Commission Implementing Decision (EU) 2019/1283 of 29 July 2019 on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2019/1283

of 29 July 2019

on the recognition of the legal and supervisory framework of Japan as equivalent to the requirements of Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[(1)], and in particular Article 5(6) thereof,

Whereas:

(1) Article 5(6) of Regulation (EC) No 1060/2009 empowers the Commission to adopt an equivalence decision where the legal and supervisory framework of a third country ensures that credit rating agencies ('CRAs') authorised or registered in that third country comply with legally binding requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country.

(2) The purpose of this equivalence decision is to allow CRAs from Japan, as far as they are not systemically important for the financial stability or integrity of the financial markets of one or more Member States, to apply for certification with the European Securities and Market Authority ('ESMA'). This equivalence decision offers the possibility for ESMA to assess those CRAs on a case-by-case basis and to grant an exemption from some of the organisational requirements for CRAs active in the European Union, including the requirement of a physical presence in the European Union.

(3) In order to be considered as equivalent the legal and supervisory framework of a third country is to fulfil at a minimum the three conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.

(4) On 28 September 2010, the Commission adopted Decision 2010/578/EU[(2)], observing that these three conditions are fulfilled and considering the Japanese legal and supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.

(5) According to the first condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to authorisation or registration and must be also subject to effective supervision and enforcement on an ongoing basis. The

Japanese legal and supervisory framework requires a CRA to be registered with the Financial Services Agency of Japan ('JFSA') in order for its credit ratings to be used for regulatory purposes in Japan. JFSA imposes legally binding obligations on CRAs and supervises CRAs on an ongoing basis. JFSA has a wide and comprehensive range of powers and is able to take a number of measures, including sanctions, against CRAs for breach of the provisions of the Financial Instruments and Exchange Act related to the Regulation of Credit Ratings Agencies.

(6) According to the second condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, CRAs in a third country must be subject to legally binding rules which are equivalent to those set out set out in Articles 6 to 12 of Regulation (EC) No 1060/2009 and Annex I to that Regulation. The Japanese legal and supervisory framework is based on the duty of good faith. A CRA shall establish operational control systems for the fair and appropriate performance of the credit rating business through a large number of detailed and prescriptive requirements, extensive provisions in relation to avoidance, management and disclosure of conflicts of interests, and the duty to record and disclose information both to the JFSA and to the public. The Japanese legal and supervisory framework is considered as equivalent to Regulation (EC) No 1060/2009 in respect of the management of conflicts of interest, the organisational requirements, the safeguards to ensure the quality of ratings and of rating methodologies, the obligation to disclose credit ratings and the obligation for general and periodic disclosure of credit rating activities. Therefore, the Japanese legal and supervisory framework provides for equivalent protection in terms of integrity, transparency, good governance of CRAs and reliability of the credit rating activities.

(7) According to the third condition laid down in Article 5(6) of Regulation (EC) No 1060/2009, the regulatory regime in a third country must prevent interference by supervisory authorities and other public authorities of that third country with the content of credit ratings and methodologies. In this respect, the JFSA is prohibited by law from interfering with the substance of credit ratings and credit rating methodologies.

(8) The Japanese legal and supervisory framework still fulfils the three conditions originally laid down in Article 5(6) of Regulation (EC) No 1060/2009. However, Regulation (EU) No 462/2013 of the European Parliament and of the Council[(3)] introduced additional requirements for CRAs registered in the Union making the legal and supervisory regime for those CRAs more stringent. These additional requirements include rules on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.

(9) Pursuant to point (1)(b) of the second paragraph of Article 2 of Regulation (EU) No 462/2013, the additional requirements apply for the purposes of assessing the equivalence of third country legal and supervisory frameworks from 1 June 2018.

(10) Against this background, on 13 July 2017 the Commission requested advice to ESMA on the equivalence of the legal and supervisory framework of *inter alia* Japan with these additional requirements introduced by Regulation (EU) No 462/2013 and its judgement on the material importance of any differences.

(11) In its technical advice published on 17 November 2017, ESMA indicated that the Japanese legal and supervisory framework in relation to CRAs includes sufficient provisions to meet the additional requirements introduced by Regulation (EU) No 462/2013.

(12) Regulation (EU) No 462/2013 introduces in Article 3(1)w a definition of a rating outlook and Regulation (EC) No 1060/2009 now extends certain requirements applicable to credit ratings to rating outlooks. The Japanese legal and supervisory framework substantively recognises rating outlooks. It considers a rating outlook to be part of the credit rating and empowers the JFSA to monitor the appropriateness of rating outlooks in conjunction with their associated credit ratings.

(13) With a view to enhancing the perception of independence of credit rating agencies vis-à-vis the rated entities, Regulation (EU) No 462/2013 extends in Article 6(4), 6a and 6b of Regulation (EC) No 1060/2009 the rules on conflicts of interest to those caused by shareholders or members holding a significant position within the CRA. The Japanese legal and supervisory framework requires CRAs to put in place measures to ensure that the CRA does not harm the interests of investors in the process of determining a credit rating, in particular when a rated entity has a 5 % or more shareholding in the CRA. Furthermore, a CRA is prohibited from carrying out a rating altogether if the CRA has an interest in the rated entity.

(14) Regulation (EU) No 462/2013 introduces new provisions to ensure that confidential information is only used for purposes related to credit rating activities and is protected from fraud, theft or misuse. To that effect, Article 10(2a) of Regulation (EC) No 1060/2009 requires CRAs to treat all credit ratings, rating outlooks and information relating thereto as inside information up until the point of disclosure. The Japanese legal and supervisory framework sets out detailed requirements regarding the steps CRAs must take to protect the confidential information relating to issuers. There is thus a credible framework in place to protect against the misuse of confidential information.

(15) Regulation (EU) No 462/2013 aims to increase the level of transparency and quality of rating methodologies. It introduces in Annex I, Section D, Subsection I paragraph 3 of Regulation (EC) No 1060/2009 an obligation for CRAs to provide a rated entity with the opportunity to indicate any possible factual errors ahead before publication of the credit rating or the rating outlook. The Japanese legal and supervisory framework requires CRAs to establish a rating policy setting out the methodology for determining and disclosing its credit ratings. The rating policy should provide guidelines and methods to enable a rated entity to verify whether there is any factual misrepresentation in a credit rating prior to its publication and to express its opinions on the credit rating in a reasonable amount of time.

(16) Regulation (EU) No 462/2013 introduces safeguards in Article 8(5a)(6) aa and ab and (7) of Regulation (EC) No 1060/2009 to ensure that any modification to rating methodologies does not result in less rigorous methodologies. Similarly, the Japanese legal and supervisory framework requires that a CRA have measures to ensure that the information used in determining a credit rating is of sufficient quality and that rating methodologies are rigorous and systematic.