Commission Implementing Decision (EU) 2019/541 of 1 April 2019 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council (notified under document C(2019) 2349) (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2019/541

of 1 April 2019

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[(1)], and in particular Article 28(4) thereof,

Whereas:

(1) Article 28(1) of Regulation (EU) No 600/2014 identifies the trading venues on which financial counterparties, as defined in Article 2(8) of Regulation (EU) No 648/2012 of the European Parliament and of the Council[(2)], and non-financial counterparties that meet the conditions in Article 10(1)(b) of Regulation (EU) No 648/2012 can conclude transactions in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation. The trading venues on which such transactions may be concluded is limited to regulated markets, multilateral trading facilities (MTFs), organised trading facilities (OTFs), and third-country trading venues recognised by the Commission as being subject to equivalent legal requirements and effective supervision in that third country. The relevant third country is also required to provide for an effective equivalent system for the recognition of trading venues authorised under Directive 2014/65/EU of the European Parliament and of the Council[(3)].

(2) Given the agreement reached by the parties to the G20 in Pittsburgh on 25 September 2009 to move trading in standardised OTC derivative contracts to exchanges or electronic trading platforms, it is appropriate to provide for a suitable range of eligible venues on which trading contemplated by that commitment can take place. Regulation (EU) No 600/2014 underlines, moreover, the need to establish a single set of rules for all institutions in respect of certain requirements and to avoid potential regulatory arbitrage. Therefore, when designating the standardised OTC derivative contracts that will be subject to a trading obligation, it is appropriate that the Union also encourages

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the development of a sufficient number of eligible venues to allow the trading obligation to be complied with, including in the Union.

(3) In accordance with Article 28(4) of Regulation (EU) No 600/2014, third-country trading venues can be recognised as equivalent to trading venues established in the Union where they are required to comply with legally binding requirements which are equivalent to the requirements resulting from Directive 2014/65/EU, Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 of the European Parliament and of the Council[4] and where those equivalent requirements are subject to effective supervision and enforcement in that third country. This should be read in the light of the objectives pursued by those three acts, in particular their contribution to the establishment and functioning of the internal market, market integrity, investor protection and ultimately, but no less importantly, financial stability.

(4) With the commencement of a new regime regulating operators of trading platforms for OTC derivatives in Singapore and designating the most liquid derivatives as subject to a domestic trading mandate, it is necessary to address potential risks of liquidity fragmentation by ensuring that trading platforms established in Singapore are recognised as eligible for compliance with the Union trading obligation. Trading platforms operating in Singapore offer important trading volumes in derivatives and it is important that Union firms are able to access the liquidity stemming from Asian counterparts in Singapore for efficient risk management, especially outside of European trading hours. This Decision is based on a detailed assessment of the legal and supervisory framework governing trading platforms under the Securities and Futures Act (SFA) in Singapore and its implementing regulations.

(5) The purpose of the equivalence assessment under Article 28 of Regulation (EU) No 600/2014 is to verify that the legal and supervisory arrangements under the SFA and its implementing regulations ensure that trading platforms operated by approved exchanges (AEs) or recognised market operators (RMOs) established in Singapore and authorised by the Monetary Authority of Singapore (MAS comply with legally binding requirements which are equivalent to the requirements for Union trading venues resulting from Directive 2014/65/EU, Regulation (EU) No 596/2014 and Regulation (EU) No 600/2014, based on the criteria set out in the third subparagraph of Article 28(4) of Regulation (EU) No 600/2014. The purpose of the equivalence assessment is also to verify that AEs and RMOs in question are subject to effective supervision and enforcement in Singapore.

