

6. Finance: Over-the-Counter Derivatives

Commitment [#90]:

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

Seoul Summit Document

Assessment:

Country	Lack of Compliance	Work in Progress	Full Compliance
Argentina			+1
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		+0.68	

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.”⁷⁶² 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

⁷⁶² 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.”⁷⁶³

The second edition of *OTC Derivatives Market Reforms, Progress Report on Implementation*, a report published by the Financial Stability Board on 11 October 2011, provided “a more detailed assessment of progress toward meeting the G-20 commitments” and noted that “few FSB members have the legislation or regulations in place to provide the framework for operationalizing the commitments.” The FSB “concludes that jurisdictions should aggressively push forward to meet the end-2012 deadline in as many reform areas as possible.”⁷⁶⁴

Commitment Features:

On 25 October 2010 FSB published a report on Implementing OTC Derivatives Market Reforms.⁷⁶⁵ 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.⁷⁶⁶ The specific timelines and processes associated with these four recommendation areas are outlined in Table 7.

It is important to note that the G20RG does not evaluate the regulations implemented by a country, it merely determines whether they have acted in compliance with agreements reached at the G20 summit.

⁷⁶³ 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

⁷⁶⁴ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁷⁶⁵ 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

⁷⁶⁶ 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

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>

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 nondiscriminatory 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 nondiscriminatory 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 nondiscriminatory 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: +1

Argentina 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 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.”⁷⁶⁷ The same report noted that in Argentina, “trading derivatives [...] takes place in a far greater proportion in standardized, exchange-traded form” and that “its central bank closely monitors usage of non-standardized OTC derivatives products.”⁷⁶⁸ The report further mentions that Argentina requires “reporting of OTC derivatives transactions to the authorities [through a] TR-like platform.”⁷⁶⁹

The October 2011 FSB progress report noted that Argentina’s Central Bank’s regulation Com. “A” 4725 provides “a regulatory stimulus for the use of guarantees and CCPs to all financial institutions supervised by the Central Bank” as well as “incentives to trade derivatives on organized platforms that provide for central clearing” and “to encourage use of electronic trading platforms.”⁷⁷⁰ The FSB report further noted that “MAE is considering increasing the standardized derivatives products that can be traded on this platform.”⁷⁷¹

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

Analysts: Alexandre De Palma and Sarah Ellis

Australia: +1

Australia 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 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.⁷⁷²

⁷⁶⁷ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access: 25 April 2011.

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

⁷⁶⁸ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access: 25 April 2011.

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

⁷⁶⁹ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access: 25 April 2011.

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

⁷⁷⁰ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁷⁷¹ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁷⁷² Survey of the OTC Derivatives Market in Australia, Australian Prudential Regulation Authority, Australian Securities and Investments Commission and the Reserve Bank of Australia (Canberra) 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)

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.⁷⁷³

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.⁷⁷⁴

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.⁷⁷⁵ REP 201 also aims to provide a basis for greater standardization of OTC derivatives markets.⁷⁷⁶

The April 2011 FSB Report on OTC Derivatives Market Reforms noted that "the work of ISDA to standardize contractual terms was noted [by Australia] as key to increasing standardization in the OTC derivatives market." The report further mentions that Australia declared that its market "already is well advanced in terms of legal standardization" and that "its regulators are currently exploring whether reporting metrics similar to those used in the G-14 dealer commitments would be useful in the Australian market."⁷⁷⁷ The report adds that Australia plans to "make decisions concerning the structure of central clearing requirements for OTC derivatives in [its] market during 2011."

On 9 May 2011, ASIC released Consultation Paper 156 Retail OTC derivative issuers: Financial requirements "to seek feedback on the financial requirements for issuers of over-the-counter (OTC) derivatives, such as contracts for difference or margin foreign exchange, to retail investors."⁷⁷⁸ The subsequent regulatory guide is expected by 25 October 2011.

On 17 June 2011, the Council of Financial Regulators issued a discussion paper on Central Clearing of OTC Derivatives in Australia. The report notes that "the agencies of the Council of Financial Regulators are considering the question of central clearing of over-the-counter (OTC)

⁷⁷³ Clearing & Settlement Facilities: Australian & Overseas Operators, Australian Securities & Investment Commission (Sydney) 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)

⁷⁷⁴ FSB-G20-Monitoring Progress – Australia September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401b.pdf

⁷⁷⁵ REP 201 Review of disclosure for capital protected products and retail structured or derivative products, Australia Securities and Investments Commission (Sydney) 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)

⁷⁷⁶ REP 201 Review of disclosure for capital protected products and retail structured or derivative products, Australia Securities and Investments Commission (Sydney) 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)

⁷⁷⁷ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁷⁷⁸ 11-92MR ASIC consults on financial requirements for issuing retail OTC derivatives. Australian Securities & Investments Commission (Sydney) 9 May 2011. Date of Access: 3 October 2011. <http://www.asic.gov.au/asic/asic.nsf/byheadline/11-92MR+ASIC+consults+on+financial+requirements+for+issuing+retail+OTC+derivatives?openDocument>

derivatives transacted in Australian financial markets” and that “the Council agencies are considering the case for a requirement that activity in Australian dollar-denominated interest rate derivatives be centrally cleared and whether this should take place domestically.”⁷⁷⁹ The Council further announced that “The Council has also been considering other aspects of the G20 commitment, such as reporting to trade repositories, and will develop recommendations to the Government on these in due course.”⁷⁸⁰

On 1 July 2011, the Treasury issued a discussion paper accompanying “the exposure draft of the Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011. The Bill sets out proposed legislative amendments to remedy an inconsistency in the existing law with respect to the effect of statutory management or judicial management on close-out netting contracts.”⁷⁸¹

