

6. Finance: Over-the-Counter Derivatives

Commitment [#90]:

“[We also firmly recommitted to work in an internationally consistent and non-discriminatory manner to strengthen regulation and supervision on] OTC derivatives”

Seoul Summit Document

Assessment:

Country	Lack of Compliance	Work in Progress	Full Compliance
Argentina		0	
Australia			+1
Brazil			+1
Canada			+1
China			+1
France			+1
Germany			+1
India			+1
Indonesia		n/a	
Italy			+1
Korea			+1
Japan			+1
Mexico			+1
Russia		0	
Saudi Arabia		-1	
South Africa		0	
Turkey		-1	
United Kingdom			+1
United States			+1
European Union			+1
Average Score		+0.58	

Background:

At the Pittsburgh Summit in 2009, G20 leaders announced that “All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end- 2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.”⁵⁴⁰ G20 leaders reaffirmed this commitment in the Seoul Summit Declaration, although the declaration did not explicitly commit to the end-2012 deadline and instead emphasized that reforms ought to be consistent between regulatory jurisdictions.

OTC Derivatives Market Reforms, Progress Report on Implementation, a 15 April 2011 report published by the Financial Stability Board (FSB), noted progress made so far by G20 members toward implementing FSB-proposed OTC derivatives reforms by the end of 2012. The FSB expressed “concern regarding many jurisdictions’ likelihood of meeting the G20 end-2012

⁵⁴⁰ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 15 April 2011. Date of Access 26 April 2011.

http://www.financialstabilityboard.org/publications/r_110415b.pdf

deadline, and believes that in order for this target to be achieved, jurisdictions need to take substantial, concrete steps toward implementation immediately.”⁵⁴¹

Commitment Features:

On 25 October 2010 FSB published a report on Implementing OTC Derivatives Market Reforms.⁵⁴² The report responded to calls from G20 leaders at the Pittsburgh and Toronto Summits to improve the functioning, transparency and regulatory oversight of over-the-counter (OTC) derivatives markets. The report set out recommendations to implement commitments related to OTC derivatives markets under the following four areas: standardization, central clearing, organized platform trading, and reporting to trade repositories.⁵⁴³ The specific timelines and processes associated with these four recommendation areas are outlined in Table 7.

Table 7: Recommendations for OTC Derivatives Markets

Area	Recommendations
Standardization	To achieve increased standardization of contractual terms and greater use of standardized operational processes the OTC Derivatives Supervisors Group ... (ODSG) should continue to secure ambitious commitments from the major OTC derivatives market participants. These commitments should include publishing a roadmap by 31 March 2011 with demanding implementation milestones for achieving greater standardization and, as an interim measure until mandatory clearing requirements are fully implemented, increasing volumes of centrally cleared transactions. The roadmap should set forth baseline metrics and forward-looking targets against which market participants will be measured.*
Central clearing	To help mitigate systemic risk in the OTC derivatives markets, the G20 Leaders agreed that all standardized derivatives contracts should be cleared through central counterparties by end-2012 at the latest.
Exchange or electronic platform trading	
Reporting to trade repositories	Authorities should ensure that trade repositories are established to collect, maintain, and report (publicly and to regulators) comprehensive data for all OTC derivative transactions regardless of whether transactions are ultimately centrally cleared. Authorities should establish a clear framework for the regulation of trade repositories based on their essential functions as a source of information to authorities, market participants and the public. Trade repositories should be subject to robust and consistently applied supervision, oversight and regulatory standards that, at a minimum, meet evolving international standards developed jointly by CPSS and IOSCO.

* UPDATE: The New York Federal Reserve Branch released a 31 May 2011 letter outlining a roadmap for standardization of OTC derivatives agreed upon by members of the G14 group of states as well as representatives of financial institutions. The letter can be found here: <http://www.newyorkfed.org/newsevents/news/markets/2011/SCL0331.pdf>

⁵⁴¹ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 15 April 2011. Date of Access 26 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁵⁴² Implementing OTC Derivatives Market Reforms, Financial Stability Board (Brussels) 25 October 2010. Date of Access 26 January 2011. http://www.financialstabilityboard.org/publications/r_101025.pdf

⁵⁴³ Implementing OTC Derivatives Market Reforms, Financial Stability Board (Brussels) 25 October 2010. Date of Access 26 January 2011. http://www.financialstabilityboard.org/publications/r_101025.pdf

Scoring Guidelines:

-1	Member fails to take active steps to comply with applicable FSB recommendations to strengthen regulation and supervision of OTC derivatives markets in a non-discriminatory manner with respect to ANY the following recommendation areas: Standardization, Central Clearing, Exchange and Platform Trading, and Reporting to Trade Repositories.
0	Member takes active steps to comply with the applicable FSB recommendations to strengthen regulation and supervision of OTC derivatives markets in a non-discriminatory manner with respect to ONE or TWO of the following recommendation areas: Standardization, Central Clearing, Exchange and Platform Trading, and Reporting to Trade Repositories.
+1	Member takes active steps to comply with applicable FSB recommendations to strengthen regulation and supervision of OTC derivatives markets in a non-discriminatory manner with respect to at least THREE of the following recommendation areas: Standardization, Central Clearing, Exchange and Platform Trading, and Reporting to Trade Repositories.