(6) Legally binding requirements for AEs and RMOs are set out in Part II of the SFA, which supports MAS' mandate for establishing a principle-based, technology-neutral regime that applies to all AEs and RMOs. Acts and regulations adopted based on those acts, such as the Securities and Futures (Organised Markets) Regulations (SFOMR) adopted by MAS, have the force of law and together establish the legal framework for the operation of AEs and RMOs in Singapore. Section 45 of the SFA allows MAS to issue binding directions to an AE or a RMO. Not complying with those directions is deemed to be a breach of the relevant provision in the SFA. Section 321 of the SFA empowers MAS to provide guidance in furtherance of the regulatory objectives of the

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SFA or in relation to the operation of any of the SFA provisions. Guidelines set out principles or best practice standards governing the conduct of AEs and RMOs, such as the Guidelines on the Regulation of Organised Markets (SFA 02-G01). Any failure to comply with guidelines can be relied upon by any party to proceedings — civil or criminal — as tending to establish or to negate any liability at stake in the proceedings (section 321(5) of the SFA). Sections 15(1)(e) and 33(1)(e) of the SFA require AEs and RMOs to maintain business rules and listing rules that make satisfactory provision for a fair, orderly and transparent market. The business and listing rules, as well as any amendment of those rules, must be submitted to MAS prior to implementation. The business rules and listing rules have effect as a binding contract for AEs and RMOs and their members and must be observed and complied with on an ongoing basis.

(7) The third subparagraph of Article 28(4) of Regulation (EU) No 600/2014 sets out four conditions that need to be fulfilled in order to determine that the legal and supervisory framework of a third country regarding the trading venues authorised in that country has equivalent effect.

(8) The first of those conditions provides that third-country trading venues must be subject to authorisation and to effective supervision and enforcement on an ongoing basis.

(9) Under the SFA, markets are facilities that operate on a multilateral or 'many-to-many' basis. An entity operating a market in Singapore must be an AE or RMO. The legislative provisions relating to AEs and RMOs are contained in Part II of the SFA. Singapore corporations are regulated as AEs or RMOs, while foreign corporations are regulated as RMOs. An applicant wishing to operate a market in Singapore must obtain a licence from MAS pursuant to Section 8 of the SFA either as an AE or as a RMO. In determining whether a market operator should be regulated as an AE or a RMO, MAS considers the systemic importance of the organised market. Corporations operating organised markets that are systemically important are regulated as AEs. An applicant must meet the applicable requirements, including the requirements set out in section 15 and 33 of the SFA, on an initial and ongoing basis. Under section 9 of Part II, MAS grants a licence if it concludes that all the requirements with respect to the applicant are satisfied. MAS can refuse to approve an application if the requirements are not all met. Sections 15(1)(a) and 33(1)(a) of the SFA both require that an AE and a RMO operate a fair organised market which is characterised by non-discriminatory access to market facilities and information. Sections 15(1)(d) and 33(1)(d) of the SFA further require that an AE and a RMO ensure that access for participation in its facilities is subject to criteria that are fair and objective, and that are designed to ensure the orderly functioning of the organised market and to protect the interests of the investing public. Regulations 13 and 25 of the SFOMR require AEs and RMOs to make available upon request, or to publish in a manner that is accessible to any investor or potential investor, information, including information on their services, products, fees, and any compensation arrangements that may be in place. AEs and RMOs are subject to organisational requirements with respect to corporate governance, conflicts of interest policy, risk management, fair and orderly trading, clearing and settlement arrangements, trading system resilience and compliance monitoring.

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(10) MAS has investigation powers under Part IX, Division 3 of the SFA and under the Criminal Procedure Code that include powers to compel production of evidence, interview and take statements from suspects and witnesses, arrest suspects and seize property in certain circumstances. MAS supervises AEs' and RMOs' risk management practices and controls, through both on-site and off-site inspections. Section 45 of the SFA empowers MAS to issue directions to AEs and RMOs in relation to specific matters as specified by the SFA to ensure investor protection, the functioning of fair, orderly and transparent markets, the integrity and stability of the capital markets and compliance with any condition or restriction imposed by MAS. MAS may impose fines and issue reprimands for the infringement of provisions of the SFA or of its subsidiary legislation. MAS may also remove officers in situations specified in section 43(1) and where it considers that doing so is in the interest of the public. MAS is also empowered to revoke the licence of an AE or RMO under the conditions set out in section 14 of the SFA. Furthermore, AEs and RMOs are required under sections 15 and 33 of the SFA to ensure proper regulation and supervision of their members. In addition, AEs are required to notify MAS of any disciplinary action taken against a member under section 16(1)(f) of the SFA. The SFA provides for penalties where the business or listing rules are not compliant with the requirements set out by MAS. Finally, under section 46AA of the SFA, MAS is equipped with emergency powers to direct an AE or RMO to take action to maintain or restore the fair, orderly and transparent operation of the market when it is in the interest of the public or necessary for the protection of investors.