On 12 August 2011, the Australian Securities & Investments Commission (ASIC) issued Regulatory Guide 246, Over-the-counter contracts for difference: Improving disclosure for retail investors, which “seeks to improve disclosure on OTC CFDs to ensure that retail investors are provided with [high-quality disclosure] documents.”⁷⁸²

A September 2011 Committee on Payment and Settlement Systems (CPSS) report on Payment, clearing and settlement systems in the CPSS countries indicates that “Austraclear [...] provides [...] trade confirmation services for [...] some OTC derivatives transactions.”⁷⁸³

The 11 October 2011 FSB report noted that “main OTC derivatives instruments traded in Australian markets are interest rate and FX products, which are already fairly standardized.”⁷⁸⁴ The report further noted that the Australian Council of Financial Regulators is currently consulting or expected to consult with market participants regarding the legislative and/or regulator steps needed to comply with the G20 commitments on central clearing, exchange or electronic platform trading, and reporting to 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: Alexandre De Palma and Faiyyad Hosein

⁷⁷⁹ Central Clearing of OTC Derivatives in Australia: a discussion paper issued by the Council of Financial Regulators. Council of Financial Regulators (Sydney) June 2011. Date of Access: 3 October 2011.

<http://www.rba.gov.au/publications/consultations/201106-otc-derivatives/pdf/201106-otc-derivatives.pdf>

⁷⁸⁰ Central Clearing of OTC Derivatives in Australia: a discussion paper issued by the Council of Financial Regulators. Council of Financial Regulators (Sydney) June 2011. Date of Access: 3 October 2011.

<http://www.rba.gov.au/publications/consultations/201106-otc-derivatives/pdf/201106-otc-derivatives.pdf>

⁷⁸¹ Exposure Draft - Financial Sector Legislation Amendment (Close-Out Netting Contracts) Bill 2011, The Treasury of the Australian Government (Canberra) 1 July 2011. Date of Access: 3 October 2011.

<http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2076>

⁷⁸² Regulatory Guide 246, Over-the-counter contracts for difference: Improving disclosure for retail investors. Australian Securities & Investments Commission (Sydney) 12 August 2011. Date of Access: 3 October 2011. [http://www.asic.gov.au/asic/pdflib.nsf/add907be1c708f42ca256aca0007f465/a56b195f1af9bcf0ca2578ea0015d0ff/\\$FILE/rg227-published-12-August-2011-1.pdf](http://www.asic.gov.au/asic/pdflib.nsf/add907be1c708f42ca256aca0007f465/a56b195f1af9bcf0ca2578ea0015d0ff/$FILE/rg227-published-12-August-2011-1.pdf)

⁷⁸³ Payment, clearing and settlement systems in CPSS countries Volume 1, Committee on Payment and Settlement Systems 2 September 2011. Date of Access: 3 October 2011.

<http://www.bis.org/publ/cpss97.pdf>

⁷⁸⁴ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

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."⁷⁸⁵ The government also reported that initiatives are underway to enhance the standardization and transparency of derivatives contracts and to explore risk management strategies for OTC derivatives traded through central counterparties.⁷⁸⁶

In the February 2011 Banque de France's Financial Stability Review, the Governor of Banco Central do Brasil declared that in Brazil "Over-the-counter derivatives trades must be registered in a clearing house and only financial institutions can enter into credit derivatives trades."⁷⁸⁷

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 standardized, exchange traded and centrally cleared; since 1994, all OTC derivatives transactions are required to be registered with trade repositories that are self-regulatory organizations."⁷⁸⁸

A September 2011 Committee on Payment and Settlement Systems (CPSS) report on Payment, clearing and settlement systems in the CPSS countries indicates that "CETIP [one of Brazil's Central Counterparties] plans a new collateral management service [...] for OTC derivatives trades."⁷⁸⁹

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.

Analysts: Alexandre De Palma and 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.

⁷⁸⁵ FSB- G20 – Monitoring Progress – Brazil September 2010, Financial Stability Board (Basel) March 2011. Date of Access: 25 April 2011. http://www.financialstabilityboard.org/publications/r_110401c.pdf

⁷⁸⁶ FSB- G20 – Monitoring Progress – Brazil September 2010, Financial Stability Board (Basel) March 2011. Date of Access: 25 April 2011. http://www.financialstabilityboard.org/publications/r_110401c.pdf

⁷⁸⁷ Financial Stability Review, Banque de France (Paris) February 2011. Date of Access: 5 October 2011. http://www.banque-france.fr/gb/publications/telechar/rsf/2011/rsf_1102.pdf

⁷⁸⁸ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access: 25 April 2011.

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

⁷⁸⁹ Payment, clearing and settlement systems in CPSS countries Volume 1, Committee on Payment and Settlement Systems 2 September 2011. Date of Access: 3 October 2011.

<http://www.bis.org/publ/cpss97.pdf>

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.⁷⁹⁰

On 28 June 2011, Agathe Côté, Deputy Governor of the Bank of Canada, declared that "the Bank is working on how best to implement the G-20 commitment for OTC derivatives. One way to build resiliency may be a domestic infrastructure for centrally clearing OTC Canadian-dollar denominated derivatives."⁷⁹¹ On 22 July 2011, Tiff Macklem, Senior Deputy Governor of the Bank of Canada, further indicated that "Canada is giving serious consideration to an onshore option."⁷⁹² On 19 September 2011, Timothy Lane, Deputy Governor of the Bank of Canada, reiterated that "The selection of an appropriate CCP strategy for OTC derivatives is a particularly important issue for Canadian market participants and regulators."⁷⁹³

