

**COMMISSION IMPLEMENTING DECISION (EU) 2017/2320****of 13 December 2017****on the equivalence of the legal and supervisory framework of the United States of America for national securities exchanges and alternative trading systems in accordance with Directive 2014/65/EU of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <sup>(1)</sup>, and in particular Article 25(4)(a) thereof,

Whereas:

- (1) Article 23(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(2)</sup> requires investment firms to ensure that the trades they undertake in shares admitted to trading on regulated markets, or traded on trading venues should take place on regulated markets, multilateral trading facilities (MTFs) or systematic internalisers, or third-country trading venues assessed by the Commission as equivalent in accordance with Article 25(4)(a) of Directive 2014/65/EU.
- (2) Article 23(1) of Regulation (EU) No 600/2014 only applies a trading obligation in respect of shares. The trading obligation does not comprise other equity instruments, such as depositary receipts, ETFs, certificates and other similar financial instruments.
- (3) The equivalence procedure for trading venues established in third countries set out in Article 25(4)(a) of Directive 2014/65/EU aims to allow investment firms to undertake trades in shares that are subject to the trading obligation in the Union, on third-country trading venues recognised as equivalent. The Commission should assess whether the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements resulting from Regulation (EU) No 596/2014 of the European Parliament and of the Council <sup>(3)</sup>, from Title III of Directive 2014/65/EU, from Title II of Regulation (EU) No 600/2014 and from Directive 2004/109/EC of the European Parliament and of the Council <sup>(4)</sup>, and which are subject to effective supervision and enforcement in that third country. This should be read in the light of the objectives pursued by these acts, in particular their contribution to the establishment and functioning of the internal market, market integrity, investor protection and ultimately, but no less importantly, financial stability.
- (4) In accordance with the forth subparagraph Article 25(4)(a) of Directive 2014/65/EU, a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the conditions that (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis (b) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable (c) security issuers should be subject to periodic and ongoing information requirements ensuring a high level of investor protection, and (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.
- (5) The purpose of this equivalence assessment is to assess, inter alia, whether the legally binding requirements which are applicable in United States of America (the 'USA' or the 'U.S.') to national securities exchanges ('NSE')

<sup>(1)</sup> OJ L 173 12.6.2014, p. 349

<sup>(2)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>(3)</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

<sup>(4)</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

and alternative trading systems ('ATS') established therein and registered with and under the supervision of the U.S. Securities and Exchange Commission ('SEC') are equivalent to the requirements resulting from Regulation (EU) No 596/2014, from Title III of Directive 2014/65/EU, from Title II of Regulation (EU) No 600/2014 and from Directive 2004/109/EC, which are subject to effective supervision and enforcement in that third country.

- (6) As regards the conditions that the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis; Section 3(a)(1) of the Securities Exchange Act of 1934 ('the Exchange Act') defines an exchange as any organization, association, or group of persons which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange. The term exchange is further defined under SEC Rule 3b-16 as an organization, association or group of persons that (1) brings together the orders for securities of multiple buyers and sellers and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders shall interact with each other and the buyers and sellers entering such orders agree to the terms of the trade. Accordingly, an exchange must operate a multilateral system in accordance with non-discretionary rules. An exchange must either register with the SEC as a NSE or register with the SEC as a broker-dealer and comply with Regulation ATS.
- (7) Furthermore, a NSE must provide members with impartial access to their markets and services. The access criteria must further be transparent, and must not be applied in an unfairly discriminatory manner. To this effect, a NSE is required to have rules in place that prescribe the means by which any registered broker-dealer may apply to become a member. The SEC, pursuant to Section 19(b) of the Exchange Act, reviews rules for admission to a NSE. While NSE must have reasonable standards for access, such standards should act to prohibit unreasonably discriminatory denials of access. A NSE must deny membership to any non-registered broker-dealer and may deny membership to any broker-dealer that is subject to a statutory disqualification.
- (8) Section 242.300 of Title 17 of the Code of Federal Regulations Part 242 ('Regulation ATS') defines an ATS as any organization, association, person, group of persons, or system that provides a market place for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Exchange Act Rule 3b-16. Under Regulation ATS, an entity that falls within the definition of an exchange must register either as a NSE or as a broker-dealer and comply with Regulation ATS. An ATS must operate a multilateral system where participants execute transactions in accordance with non-discretionary rules. ATSs that account for 5 % or more of the average daily trading volume within a certain time period in any equity security must comply with the fair access requirements of Section 242.301(b)(5)(ii) of the Regulation ATS. Specifically, they must establish written standards for granting access to trading in the relevant security on their systems and maintain these standards in their records. An ATS is prohibited from unreasonably restricting or limiting any persons with respect to access to its services for those equity securities for which the ATS accounts for 5 % or more of the average daily trading volume in the applicable time period, and must not apply these standards in an unfair or discriminatory manner. The access standards are provided to the SEC upon request.
- (9) The four conditions set out in Article 25(4)(a) subparagraph 4 of Directive 2014/65/EU must be fulfilled in order to determine that the legal and supervisory arrangements of a third country regarding the NSEs and ATSS authorised therein are equivalent to those laid down in Directive 2014/65/EU.
- (10) According to the first condition, third-country trading venues must be subject to authorisation and to effective supervision and enforcement on an ongoing basis.
- (11) A NSE must be registered by the SEC before it may begin operations. The SEC grants registration if it finds that the applicable requirements with respect to the applicant are satisfied. The SEC must deny a registration if it does not make this finding (Section 19(a)(1) of the Securities Exchange Act). The Exchange Act requires that an exchange has in place arrangements to address all of the types of conduct and activity that an applicant wished

