COMMISSION IMPLEMENTING DECISION (EU) 2015/2040

of 13 November 2015

on the equivalence of the regulatory framework of certain provinces of Canada for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

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 decision 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 substantial 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 the provinces of Alberta, British Columbia, Manitoba, Ontario and Quebec (hereinafter 'the relevant provinces') in Canada 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.

(3) This Decision is based on the assessment of the legal and supervisory arrangements applicable in the relevant provinces, and their adequacy to mitigate the risks that clearing members and trading venues established in the Union may be exposed to in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012. 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.

(4) 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.

(5) 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.

(6) The legally binding requirements of Canada for CCPs authorised in the relevant provinces consist of the respective securities acts and rules and regulations pursuant to such acts adopted by the securities regulators of each province as well as any decision, direction or order made or issued by such securities regulators (the provincial securities regime) and which are applicable to CCPs operating in those provinces.

[1] OJ L 201, 27.7.2012, p. 1.

(7) For the purposes of this Decision, the securities regulators are the Alberta Securities Commission (ASC) in Alberta; the Autorité des marchés financiers (AMF) in Quebec; the British Columbia Securities Commission (BCSC) in British Columbia; the Manitoba Securities Commission (MSC) in Manitoba and the Ontario Securities Commission (OSC) in Ontario. The securities regulators work cooperatively to develop and implement securities laws and regulations and to administer, monitor and enforce existing laws in a consistent and coordinated manner.

(8) A CCP seeking to carry out business in a relevant province must be authorised by the relevant securities regulator. That authorisation can take the form of either recognition or an exemption from recognition. Recognition implies the full application of the respective provincial securities regime. CCPs operating in several of the relevant provinces have to be authorised as a recognised CCP at least in one province and are subject to the most stringent requirements amongst those applicable in the provinces in which they operate. Exemption from recognition is generally provided to CCPs recognised in another province, and therefore subject to direct supervision by the securities regulator of the province where the CCP is recognised, provided they are not considered by the relevant securities regulator to be systemically important or to pose significant risk to the capital markets. Securities regulators impose conditions on CCPs exempted from recognition where those CCPs are subject in the provinces where they are recognised to less cumbersome requirements than in the provinces where they are exempted from recognition. The Bank of Canada can also designate CCPs as systemically important where they have the potential to pose systemic risk to the Canadian financial system.

(9) The legally binding requirements applicable to CCPs authorised in Alberta consist of the Securities Act (Alberta), the rules and regulations adopted pursuant to it and any decision, direction or order made or issued by the ASC (hereinafter 'Alberta securities laws'). In order to provide clearing services in Alberta, a CCP has to be authorised by the ASC either as a recognised clearing agency or as a clearing agency exempted from recognition (exempted clearing agency). CCPs authorised in Alberta must comply with the Alberta securities laws. In general, the ASC authorises CCPs as recognised clearing agencies where it considers it appropriate to subject them to its supervision. However, the ASC may also rely on another securities regulator's supervision for some clearing houses recognised in other provinces. The ASC can impose conditions and terms on the authorisation of a clearing agency, either as a recognised clearing agency or as an exempted clearing agency. The ASC has issued recognition orders in respect of all clearing agencies authorised by it as recognised clearing agencies, requiring them to comply with the Principles for Financial Markets Infrastructures (PFMIs) issued in April 2012 by the Committee on Payment and Settlement Systems ([1]) and the International Organization of Securities Commissions.

(10) The legally binding requirements applicable to CCPs authorised in British Columbia consist of the Securities Act (British Columbia), the rules and regulations issued pursuant to it and the orders issued by the BCSC. In order to provide clearing services in British Columbia, a CCP has to be authorised by the BCSC either as a recognised clearing agency or as a clearing agency exempted from recognition (exempted clearing agency), which depends on a number of factors, including the impact of the operations of the clearing agency in British Columbia. The BCSC can impose conditions and terms on the authorisation of a clearing agency, either as a recognised clearing agency or as an exempted clearing agency. The BCSC has issued recognition orders in respect of all clearing agencies authorised by it as recognised clearing agencies requiring them to comply with the PFMIs.

(11) The legally binding requirements applicable to CCPs authorised in Manitoba consist of the Commodity Futures Act (Manitoba), the Securities Act (Manitoba) and the rules and orders issued by MSC pursuant to them. In order to provide clearing services in Manitoba, a CCP has to be authorised by the MSC either as a recognised clearing house in respect of commodity futures, or as a recognised clearing agency in respect of other securities, or as a clearing house or clearing agency, respectively, exempted from recognition (exempted clearing agency or clearing house). The MSC can impose conditions and terms to the authorisation of a clearing agency or clearing house, either as a recognised clearing agency or clearing house or as an exempted clearing agency or clearing house. The

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

MSC has issued recognition orders in respect of all clearing agencies and clearing houses authorised by it as recognised clearing agencies or clearing houses, requiring them to comply with the PFMIs.