The 11 October 2011 FSB progress report noted that legislation on central clearing and exchange or electronic platform trading is under review. The FSB also notes that other steps are "contingent on legislative changes and rules being put in place across multiple jurisdictions and international reporting standards."⁷⁹⁴

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.⁷⁹⁵

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.⁷⁹⁶

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

⁷⁹⁰ 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

⁷⁹¹ Financial Risks and Global Reforms, Bank of Canada (Ottawa) 28 June 2011. Date of Access: 3 October 2011. <http://www.bankofcanada.ca/2011/06/speeches/financial-risks-and-global-reforms/>

⁷⁹² Global Financial Reform: Maintaining the Momentum, Bank of Canada (Ottawa) 22 July 2011. Date of Access: 3 October 2011. <http://www.bankofcanada.ca/2011/07/speeches/global-financial-reform/>

⁷⁹³ Curbing Contagion: Options and Challenges for Building More Robust Financial Market Infrastructure, Bank of Canada (Ottawa) 19 September 2011. Date of Access: 3 October 2011.

<http://www.bankofcanada.ca/2011/09/speeches/curbing-contagion-options-and-challenges/>

⁷⁹⁴ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁷⁹⁵ 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

⁷⁹⁶ 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

repository for equity derivatives. The Government of Canada requires that all trades be reported, including non-centrally-cleared trades.⁷⁹⁷

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.

Analysts: Alexandre De Palma and 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."⁷⁹⁸

Furthermore, the Shanghai Clearing House, established in November 2009, has laid the groundwork for the future clearing of standardized OTC derivatives.⁷⁹⁹

The Financial Stability Board's 15 April 2011 report on OTC Derivatives Market Reforms noted that "in China, the central bank has required the use of standardized documentation and reporting to authorities of OTC derivatives transactions, and has promoted the establishment of a CCP to clear OTC derivatives."⁸⁰⁰

In a 29 July 2011 letter to the Financial Stability Board, the International Swaps and Derivatives Association (ISDA) confirmed that "China [is] working towards establishing [a] clearing house [for OTC derivatives]."⁸⁰¹

The Financial Stability Board's 11 October 2011 progress report on OTC Derivatives Market Reforms noted that China already has "rules in effect requiring reporting of certain derivatives transactions to a TR-like platform."⁸⁰² The report further noted that the People's Bank of China made "efforts to encourage Shanghai Clearing House to establish detailed schemes for central

⁷⁹⁷ 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

⁷⁹⁸ FSB-G20-Monitoring Progress – China September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401e.pdf

⁷⁹⁹ The Establishment of the Shanghai Clearing House in Shanghai, Shanghai Clearing House (Shanghai). November 2009. Date of Access: 24 October 2010.

www.shclearing.com/English/ShowInfo.asp?InfoID=130

⁸⁰⁰ OTC Derivatives Market Reform, Financial Stability Board (Basel) 15 April 2011. Date of Access: 3 October 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁸⁰¹ Letter to the Financial Stability Board (FSB) providing overview of industry achievements, International Swaps and Derivatives Association 29 July 2011. Date of Access: 3 October 2011.

<http://www2.isda.org/attachment/MzQzNw==/FSBletter29jul.pdf>

⁸⁰² OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

clearing of OTC derivatives.”⁸⁰³ The FSB also mentioned that “transactions executed outside of the organized platform need to be reported”⁸⁰⁴ to the regulators. The progress report also considers that China completed regulatory steps “toward increasing the use of standardized products and processes” through the improvement of “Master Agreement and Definition Document.”⁸⁰⁵

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.

Analysts: Alexandre De Palma and 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.

In July 2009, the first central clearing institutions for credit default swaps went into operation at the level of the European Union.⁸⁰⁶

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 2009.⁸⁰⁷ 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.⁸⁰⁸

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).⁸⁰⁹

⁸⁰³ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁰⁴ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁰⁵ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁰⁶ FSB-G20-Monitoring Progress – Germany September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401g.pdf

⁸⁰⁷ FSB-G20-Monitoring Progress – France September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401f.pdf

⁸⁰⁸ FSB-G20-Monitoring Progress – France September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401f.pdf

⁸⁰⁹ FSB-G20-Monitoring Progress – France September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401f.pdf

In September 2010, the European Commission, which covers France, adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁸¹⁰ This proposal mandates standardization for: (1) central counterparties and trade repositories, (2) central clearing, (3) reporting of standardized OTC derivatives contracts, and (4) risk mitigation standards for OTC derivatives that are not cleared centrally.⁸¹¹ 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 2012.⁸¹²

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.⁸¹³ 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.⁸¹⁴

The Financial Stability Board's 15 April 2011 report on OTC Derivatives Market Reforms noted that "the work of ISDA to standardize contractual terms, was noted [by France] as key to increasing standardization in the OTC derivatives market."⁸¹⁵

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

Analysts: Alexandre De Palma and Faiyyad Hosein

⁸¹⁰ 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://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁸¹¹ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁸¹² OTC derivatives: financial stability challenges and responses from authorities, Banque De France (Paris) July 2010. Date of Access: 25 April 2011.

http://www.banquefrance.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁸¹³ 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

⁸¹⁴ 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

⁸¹⁵ OTC Derivatives Market Reform, Financial Stability Board (Basel) 15 April 2011. Date of Access: 3 October 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

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.

