Commission Implementing Decision (EU) 2019/1278 of 29 July 2019 repealing Implementing Decision 2014/248/EU on the recognition of the legal and supervisory framework of Singapore 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) 2019/1278

of 29 July 2019

repealing Implementing Decision 2014/248/EU on the recognition of the legal and supervisory framework of Singapore 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, stating that 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 which are equivalent to the requirements set out in that Regulation and which are subject to effective supervision and enforcement in that third country. In order to be considered as equivalent the legal and supervisory framework is to fulfil at least the conditions set out in Article 5(6) of Regulation (EC) No 1060/2009.

(2) On 28 April 2014, the Commission adopted Implementing Decision 2014/248/EU[(2)], observing these three conditions are fulfilled and considering the Singaporean legal supervisory framework for CRAs as equivalent to the requirements of Regulation (EC) No 1060/2009 in force at that time.

(3) The Singaporean 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 legally binding rules for CRAs on rating outlooks, conflicts of interest management, confidentiality requirements, quality of rating methodologies, and the presentation and disclosure of credit ratings.

(4) 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.

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

(6) In its technical advice published on 17 November 2017, ESMA indicated that the Singaporean legal and supervisory framework does not include sufficient provisions, which could meet the objectives of the additional requirements introduced by Regulation (EU) No 462/2013.

(7) Regulation (EU) No 462/2013 introduces in Article 3(1)w of Regulation (EC) No 1060/2009 a definition of a rating outlook and extends certain requirements applicable to credit ratings to rating outlooks. The Singaporean legal and supervisory framework does not recognise rating outlooks.

(8) 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 Singaporean legal and supervisory framework is not as detailed or prescriptive as the Union regime. There is a requirement to establish an internal control function and internal procedures for identifying, mitigating and preventing conflicts of interest. However, there is no explicit requirement to address conflicts of interest relating to shareholders. Consequently, there is no prohibition from issuing a credit rating on an entity if a board member of the CRA, or a shareholder holding more than 10 % of shares or voting rights of the CRA, holds more than 10 % of the shares in the rated entity. There is also no prohibition on an individual or entity holding more than 5 % of the shares or the voting rights of a CRA from providing consultancy or advisory services to a rated entity of that CRA.

(9) 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 Singaporean legal and supervisory framework contains a definition of inside information, but credit ratings and information related thereto are not automatically recognised as such.

(10) 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 Singaporean legal and supervisory framework contains

no explicit requirement for a CRA to inform a rated entity about a credit rating prior to its publication. A CRA is to notify a rated entity only when feasible and appropriate.

(11) 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. The Singaporean legal and supervisory framework requires a CRA to establish and implement a rigorous and formal review function for periodically reviewing the rating methodologies. However, it does not contain an explicit requirement for a CRA to correct errors and to conduct a consultation on any changes to methodologies. While CRAs must publicly disclose any material change to its methodologies, there is no requirement to notify either the supervisor or all affected entities in such case.

(12) Regulation (EU) No 462/2013 strengthens the requirements regarding the presentation and disclosure of credit ratings. Pursuant to Article 8(2) and Annex I, Section D, Subsection I paragraph 2a of Regulation (EC) No 1060/2009 a CRA shall accompany the disclosure of rating methodologies, models and key rating assumptions with clear and easily comprehensible guidance, which explains any assumptions, the parameters, limits and any uncertainties surrounding the models and rating methodologies used in credit rating process. Under the Singaporean legal and supervisory regime, there is a requirement to ensure adequate guidance accompanies a credit rating action and methodology.

(13) With the aim of strengthening competition and limiting the scope for conflicts of interest in the CRA sector, Regulation (EU) No 462/2013 introduces a requirement in Annex I, Section E, Subsection II of Regulation (EC) No 1060/2009 that fees charged by CRAs for credit ratings and ancillary services should be non-discriminatory and based on actual costs. It requires CRAs disclose certain financial information. The Singaporean legal and supervisory regime contains no systematic requirements for CRAs to provide pricing policies to either the supervisor or the rated entities, although the supervisor may request this information as part of its supervisory activities. Furthermore, there is no requirement that fees charged to clients are to be cost based and non-discriminatory.

(14) In view of the factors examined, the Singaporean legal and supervisory framework for CRAs does not satisfy all the conditions for equivalence laid down in the second subparagraph of Article 5(6) of Regulation (EC) No 1060/2009. Therefore, it cannot be considered as equivalent to the legal and supervisory framework established by that Regulation.

(15) Implementing Decision 2014/248/EU should therefore be repealed.

(16) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2014/248/EU is repealed.