Argentina: 0

Argentina has partially complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

The Argentine government's response to a January 2011 FSB survey on OTC derivatives reforms noted that derivatives in Argentina are already centrally cleared and, in many cases, exchanged on an electronic platform. The subsequent April 2011 FSB progress report on implementation of OTC markets reforms noted that in Argentina "three-quarters of the [derivatives] market are centrally-cleared and either traded on exchange or on the Mercado Abierto Electrónico S.A. electronic platform, which is regulated by the Argentine market regulator."⁵⁴⁴

Argentina has taken steps toward compliance with two of the four FSB recommendation areas for OTC derivatives market reforms and has therefore earned a score of 0.

Analyst: Sarah Ellis

Australia: +1

Australia has partially complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

On 22 July 2010 the Australian Securities and Investment Commission (ASIC) released REP 201, a review of disclosure for capital protected products and retail structured or derivative products which provides guidance and regulation for the over-the-counter derivative market.⁵⁴⁵ REP 201 also aims to provide a basis for greater standardization of OTC derivatives markets.⁵⁴⁶

⁵⁴⁴ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁵⁴⁵ REP 201 Review of disclosure for capital protected products and retail structured or derivative products, Australia Securities and Investments Commission (Australia) 22 July 2010. Date of Access: 20 October

According to the Australian government's September 2010 responses to an FSB survey on implementation of G20 financial regulatory reforms, on 21 September 2009 the International Swaps and Derivatives Association (ISDA) moved to adopt standardized trading coupons for CDS transactions in various markets including Australia.⁵⁴⁷

On 20 April 2010 ASIC released regulatory guidance on its recommended approach to the licensing and regulation of clearing and settlement facilities. This report serves to disclose the methods by which central clearing of all standardized contracts will be achieved.⁵⁴⁸

In May 2009, the Australian Prudential Regulation Authority (APRA), ASIC, and the Reserve Bank of Australia published a report on the OTC derivatives market in Australia that indicated that efforts were already underway to move trading to OTC derivatives to electronic platforms and to establish and increase the number of central counterparties for derivatives contracts.⁵⁴⁹

No information could be found on efforts by Australian regulators to establish trade repositories.

Australia has taken steps toward compliance with three of the four FSB recommendation areas for OTC derivatives market reforms and has therefore earned a score of +1.

Analyst: Faiyyad Hosein

Brazil: +1

Brazil has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

According to the Brazilian government's September 2010 responses to an FSB survey on implementation of G20 financial regulatory reforms, in Brazil "all OTC derivatives transactions involving financial institutions are mandatorily registered at a central registry."⁵⁵⁰ The government also reported that initiatives are underway to enhance the standardization and

2010. [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP201-PDS-reviews-2010-7-14.pdf/\\$file/REP201-PDS-reviews-2010-7-14.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP201-PDS-reviews-2010-7-14.pdf/$file/REP201-PDS-reviews-2010-7-14.pdf)

⁵⁴⁶ REP 201 Review of disclosure for capital protected products and retail structured or derivative products, Australia Securities and Investments Commission (Australia) 22 July 2010. Date of Access: 20 October 2010. [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP201-PDS-reviews-2010-7-14.pdf/\\$file/REP201-PDS-reviews-2010-7-14.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP201-PDS-reviews-2010-7-14.pdf/$file/REP201-PDS-reviews-2010-7-14.pdf)

⁵⁴⁷ FSB-G20-Monitoring Progress – Australia September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401b.pdf

⁵⁴⁸ Clearing & Settlement Facilities: Australian & Overseas Operators, Australian Securities & Investment Commission (Australia) April 2010. Date of Access: 9 April 2011. [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg211.pdf/\\$file/rg211.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg211.pdf/$file/rg211.pdf)

⁵⁴⁹ Survey of the OTC Derivatives Market in Australia, Australian Prudential Regulation Authority, Australian Securities and Investments Commission and the Reserve Bank of Australia (Australia) May 2009. Date of Access: 20 October 2010. [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP158_SurveyOfTheDerivatives.pdf/\\$file/REP158_SurveyOfTheDerivatives.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/REP158_SurveyOfTheDerivatives.pdf/$file/REP158_SurveyOfTheDerivatives.pdf)

⁵⁵⁰ FSB- G20 – Monitoring Progress – Brazil September 2010, Financial Stability Board, March 2011. Date of Access: 25 April 2011. http://www.financialstabilityboard.org/publications/r_110401c.pdf

transparency of derivatives contracts and to explore risk management strategies for OTC derivatives traded through central counterparties.⁵⁵¹

An April 2011 FSB report on OTC derivatives market reforms also noted the extent to which Brazilian derivatives markets meet the standards committed to by the G20. The report found that “In Brazil...it is estimated that approximately 90 percent of all derivatives are standardised, exchange traded and centrally cleared; since 1994, all OTC derivatives transactions are required to be registered with trade repositories that are self-regulatory organizations.”⁵⁵²

Brazil has taken steps toward compliance with all four of the FSB recommendation areas for OTC derivatives market reforms and has therefore earned a score of +1.

Analyst: Sarah Ellis

Canada: +1

Canada has fully complied with its commitment to strengthen regulation of OTC derivatives markets by (1) increasing standardization; (2) establishing central counterparties for central clearing of OTC derivatives contracts; (3) establishing exchange or electronic platform trading; (4) establishing trade repositories for OTC derivatives transactions.