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.⁸¹⁶ On 13 December 2010, both German exchanges launched OTC derivatives trade repositories.⁸¹⁷

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.⁸¹⁸ 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.⁸¹⁹

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties, and trade repositories.⁸²⁰ This proposal mandates standardization for: (1) central counterparties and trade repositories, (2) central clearing, (3) reporting of standardized OTC derivatives contracts, and (4) risk mitigation standards for OTC derivatives that are not cleared centrally.⁸²¹ 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 2012.⁸²²

⁸¹⁶ FSB-G20-Monitoring Progress – Germany September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401g.pdf

⁸¹⁷ 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-otcrepositoryidUSLDE6BC0SQ20101213>

⁸¹⁸ 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

⁸¹⁹ 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

⁸²⁰ 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://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁸²¹ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁸²² OTC derivatives: financial stability challenges and responses from authorities, Banque De France (Paris) July 2010. Date of Access: 25 April 2011.

http://www.banquefrance.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

On 4 October 2011, Germany played an important role in reaching an agreement among EU member states to tighten regulation of over-the-counter (OTC) derivatives contracts.⁸²³ The agreement called for the reporting of all derivative contracts to trade repositories, the clearing of the derivatives through central counterparties (CCPs), and the standardization of all derivatives not traded on a regular exchange.⁸²⁴ The agreement is expected to be approved by the European Parliament by the end of 2012.

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

Analysts: Alexandre De Palma and Faiyyad Hosein

India: +1

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 20 April 2010, the Annual Policy Statement of the Year 2010-11 of the Reserve Bank of India indicated that “to capture the trade data pertaining to all OTC derivative transactions for regulation, surveillance and transparency purposes, it is necessary to extend the existing reporting arrangement in respect of IRS to all OTC interest rate and forex derivatives.”⁸²⁵

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.⁸²⁶

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.⁸²⁷ 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.”⁸²⁸

⁸²³ EU countries reach agreement on derivatives, RTE News (Dublin) 4 October 2011. Date of Access: 9 October 2011. <http://www.rte.ie/news/2011/1004/derivatives-business.html>

⁸²⁴ EU member states reach deal on OTC derivative rules, Wall Street Journal (New York) 4 October 2011. Date of Access: 9 October 2011. <http://online.wsj.com/article/BT-CO-20111004-711372.html>

⁸²⁵ Annual Policy Statement for the Year 2010-11, Reserve Bank of India (Mumbai) 20 April 2010. Date of Access: 3 October 2011. <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=5602&Mode=0>

⁸²⁶ 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

⁸²⁷ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁸²⁸ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

The May 2011 report of the Reserve Bank of India's Working Group on Reporting of OTC Interest Rates and Forex Derivatives recommended that "Clearing Corporation of India Limited (CCIL) may be the designated repository of interest rate and forex derivative transactions."⁸²⁹ The report further recommended that the existing reporting scheme for OTC derivatives products be amended by "[consolidating] the existing reporting arrangements so as to make it more robust and efficient."⁸³⁰

The 11 October 2011 report of the Financial Stability Board noted that India made progress towards "increasing the use of standardised products and processes" by issuing "guidelines to standardise terms of coupon, maturity dates, coupon payment dates, etc. on single name CDS for corporate bonds."⁸³¹ The report further noted that CCIL, India's clearinghouse, would soon provide guaranteed settlement for interest rates swaps. The FSB also mentioned that "per existing regulatory guidelines, banks and PDs should report IRS/FRA transactions to the CCIL reporting platform; in the case of CDS, all market makers must report trades on the centralised reporting platform within 30 minutes of execution; CCIL will extend trade reporting service to FX forwards and [is] considering this service for FX options."⁸³²

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.

Analysts: Alexandre De Palma and Sarah Ellis

Indonesia: 0

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."⁸³³ 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."⁸³⁴

As a result, Indonesia cannot be assessed for compliance to this commitment and has been awarded a score of 0.

Analyst: Sarah Ellis

⁸²⁹ Report of the Working Group on Reporting of OTC Interest Rates and Forex Derivatives, Reserve Bank of India (Mumbai) 25 May 2011. Date of Access: 3 October 2011.

<http://rbidocs.rbi.org.in/rdocs/PublicationReport/PDFs/OTC250511F.pdf>

⁸³⁰ Report of the Working Group on Reporting of OTC Interest Rates and Forex Derivatives, Reserve Bank of India (Mumbai) 25 May 2011. Date of Access: 3 October 2011.

<http://rbidocs.rbi.org.in/rdocs/PublicationReport/PDFs/OTC250511F.pdf>

⁸³¹ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸³² OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸³³ FSB-G20-Monitoring Progress – Indonesia September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401j.pdf

⁸³⁴ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access 25 April 2011.

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

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.

In July 2009, the first central clearing institutions for credit default swaps went into operation at the level of the European Union.⁸³⁵

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 2009.⁸³⁶ This forum has established a cooperative oversight framework for the Trade Information Warehouse (TIW), the global trade repository for credit default swaps.⁸³⁷

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁸³⁸ This proposal mandates standardization for: (1) central counterparties and trade repositories, (2) central clearing, (3) reporting of standardized OTC derivatives contracts, and (4) risk mitigation standards for OTC derivatives that are not cleared centrally.⁸³⁹ 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 2012.⁸⁴⁰

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.⁸⁴¹ 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

⁸³⁵ FSB-G20-Monitoring Progress – Germany September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401g.pdf

⁸³⁶ FSB-G20-Monitoring Progress – Italy September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401k.pdf

⁸³⁷ FSB-G20-Monitoring Progress – Italy September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401k.pdf

⁸³⁸ 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://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

⁸³⁹ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁸⁴⁰ OTC derivatives: financial stability challenges and responses from authorities, Banque De France (Paris) July 2010. Date of Access: 25 April 2011.

http://www.banquefrance.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁸⁴¹ 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

instruments, changes in market structure and competition between trading venues, investor protection after the crisis, and improving market data consolidation.⁸⁴²

