

**COMMISSION IMPLEMENTING DECISION (EU) 2022/552****of 4 April 2022****determining that national securities exchanges of the United States of America that are registered with the Securities and Exchange Commission comply with legally binding requirements which are equivalent to the requirements laid down in Title III of Directive 2014/65/EU and are subject to effective supervision and enforcement****(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 2a(2) thereof,

Whereas:

- (1) It results from the definition of 'OTC derivative' and 'OTC derivative contract' laid down in Article 2, point (7), of Regulation (EU) No 648/2012 that financial instruments other than OTC derivatives are derivative contracts the execution of which takes place either on a regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council <sup>(2)</sup>, or on a third country market considered equivalent to a regulated market pursuant to Article 2a of Regulation (EU) No 648/2012. In consequence, for the purposes of Regulation (EU) No 648/2012, derivative contracts executed on a third country market deemed equivalent to a regulated market should be classified as financial instruments other than OTC derivatives.
- (2) According to Article 2a of Regulation (EU) No 648/2012, a third country market is to be considered equivalent to a regulated market where that market complies with legally binding requirements that are equivalent to the requirements laid down in Title III of Directive 2014/65/EU and provided that that market is subject to effective supervision and enforcement in that third country on an ongoing basis. It should thus be assessed whether national stock exchanges ('NSEs') that are established in the USA and that are supervised by the SEC comply with those requirements.
- (3) This equivalence assessment is limited to the NSEs listed in the Annex to this Decision and thus covers derivative instruments that are traded on those exchanges and cleared by the CCPs recognised by ESMA.
- (4) Section 3(a)(1) of the Securities Exchange Act of 1934 (the 'Exchange Act') defines an exchange as any organisation, 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 organisation, association or group of persons that brings together the orders for securities of multiple buyers and sellers and 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 is required to operate a multilateral system in accordance with non-discretionary rules.

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

<sup>(2)</sup> 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 (OJ L 173, 12.6.2014, p. 349).

- (5) According to Section 19(a)(1) of the Exchange Act, an exchange must be registered with the SEC as a NSE 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 those requirements are not satisfied. The Exchange Act further 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. Under the Exchange Act, continued compliance with the initial registration requirements is a condition for continued registration for NSEs. Registered NSEs are thus required to maintain rules, policies and procedures consistent with their statutory obligations, and to have the capacity to carry out their obligations on a continuous basis.
- (6) The Exchange Act further specifies that NSEs must provide their members with impartial access to their markets and services. The access criteria must be transparent and must not apply in an unfairly discriminatory manner. Registered NSEs are thus required to have clear and transparent rules regarding the admission of securities to trading so that those securities are capable of being traded in a fair, orderly, and efficient manner and are freely negotiable. Both the options and equities exchanges have listing standards that are subject to the SEC's oversight pursuant to Section 19 and Rule 19b-4 of the Exchange Act. SEC rules and listing standards require issuers of securities underlying listed options to timely disclose information that would be material to investors or likely to have a significant effect on the price of the securities. NSEs are prohibited from listing any security of an issuer that does not comply with the audit committee requirements set out in the SEC rules. A NSE cannot register securities that underlie listed options for which information about the securities and the issuer is not publicly available. SEC Rule 9b-1 also requires options markets to prepare an options disclosure document with certain specified information about the characteristics and risks of exchange traded options. Broker-dealers are to provide customers with that options disclosure document, and that document is to be filed with the SEC prior to being furnished to customers. Further, the Options Clearing Corporation ("OCC") is the issuer of exchange-listed options. The OCC is registered with the SEC as a clearing corporation and self-regulatory organisation. The OCC must comply with Section 17A of the Exchange Act, which requires, inter alia, that the OCC's rules are to be designed, in general, to protect investors and the public interest. OCC's rules are subject to the SEC's oversight pursuant to Section 19 of the Exchange Act and SEC Rule 19b-4. Furthermore, changes that an OCC intends to make to its rules, operations, or procedures that could materially affect the nature or level of risk posed by the OCC are also subject to SEC oversight pursuant to Section 806(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and SEC Rule 19b-4. SEC Rule 17Ad-22(c) requires the OCC to disclose annual audited financials publicly. Additionally, SEC Rule 17Ad-22(e)(23) requires that an OCC enforces policies and procedures that provide for, inter alia, the public disclosure of all relevant rules and material procedures, including key aspects of its default management rules and procedures, of basic data on transaction volume and values, and of a comprehensive description of its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework. Orderly trading of securities on a NSE is ensured by the SEC's powers to suspend trading and issue emergency orders under certain circumstances and to protect public interest and investors. The U.S. regulatory framework also includes pre and post-trade transparency requirements for providing information to market participants in a timely manner.
- (7) Upon registration with the SEC, a NSE becomes a Self-Regulatory Organisation ("SRO"). Self-regulation of market intermediaries through a system of SROs is one of the core elements of the U.S regulatory framework. SROs are primarily responsible for establishing the rules under which their members conduct business and for monitoring the ways their members conduct business. In their capacity as SROs, NSEs monitor and enforce compliance by their members and persons associated with their members with 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 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.
- (8) The legally binding requirements applicable to NSEs authorised in the USA which are set out in the legal framework for the operation of NSEs therefore deliver results that are in substance equivalent to the requirements laid down in Title III of Directive 2014/65/EU in the following areas: authorisation process, definitional requirements, access to the recognised exchange, organisational requirements, admission of financial instruments to trading, suspension and removal of instruments from trading, monitoring of compliance and access to clearing and settlement arrangements.
- (9) The Commission therefore concludes that the legally binding requirements for NSEs established in the USA are equivalent to the requirements laid down in Title III of Directive 2014/65/EU.