to engage in. Once registered, NSEs are required to maintain rules, policies, and procedures consistent with their statutory obligations, and to have the capacity to carry out their obligations. Upon registration, a NSE becomes a Self-Regulatory Organisation ('SRO'). In this capacity, NSEs monitor and enforce compliance by their members and persons associated with their members with the provisions of the Exchange Act, the rules and regulations thereunder and with their own rules. In the case of non-compliance of members with NSEs rules, NSEs in their capacity as SROs are required to address any potential violations of the market's rules or the federal securities laws by its members. They are also required to inform the SEC of significant infringements.

- (12) An ATS must comply with Regulation ATS, which requires, among other things, that the ATS register with the SEC as a broker-dealer under Section 15 of the Securities Exchange Act. ATSs, as broker-dealers, must become a member of at least one SRO, such as the Financial Industry Regulatory Authority ('FINRA'). The broker-dealer applicant must submit information about its background, including the type of business in which it proposes to engage, the identity of the applicant's direct and indirect owners, and other control persons, including executive officers and whether the applicant or any of its control affiliates has been subject to criminal prosecutions, regulatory actions or civil actions in connection with any investment-related activity. The SEC must deny a registration if it does not make this finding (S. 15 of the Securities Exchange Act).
- (13) Under the U.S. framework, continued compliance with the initial registration requirements is a condition for continued registration for NSEs and ATSs. Registered NSEs and ATSs are both required to maintain rules, policies, and procedures consistent with their obligations under the federal securities laws and rules, and to have the capacity to carry out their obligations.
- (14) As regards effective supervision, the Securities Act of 1933 ('The Securities Act') and the Exchange Act constitute the main pieces of the primary legislation which establishes a legally enforceable regime for the trading of securities in the USA. The Exchange Act empowers the SEC with broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee broker-dealers, including ATSs, transfer agents, and clearing agencies as well as the U.S. SROs which include securities exchanges and FINRA. The Exchange Act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The Exchange Act also empowers the SEC to require periodic reporting of information by companies with publicly traded securities. Self-regulation of market intermediaries through a system of SROs is one of the core elements of the U.S regulatory framework. Under the U.S. framework, SROs, as regulators, are primarily responsible for establishing the rules under which their members conduct business and for monitoring the ways their members conduct business. In the case of non-compliance of members with ATS rules, ATS in their capacity as SROs are required to address any potential violations of the market's rules or the federal securities laws by its members. They are also required to inform the SEC of significant infringements.
- (15) The Exchange Act requires all registered NSEs to be able to enforce compliance by their members and persons associated with their members with the provisions of the Exchange Act, the rules and regulations thereunder, and their own rules. As part of their ongoing supervision of NSEs, the SEC evaluates each exchange's ability to survey their members and their trading activities. It is also incumbent on a NSE to address any potential violations of the market's rules or the federal securities laws by its members and report such potential violations to the SEC. As part of its duty to enforce compliance by their members, each NSE is responsible for investigating and disciplining any breaches of the Exchange Act, the rules and regulations thereunder. The SEC may also, in its discretion, investigate and prosecute any violations of the Exchange Act and the rules thereunder. FINRA, a SRO for broker-dealers including ATSs, is required to enforce compliance by its members, including ATSs, with the provisions of the Exchange Act, the rules and regulations thereunder, and their own rules. The SRO rules are also subject to SEC review. If the SEC finds that an SRO has failed, without reasonable justification or excuse, to enforce compliance with any such provision by a member or person associated with a member, it has powers to impose sanctions against the SRO under Section 19(h) of the Exchange Act. Pursuant to Section 21 of the Exchange Act, the SEC may investigate violations and seek sanctions against SRO members that violate an SRO rule. As part of their ongoing supervision of SROs, the SEC evaluates the ability of each NSE and FINRA to supervise their members and their trading activities. NSEs and ATSs are required to inform SEC of any rule changes.