The Bank of Canada’s Financial System Review, published in December 2010, addressed Canadian regulators’ progress to date on G20 reform initiatives for OTC derivatives markets. The Financial System Review suggested that Canadian derivatives markets are sufficiently standardized due to headway in standardization through the International Swaps and Derivatives Association (iSDa). Some important achievements noted by the Financial System Review are improvements in the management of bilateral counterparty risk, standard definitions for all asset classes and standard agreements for facilitating trade confirmations.⁵⁵³

With respect to central clearing of OTC derivatives contracts in Canada, several important initiatives, such as best practices for risk management, effective oversight, and third-party clearing are still largely untested.⁵⁵⁴

In the area of electronic platform trading, the Financial System Review noted that the benefits and challenges of implementing measures aimed at increasing exchange and electronic trading for OTC derivatives are being evaluated by the IOSCO Task Force on OTC derivatives regulation.⁵⁵⁵

At present, there are three trade repositories in operation for OTC derivatives in Canadian financial markets: Warehouse Trust, a trade repository for credit default swaps operated by DTCC -Derivserv; Tri-Optima’s trade repository for interest rate derivatives; and DTCC’s trade repository for equity derivatives. The Government of Canada requires that all trades be reported, including non-centrally-cleared trades.⁵⁵⁶

⁵⁵¹ FSB- G20 – Monitoring Progress – Brazil September 2010, Financial Stability Board, March 2011. Date of Access: 25 April 2011. http://www.financialstabilityboard.org/publications/r_110401c.pdf

⁵⁵² OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁵⁵³ Financial System Review, Bank of Canada (Ottawa) December 2010. Date of Access: 9 April 2010. http://www.bankofcanada.ca/en/fsr/2010/fsr_1210.pdf

⁵⁵⁴ Financial System Review, Bank of Canada (Ottawa) December 2010. Date of Access: 9 April 2010. http://www.bankofcanada.ca/en/fsr/2010/fsr_1210.pdf

⁵⁵⁵ Financial System Review, Bank of Canada (Ottawa) December 2010. Date of Access: 9 April 2010. http://www.bankofcanada.ca/en/fsr/2010/fsr_1210.pdf

⁵⁵⁶ Financial System Review, Bank of Canada (Ottawa) December 2010. Date of Access: 9 April 2010.

Canada has taken steps toward compliance with three of the four FSB recommendation areas for OTC derivatives market reforms and has therefore earned a score of +1.

Analyst: Faiyyad Hosein

China: +1

China has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

According to the Chinese government's September 2010 responses to an FSB survey on implementation of G20 financial regulatory reforms, "China's OTC foreign exchange derivatives, OTC RMB interest rate derivatives and credit derivatives are traded on [an] electronic trading platform, and those derivatives not traded on the platform are reported to relevant departments."⁵⁵⁷

Furthermore, the Shanghai Clearing House, established in November 2009, has laid the groundwork for the future clearing of standardized OTC derivatives.⁵⁵⁸

China has taken steps toward compliance with three of the four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

Analyst: Sarah Ellis

France: + 1

France has fully complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

French financial market supervisors have demonstrated their support for the central clearing of OTC derivatives contracts, and they encouraged the ODSG to lay down and supervise industry targets for central clearing of interest rate derivatives, equity derivatives and credit default swaps by December 2009.⁵⁵⁹ LCH Clearnet SA, the French central clearing party, launched a clearing service for credit default swaps. Incentives for centrally clearing contracts with qualifying central clearing parties have been released for public consultation in December 2010 by the BCBS where the French supervisor is involved directly.⁵⁶⁰

In July 2009, the first central clearing institutions for credit default swaps went into operation at the level of the European Union.⁵⁶¹

http://www.bankofcanada.ca/en/fsr/2010/fsr_1210.pdf

⁵⁵⁷ FSB-G20-Monitoring Progress – China September 2010, Financial Stability Board, 12 November 2010.

Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401e.pdf

⁵⁵⁸ The Establishment of the Shanghai Clearing House in Shanghai, Shanghai Clearing House (Shanghai).

Date of Access: 24 October 2010. www.shclearing.com/English/ShowInfo.asp?InfoID=130

⁵⁵⁹ FSB-G20-Monitoring Progress – France September 2010, Financial Stability Board, 12 November 2010.

Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401f.pdf

⁵⁶⁰ FSB-G20-Monitoring Progress – France September 2010, Financial Stability Board, 12 November 2010.

Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401f.pdf

⁵⁶¹ FSB-G20-Monitoring Progress – Germany September 2010, Financial Stability Board, 12 November

2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401g.pdf

A repository for equity derivatives has been established for French derivatives by MarkitSERV in London and, and non-cleared derivatives are reported to either US DTCC (CDS) or Swedish Tri-Optima (rates).⁵⁶²

In September 2010, the European Commission, which covers France, adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁵⁶³ This proposal mandates standardization for central counterparties and trade repositories, clearing central clearing, reporting of standardized OTC derivatives contracts, and finally risk mitigation standards for OTC derivatives that are not cleared centrally.⁵⁶⁴ This proposal is in the process of being negotiated among the member states of the European Union and the European Parliament, and it is expected that the proposal will be adopted by the Parliament and the Council and come into force in the summer of 2011. All rules should therefore be in place by the end of 2012.⁵⁶⁵

On 20 September 2010, the European Commission (DG Internal Market and Services) held a public hearing on the review of the Markets in Financial Instruments Directive 2004/39/EC (MiFID) in Brussels.⁵⁶⁶ MiFID would provide harmonized regulation for investment services across the thirty member states of the European Economic Area, covering almost all tradable financial products, including commodity and other over-the counter derivatives. The public hearing covered proposed measures, such as derivative market reform and increasing trading on organized platforms, ensuring transparency and efficiency are balanced in the trading of financial instruments, changes in market structure and competition between trading venues, investor protection after the crisis, and improving market data consolidation.⁵⁶⁷