- (10) As regards effective supervision, the Securities Act of 1933 (the 'Securities Act') and the Exchange Act constitute the main acts of primary legislation that establish a legally enforceable regime for the trading of securities in the USA. The Exchange Act gives the SEC broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee broker-dealers, transfer agents, and clearing agencies as well as the U.S. SROs which include national securities exchanges.
- (11) The Exchange Act 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. Moreover, the Exchange Act 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. regulatory framework, SROs, as regulators, are primarily responsible for establishing and monitoring the rules under which their members conduct business.
- (12) The Exchange Act requires that all registered NSEs are able to enforce compliance by their members and persons associated with their members with the Exchange Act, the rules and regulations thereunder, and their own rules. As part of its ongoing supervision of NSEs, the SEC evaluates each exchange's ability to survey its 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.
- (13) As part of its duty to enforce compliance by its members, each NSE is responsible for investigating and disciplining any breaches of the Exchange Act and of the rules and regulations adopted thereunder. The SEC may also, at its discretion, investigate and prosecute any breaches of the Exchange Act and the rules and regulations adopted thereunder. The SRO rules are also subject to SEC review. Under Section 19(h) of the Exchange Act, the SEC can impose sanctions on SROs that have failed, without reasonable justification or excuse, to enforce compliance with any SRO rule by a member or person associated with a member.
- (14) Pursuant to Section 21 of the Exchange Act, the SEC may investigate violations of SRO rules and impose sanctions on SRO members that violate those rules. As part of its ongoing supervision of SROs, the SEC evaluates the ability of each NSE to supervise its members and their trading activities. NSEs are required to inform the SEC of any rule changes.
- (15) As regards effective enforcement, the SEC has broad authority to investigate actual or potential violations of U.S. federal securities laws, including the Exchange Act and the rules adopted 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 USA. The SEC has authority to take enforcement actions by commencing civil actions in federal district courts or instituting administrative proceedings before a SEC administrative law judge for violations of the U.S. 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, as well as other ancillary relief, including an accounting from a defendant.
- (16) In administrative actions, sanctions may include censures, limitations on activities, civil penalties in addition to disgorgement of ill-gotten gains or bars to individuals, or revocation of the registration of an entity. The SEC has powers to bring an enforcement action against an SRO for failure to act or adequately perform required functions. Moreover, the SEC is authorised to coordinate its enforcement actions with domestic and international counterparts at any point during an inquiry or investigation, including the referral of a matter to the U.S. Department of Justice for criminal prosecution or to other criminal or regulatory bodies for action. In addition, the SEC has authority to share non-public information with domestic and international counterparts.

- (17) The U.S. legal and supervisory framework also ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation. That legal and supervisory framework prohibits the conduct that could result in a distortion of the functioning of the markets, including market manipulation and communication of false or misleading information. That legal and supervisory framework also authorises the SEC to take enforcement actions against such conduct.
- (18) The Commission therefore concludes that the NSEs are subject to effective supervision and enforcement in the USA on an ongoing basis.
- (19) The conditions laid down in Article 2a of Regulation (EU) No 648/2012 are therefore considered satisfied with respect to NSEs authorised and supervised by the SEC in the USA.
- (20) This Decision is based on the legally binding requirements relating to NSEs applicable in the USA at the time of the adoption of this Decision. The Commission, in cooperation with ESMA, will continue monitoring on a regular basis the supervisory and enforcement arrangements for NSEs and the fulfilment of the conditions on the basis of which this Decision has been taken.
- (21) The regular review of the legal and supervisory arrangements applicable to NSEs in the USA 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 reassess the equivalence granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (22) 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 2, point (7), of Regulation (EU) No 648/2012, the national securities exchanges of the United States of America that are registered with the Securities and Exchange Commission and that are set out in the Annex to this Decision, comply with legally binding requirements which are equivalent to the requirements laid down in Title III of Directive 2014/65/EU and are subject to effective supervision and enforcement.

*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, 4 April 2022.

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

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## ANNEX

**National Securities Exchanges registered with the US Securities and Exchange Commission  
considered equivalent to regulated markets:**

- (a) BOX Exchange LLC,
  - (b) Cboe BZX Exchange, Inc.,
  - (c) Cboe C2 Exchange, Inc.,
  - (d) Cboe EDGX Exchange, Inc.,
  - (e) Cboe Exchange, Inc.,
  - (f) Miami International Securities Exchange, LLC,
  - (g) MIAX Emerald, LLC,
  - (h) MIAX PEARL, LLC,
  - (i) Nasdaq GEMX, LLC,
  - (j) Nasdaq ISE, LLC,
  - (k) Nasdaq BX, Inc.,
  - (l) Nasdaq MRX, LLC,
  - (m) Nasdaq PHLX, LLC,
  - (n) Nasdaq Options Market, LLC,
  - (o) NYSE American Options, LLC, and
  - (p) NYSE Arca, Inc.
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