- (16) As regards effective enforcement, the SEC has broad authority to investigate actual or potential violations of the federal securities laws, including the Exchange Act and the rules thereunder. The SEC can obtain records from regulated entities pursuant to its supervisory powers. Moreover, under its subpoena authority, the SEC can compel the production of documents or testimony from any person or entity anywhere within the United States. The SEC has authority to take enforcement actions by commencing civil actions in federal district court or instituting administrative proceedings before an SEC administrative law judge for violations of the federal securities laws, including insider trading and market manipulation. In civil actions, the SEC may seek disgorgement of ill-gotten gains, pre-judgment interest, civil money penalties, injunctions, an order prohibiting one from serving as an officer or director of a public company or from participating in an offering of penny stock, as well as other ancillary relief (such as an accounting from a defendant). In administrative actions, sanctions may include censures, limitations on activities, civil penalties in addition to disgorgement of ill-gotten gains or bars as to individuals, or revocation of the registration of an entity. The SEC has powers to bring an enforcement action against an SRO (e.g., a NSE or FINRA) for failure to act or adequately perform required functions.
- (17) The SEC also has authority to investigate and take disciplinary or other enforcement actions against an ATS for infringements of the U.S. federal securities laws. Moreover, the SEC is authorised to coordinate its enforcement actions with domestic and international counterparts. For example, the SEC may refer a matter to the U.S. Department of Justice for criminal prosecution or to other criminal or regulatory bodies for action at any point during an inquiry or investigation. In addition, the SEC has authority to share non-public information in its possession with domestic and international counterparts.
- (18) It can therefore be concluded that NSEs and ATSS registered with the U.S. SEC are subject to authorisation and to effective supervision and enforcement on an ongoing basis.
- (19) According to the second condition, third-country trading venues must have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable.
- (20) Pursuant to Section 12(a) of the Exchange Act, securities listed on a U.S. NSE must be registered on a NSE by the issuer. Registration of a security requires the issuer to file an application with the exchange where its securities will be listed; the issuer must also file registration statements with the SEC. The exchange authority will certify to the SEC once the security has been approved by the NSE for listing and registration. All securities traded on a NSE, and ATS trading listed securities, must meet listing standards set out in the exchange's listing rules, which must be filed with the SEC under Section 19(b) of the Exchange Act and Rule 19b-4. Unlisted securities traded publicly on an ATS are subject to SEC disclosure rules and other standards for publicly traded securities. SEC rules and listing standards require issuers to make timely disclosure of information that would be material to investors or likely to have a significant effect on the price of an issuer's securities. Section 10A(m) and Rule 10A-3 thereunder also directs each NSE to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements set forth in the statute and rule. The Securities Act requires that investors receive financial and other significant information concerning securities being offered for public sale and their issuers, and prohibit deceit, misrepresentations, and other fraud in the sale of securities. NSEs are required to have clear and transparent rules regarding the admission of securities to trading. Securities must be freely negotiable and meet certain criteria regarding the distribution of securities to the public and information about the security and the issuer that are needed to value the security. A NSE cannot register securities for which information about the securities and the issuer is not publicly available. Finally, orderly trading of securities on a NSE or ATSS is ensured by the SEC's powers to suspend trading and issue emergency orders under certain circumstances. Pursuant to Section 12(k)(1)(A) of the Exchange Act, the SEC, if the public interest and the protection of investors so require, can issue an order summarily to temporarily suspend all trading in a specific security.