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

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.⁸⁴³ The report noted that certain classes of OTC derivatives contracts would be subject to mandatory clearing by central counterparties.⁸⁴⁴ The report also calls for the collection of information about OTC derivatives contracts by trade repositories and CCPs.⁸⁴⁵ 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.⁸⁴⁶

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.⁸⁴⁷

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.⁸⁴⁸ This forum has worked on an outline for credit derivatives central counterparties and an outline for OTC derivatives trade repositories.⁸⁴⁹

⁸⁴² 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

⁸⁴³ FSB-G20-Monitoring Progress – Japan September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_1104011.pdf

⁸⁴⁴ Development of Institutional Frameworks Pertaining to Financial and Capital Markets, Financial Services Agency (Tokyo) 21 January 2010. Date of Access: 25 April 2011. <http://www.fsa.go.jp/en/news/2010/20100122-3/01.pdf>

⁸⁴⁵ FSB-G20-Monitoring Progress – Japan September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_1104011.pdf

⁸⁴⁶ 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-derivativesidUSTOE64B06W20100512?type=marketsNews>

⁸⁴⁷ Outline of the Bill for Amendment of the Financial Instruments and Exchange Act, Financial Services Agency (Tokyo) 12 May 2010. Date of Access: 12 August 2011. www.fsa.go.jp/en/news/2011/20110224-1/04.pdf

⁸⁴⁸ 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>

⁸⁴⁹ Outline for Trade Repositories, OTC Derivatives Regulators Forum 27 October 2010. Date of Access: 25 April 2011. <http://www.otcdrf.org/documents/trplsoutline.pdf>

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.⁸⁵⁰ 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 working group on drafting a roadmap to improving the regulation of OTC derivatives markets.⁸⁵¹

The 11 October 2011 FSB progress report noted that “Japan and the United States are the only jurisdictions that have adopted legislation mandating central clearing of standardised OTC derivatives.”⁸⁵² Furthermore, Japan has “legislation requiring reporting of OTC derivatives transactions to a TR, which is an entity specifically defined in legislation,” and “non-standardized OTC derivatives transactions that are not accepted by a TR must be reported to the Japanese Financial Services Agency.”⁸⁵³ The FSB also noted that in Japan, a “significant portion of [derivatives] market [is] already standardised.”⁸⁵⁴

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.

Analysts: Alexandre De Palma and 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.⁸⁵⁵ 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.⁸⁵⁶

⁸⁵⁰ SB-G20-Monitoring Progress – Japan September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_1104011.pdf

⁸⁵¹ 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>

⁸⁵² OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011. http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁵³ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011. http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁵⁴ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011. http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁵⁵ FSB-G20-Monitoring Progress – Korea September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁸⁵⁶ FSB-G20-Monitoring Progress – Korea September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401o.pdf

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.⁸⁵⁷

On 26 July 2011, the Financial Services Commission announced the proposal of a revision bill of the Financial Investment Services and Capital Market Act that "creates a new category of 'clearing business for financial investment transactions' and lays a legal foundation for establishing a central counter party (CCP). By introducing a license system for a clearing business provider, it aims to provide clearing services for a variety of products (e.g. OTC derivatives, securities lending, RPs). For OTC derivatives transactions that can significantly affect markets if defaulted, they will be mandatorily required to be cleared through clearing houses."⁸⁵⁸

A September 2011 Committee on Payment and Settlement Systems (CPSS) report on Payment, clearing and settlement systems in the CPSS countries noted that "the decision has been taken to build new infrastructure for the OTC derivatives market, including a CCP and a trade repository."⁸⁵⁹

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.⁸⁶⁰ This forum has worked on an outline for credit derivatives central counterparties as well as an outline for OTC derivatives trade repositories.⁸⁶¹

The 11 October 2011 FSB progress report noted that "Financial Investment Services and Capital Markets Act (FSC) and the Foreign Exchange Transactions Act (BoK) require reporting of all OTC derivatives transactions to authorities."⁸⁶²

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

⁸⁵⁷ 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>

⁸⁵⁸ Press Release – Revision Bill of the Financial Investment Services and Capital Market Act, Financial Services Commission (Republic of Korea) 26 July 2011. Date of Access: 14 October 2011.

<http://www.fsc.go.kr/downManager?bbsid=BBS0048&no=75900>

⁸⁵⁹ Payment, clearing and settlement systems in CPSS countries Volume 1, Committee on Payment and Settlement Systems 2 September 2011. Date of Access: 3 October 2011.

<http://www.bis.org/publ/cpss97.pdf>

⁸⁶⁰ 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>

⁸⁶¹ Outline for Trade Repositories, OTC Derivatives Regulators Forum 27 October 2010. Date of Access: 25 April 2011. <http://www.otcdrf.org/documents/trplsoutline.pdf>

⁸⁶² OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

by 2012.⁸⁶³ The overview also states that systems such as trade repositories and electronic trading platforms have yet to be built.⁸⁶⁴

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.

Analysts: Alexandre De Palma and 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.

