

COMMISSION IMPLEMENTING DECISION (EU) 2016/2274**of 15 December 2016****on the equivalence of the regulatory framework for central counterparties in New Zealand in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾, and in particular Article 25(6) thereof,

Whereas:

- (1) The procedure for recognition of central counterparties ('CCPs') established in third countries set out in Article 25 of Regulation (EU) No 648/2012 aims to allow CCPs established and authorised in third countries whose regulatory standards are equivalent to those laid down in that Regulation to provide clearing services to clearing members or trading venues established in the Union. That recognition procedure and the equivalence decisions provided for therein thus contribute to the achievement of the overarching aim of Regulation (EU) No 648/2012 to reduce systemic risk by extending the use of safe and sound CCPs to clear over-the-counter ('OTC') derivative contracts, including where those CCPs are established and authorised in a third country.
- (2) In order for a third-country legal regime to be considered equivalent to the legal regime of the Union in respect of CCPs, the substantive outcome of the applicable legal and supervisory arrangements should be equivalent to Union requirements in respect of the regulatory objectives they achieve. The purpose of this equivalence assessment is therefore to verify that the legal and supervisory arrangements of New Zealand ensure that CCPs established and authorised therein do not expose clearing members and trading venues established in the Union to a higher level of risk than the latter could be exposed to by CCPs authorised in the Union and, consequently, do not pose unacceptable levels of systemic risk in the Union. The significantly lower risks inherent in clearing activities carried out in financial markets that are smaller than the Union financial market should thereby, in particular, be taken into account.
- (3) In accordance with Article 25(6) of Regulation (EU) No 648/2012, three conditions need to be fulfilled in order to determine that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that Regulation.
- (4) According to the first condition, CCPs authorised in a third country must comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (5) The legally binding requirements of New Zealand for CCPs authorised therein consist of Part 5C of the Reserve Bank of New Zealand Act 1989 ('the primary rules') and the orders by which CCPs are authorised as a designated settlement system ('designation orders'). The primary rules and the designation orders set out the requirements that CCPs have to comply with on an ongoing basis to be able to provide clearing services in New Zealand. CCPs established in New Zealand can be authorised as a designated settlement system by the Governor-General, on advice of both the Minister of Finance and the Minister of Commerce and in accordance with a joint recommendation of the Bank of New Zealand and the Financial Markets Authority (together, 'the joint regulators'). Conditions may be imposed for authorising a CCP as a designated settlement system. The designation orders approve the specific internal rules and procedures of the designated settlement system which contain the requirements that designated settlement systems must comply with, and which are consistent with the joint regulators' high-level policy published by the joint regulators. Pursuant to the Reserve Bank of New Zealand Act 1989, designated settlement systems must comply with relevant international standards concerning clearing and settlement systems, including the Principles for Financial Markets Infrastructures ('PFMIs') issued in April 2012 by

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

the Committee on Payment and Settlement Systems⁽¹⁾ and the International Organization of Securities Commissions ('IOSCO'). The joint regulators issued a policy statement 'The Designation and Oversight of Designated Settlement Systems' requiring designated settlement systems to comply with the PFMI.