- (21) The U.S. regulatory framework includes requirements for providing pre-trade information to market participants. The securities laws and rules and SRO rules require real-time reporting of best bids, best offers and quotation sizes for any security on NSEs or ATSS that trade 5 % or more of the volume in a given NMS stock and displays orders to any person. The 5 % threshold is based on Rule 301(b)(3) and (b)(5) and is calculated using share volumes reported to the U.S. consolidated tapes. The SEC has authority to examine ATSS for compliance with federal securities laws and Regulation ATS, including whether an ATSS has exceeded this 5 % threshold and complies, as applicable, with the requirement of Rule 301(b)(3) of Regulation ATS. Under SEC Rule 602, each NSE is required to collect, process, and make available to vendors the best bid, best offer, and aggregate quotation sizes for each subject security. The information is made widely available to the public on fair, reasonable and non-discriminatory terms. In the public interest and as appropriate for the protection of investors and the maintenance of fair and orderly markets, under Section 11A(a)(1)(C) of the Exchange Act and the rules thereunder, NSEs are required to ensure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The U.S. regulatory framework also includes requirements for providing post-trade information, including the price, volume and time of the transactions, to market participants on a timely basis. Rule 601(a) under Regulation NMS requires exchanges and FINRA to file transaction reporting plans for approval with the SEC. The SEC and SRO rules require real-time reporting of transactions on exchanges and on ATSS. Broker-dealers, including ATSS, must submit transactions information to FINRA for dissemination.
- (22) It can therefore be concluded that NSEs and ATSS registered with the U.S. SEC have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner and are freely negotiable.
- (23) According to the third condition, security issuers must be subject to periodic and ongoing information requirements ensuring a high level of investor protection.
- (24) Issuers whose securities are admitted to trading on a U.S. NSE are required to publish annual and interim financial reports. Listed issuers and companies whose shares are admitted to trading are also subject to the reporting requirements under Section 13(a) or Section 15(d) of the Exchange Act. Securities admitted to trading on a U.S. NSE may also be traded on another NSE or on ATSS. The reporting obligation applicable to such reporting issuers applies regardless of the venue on which individual trades take place. The disclosure of comprehensive and timely information about security issuers allows investors to assess the business performance of issuers and ensures appropriate transparency for investors through a regular flow of information.
- (25) It can therefore be concluded that issuers whose securities are admitted to trading on NSEs and ATSS are subject to periodic and ongoing information requirements ensuring a high level of investor protection.
- (26) According to the fourth condition, the third-country legal and supervisory framework must ensure market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.
- (27) Federal securities laws of the USA establish a comprehensive regulatory framework to ensure market integrity and prevent insider trading and market manipulation. This framework prohibits, and authorises the SEC to take enforcement action against, conduct which could result in distorting the functioning of the markets such as market manipulation and communication of false or misleading information (including in Sections 9(a), 10(b), 14(e), 15(c) of the Exchange Act, and Rule 10b-5 thereunder). Federal securities laws also prohibit insider trading (e.g., Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder). The SEC may bring enforcement action against a person for buying or selling securities on the basis of material, non-public information obtained or used in violation of a fiduciary duty or a duty of trust or confidence, or for communicating such information in violation of a duty (Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act).
- (28) It can therefore be concluded that the U.S. legal and supervisory framework ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

- (29) It can therefore further be concluded that the legal and supervisory framework governing NSEs and ATSS registered with the SEC complies with the four abovementioned conditions for legal and supervisory arrangements and hence should be considered to provide for an equivalent system to the requirements for trading venues laid down in Directive 2014/65/EU, Regulation (EU) No 600/2014 Regulation (EU) No 596/2014 and Directive 2004/109/EC.
- (30) This decision is based on the legal and supervisory framework governing NSEs and ATSS registered with the SEC on which shares that are admitted to trading in the EU are also traded following a separate admission to be traded on NSEs. This decision does not therefore cover ATSS on which shares admitted to trading in the EU are traded without having obtained that separate admission.
- (31) The decision will also be complemented by cooperation arrangements to ensure the effective exchange of information and coordination of supervisory activities between the national competent authorities and the SEC.
- (32) This Decision is based on the legally binding requirements relating to NSEs and ATSS applicable in the U.S. at the time of the adoption of this Decision. The Commission should continue monitoring on a regular basis the evolution of the legal and supervisory arrangements for these trading venues, market developments, the effectiveness of supervisory cooperation in relation to monitoring and enforcement and the fulfilment of the conditions on the basis of which this Decision has been taken.
- (33) For that purpose, the Commission should conduct regular reviews of the legal and supervisory arrangements applicable to NSEs and ATSS in the U.S. This is without prejudice to the possibility of the Commission to undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the equivalence granted by this Decision, in particular taking into account the experience acquired as regards the execution of trades on ATS after one year following entry into force of this decision. Any re-assessment could lead to the repeal of this Decision.
- (34) Considering that Regulation (EU) No 600/2014 and Directive 2014/65/EU applies from 3 January 2018, it is necessary that this decision enters into force on the day following the day of publication in the *Official Journal of the European Union*.
- (35) 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 Article 23(1) of Regulation (EU) No 600/2014 the legal and supervisory framework in the United States of America applicable to national securities exchanges and alternative trading systems registered with the Securities and Exchange Commission as set out in the Annex to this Decision shall be considered to be equivalent to the requirements for regulated markets as defined in Directive 2014/65/EU resulting from Regulation (EU) No 596/2014, from Title III of Directive 2014/65/EU, from Title II of Regulation (EU) No 600/2014 and from Directive 2004/109/EC and to be subject to effective supervision and enforcement.