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.⁸⁶⁵

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 restandardized 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."⁸⁶⁶ There is also an effort underway to assess the potential implementation of a trade repository for OTC derivatives in Mexico.⁸⁶⁷

A September 2011 Committee on Payment and Settlement Systems (CPSS) report on Payment, clearing and settlement systems in the CPSS countries indicates that "INDEVAL has started work on two major projects, a trade repository for OTC derivatives and a CCP for debt securities."⁸⁶⁸

⁸⁶³ 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-derivativesto-be-reviewed-starting-next-week.html>

⁸⁶⁴ 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://fscukorea.wordpress.com/2010/09/20/central-counterparty-ccp-regulatory-initiatives-to-strengthen-the-otc-derivatives-market-infrastructure/>

⁸⁶⁵ Se instaló hoy el Consejo de Estabilidad del Sistema Financiero, Office of the President (Mexico City) 11 August 2010. Date of Access: 23 October 2010. www.presidencia.gob.mx/index.php?DNA=85&Contenido=59300

⁸⁶⁶ FSB-G20-Monitoring Progress – Mexico September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401m.pdf

⁸⁶⁷ FSB-G20-Monitoring Progress – Mexico September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401m.pdf

⁸⁶⁸ Payment, clearing and settlement systems in CPSS countries Volume 1, Committee on Payment and Settlement Systems 2 September 2011. Date of Access: 3 October 2011. <http://www.bis.org/publ/cpss97.pdf>

The 11 October 2011 FSB progress report noted that “most OTC derivatives products in Mexico are already highly standardised.”⁸⁶⁹ The report further noted that Mexico is in the process of developing regulation on central clearing, exchange or electronic platform trading, and reporting to trade repositories.⁸⁷⁰

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: Glenn Asare, Alexandre De Palma and Sarah Ellis

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 2011, the Russian Government adopted an executive order which provides for the obligatory registration of OTC derivatives transactions on commodity exchanges.⁸⁷¹

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.⁸⁷²

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.⁸⁷³

On 8 September 2011, the Russian Federal Service for Financial Markets announced plans to establish a trade repository for collecting data on OTC derivatives transactions and reporting these data to the Central Bank, thus the Central Bank will receive the data for assessing risks of transactions with OTC derivatives.⁸⁷⁴

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: Andrey Shelepov

Saudi Arabia: -1

⁸⁶⁹ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁷⁰ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁷¹ 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/>.

⁸⁷² 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/>.

⁸⁷³ 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>.

⁸⁷⁴ FSFM is to issue a draft order on trade repository, 8 September 2011. Date of Access: 5 October 2011. <http://www.ria.ru/economy/20110908/432641736.html>

Saudi Arabia 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.

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.⁸⁷⁵ 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."⁸⁷⁶

The 11 October 2011 FSB progress report on OTC Derivatives Regulation noted that "banks in Saudi Arabia already use standardised and plain vanilla products (foreign exchange and interest rate products)" and that "July 2000 SAMA [requires] for all counterparties to use a standard Customer Treasury Agreement."⁸⁷⁷ The report further noted that a self-assessment study is underway to identify the steps to be taken on other OTC Derivatives commitments.

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: Alexandre De Palma and 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.

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."⁸⁷⁸ 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."⁸⁷⁹

⁸⁷⁵ IOSCO expands its global membership to include Iceland, the Maldives, Saudi Arabia and Syria, International Organization of Securities Commissions (Madrid) 9 June 2010. Date of Access: 22 October 2010. www.iosco.org/news/pdf/IOSCONEWS187.pdf

⁸⁷⁶ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access: 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

⁸⁷⁷ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011. http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁷⁸ FSB-G20-Monitoring Progress – South Africa September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401s.pdf

⁸⁷⁹ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access 25 April 2011. http://www.financialstabilityboard.org/publications/r_110415b.pdf

In the August 2011 Policy document explaining the Financial Markets Bill, the Financial Services Board noted that “the National Treasury recognises the need to bring the OTC derivatives within the regulatory fold. The focus, at this stage, is possible incentives for the standardisation of OTC derivatives to be cleared through a central counterparty.”⁸⁸⁰ The Financial Markets Bill would “[provide for] the establishment of a trade repository to which all trades in these instruments will be reported and monitored. The initial focus of the trade repository will be on OTC derivatives, in line with the G-20 recommendations”⁸⁸¹

The October 2011 FSB report noted that the Financial Markets Bill has been “submitted to the National Treasury for Cabinet and Parliamentary approval.”⁸⁸²

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: Glenn Asare, Alexandre De Palma and Sarah Ellis

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.

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 crossborder trade. However, the CMB remained opposed to further regulation, which might hinder financial growth in Turkey.⁸⁸³ 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.⁸⁸⁴

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.”⁸⁸⁵

⁸⁸⁰ Reviewing the regulation of Financial Markets in South Africa, Financial Services Board (Basel) August 2011. Date of Access: 3 October 2011.

<http://www.fsb.co.za/FinMarks/FinancialMarketsBill/FMBPolicyDocument.pdf>

⁸⁸¹ Reviewing the regulation of Financial Markets in South Africa, Financial Services Board (Basel) August 2011. Date of Access: 3 October 2011.

<http://www.fsb.co.za/FinMarks/FinancialMarketsBill/FMBPolicyDocument.pdf>

⁸⁸² OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁸³ 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

⁸⁸⁴ 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

⁸⁸⁵ OTC Derivatives Market Reforms: Report on Implementation. Financial Stability Board (Basel) 15 April 2011. Date of Access: 25 April 2011.

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

The 11 October 2011 FSB report noted that “investment firms are prohibiting from dealing in OTC derivatives in Turkey [while] banks use mostly plain vanilla products with standardised feature.” The report further noted that other compliance areas are under review.⁸⁸⁶

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.

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.

Analysts: Alexandre De Palma and 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 clearing of OTC derivatives contracts; (3) establishing exchange or electronic platform trading; (4) establishing trade repositories for OTC derivatives transactions.