France has taken steps toward compliance with all four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

Analyst: Faiyyad Hosein

Germany: +1

Germany has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

⁵⁶² FSB-G20-Monitoring Progress – France September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401f.pdf

⁵⁶³ Proposal for a regulation of the European Parliament and of the council on OTC Derivatives, Central Counterparties and trade repositories, European Commission (Brussels), 15 September 2010. Date of Access: 10 April 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁵⁶⁴ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁵⁶⁵ OTC derivatives: financial stability challenges and responses from authorities, Banque De France, July 2010. Date of Access: 25 April 2011. http://www.banque-france.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁵⁶⁶ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

⁵⁶⁷ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

In July 2009, the first central clearing institutions for credit default swaps went into operation at the level of the European Union. Eurex Credit Clear, one central clearing institution, provides an exchange trading platform for derivatives and is a business unit of Eurex Clearing, which is supervised by BaFin and is located in Frankfurt.⁵⁶⁸ On 13 December 2010, both German exchanges launched OTC derivatives trade repositories.⁵⁶⁹

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁵⁷⁰ This proposal mandates standardization for central counterparties and trade repositories, clearing central clearing, reporting of standardized OTC derivatives contracts, and finally risk mitigation standards for OTC derivatives that are not cleared centrally.⁵⁷¹ This proposal is in the process of being negotiated among the member states of the European Union and the European Parliament, and it is expected that the proposal will be adopted by the Parliament and the Council and come into force in the summer of 2011. All rules should therefore be in place by the end of 2012.⁵⁷²

On 20 September 2010, the European Commission (DG Internal Market and Services) held a public hearing on the review of the Markets in Financial Instruments Directive 2004/39/EC (MiFID) in Brussels.⁵⁷³ MiFID would provide harmonized regulation for investment services across the thirty member states of the European Economic Area, covering almost all tradable financial products, including commodity and other over-the-counter derivatives. The public hearing covered proposed measures, such as derivative market reform and increasing trading on organized platforms, ensuring transparency and efficiency are balanced in the trading of financial instruments, changes in market structure and competition between trading venues, investor protection after the crisis, and improving market data consolidation.⁵⁷⁴

Germany has taken steps toward compliance with all four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

Analyst: Faiyyad Hosein

India: +1

⁵⁶⁸ FSB-G20-Monitoring Progress – Germany September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401g.pdf

⁵⁶⁹ German, Spanish Exchanges launch OTC repository, Reuters (London) 13 December 2010. Date of Access: 9 April 2011. <http://www.reuters.com/article/2010/12/13/exchanges-otcrepository-idUSLDE6BC0SQ20101213>

⁵⁷⁰ Proposal for a regulation of the European Parliament and of the council on OTC Derivatives, Central Counterparties and trade repositories, European Commission (Brussels), 15 September 2010. Date of Access: 10 April 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁵⁷¹ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁵⁷² OTC derivatives: financial stability challenges and responses from authorities, Banque De France, July 2010. Date of Access: 25 April 2011. http://www.banque-france.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁵⁷³ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

⁵⁷⁴ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

India has fully complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

On 15 October 2010 the Securities and Exchange Board of India took up shared leadership of an IOSCO task force on creating globally consistent regulations for OTC derivatives. This initiative is in keeping with the G20 and FSB requirement that state-driven financial reform be internationally consistent.⁵⁷⁵

An April 2011 report on OTC derivatives reforms by the FSB noted that all trades in OTC derivatives in India are supervised by a central counterparty, the Clearing Corporation of India Limited, and must be reported within 30 minutes of the trade on a reporting platform.⁵⁷⁶ The FSB report also notes that the Indian central bank “has set up a working group to develop the modalities for a single-point reporting mechanism for all OTC interest rate and foreign exchange derivative transactions. It is intended to eventually clear all OTC derivatives transactions through the CCP.”⁵⁷⁷

India has taken steps toward compliance with three of the FSB’s recommendation areas for OTC derivatives market reforms and has therefore earned a score of +1.

Analyst: Sarah Ellis

Indonesia: N/A

According to the Indonesian government’s September 2010 responses to an FSB survey on implementation of G20 financial regulatory reforms, “There is no OTC derivative market in Indonesia. We only have [an] exchange derivatives market.”⁵⁷⁸ An April 2011 FSB report on OTC derivatives markets noted that derivatives markets in Indonesia are less developed than in many other jurisdictions, and “consideration of approaches to implementing OTC derivatives market regulation is at an early stage.”⁵⁷⁹ As a result, Indonesia cannot be scored for this commitment.

Analyst: Sarah Ellis

Italy: +1

Italy has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

⁵⁷⁵ IOSCO forms Task Force on OTC Derivatives Regulation, International Organisation of Securities Commissioners (Madrid) 15 October 2010. Date of Access: 22 October 2010. www.iosco.org/news/pdf/IOSCONEWS191.pdf

⁵⁷⁶ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁵⁷⁷ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁵⁷⁸ FSB-G20-Monitoring Progress – Indonesia September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401j.pdf

⁵⁷⁹ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

The Bank of Italy and the Consob, Italy's financial market regulator, have worked with the OTC Derivatives Regulators' Forum, which was formed in September 2009.⁵⁸⁰ This forum has established a cooperative oversight framework for the Trade Information Warehouse (TIW), the global trade repository for credit default swaps.⁵⁸¹

In July 2009, the first central clearing institutions for credit default swaps went into operation at the level of the European Union.⁵⁸²