*Article 2*

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

Done at Brussels, 13 December 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

## ANNEX

National securities exchanges registered with the US Securities and Exchange Commission and considered equivalent to regulated markets as defined in Directive 2014/65/EU:

- (a) BOX Options Exchange LLC
- (b) Cboe BYX Exchange, Inc. (formerly Bats BYX Exchange, Inc.; BATS Y-Exchange, Inc.)
- (c) Cboe BZX Exchange, Inc. (formerly Bats BZX Exchange, Inc.; BATS Exchange, Inc.)
- (d) Cboe C2 Exchange, Inc.
- (e) Cboe EDGA Exchange, Inc. (formerly Bats EDGA Exchange, Inc.; EDGA Exchange, Inc.)
- (f) Cboe EDGX Exchange, Inc. (formerly Bats EDGX Exchange, Inc.; EDGX Exchange, Inc.)
- (g) Cboe Exchange, Inc.
- (h) Chicago Stock Exchange, Inc.
- (i) The Investors Exchange LLC
- (j) Miami International Securities Exchange
- (k) MIAX PEARL, LLC
- (l) Nasdaq BX, Inc. (formerly NASDAQ OMX BX, Inc.; Boston Stock Exchange)
- (m) Nasdaq GEMX, LLC (formerly ISE Gemini)
- (n) Nasdaq ISE, LLC (formerly International Securities Exchange, LLC)
- (o) Nasdaq MRX, LLC (formerly ISE Mercury)
- (p) Nasdaq PHLX LLC (formerly NASDAQ OMX PHLX, LLC; Philadelphia Stock Exchange)
- (q) The Nasdaq Stock Market
- (r) New York Stock Exchange LLC
- (s) NYSE Arca, Inc.
- (t) NYSE MKT LLC (formerly NYSE AMEX and the American Stock Exchange)
- (u) NYSE National, Inc. (formerly National Stock Exchange, Inc.)

Alternative trading systems registered with the US Securities and Exchange Commission and considered equivalent to regulated markets as defined in Directive 2014/65/EU:

- (a) Aqua Securities L.P.
- (b) ATS-1
- (c) ATS-4
- (d) ATS-6
- (e) Barclays ATS
- (f) Barclays DirectEx
- (g) BIDS Trading, L.P.
- (h) CIOI
- (i) CitiBLOC

- (j) CITICROSS
  - (k) CODA Markets, Inc
  - (l) Credit Suisse Securities (USA) LLC
  - (m) Deutsche Bank Securities, Inc
  - (n) eBX LLC
  - (o) Instinct X
  - (p) Instinet Continuous Block Crossing System (CBX)
  - (q) Instinet, LLC (*Instinet Crossing, Instinet BLX*)
  - (r) Instinet, LLC (*BlockCross*)
  - (s) JPB-X
  - (t) J.P. Morgan ATS ('JPM-X')
  - (u) JSVC LLC
  - (v) LiquidNet H<sub>2</sub>O ATS
  - (w) Liquidnet Negotiation ATS
  - (x) Luminex Trading & Analytics LLC
  - (y) National Financial Services, LLC
  - (z) POSIT
  - (aa) SIGMA X2
  - (bb) Spot Quote LLC
  - (cc) Spread Zero LLC
  - (dd) UBS ATS
  - (ee) Ustocktrade
  - (ff) Virtu MatchIt
  - (gg) XE
-