- (6) The legally binding requirements applicable to CCPs authorised in New Zealand therefore comprise a two-tiered structure. The core principles contained in the primary rules lay down the high-level standards with which designated settlement systems must comply in order to obtain authorisation to provide clearing services in New Zealand. Those primary rules comprise the first tier of the legally binding requirements in New Zealand. In order to prove compliance with the primary rules, designated settlement systems must submit their internal rules and procedures to the approval of the joint regulators. Those internal rules and procedures, together with the designation orders through which they are approved, comprise the second tier of the legally binding requirements in New Zealand, which must provide prescriptive detail regarding the way in which the designated settlement system will meet those standards and the PFMI. The joint regulators assess compliance by the designated settlement system with those standards and with the PFMI. Once the system has been authorised as a designated settlement system, the internal rules and procedures, become legally binding upon it and cannot be amended if the joint regulators object to the intended amendments.
- (7) The equivalence assessment of the legal and supervisory arrangements applicable to designated settlement systems established in New Zealand should also take into account the risk mitigation outcome that they ensure in terms of the level of risk to which clearing members and trading venues established in the Union are exposed when participating in those entities. The risk mitigation outcome is determined by both the level of risk inherent in the clearing activities carried out by the CCP concerned which depends on the size of the financial market in which it operates, and the appropriateness of the legal and supervisory arrangements applicable to CCPs to mitigate that level of risk. In order to achieve an equivalent risk mitigation outcome, more stringent risk mitigation requirements are necessary for CCPs carrying out their activities in larger financial markets whose inherent level of risk is higher than for CCPs carrying out their activities in smaller financial markets whose inherent level of risk is lower.
- (8) The financial market in which designated settlement systems authorised in New Zealand carry out their clearing activities is significantly smaller than that in which CCPs established in the Union are active. Over the past 3 years, the total value of derivative transactions cleared in New Zealand represented less than 1 % of the total value of derivative transactions cleared in the Union. Therefore, participation in designated settlement systems established in New Zealand exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (9) The legal and supervisory arrangements applicable to designated settlement systems established in New Zealand may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The primary rules applicable to designated settlement systems authorised in New Zealand, complemented by the internal rules and procedures, which implement the PFMI, mitigate the lower level of risk existing in New Zealand and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (10) It should therefore be concluded that the legal and supervisory arrangements of New Zealand ensure that designated settlement systems authorised therein comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (11) According to the second condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of New Zealand in respect of CCPs authorised therein must provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (12) The supervision of designated settlement systems authorised in New Zealand is carried out by the joint regulators. The joint regulators may request information from designated settlement systems and their participants and may impose penalties if they refuse to reply. The joint regulators can revoke the authorisation of a designated settlement system. The joint regulators monitor compliance by designated settlement systems with the conditions to which authorisation as a designated settlement system is subject. These conditions can include requirements to notify the joint regulators of material events (such as non-compliance with, or changes to, the system's risk management framework or financial resources policy), regular reports to the joint regulators and to publish information, including a self-assessment against relevant international standards (PFMI). The joint

⁽¹⁾ As of 1 September 2014 the Committee on Payment and Settlement Systems has changed its name to Committee on Payment and Market Infrastructures.

regulators meet regularly with the senior management of the designated settlement systems and may review the authorisation and subject it to additional conditions or revoke it if the applicable requirements are not complied with.

- (13) It should therefore be concluded that designated settlement systems authorised in New Zealand are subject to effective supervision and enforcement on an ongoing basis.
- (14) According to the third condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of New Zealand must include an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (15) Third-country CCPs can operate in New Zealand provided that the legal and supervisory arrangements applicable to them and to their participants are legally robust. Moreover, third-country CCPs must be subject to effective supervision ensuring compliance with the applicable legal and supervisory arrangements. A memorandum of understanding between the Bank of New Zealand and the competent third-country supervisory authority of the CCP may be concluded.
- (16) It should therefore be concluded that the legal and supervisory arrangements of New Zealand provide for an effective equivalent system for the recognition of third-country CCPs.
- (17) This Decision is based on the legally binding requirements relating to designated settlement systems applicable in New Zealand at the time of the adoption of this Decision. The Commission, in cooperation with ESMA, should continue monitoring on a regular basis the evolution of the legal and supervisory framework for designated settlement systems in New Zealand and the fulfilment of the conditions on the basis of which this Decision has been taken.
- (18) The regular review of the legal and supervisory arrangements applicable in New Zealand to CCPs authorised therein should be without prejudice to the possibility of the Commission to undertake a specific review at any time outside the general review, where relevant developments make it necessary for the Commission to re-assess the equivalence granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (19) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of paragraph 6 of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of New Zealand consisting of Part 5C of the the Reserve Bank of New Zealand Act 1989, as complemented by the policy statement 'The Designation and Oversight of Designated Settlement Systems' requiring designated settlement systems to comply with the PFMI, and applicable to designated settlement systems shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 15 December 2016.

For the Commission
The President
Jean-Claude JUNCKER