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁵⁸³ This proposal mandates standardization for central counterparties and trade repositories, clearing central clearing, reporting of standardized OTC derivatives contracts, and finally risk mitigation standards for OTC derivatives that are not cleared centrally.⁵⁸⁴ This proposal is in the process of being negotiated among the member states of the European Union and the European Parliament, and it is expected that the proposal will be adopted by the Parliament and the Council and come into force in the summer of 2011. All rules should therefore be in place by the end of 2012.⁵⁸⁵

On 20 September 2010, the European Commission (DG Internal Market and Services) held a public hearing on the review of the Markets in Financial Instruments Directive 2004/39/EC (MiFID) in Brussels.⁵⁸⁶ MiFID would provide harmonized regulation for investment services across the thirty member states of the European Economic Area, covering almost all tradable financial products, including commodity and other over-the counter derivatives. The public hearing covered proposed measures, such as derivative market reform and increasing trading on organized platforms, ensuring transparency and efficiency are balanced in the trading of financial instruments, changes in market structure and competition between trading venues, investor protection after the crisis, and improving market data consolidation.⁵⁸⁷

Italy has taken steps toward compliance with all four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

Analyst: Faiyyad Hosein

⁵⁸⁰ FSB-G20-Monitoring Progress – Italy September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401k.pdf

⁵⁸¹ FSB-G20-Monitoring Progress – Italy September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401k.pdf

⁵⁸² FSB-G20-Monitoring Progress – Germany September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401g.pdf

⁵⁸³ Proposal for a regulation of the European Parliament and of the council on OTC Derivatives, Central Counterparties and trade repositories, European Commission (Brussels), 15 September 2010. Date of Access: 10 April 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁵⁸⁴ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁵⁸⁵ OTC derivatives: financial stability challenges and responses from authorities, Banque De France, July 2010. Date of Access: 25 April 2011. http://www.banque-france.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁵⁸⁶ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

⁵⁸⁷ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

Japan: +1

Japan has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

On 21 January 2010, the FSA, the Japanese securities regulator, published a report on the Development of Institutional Frameworks Pertaining to Financial and Capital Markets.⁵⁸⁸ The report noted that certain classes of OTC derivatives contracts would be subject to mandatory clearing by central counterparties.⁵⁸⁹ The report also calls for the collection of information about OTC derivatives contracts by trade repositories and CCPs.⁵⁹⁰ Reuters reported on 12 May 2010 that the Japanese parliament had voted to approve a bill that would mandate the clearing of some OTC derivatives as well as the reporting of information about OTC derivatives trades to Japanese authorities.⁵⁹¹ Under the revised Financial Instruments and Exchange Act (FIEA), the FSA designates trade repositories, and trade repositories are required to store and to submit trade information to the regulator. Also, CCP clearing is required for actively traded OTC derivatives, where the reduction of clearing and settlement risk through the use of CCPs would be deemed beneficial for the stability of the Japanese market.⁵⁹²

Japan is also a member of the OTC derivatives regulators forum, which is exploring options for financial market infrastructure such as central counterparties and trade repositories.⁵⁹³ This forum has worked on an outline for credit derivatives central counterparties and an outline for OTC derivatives trade repositories.⁵⁹⁴

The January 2010 FSA document entitled “Development of Institutional Frameworks Pertaining to Financial and Capital Markets,” enacted as a bill on 12 May 2010, outlined preliminary steps for the standardization of OTC derivatives, including increasing the volume of derivatives subject to central clearing and demanding greater information sharing between financial institutions and regulators.⁵⁹⁵ The Japanese government has continued to work with financial institutions to increase standardization, including working as part of the G14 group of states with the ODSG

⁵⁸⁸ FSB-G20-Monitoring Progress – Japan September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_1104011.pdf

⁵⁸⁹ Development of Institutional Frameworks Pertaining to Financial and Capital Markets, Financial Services Agency, 21 January 2010. Date of Access: 25 April 2011. <http://www.fsa.go.jp/en/news/2010/20100122-3/01.pdf>

⁵⁹⁰ FSB-G20-Monitoring Progress – Japan September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_1104011.pdf

⁵⁹¹ Japan Passes Bill to Tighten OTC Derivatives Rules. Reuters (Tokyo) 12 May 2010. Date of Access 12 May 2011. <http://www.reuters.com/article/2010/05/12/japan-derivatives-idUSTOE64B06W20100512?type=marketsNews>

⁵⁹² Outline of the Bill for Amendment of the Financial Instruments and Exchange Act, Financial Services Agency (Japan) 12 May 2010. Date of Access 12 August 2011. www.fsa.go.jp/en/news/2011/20110224-1/04.pdf

⁵⁹³ Authorities currently involved in the OTC Derivatives Regulators Forum, OTC Derivatives Regulators Forum. Date of Access: 25 April 2011. <http://www.otcdrf.org/about/members.htm>

⁵⁹⁴ Outline for Trade Repositories, OTC Derivatives Regulators Forum, 27 October 2010. Date of Access: 25 April 2011. <http://www.otcdrf.org/documents/trplsoutline.pdf>

⁵⁹⁵ SB-G20-Monitoring Progress – Japan September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_1104011.pdf

working group on drafting a roadmap to improving the regulation of OTC derivatives markets.⁵⁹⁶

Japan has taken steps toward compliance with three of the four FSB recommendation areas for OTC derivatives market reforms and has therefore been awarded a score of +1.