(12) The legally binding requirements applicable to CCPs authorised in Ontario consist of the Securities Act (Ontario), the regulations and rules issued under the Securities Act (Ontario), and the directions, decisions, orders, rulings or other requirements made pursuant to it. In order to provide clearing services in Ontario, a CCP has to be authorised by the OSC either as a recognised clearing agency or as a clearing agency exempted from recognition (exempted clearing agency). The OSC can impose conditions and terms on the authorisation of a clearing agency, either as a recognised clearing agency or as an exempted clearing agency. The OSC has issued recognition orders in respect of all clearing agencies authorised by it as recognised clearing agencies requiring them to comply with the PFMIs.

(13) The legally binding requirements applicable to CCPs authorised in Quebec consist of the Securities Act (Quebec), the Derivatives Act (Quebec) and the Act respecting the Autorité des marchés financiers (AAMF); the regulations adopted pursuant to the Securities Act (Quebec) and the Derivatives Act (Quebec) and the decisions and orders issued by the AMF. In order to provide clearing services in Quebec, a CCP has to be authorised by the AMF either as a recognised clearing house or as a clearing house exempted from recognition (exempted clearing house). The AMF can impose conditions and terms on the authorisation of a clearing house, either as a recognised clearing house or as an exempted clearing house. The AMF has issued recognition orders in respect of all clearing houses authorised by it as recognised clearing houses requiring them to comply with the PFMIs.

(14) The equivalence assessment of the legal and supervisory arrangements applicable to CCPs authorised in the relevant provinces should also take account of 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 to due to their participation in CCPs authorised therein. 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 the same risk mitigation outcome, more stringent risk mitigation requirements are needed for CCPs carrying out their activities in bigger 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.

(15) The size of the financial market in which CCPs authorised in the relevant provinces carry out their clearing activities is significantly smaller than those in which CCPs established in the Union carry out theirs. In particular, over the past 3 years, the total value of derivative transactions cleared in Canada represented less than 3 % of the total value of derivative transactions cleared in the Union. Therefore, participation in CCPs authorised in the relevant provinces exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.

(16) The legal and supervisory arrangements applicable to CCPs authorised in the relevant provinces may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The rules applicable to CCPs authorised in the relevant provinces, including the recognition orders issued by the securities regulators which require compliance with the PFMIs, mitigate the lower level of risk existing in the relevant provinces and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.

(17) The Commission therefore concludes that the legal and supervisory arrangements of the relevant provinces ensure that CCPs authorised therein comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.

(18) According to the second condition under Article 25(6), the legal and supervisory arrangements in respect of CCPs authorised in the relevant provinces must provide for effective supervision and enforcement of those CCPs on an ongoing basis.

(19) Supervision of CCPs which are authorised in multiple provinces is carried out in a cooperative way between the securities regulators of the relevant provinces. For CCPs designated by the Bank of Canada as capable of posing systemic risk, supervision of CCPs is carried out cooperatively between the securities regulators of the relevant provinces and the Bank of Canada.

(20) In Alberta, the ASC has broad powers to take any remedial or dissuasive actions against an authorised clearing agency, either recognised or exempted from recognition, in the public interest or where a clearing agency has violated the Alberta securities laws. Both recognised and exempted clearing agencies must provide information, documents or records for the purposes of ensuring compliance with the applicable rules. The ASC can, both regarding recognised and exempted clearing agencies, impose administrative penalties and suspend, change the terms of or revoke a clearing agency's recognition or an order exempting a clearing agency from recognition. The ASC can also request a declaration of non-compliance by the courts, initiate other judicial proceedings and conduct investigations which can result in the imposition of a variety of sanctions. Penalties may also be imposed on directors and officers of persons or companies, or other persons that authorise, permit or acquiesce in the breach of Alberta securities laws. In addition, as regards recognised clearing agencies, the ASC conducts on-site inspections, regular consultations and review and analysis of required filings, and can make decisions with regard to any internal rule, procedure or practice of any recognised clearing agency if the ASC considers it is in the public interest to do so.

(21) In British Columbia, the BCSC conducts ongoing supervision of recognised clearing agencies through the use of periodic on-site inspections and regular communication with senior management of the clearing agency, as well as review of the information reported by the clearing agency and compliance with the clearing agency's requirements relating to the management of risks, among others. The BCSC has broad powers to take any remedial or dissuasive action against a recognised clearing agency in the public interest or where a clearing agency has violated the Securities Act (British Columbia). Such actions include making any decision about the bylaws, rules, procedures or practices or the manner in which a recognised clearing agency carries on business, and can make orders regarding the recognised clearing agency, including the suspension or revocation of the recognition of clearing agencies as well as conduct investigations which can result in the imposition of sanctions.