In the 24 September 2009 joint response to EU Consultation Document: Possible initiatives to enhance the resilience of OTC derivatives markets, the UK Financial Services Authority and HM Treasury identified four key issues which need to be addressed: (1) further standardization of contract and economic terms, (2) greater use of CCP clearing for “clearing-eligible” products, (3) strengthened risk management for non-CCP-cleared products, and (4) increased transparency to the market and to regulators.⁸⁸⁷

On 16 December 2009, the Reforming OTC Derivatives Markets joint report from the UK Financial Services Authority (FSA) and the HM Treasury proposed measures that included: (1) greater standardization of OTC derivatives contracts, (2) registration of all relevant OTC derivative trades in a trade repository, and (3) more robust counterparty risk management through the use of CCP clearing for clearing eligible products. However, the report noted that the FSA and the HM Treasury “[did] not see at this stage the need for mandating the trading of standardised derivatives on organised trading platform.”⁸⁸⁸

On 7 June 2011, Alexander Justham, Director of Markets at the Financial Services Authority, reiterated that “the FSA supports [the] objectives” that the G20 group of countries agreed upon in September 2009 at the G20 Pittsburgh summit and that the FSA is “heavily engaged at both the European and the global level in designing the regulatory framework that will apply to OTC derivatives.”⁸⁸⁹

⁸⁸⁶ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 14 October 2011.

http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁸⁸⁷ Joint UK Financial Services Authority and HM Treasury response to EU Consultation Document: Possible initiatives to enhance the resilience of OTC derivatives markets, Financial Services Authority and HM Treasury (London) 24 September 2009. Date of Access: 6 October 2011.

http://www.fsa.gov.uk/pages/Library/Other_publications/EU/eu_docs/index.shtml

⁸⁸⁸ Reforming OTC Derivatives markets, Financial Services Authority and HM Treasury (London) 16 December 2009. Date of Access: 6 October 2011.

http://www.fsa.gov.uk/pubs/other/reform_otc_derivatives.pdf

⁸⁸⁹ Derivatives reform - progress against the G20 objectives, Financial Services Authority (London) 7 June 2011. Date of Access: 6 October 2011.

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2011/0607_aj.shtml

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.⁸⁹⁰ 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.⁸⁹¹ 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.⁸⁹²

On 4 October 2011, the UK government agreed on a deal reached among the EU member states to tighten regulation of over-the-counter (OTC) derivatives contracts.⁸⁹³ The agreement called for the reporting of all derivative contracts to trade repositories, the clearing of the derivatives through central counterparties (CCPs), and the standardization of all derivatives not trade on a regular exchange.⁸⁹⁴ The agreement is expected to be approved by the European Parliament by the end of 2012.

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

Analyst: Alexandre De Palma

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.⁸⁹⁵ The Dodd-Frank Act mandates that certain swaps and 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.⁸⁹⁶

⁸⁹⁰ FSB-G20-Monitoring Progress – UK September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401w.pdf

⁸⁹¹ FSB-G20-Monitoring Progress – UK September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401w.pdf

⁸⁹² FSB-G20-Monitoring Progress – UK September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401w.pdf

⁸⁹³ EU makes derivative deal that Osborne says benefit UK, Bloomberg (New York) 4 October 2011. Date of Access: 9 October 2011. <http://www.bloomberg.com/news/2011-10-04/eu-makes-deal-on-derivatives-proposal-to-bridge-gap-with-u-k.html>

⁸⁹⁴ EU member states reach deal on OTC derivative rules, Wall Street Journal (New York) 4 October 2011. Date of Access: 9 October 2011. <http://online.wsj.com/article/BT-CO-20111004-711372.html>

⁸⁹⁵ FSB-G20-Monitoring Progress – US September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401x.pdf

⁸⁹⁶ FSB-G20-Monitoring Progress – US September 2010, Financial Stability Board (Basel) 12 November 2010. Date of Access: 9 April 2011. http://www.financialstabilityboard.org/publications/r_110401x.pdf

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.⁸⁹⁷

The SEC and CFTC have released 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.”⁸⁹⁸ If adopted, such an algorithm might serve as one method of standardizing OTC derivatives contracts.

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.”⁸⁹⁹ 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.⁹⁰⁰

On 10 June 2011, the Securities and Exchange Commission announced that it would provide “temporary relief from [...] the various pre-Dodd-Frank provisions of the Exchange Act that would otherwise apply to security-based swaps on July 16”⁹⁰¹

On 14 June 2011, General Counsel Dan Berkovitz of the U.S. Commodity Futures Trading Commission (CFTC) announced that “although the Commission has issued proposed rules to implement [provisions regarding section 754 of the Dodd-Frank Act], these rulemakings will not be completed by July 16.”⁹⁰² Berkovitz further announced that “the draft order proposes to temporarily exempt persons or entities from complying with these provisions until the earlier of the effective date of the definitional rulemaking for such terms or December 31, 2011.”⁹⁰³

On 1 July 2011, the SEC “provided additional guidance to clarify which U.S. securities laws will apply to security-based swaps starting July 16 [and] approved an order granting temporary relief

⁸⁹⁷ Proposed Rules on Clearing Agency Standards for Operation and Governance, Securities and Exchange Commission (Washington D.C.) 2 March 2011. Date of Access 11 May 2011.

<http://www.sec.gov/rules/proposed/2011/34-64017.pdf>

⁸⁹⁸ Publication of Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives, Securities and Exchange Commission (Washington D.C.) 8 April 2011. Date of Access 11 May 2011.

<http://www.sec.gov/news/press/2011/2011-89.htm>

⁸⁹⁹ 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

⁹⁰⁰ Financial Overhaul Is Mired in Detail and Dissent, 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

⁹⁰¹ SEC Announces Steps to Address One-Year Effective Date of Title VII of Dodd-Frank Act, Securities and Exchange Commission (Washington D.C.) 10 June 2011. Date of Access: 6 October 2011.