Analyst: Faiyyad Hosein

Korea: +1

Korea has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

In February 2010, Korea's Study Committee for OTC Derivatives Infrastructure announced its recommendations regarding implementation of new regulatory and supervisory infrastructure.⁵⁹⁷ In addition, the Korean government has set up a task force team consisting of academic and other agencies in order to develop strategies for implementing these and other FSB recommendations.⁵⁹⁸

According to IFLR 1000, as of 13 June 2010 amendments to Korean financial services and capital markets regulations allowed Korea's financial market regulator, the Korean Financial Investment Association, to set up the New Product Review Committee for reviewing and approving new OTC derivative products.⁵⁹⁹

The Korean Financial Services Commission has released a detailed overview of the potential for central counterparties for OTC derivatives in Korea. The overview states that frameworks for central clearing houses are in the process of being built and can be expected to be implemented by 2012.⁶⁰⁰ The overview also states that systems such as trade repositories and electronic trading platforms have yet to be built.⁶⁰¹

Korea is also a member of the OTC derivatives regulators forum, which is exploring options for financial market infrastructure such as central counterparties and trade repositories.⁶⁰² This forum

⁵⁹⁶ ODSG Participants' May 31 Letter, New York Federal Reserve (New York) 31 May 2011. Date of Access 15 August 2011. <http://www.newyorkfed.org/newsevents/news/markets/2011/SCL0331.pdf>

⁵⁹⁷ FSB-G20-Monitoring Progress – Korea September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁵⁹⁸ FSB-G20-Monitoring Progress – Korea September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁵⁹⁹ New OTC derivative product approval, IFLR 1000 (Seoul). Date of Access: 25 April 2011. <http://www.iflr1000.com/LegislationGuide/462/New-OTC-derivative-product-approval.html>

⁶⁰⁰ South Korean Derivatives to be reviewed starting next week, Bloomberg (New York) 9 June 2010. Date of Access: 25 April 2011. <http://www.businessweek.com/news/2010-06-09/south-korean-otc-derivatives-to-be-reviewed-starting-next-week.html>

⁶⁰¹ Central Counterparty (CCP): Regulatory Initiatives to Strengthen the OTC Derivatives Market, Korea Financial Services Commission (Seoul), 20 September 2010. Date of Access 25 October 2010. <http://fsckorea.wordpress.com/2010/09/20/central-counterparty-ccp-regulatory-initiatives-to-strengthen-the-otc-derivatives-market-infrastructure/>

⁶⁰² Authorities currently involved in the OTC Derivatives Regulators Forum, OTC Derivatives Regulators Forum. Date of Access: 25 April 2011. <http://www.otcdrf.org/about/members.htm>

has worked on an outline for credit derivatives central counterparties as well as an outline for OTC derivatives trade repositories.⁶⁰³

Korea has taken steps toward compliance in three of the four FSB recommendation areas on OTC derivatives market reform and has therefore been awarded a score of +1.

Analyst: Faiyyad Hosein

Mexico: +1

Mexico has partially complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

According to the Mexican government's September 2010 responses to an FSB survey on implementation of G20 financial regulatory reforms, "There is work underway to analyze which OTC derivative contracts are subject to be standardized and whether it is feasible to trade those contracts on a regulated exchange or any other regulated trading platform, as well as to be cleared and settled through a central counterparty."⁶⁰⁴ There is also an effort underway to assess the potential implementation of a trade repository for OTC derivatives in Mexico.⁶⁰⁵

On 11 August 2010 the Mexican government established a Financial System Stability Council, which will begin the process of addressing risks posed to finance markets OTC derivatives by making recommendations and coordinating with financial authorities. The council will also advise the executive and yearly financial stability reports. The goals of the council will be to make recommendations on capital adequacy, evaluate differences in regulation between financial entities, analyze regulated and non-regulated financial bodies, and identify potential vulnerabilities in the financial system.⁶⁰⁶

Mexico has taken steps toward compliance in all four FSB recommendation areas on OTC derivatives market reform and has therefore been awarded a score of +1.

Analysts: Sarah Ellis and Glenn Asare

Russia: 0

Russia has partially complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

Russian authorities have undertaken measures to achieve increased standardization of OTC derivatives contracts and the registration of derivatives to trade repositories. On 10 February

⁶⁰³ Outline for Trade Repositories, OTC Derivatives Regulators Forum, 27 October 2010. Date of Access: 25 April 2011. <http://www.otcdrf.org/documents/trplsoutline.pdf>

⁶⁰⁴ FSB-G20-Monitoring Progress – Mexico September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401m.pdf

⁶⁰⁵ FSB-G20-Monitoring Progress – Mexico September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401m.pdf

⁶⁰⁶ Se instaló hoy el Consejo de Estabilidad del Sistema Financiero, Office of the President (Mexico City, Mexico) 11 August 2010. Date of Access: 23 October 2010. www.presidencia.gob.mx/index.php?DNA=85&Contenido=59300

2011, the Russian Government adopted an executive order which provides for the obligatory registration of OTC derivatives transactions on commodity exchanges.⁶⁰⁷

On 10 February 2011, the Russian government approved a registration procedure for OTC derivatives transactions, in particular with commodities by commodity exchanges as well as keeping the register of such transactions.⁶⁰⁸

Russia has created a mechanism of clearing OTC derivatives contracts through central counterparties. On 7 February 2011, Russian President signed a law outlining central clearing procedures for OTC derivatives contracts.⁶⁰⁹

Russia has taken steps toward compliance with two of the four FSB recommendation areas for OTC derivatives market reforms and has therefore been awarded a score of 0.

