

**COMMISSION IMPLEMENTING DECISION (EU) 2021/1105****of 5 July 2021****on the recognition of the legal, supervisory and enforcement arrangements of Singapore for derivatives transactions supervised by the Monetary Authority of Singapore as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories****(Text with EEA relevance)**

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 <sup>(1)</sup>, and in particular Article 13(2) thereof,

Whereas:

- (1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.
- (2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 <sup>(2)</sup> and Commission Delegated Regulation (EU) 2016/2251 <sup>(3)</sup>, establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'); in addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.
- (3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements is to be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must be effectively applied in an equitable and non-distortive manner in that third country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and enforcement arrangements of a third country ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

<sup>(1)</sup> OJ L 201, 27.7.2012, p. 1.

<sup>(2)</sup> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

<sup>(3)</sup> Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

- (4) This Decision is not only based on a comparative analysis of the legal, supervisory and enforcement requirements applicable in Singapore, but also on an assessment of the outcome of those requirements and their adequacy in order to mitigate the risks arising from OTC derivative contracts not cleared by a CCP in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.
- (5) The legal, supervisory and enforcement arrangements applicable in Singapore for non-centrally cleared derivative contracts are laid out in the Securities and Futures (licensing and conduct of business) Regulations, as well as in the Guidelines on risk mitigation requirements for non-centrally cleared over-the-counter derivative contracts ('Guidelines on risk mitigation requirements') and in the Guidelines on margin requirements for non-centrally cleared derivative contracts ('Guidelines on margins') of the Monetary Authority of Singapore ('MAS'). The Guidelines on margins entered into force on 1 March 2017 while those on risk mitigation requirements were published in April 2019. The MAS is Singapore's central bank and financial regulator and exercises prudential supervision over all financial institutions in Singapore, which include banks, merchant banks, insurance companies, capital market intermediaries, financial advisors and financial market infrastructures. It has jurisdiction over OTC derivatives within the meaning of Article 2(7) of Regulation (EU) No 648/2012.
- (6) The operational risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as laid down in Article 54B of the Securities and Futures (Licensing and conduct of business) Regulations, in the Guidelines on risk mitigation requirements and in the Guidelines on Margin Requirements of MAS are similar to those provided for in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012 and Delegated Regulation (EU) No 149/2013 with regard to timely confirmation, valuation of contracts, portfolio compression, portfolio reconciliation and dispute resolution.
- (7) With regard to the requirements for timely confirmation, portfolio compression and reconciliation, valuation and the resolution of disputes applicable to OTC derivatives not cleared by a CCP, the OTC derivatives rules contained in the Guidelines of MAS could be considered equivalent to the requirements set out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012. Non-compliance with the Guidelines may trigger a review of the authorisation under which entities subject to the Guidelines operate.
- (8) The margin rules of Singapore apply to OTC derivatives contracts as defined in point (7) of Article 2 of Regulation (EU) No 648/2012, with the exception of physically settled FX forwards and swaps, fixed physically settled FX transactions associated with the exchange of principal by means of cross-currency swaps, physically-settled commodity derivatives entered into for commercial purposes, uncleared derivatives without a legally enforceable netting agreement, uncleared derivatives without a legally enforceable collateral arrangement, equity options and equity index options. In addition, the margin rules of Singapore do not contain any specific treatment for structured products, including covered bonds and securitisations. Under the terms of Regulation (EU) No 648/2012 and Delegated Regulation (EU) 2016/2251, FX swaps and FX forwards and the exchange of principal of currency swaps are exempted from the initial margin requirements and only derivatives associated with covered bonds for hedging purposes, derivatives associated with certain securitisations, and derivatives with counterparties in third countries where legal enforceability of netting agreements or collateral protection cannot be ensured, as well as single-stock equity options and index options, benefit from exemptions from margin requirements. This Decision should therefore not apply to physically-settled commodity derivatives entered into for commercial purposes.
- (9) The margin requirements set out in the Guidelines on margins apply to 'persons who are exempt from holding a capital markets services license under section 99(1)(a) or (b) of the SFA' ('MAS Covered Entity'), which refers to banks licensed under the Banking Act of Singapore and merchant banks. Sovereigns, central banks, public sector entities, eligible multilateral agencies, organisation or entities, the Bank for International Settlements, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development are exempted from exchange of margins under the Guidelines. The definition of an 'MAS Covered Entity' is therefore a subset of the definition of 'financial counterparty' in Regulation (EU) No 648/2012. This decision should therefore cover the legal, supervisory and enforcement arrangements regarding operational risk mitigation and exchange of collateral obligations applicable to MAS Covered Entities.