(22) In Manitoba, the MSC conducts ongoing supervision of authorised clearing agencies, either recognised or exempted from recognition. However, exempted clearing agencies are subject to more limited supervision by the MSC. For recognised clearing agencies or clearing houses, supervision is carried out through periodic reporting review, periodic on-site inspections, regular communication with senior management of the clearing agency or clearing house and an annual assessment of risks and controls. The MSC has several tools available to remedy breaches of certain requirements by an authorised clearing agency or a clearing house, either recognised or exempted including imposing terms or conditions on the authorisation of the clearing agency, suspending or revoking the clearing agency's or clearing house's authorisation orders or conducting investigations which can result in the imposition of fines and in other sanctions.

(23) In Ontario, the OSC conducts ongoing supervision of CCPs authorised as recognised clearing agencies through the use of periodic on-site inspections and regular communication with senior management of the clearing agency, regular assessment of risks and controls, as well as review of the information reported by the clearing agency and of compliance with the clearing agency's requirements relating to the management of risks, among others. However, exempted clearing agencies are subject to more limited supervision by the OSC. The OSC has broad powers to make any decision in respect of any by-law, rule and procedure of a recognised clearing agency and the manner in which a recognised clearing agency carries on its business, and to take any remedial or dissuasive actions against an authorised clearing agency, either recognised or exempted from recognition, where in the public interest or where a clearing agency has violated the Securities Act (Ontario). Such actions include the adoption of decisions or orders regarding the clearing agency, the imposition of terms, conditions, restrictions

or requirements on the clearing agency, the suspension or revocation of the clearing agency's authorisation as well as conducting investigations which can result in the imposition of fines and penalties.

(24) In Quebec, the AMF is vested with exhaustive supervisory authority over all the activities of authorised clearing houses and it supervises CCPs' compliance with the Securities Act (Quebec), the Derivatives Act (Quebec) and the AAMF. These acts establish the general legal framework applicable to the control the AMF exercises over the financial entities it supervises or oversees, such as authorised clearing houses. The AMF has the power, over any authorised clearing house, to request information, to require submission to an examination under oath, to conduct an investigation and to conduct on-site inspections. The AMF has several tools available to remedy breaches of requirements by clearing houses. These include the power to suspend the application of the internal rules and procedures of a recognised clearing house, to order an amendment to a provision or practice of a recognised clearing house in order to make it consistent with applicable legislative provisions, to take action against an authorised clearing house to ensure compliance with undertakings given to the AMF or with applicable legal requirements, to impose fines to an authorised clearing house and to modify, suspend or withdraw all or part of an authorisation or an exemption granted to a clearing house.

(25) The Commission therefore concludes that the legal and supervisory arrangements of the relevant provinces in respect of CCPs authorised therein provide for effective supervision and enforcement on an ongoing basis.

(26) According to the third condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the relevant provinces must include an effective equivalent system for the recognition of CCPs authorised under third country legal regimes ('third country CCPs').

(27) Third country CCPs seeking to carry on business as a clearing agency or clearing house in British Columbia and Manitoba may apply, and in Alberta, Ontario and Quebec must apply for recognition or exemption for recognition in the relevant province enabling them to provide the same clearing services in Canada as they are authorised to provide in the third country subject to appropriate terms and conditions of the recognition or exemption order. Exemption may be available where the third country CCP is not systemically important to the provincial market, or where it does not otherwise pose significant risk to the capital markets, provided that it is subject to a comparable regulatory regime. However, even in the case that the third country CCP is required to obtain recognition, the authorities may rely on the third country regulators supervision where the regulation applicable to the third country CCP is comparable to the regulation applicable under the relevant provincial regime.

(28) While noting that the structure of the recognition procedure of the legal regime of the relevant provinces in Canada applicable to third country CCPs differs from the procedure laid down in Regulation (EU) No 648/2012, it should nonetheless be considered as providing for an effective equivalent system for the recognition of third country CCPs.

(29) The conditions laid down in Article 25(6) of Regulation (EU) No 648/2012 can therefore be considered to be met by the legal and supervisory arrangements of the relevant provinces in Canada, and those legal and supervisory arrangements should be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012. The Commission should continue monitoring on a regular basis the evolution of the legal and supervisory framework for CCPs in the relevant provinces and the fulfilment of the conditions on the basis of which this decision has been taken.

(30) The regular review of the legal and supervisory arrangements applicable in Canada 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 withdrawal of the recognition of equivalence.

(31) 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 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the Canadian provinces of Alberta, British Columbia, Manitoba, Ontario and Quebec consisting of the Securities Act (Alberta), the Securities Act (British Columbia), the Commodity Futures Act (Manitoba), the Securities Act (Manitoba), the Securities Act (Ontario), the Securities Act (Quebec), the Derivatives Act (Quebec), the Act respecting the Autorité des marchés financiers, and the rules, regulations, decisions, directions and orders adopted pursuant to them, including recognition orders applicable to CCPs authorised therein 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, 13 November 2015.

For the Commission
The President
Jean-Claude JUNCKER