Analyst: Mark Rakhmagulov

Saudi Arabia: -1

Saudi Arabia has partially complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

On 9 June 2010 the Saudi Capital Markets Authority became a member of the International Organization of Securities Commissions, indicating that it is committed to IOSCO's Objectives and Principles of Securities Regulation.⁶¹⁰ An April 2011 FSB report on OTC derivatives market reforms noted that Saudi financial authorities "have embarked on an assessment of the derivatives markets operating within their jurisdictions and plan to decide upon future regulatory initiatives involving the implementation of the G20 commitments in the course of 2011."⁶¹¹

Saudi Arabia has failed to take steps toward compliance with any of the four FSB recommendation areas on OTC derivatives market reform and has therefore been awarded a score of -1.

Analyst: Sarah Ellis

South Africa: 0

South Africa has partially complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

⁶⁰⁷ Government Executive Order No. 167-r of 10 February 2011, Government of Russia (Moscow) 10 February 2011. Date of Access: 4 April 2011. <http://government.ru/gov/results/14134/>.

⁶⁰⁸ Government Resolution No. 65 of 10 February 2011, Government of Russia (Moscow) 10 February 2011. Date of Access: 4 April 2011. <http://government.ru/gov/results/14189/>.

⁶⁰⁹ Federal Law of 7 February 2011 No. 7-FZ on Clearing and Clearing Activities, Office of the President (Moscow) 9 February 2011. Date of Access: 4 April 2011. <http://kremlin.ru/acts/10284>.

⁶¹⁰ IOSCO expands its global membership to include Iceland, the Maldives, Saudi Arabia and Syria, International Organization of Securities Commissions (Madrid, Spain), 9 June 2010. Date of Access: 22 October 2010. www.iosco.org/news/pdf/IOSCONEWS187.pdf

⁶¹¹ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

According to the South Africa government's September 2010 responses to an FSB survey on implementation of G20 financial regulatory reforms, South African regulators "will introduce appropriate legislation and amendments to legislation to, *inter alia*, allow for centralised clearing of OTC contracts."⁶¹² An April 2011 FSB report on OTC derivatives market reforms noted that South African financial authorities "have embarked on an assessment of the derivatives markets operating within their jurisdictions and plan to decide upon future regulatory initiatives involving the implementation of the G20 commitments in the course of 2011."⁶¹³

South Africa has taken steps toward compliance in one of the four FSB recommendation areas on OTC derivatives market reform and has therefore been awarded a score of 0.

Analysts: Sarah Ellis and Glenn Asare

Turkey: -1

Turkey has failed to comply with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

The Turkish government did not respond to the portion of the FSB survey on G20 financial regulatory reforms related to OTC and credit derivatives market reforms.

As of 2007, OTC derivatives remained unregulated in Turkey, though the Capital Markets Board of Turkey had proposed amendments to its current regulatory policy which would outline systematic rules for valuing counterparty risk for OTC derivatives contracts, allowing for cross-border trade. However, the CMB remained opposed to further regulation, which might hinder financial growth in Turkey.⁶¹⁴ Currently, the CMB Regulations and Communiqué does not indicate that the Turkish government has supported the creation of central counterparties or electronic clearing platforms for OTC derivatives.⁶¹⁵

An April 2011 FSB report on OTC derivatives markets noted that derivatives markets in Turkey are less developed than in many other jurisdictions, and "consideration of approaches to implementing OTC derivatives market regulation is at an early stage."⁶¹⁶

Turkey has failed to take steps toward compliance with any of the four FSB recommendation areas on OTC derivatives market reform and has therefore been awarded a score of -1.

Analyst: Sarah Ellis

United Kingdom: +1

The United Kingdom has fully complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central

⁶¹² FSB-G20-Monitoring Progress – South Africa September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401s.pdf

⁶¹³ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁶¹⁴ Turkey: Over-the-Counter (OTC) Derivatives, Mondaq (New York) 13 March 2007. Date of Access 25 October 2010. www.mondaq.com/article.asp?articleid=46808&login=true&nogo=1

⁶¹⁵ CMB By-Law About the Establishment and Working Principles of Derivatives Exchanges, Capital Markets Board (Turkey) . Date of Access 25 October 2010.

www.cmb.gov.tr/regulations/regulations_index.html

⁶¹⁶ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board, 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

The United Kingdom's Financial Services Authority is continuing to work with G14 dealers to increase standardization across derivative products and encourage them to expand central clearing of OTC derivatives contracts.⁶¹⁷ Furthermore, in the UK 96% of eligible trades for both interest rate and credit derivatives are submitted by the UK members of the G14 OTC derivative dealers to interest rate and equity derivative trade repositories.⁶¹⁸ Finally, according to UK regulators' responses to an FSB survey on progress on G20 commitments, electronic trading platforms are already being used to trade many standardized OTC derivatives.⁶¹⁹

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁶²⁰ This proposal mandates standardization for central counterparties and trade repositories, clearing central clearing, reporting of standardized OTC derivatives contracts, and finally risk mitigation standards for OTC derivatives that are not cleared centrally.⁶²¹ This proposal is in the process of being negotiated among the member states of the European Union and the European Parliament, and it is expected that the proposal will be adopted by the Parliament and the Council and come into force in the summer of 2011. All rules should therefore be in place by the end of 2012.⁶²²

The United Kingdom has fully complied with all four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

United States: + 1

The United States has fully complied with its commitment to strengthen regulation of OTC derivatives markets by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law by US President Barack Obama in July 2010, gives the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) authority to regulate OTC derivatives and central clearing facilities.⁶²³ The Dodd-Frank Act mandates that certain swaps and