(11) The Commission therefore concludes that markets operated by AEs and RMOs are subject to authorisation and to effective supervision and enforcement on an ongoing basis.

(12) The second of the conditions set out in the third subparagraph of Article 28(4) of Regulation (EU) No 600/2014 provides that the third-country trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner and are freely negotiable.

(13) The conditions for admission to trading of financial instruments are set by the AE in its listing rules which specify the classes of products that may be traded on its market, the terms and conditions for listing, as well as the rules to ensure that members are able to meet their obligations. Under sections 29 and 41 of the SFA, AEs and RMOs are required to notify MAS before proceeding with the launch of a product. In addition, AEs and RMOs are required to certify to MAS that they have established appropriate controls and governance procedures to adequately address the key risks pertaining to the products, namely (i) the risk of disorderly trading that may be brought about by a sharp change in prices; (ii) the risk of persons acquiring significant amounts of the product which facilitates the ability of those persons to gain from market manipulation; (iii) the risk that daily settlement prices and final settlement prices will be subject to manipulation; (iv) the risk that the final settlement price of the product will not converge to its underlying; (v) the risk that the underlying of physically delivered products will not be delivered in a safe, reliable and timely manner; and (vi) the legal,

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operational and reputational risks surrounding the product. Under section 45 of the SFA, MAS has powers to take action if AEs and RMOs fail to provide appropriate controls and governance procedures, including imposing higher supervisory capital, requiring independent audit on specific processes and prohibiting the listing of new products. Under section 46 of the SFA, MAS may issue notice in writing to an AE or a RMO to prohibit trading in products if MAS is of the opinion that it is necessary to protect persons buying or selling such financial instruments.

(14) Sections 15 and 33 of the SFA require AEs and RMOs, respectively, to ensure that the market they operate is fair, orderly and transparent, regardless of the execution protocol used. Section 15(1)e of the SFA requires the business rules of an AE to make satisfactory provision for the operation of a fair, orderly and transparent market. The Guidelines on the Regulation of Organised Markets, together with the Monograph on Objectives and Principles of Financial Sector Oversight in Singapore, further specify that a transparent market is a market where pre- and post-trade information about trading is made publicly available on a continuous and real-time basis. For the trading of derivatives, MAS does not require that execution is made through a specific protocol. However, in practice, a large proportion of the trades are executed through the 'request for quote' protocol. Electronic order book trading systems require the publication of best bids and offers continuously, while other trading systems (such as 'request for quote' systems or 'voice-based systems') require the dissemination of information on price and volume to eligible market participants before they become executable. Inter-dealer voice brokers facilitating multilateral trading are subject to MAS' market licensing regime and are required to ensure pre-trade transparency of their organised markets. Therefore, pre-trade information is made publicly available to enable investors to know which transactions they may enter into and at what prices. Post-trade information on executed trades must similarly be publicised to reflect the product details, the price and volume. AEs and RMOs are expected to publicly disclose submitted quotes as soon as they are executable and the transaction details should be publicly disclosed as soon as possible after the quote is executed.

(15) The Commission therefore concludes that markets operated by AEs and RMOs have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner and are freely negotiable.

(16) The third of the conditions set out in the third subparagraph of Article 28(4) of Regulation (EU) No 600/2014 provides that issuers of financial instruments must be subject to periodic and ongoing information requirements ensuring a high level of investor protection.

(17) Issuers seeking to list securities or admit securities for trading on a market must satisfy the requirements of the exchange's listing rules. Rule 703 of the Listing Manual requires an issuer to disclose any information that is necessary to avoid the establishment of a false market in the issuer's securities or would be likely to materially affect the price or value of its securities. Furthermore, Rules 707 to 711 of the Listing Manual in Singapore set out the requirements for annual reports issued by listed issuers. Periodic