- (10) An MAS Covered Entity must exchange variation margin if its aggregate month-end average notional amount of uncleared derivative contracts for March, April and May of the year exceeds S\$ 5 billion or in case of a transaction with an MAS Covered Entity whose aggregate month-end average notional amount of uncleared derivatives contracts for March, April and May of the year exceeds that threshold. Regulation (EU) No 648/2012 requires all counterparties to an OTC derivative transaction not cleared by a CCP to exchange variation margin on a daily basis. This Decision should therefore be conditional on the exchange of variation margin for transactions conducted with MAS Covered Entities which are subject to the margin rules of Singapore.
- (11) According to the Guidelines on margins, the exchange of initial and variation margins (together 'margins') should take place within the standard settlement cycle for the relevant collateral type but no later than three business days from the transaction date or from the date when margins have to be re-calculated. Regulation (EU) No 648/2012 requires all counterparties to an OTC derivative contract not cleared by a CCP to exchange variation margin on a daily basis or adjust the margin period of risk used to calculate the initial margin accordingly. Therefore, conditions should be laid down with regard to variation margin.
- (12) Similar to the requirements laid down in Delegated Regulation (EU) 2016/2251, under the Guidelines on margins MAS Covered Entities with an aggregate notional amount of uncleared OTC derivatives, calculated at the level of the consolidated group and excluding intragroup transactions, for the months of March, April and May of the year before the year in which the calculation exceeds S\$13 billion must exchange initial margin. Singapore has adopted the internationally agreed phase-in schedule for initial margin requirements. The Guidelines on margins also provide for a combined minimum transfer amount of initial and variation margins of S\$ 800 000. The threshold in Article 25 of Delegated Regulation (EU) 2016/2251 is EUR 500 000. Taking into account the marginal difference in the value of these currencies, those amounts should be considered equivalent.
- (13) In a similar manner to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, the margin rules of Singapore allow for the use of a standardised model equivalent to the one laid out in the aforementioned Annex. Alternatively, internal or third-party models may be used to calculate the initial margin where those models contain certain specific parameters, including minimum confidence intervals and margin periods of risk and certain historical data, including stressed periods. Before using an internal or third-party model, and before making any changes thereto, counterparties must notify the MAS and provide all relevant documentation including model methodology, specifications and validation reports to demonstrate that the model complies with the Guidelines on margins.
- (14) The requirements in the margin rules of Singapore on eligible collateral, and on how that collateral is held and segregated, can be considered as equivalent to those set out in Delegated Regulation (EU) 2016/2251. The margin rules of Singapore also contain a similar list of eligible collateral and require MAS Covered Entities to reasonably diversify the collateral they collect, including by limiting securities with low liquidity in order to avoid concentration of collateral. The requirements in the margin rules of Singapore applicable to the valuation of collateral are comparable to the requirements laid out in Article 19 of Delegated Regulation (EU) 2016/2251.
- (15) With regard to the equivalent level of protection of professional secrecy in Singapore, the employees of the MAS are subject to the provisions on professional secrecy included in the Monetary Authority of Singapore Act ('MAS Act'), which prohibits directors, officers, employees, consultants and agents of the MAS to divulge information which has come to their knowledge in the course of their duties. Therefore, the 'MAS Act' guarantees professional secrecy, including the protection of business secrets exchanged by competent authorities with third parties, equivalent to those set out in Title VIII of Regulation (EU) No 648/2012. Therefore, the 'MAS Act' should be considered as providing an equivalent level of protection as regards professional secrecy as that provided in Regulation (EU) No 648/2012.
- (16) Finally, as regards the effective supervision and enforcement of the legal arrangements in Singapore, the MAS has primary responsibility for monitoring and enforcing compliance with the Guidelines. MAS has the power to take a broad range of supervisory measures to stop any breach of the applicable requirements, such as warning letters, removal of directors, denial of supervisory approvals or limits placed on the MAS Covered Entities' activities. Those measures should therefore be considered as providing for the effective application of the relevant legal, regulatory and enforcement arrangements under the OTC derivatives rules of Singapore in an equitable and non-distortive manner to ensure effective supervision and enforcement.

- (17) This Decision recognises equivalence of binding requirements set by the MAS relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its monitoring efforts the Commission may request MAS to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.
- (18) 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 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Singapore for trade confirmation, portfolio compression and reconciliation, valuation and dispute resolution that are applied to transactions regulated as OTC derivatives by the Monetary Authority of Singapore ('MAS') and that are not cleared by a CCP shall be considered as equivalent to the corresponding requirements set out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is established in Singapore and is a 'MAS Covered Entity' as defined under the Guidelines on margin requirements for non-centrally cleared OTC derivative contracts.

#### *Article 2*

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Singapore for the exchange of collateral that are applied to transactions regulated as OTC derivatives by the MAS and that are not cleared by a CCP, with the exception of physically-settled commodity derivatives for commercial purposes, shall be considered as equivalent to the requirements of paragraph 3 of Article 11 of Regulation (EU) No 648/2012, where the following conditions are satisfied:

- (a) at least one of the counterparties to those transactions is established in Singapore and is a MAS Covered Entity as defined under the Guidelines on margin requirements for non-centrally cleared OTC derivative contracts of Singapore;
- (b) where variation margin is required to be provided under Regulation (EU) No 648/2012, variation margin is exchanged on the same day in which it is calculated.

By way of derogation from point (b), where it is established between the counterparties that variation margin cannot consistently be provided on the same day in which it is calculated, the legal, supervisory and enforcement arrangements of Singapore shall also be considered as equivalent to the requirements of Art. 11(3) of Regulation (EU) No 648/2012 where variation margin is exchanged within two business days of its calculation and the margin period of risk used to calculate initial margin is adjusted accordingly.

#### *Article 3*

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, 5 July 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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