<http://www.sec.gov/news/press/2011/2011-125.htm>

⁹⁰² Oral Statement on Proposed Order for Exemptive Relief, General Counsel Dan Berkovitz, U.S. Commodity Futures Trading Commission (Washington D.C.) 14 June 2011. Date of Access: 6 October 2011. <http://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement061411>

⁹⁰³ Oral Statement on Proposed Order for Exemptive Relief, General Counsel Dan Berkovitz, U.S. Commodity Futures Trading Commission (Washington D.C.) 14 June 2011. Date of Access: 6 October 2011. <http://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement061411>

and interpretive guidance to make clear that a substantial number of the requirements of the Exchange Act applicable to securities will not apply to security-based swaps when the revised definition of “security” goes into effect on July 16⁹⁰⁴

On 14 July 2011, Financial Industry Regulatory Authority, Inc. (FINRA) filed with the SEC proposed rules changes pertaining to Security-Based Swaps and Margin Requirements for Credit Default Swaps.⁹⁰⁵⁹⁰⁶

On 21 July 2011, the SEC and the CFTC announced they would “hold a joint public roundtable on August 1 from 9 a.m. to 4 p.m. to discuss international issues related to the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”⁹⁰⁷

The 11 October 2011 Financial Stability Board report noted that “only the United States has enacted legislation [regarding exchange and electronic platform trading of OTC Derivatives] and is actively working on the detail of the implementing regulations” and that the United States is one of “the only jurisdictions that have adopted legislation mandating central clearing of standardised OTC derivatives” and has “legislation requiring reporting of OTC derivatives transactions to a TR, which is an entity specifically defined in legislation.”⁹⁰⁸

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

Analyst: Alexandre De Palma

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.

In September 2010, the European Commission adopted a proposal for the regulation of OTC derivatives, central counterparties and trade repositories.⁹⁰⁹ This proposal mandates

⁹⁰⁴ SEC Provides Additional Guidance, Interim Relief and Exemptions for Security-Based Swaps Under Dodd-Frank Act, Securities and Exchange Commission (Washington D.C.) 1 July 2011. Date of Access: 6 October 2011. <http://www.sec.gov/news/press/2011/2011-141.htm>

⁹⁰⁵ Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Securities and Exchange Commission (Washington D.C.) 14 July 2011. Date of Access: 6 October 2011. <http://www.sec.gov/rules/sro/finra/2011/34-64884.pdf>

⁹⁰⁶ Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend FINRA Rule 4240 (Margin Requirements for Credit Default Swaps), Securities and Exchange Commission (Washington D.C.) 14 July 2011. Date of Access: 6 October 2011. <http://www.sec.gov/rules/sro/finra/2011/34-64892.pdf>

⁹⁰⁷ SEC, CFTC Staffs to Host Roundtable to Discuss International Issues Relating to Dodd-Frank Act Title VII Implementation, Securities and Exchange Commission (Washington D.C.) 21 July 2011. Date of Access: 6 October 2011. <http://www.sec.gov/news/press/2011/2011-151.htm>

⁹⁰⁸ OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access 14 October 2011. http://www.financialstabilityboard.org/publications/r_111011b.pdf

⁹⁰⁹ 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://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF>

standardization for: (1) central counterparties and trade repositories, (2) central clearing, (3) reporting of standardized OTC derivatives contracts, and (4) risk mitigation standards for OTC derivatives that are not cleared centrally.⁹¹⁰ This proposal is in the process of being negotiated among the member states of the European Union and the European Parliament. It is expected that the proposal will be adopted and enforced by the Parliament and the Council in the summer of 2011. All rules should therefore be in place by the end of 2012.⁹¹¹

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.⁹¹² MiFID would provide harmonized regulation for investment services across the thirty member states of the European Economic Area and cover almost all tradable financial products, including commodity and other over-the counter derivatives. The public hearing covered proposed measures, such as: (1) derivative market reform and increasing trading on organized platforms to ensure a balance of transparency and efficiency in the trading of financial instruments, (2) changes in market structure and competition between trading venues, (3) investor protection after the crisis, and (4) improving market data consolidation.⁹¹³

On 20 July 2011, the European Commission brought forward a “regulation governing how activities of credit institutions and investment firms are carried out.” Part of the regulation covers “counter party credit risk: consistent with the Commission's policy vis-à-vis OTC (over the counter) derivatives (IP/10/1125), changes are made to encourage banks to clear OTC derivatives on CCPs (central counterparties).”⁹¹⁴

On 4 October 2011, the European Union member states reached an agreement to tighten regulation of over-the-counter (OTC) derivatives contracts. The agreement called for the reporting of all derivative contracts to trade repositories, the clearing of the derivatives through central counterparties (CCPs), and the standardization of all derivatives not trade on a regular exchange.⁹¹⁵ The agreement is expected to be approved by the European Parliament by the end of 2012.

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

Analyst: Alexandre De Palma

⁹¹⁰ FSB-G20-Monitoring Progress – European Union September 2010, Financial Stability Board (Brussels) 12 November 2010. Date of Access: 9 April 2011.

http://www.financialstabilityboard.org/publications/r_110401o.pdf

⁹¹¹ OTC derivatives: financial stability challenges and responses from authorities, Banque De France (Paris) July 2010. Date of Access: 25 April 2011.

http://www.banquefrance.fr/gb/publications/telechar/rsf/2010/etude12_rsf_1007.pdf

⁹¹² 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

⁹¹³ 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

⁹¹⁴ Commission wants stronger and more responsible banks in Europe, European Commission (Brussels) 20 July 2011. Date of Access: 9 October 2011. <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/915&format=HTML&aged=0&language=EN&guiLanguage=en>

⁹¹⁵ EU member states reach deal on OTC derivative rules, Wall Street Journal (New York) 4 October 2011. Date of Access: 9 October 2011. <http://online.wsj.com/article/BT-CO-20111004-711372.html>