⁶¹⁷ FSB-G20-Monitoring Progress – UK September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401w.pdf

⁶¹⁸ FSB-G20-Monitoring Progress – UK September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401w.pdf

⁶¹⁹ FSB-G20-Monitoring Progress – UK September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401w.pdf

⁶²⁰ Proposal for a regulation of the European Parliament and of the council on OTC Derivatives, Central Counterparties and trade repositories, European Commission (Brussels), 15 September 2010. Date of Access: 10 April 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁶²¹ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁶²² OTC derivatives: financial stability challenges and responses from authorities, Banque De France, July 2010. Date of Access: 25 April 2011. http://www.banque-france.fr/gb/publications/telechar/rsf/2010/etude12_rs_f_1007.pdf

⁶²³ FSB-G20-Monitoring Progress – US September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401x.pdf

security-based swaps be cleared through regulated central counterparties and traded on exchanges or swap execution facilities. The Dodd-Frank Act requires that all OTC derivative transactions must be reported to a registered (security based) swap data repository (SDR). If no SDR exists to accept the details of the transaction, the details must be reported to the SEC or CFTC, as applicable.⁶²⁴

Moreover, the SEC and CFTC have continued to release new rules and recommendations for standardization, central clearing, and regulatory oversight of OTC derivatives markets. On 8 April 2011, the SEC and CFTC released a joint report to Congress on the feasibility of requiring industry members to use “standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.”⁶²⁵ If adopted, such an algorithm might serve as one method of standardizing OTC derivatives contracts.

On 2 March 2011, the SEC released a report proposing several additional rules on the oversight and regulation of central clearing facilities, including (but not limited to) rules on identifying minimum standards and requiring clearing agencies to identify all possible conflicts of interest.⁶²⁶

However, the process of implementing the rules proposed by the Dodd-Frank Act is not on track with many internally proposed timelines, according to the 1 June 2011 Davis-Polk Dodd-Frank Rulemaking Progress Report. The report notes that while 18 rulemaking targets were satisfied in May 2011, “it remains clear that regulators will not be able to meet the large number of rulemaking deadlines in July.”⁶²⁷ Several sources have raised concerns that key Dodd-Frank rules will not be completely written and/or implemented in time for the FSB-proposed 2012 deadline or the 2012 United States Presidential election.⁶²⁸

The United States has fully complied with all four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

European Union: + 1

The European Union has fully complied with its commitment to strengthen regulation of OTC derivatives by 1) increasing standardization; 2) establishing central counterparties for central clearing of OTC derivatives contracts; 3) establishing exchange or electronic platform trading; 4) establishing trade repositories for OTC derivatives transactions.

⁶²⁴ FSB-G20-Monitoring Progress – US September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401x.pdf

⁶²⁵ Publication of Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives, Securities and Exchange Commission (Washington) 8 April 2011. Date of Access 11 May 2011. <http://www.sec.gov/news/press/2011/2011-89.htm>

⁶²⁶ Proposed Rules on Clearing Agency Standards for Operation and Governance, Securities and Exchange Commission (Washington) 2 March 2011. Date of Access 11 May 2011. <http://www.sec.gov/rules/proposed/2011/34-64017.pdf>

⁶²⁷ Dodd-Frank Rulemaking Progress Report, Davis-Polk and Wardwell LLP 1 June 2011. Date of Access 7 June 2011. https://www.davispolk.com/files/uploads/FIG/June2011_ProgressReport.pdf

⁶²⁸ Financial Overhaul Is Mired in Detail and Dissent, The New York Times (Washington) 6 June 2011. Date of Access 7 June 2011. http://www.nytimes.com/2011/06/07/business/07derivatives.html?_r=2&ref=todayspaper

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁶²⁹ This proposal mandates standardization for central counterparties and trade repositories, clearing central clearing, reporting of standardized OTC derivatives contracts, and finally risk mitigation standards for OTC derivatives that are not cleared centrally.⁶³⁰ This proposal is in the process of being negotiated among the member states of the European Union and the European Parliament, and it is expected that the proposal will be adopted by the Parliament and the Council and come into force in the summer of 2011. All rules should therefore be in place by the end of 2012.⁶³¹

On 20 September 2010, the European Commission (DG Internal Market and Services) held a public hearing on the review of the Markets in Financial Instruments Directive 2004/39/EC (MiFID) in Brussels.⁶³² MiFID would provide harmonized regulation for investment services across the thirty member states of the European Economic Area, covering almost all tradable financial products, including commodity and other over-the counter derivatives. The public hearing covered proposed measures, such as derivative market reform and increasing trading on organized platforms, ensuring transparency and efficiency are balanced in the trading of financial instruments, changes in market structure and competition between trading venues, investor protection after the crisis, and improving market data consolidation.⁶³³

The European Union has fully complied with all four FSB recommendation areas for OTC derivatives reform and has therefore earned a score of +1.

⁶²⁹ Proposal for a regulation of the European Parliament and of the council on OTC Derivatives, Central Counterparties and trade repositories, European Commission (Brussels), 15 September 2010. Date of Access: 10 April 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁶³⁰ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board, 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁶³¹ OTC derivatives: financial stability challenges and responses from authorities, Banque De France, July 2010. Date of Access: 25 April 2011. http://www.banque-france.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁶³² Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

⁶³³ Public Hearing on the —Review of the Markets in Financial Instruments Directive (MIFID), European Commission (Brussels), 30 September 2010. Date of Access: 18 October 2010. http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm