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## Finance: Over-the-Counter Derivatives [149]

### Commitment [#149]:

*[We commit to the full and timely implementation of the financial sector reform agenda agreed up through Seoul, including:] clearing and trading obligations for OTC derivatives”*

Cannes 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      |                    | Not applicable   |                 |
| Italy          |                    |                  | +1              |
| Japan          |                    |                  | +1              |
| Korea          |                    |                  | +1              |
| Mexico         |                    |                  | +1              |
| Russia         |                    |                  | +1              |
| Saudi Arabia   | -1                 |                  |                 |
| South Africa   |                    | 0                |                 |
| Turkey         | -1                 |                  |                 |
| United Kingdom |                    |                  | +1              |
| United States  |                    |                  | +1              |
| European Union |                    |                  | +1              |
| Average Score  |                    | +0.74            |                 |

### 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.”<sup>586</sup> 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. The Cannes Summit Declaration further reaffirms G20 leaders’ commitment to implement the financial sector agenda. While the Cannes Summit Declaration only explicitly mentions the “clearing and trading obligations for OTC derivatives,” the scope of its commitment includes all the reforms “agreed up to Seoul.” Standardization and reporting to trade repositories are thus considered as part of the reforms that target the OTC derivatives market.

*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

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<sup>586</sup>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](http://www.financialstabilityboard.org/publications/r_110415b.pdf)

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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 deadline, and believes that in order for this target to be achieved, jurisdictions need to take substantial, concrete steps toward implementation immediately.”<sup>587</sup>

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”<sup>588</sup> and noted that “few FSB members have the legislation or regulations in place to provide the framework for operationalizing the commitments.”<sup>589</sup> The FSB “concludes that jurisdictions should aggressively push forward to meet the end-2012 deadline in as many reform areas as possible.”<sup>590</sup>

A 9 December 2011 *Joint Statement on Regulation of OTC Derivatives Markets* released by the U.S. Securities and Exchange Commission informs that “the authorities responsible for regulation of the over-the-counter (OTC) derivatives markets in Canada, the European Union, Hong Kong, Japan, Singapore, and the United States [...] addressed the cross-border issues related to the implementation of new legislation and rules to govern the OTC derivatives markets in their respective jurisdictions.”<sup>591</sup>

**Commitment Features:**

On 25 October 2010 FSB published a report on Implementing OTC Derivatives Market Reforms.<sup>592</sup> 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.<sup>593</sup> The specific timelines and processes associated with these four recommendation areas are outlined in Table 8.

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<sup>587</sup> 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](http://www.financialstabilityboard.org/publications/r_110415b.pdf)

<sup>588</sup> 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](http://www.financialstabilityboard.org/publications/r_111011b.pdf)

<sup>589</sup> 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](http://www.financialstabilityboard.org/publications/r_111011b.pdf)

<sup>590</sup> 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](http://www.financialstabilityboard.org/publications/r_111011b.pdf)

<sup>591</sup> Joint Statement on Regulation of OTC Derivatives Markets, U.S. Securities and Exchange Commission (Washington, D.C.) 9 December 2011. Date of Access 24 January 2011.

<http://www.sec.gov/news/press/2011/2011-260.htm>

<sup>592</sup> 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](http://www.financialstabilityboard.org/publications/r_101025.pdf)

<sup>593</sup> 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](http://www.financialstabilityboard.org/publications/r_101025.pdf)

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.

**Table 8: 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 | IOSCO, with involvement of other appropriate authorities, should conduct an analysis by 31 January 2011 of: (i) the characteristics of the various exchanges and electronic platforms that could be used for derivatives trading; (ii) the characteristics of a market that make exchange or electronic platform trading practicable; (iii) the benefits and costs of increasing exchange or electronic platform trading, including identification of benefits that are incremental to those provided by increasing standardisation, moving to central clearing and reporting to trade repositories; and (iv) the regulatory actions that may be advisable to shift trading to exchanges or electronic trading platforms. In addition, authorities should consider increasing public price and volume transparency for all derivatives transactions. |
| 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 largest banks — derivatives dealers as well as representatives of financial institutions. The letter can be found here: <http://www.newyorkfed.org/newsevents/news/markets/2011/SCL0331.pdf>

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**Scoring Guidelines:**

|    |  |
|----|--|
| -1 | Member fails to take active steps to comply with applicable FSB recommendations to strengthen regulation and supervision of OTC derivatives markets in a non-discriminatory manner with respect to ANY of 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. |

*Lead Analyst: Alexandre De Palma*

**Argentina: +1**

Argentina's regulation complies with the Pittsburgh 2009 G20 Summit commitments to strengthen OTC derivatives markets regulation.

The 11 October 2011 FSB Report on OTC Derivatives Market Reforms notes that Argentina, "whose derivatives markets already [is] dominated by exchange-traded derivatives trading," does "not plan to implement trading requirements."<sup>594</sup>

Argentina complies with the G20 commitment to strengthen OTC derivatives markets regulation and has therefore earned a score of +1.

*Analyst: Laurène Vasseur*

**Australia: +1**

Australia has fully complied with its commitment to strengthen regulation of OTC Derivatives markets by drafting regulatory proposals and consulting with market participants on (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 November 19, 2011, the Treasury released a discussion paper on 'Handling and Use of Client Money in Relation to Over-the-Counter (OTC) Derivatives Transactions'. The purpose of the paper is to discuss the issues relating to the holding of client money in connection with OTC derivatives transactions and to review whether client monies provisions of the Corporations Act 2001 provide sufficient protection for investors.<sup>595</sup>

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<sup>594</sup> 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](http://www.financialstabilityboard.org/publications/r_111011b.pdf)

<sup>595</sup> Handling and use of client money in relation to over-the-counter derivatives transactions, The Treasury of the Australian Government 19 November 2011. Date of Access: March 2nd 2012.

[http://www.treasury.gov.au/documents/2231/PDF/DP\\_Client\\_Monies\\_OTC.pdf](http://www.treasury.gov.au/documents/2231/PDF/DP_Client_Monies_OTC.pdf)

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On 24 January 2012 the Corporations and Markets Advisory Committee (CAMAC) published a report on Derivatives and considered that “the Australian legislation regulating derivatives compares favourably with overseas regulatory systems, and regulatory initiatives in local OTC derivatives markets are fully in line with international developments.”<sup>596</sup> The report further highlights the recommendations and progresses made by Australian regulatory agencies as regards standardisation, electronic trading, central clearing, risk mitigation, and protection of the customers of OTC derivatives products.<sup>597</sup>

In its 27 March 2012 Financial Stability Review, the Reserve Bank of Australia recalled, “the Council of Financial Regulators (CFR) continued to develop policy proposals on the regulation of OTC derivatives markets.”<sup>598</sup>

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: Rizal Adam Pany*

### **Brazil: +1**

Brazil’s regulation complies with the Pittsburgh 2009 G20 Summit commitments to strengthen OTC derivatives markets regulation.

The 11 October 2011 FSB Report on OTC Derivatives Market Reforms notes that Brazil, “whose derivatives markets already [is] dominated by exchange-traded derivatives trading,” does “not plan to implement trading requirements.”<sup>599</sup>

A 9 November 2011 article by the Financial Times reported that BM&FBovespa would source clearinghouse technology from Cinnober, a Swedish trading technology company. “Cícero Vieira Neto, chief operating, clearing and depository officer of BM&FBovespa, said the new system would allow users to net positions in different classes of assets and contracts.”<sup>600</sup>

Brazil complies with the G20 commitment to strengthen OTC derivatives markets regulation and has therefore earned a score of +1.

*Analyst: Laurène Vasseur*

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<sup>596</sup> Media Release Derivatives, Corporations and Markets Advisory Committee (Sydney) 24 January 2012. Date of Access: 12 April 2012.

<http://www.camac.gov.au/camac/camac.nsf/byHeadline/Whats+NewMedia+Release+definition+of+derivatives?openDocument>

<sup>597</sup> Derivatives, Corporations and Markets Advisory Committee (Sydney) 22 December 2011. Date of Access: 12 April 2012.

[http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2011/\\$file/Derivatives\\_Report\\_Dec2011.pdf](http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2011/$file/Derivatives_Report_Dec2011.pdf)

<sup>598</sup> Financial Stability Review, Reserve Bank of Australia (Sydney) 27 March 2012. Date of Access: 12 April 2012. <http://www.rba.gov.au/publications/fsr/2012/mar/pdf/0312.pdf>

<sup>599</sup> 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](http://www.financialstabilityboard.org/publications/r_111011b.pdf)

<sup>600</sup> Cinnober wins BM&FBovespa clearing deal, Financial Times (London), 9 November 2011. Date of Access: 12 april 2012. <http://www.ft.com/intl/cms/s/0/209ba770-0ab2-11e1-b9f6-00144feabdc0.html#axzz1rtKqSMTD>

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### **Canada: +1**

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

The Bank of Canada's 2010 Financial System Review suggested that Canadian derivatives markets are sufficiently standardized due to headway in standardization through the International Swaps and Derivatives Association (ISDA).<sup>601</sup>

The 30 January 2012 FSB peer review report reported that Canada is considering two options for fulfilling its G20 commitment to increase the use of CCPs for OTC derivatives: (1) Canadian market participants could clear certain systemically important products on a CCP located in Canada, with other products cleared offshore; or (2) all products would be cleared at existing and planned global CCPs located in the United States and Europe.<sup>602</sup>

The 11 October 2011 FSB progress report noted that legislation on central clearing and exchange or electronic platform trading is under review. On 25 November 2011, the Canadian Securities Administrators (CSA) published a public consultation paper on the surveillance and enforcement of OTC derivatives markets.<sup>603</sup> This paper recommended further study on market surveillance mechanisms by provincial regulators.

On 23 June 2011, the CSA published a different consultation paper that proposed requiring all OTC derivatives transactions entered into by a Canadian counterparty be reported to an approved trade repository, with Canadian regulators having access to that data.<sup>604</sup> On 30 November 2011, Quebec amended its *Derivatives Act* in accordance with the CSA's trade repository recommendations.<sup>605</sup> According to the Security and Exchange Commission's 31 January 2012 Joint Report on International Swap Regulation, Ontario intends to establish a regulatory framework for trade repositories for all derivatives, while Alberta intends to propose statutory amendments defining and providing recognition for trade repositories.<sup>606</sup>

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<sup>601</sup> 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](http://www.bankofcanada.ca/en/fsr/2010/fsr_1210.pdf)

<sup>602</sup> Peer Review of Canada, Financial Stability Board (Basel) 30 January 2012. Date of Access 27 February 2012 [http://www.financialstabilityboard.org/publications/r\\_120130.pdf](http://www.financialstabilityboard.org/publications/r_120130.pdf)

<sup>603</sup> Public Consultation Paper on Derivatives: Surveillance and Enforcement. Canadian Securities Administrators (Toronto) 25 November 2011. Date of Access: 27 February 2012  
[http://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20111125\\_91-403\\_cp-derivatives.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20111125_91-403_cp-derivatives.htm)

<sup>604</sup> Public Consultation Paper on Derivatives: Trade Depositories, Canadian Securities Administrators (Toronto) 23 June 2011. Date of Access: 27 February 2012.  
[http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa\\_20110623\\_91-402\\_trade-repositories.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20110623_91-402_trade-repositories.pdf)

<sup>605</sup> An Act to amend various legislative provisions mainly concerning the financial sector, National Assembly of Quebec (Quebec City) 30 November 2011. Date of Access: 27 February 2012.  
[http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2011\\_C26A.PDF](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2011_C26A.PDF)

<sup>606</sup> Joint Report on International Swap Regulation, Securities and Exchange Commission and Commodity Futures Trading Commission (Washington) 31 January 2012. Date of Access: 27 February 2012. [www.sec.gov/news/studies/2012/sec-cftc-intlswapreg.pdf](http://www.sec.gov/news/studies/2012/sec-cftc-intlswapreg.pdf)

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

*Analyst: Graham Smith*

**China: +1**

There were no further developments for this commitment during the Cannes summit cycle from November 2011 to June 2012.

China has taken steps towards three of the four FSB recommendation areas for OTC derivatives market reforms and has therefore earned a score of +1.

*Analyst: Rizal Adam Pany*

**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.

On 9 February 2012, the Council of the European Union reached agreement on new regulations regarding OTC derivatives and market infrastructure. These new rules require that i) detailed information on OTC derivative contracts entered into by EU financial and non-financial firms are reported to trade repositories and made accessible to supervisory authorities, and that ii) trade repositories publish aggregate positions by class of derivatives accessible to all market participants.<sup>607</sup> Moreover, the EU will now require mandatory CCP-clearing for contracts that have been standardized, while also requires the use of electronic platforms for the timely confirmation of the terms of OTC derivatives contracts.<sup>608</sup> On 29 March 2012 the European Parliament adopted the legislative package.<sup>609</sup>

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

*Analyst: Graham Smith*

**Germany: +1**

Germany 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.

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<sup>607</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>608</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>609</sup> Clamping down on the derivatives trade, European Parliament (Brussels, Strasbourg) 29 March 2012. Date of Access: 12 April 2012.

<http://www.europarl.europa.eu/news/en/pressroom/content/20120329IPR42137/html/Clamping-down-on-the-derivatives-trade>

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On 9 February 2012, the Council of the European Union reached agreement on new regulations regarding OTC derivatives and market infrastructure. These new rules require that i) detailed information on OTC derivative contracts entered into by EU financial and non-financial firms are reported to trade repositories and made accessible to supervisory authorities, and that ii) trade repositories publish aggregate positions by class of derivatives accessible to all market participants.<sup>610</sup> Moreover, the EU will now require mandatory CCP-clearing for contracts that have been standardized, while also requires the use of electronic platforms for the timely confirmation of the terms of OTC derivatives contracts.<sup>611</sup> On 29 March 2012 the European Parliament adopted the legislative package.<sup>612</sup>

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

*Analyst: Biljana Zorbic*

**India: +1**

There were no further developments for this commitment during the Cannes summit cycle from November 2011 to June 2012.

India has taken steps towards three of the four FSB recommendation areas for OTC derivatives market reforms and has therefore earned a score of +1.

*Analyst: Alexandre de Palma*

**Indonesia: N/A**

Indonesia does not have an OTC derivatives market and cannot be scored for this commitment.

**Italy: +1**

Italy 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 9 February 2012, the Council of the European Union reached agreement on new regulations regarding OTC derivatives and market infrastructure. These new rules require that i) detailed information on OTC derivative contracts entered into by EU financial and non-financial firms are reported to trade repositories and made accessible to supervisory authorities, and that ii) trade repositories publish aggregate positions by class of derivatives accessible to all market

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<sup>610</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>611</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>612</sup> Clamping down on the derivatives trade, European Parliament (Brussels, Strasbourg) 29 March 2012. Date of Access: 12 April 2012.

<http://www.europarl.europa.eu/news/en/pressroom/content/20120329IPR42137/html/Clamping-down-on-the-derivatives-trade>

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participants.<sup>613</sup> Moreover, the EU will now require mandatory CCP-clearing for contracts that have been standardized, while also requires the use of electronic platforms for the timely confirmation of the terms of OTC derivatives contracts.<sup>614</sup> On 29 March 2012 the European Parliament adopted the legislative package.<sup>615</sup>

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

*Analyst: Alexandre de Palma*

**Japan: +1**

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

On 22 February 2012 Shozaburo Jimi, Minister of State for Financial Services, announced that “[the Government plans] to submit the bill to partially amend the Financial Instruments and Exchange Act. This bill includes provisions for [...] putting in place necessary measures concerning regulations of over-the-counter derivatives transactions”<sup>616</sup>

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

*Analyst: Alexandre de Palma*

**Korea: +1**

Korea has fully complied with its commitment to strengthen regulation of OTC derivatives by starting planning for the implementation of (2) central clearing; (3) exchange or electronic platform trading; (4) trade repositories for OTC derivatives transactions.

A 1 March 2012 article by Risk.net reported that at the 28 February 2012 Risk/Return Korea 2012 conference Shim Jae-Sung, a KRX executive, declared that “[Korea wants] to adopt the CCP approach because the international consensus is that it’s a necessary step, and we hope this approach will mitigate the final level of risk facing the Korean financial sector.”<sup>617</sup>

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<sup>613</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>614</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>615</sup> Clamping down on the derivatives trade, European Parliament (Brussels, Strasbourg) 29 March 2012. Date of Access: 12 April 2012.

<http://www.europarl.europa.eu/news/en/pressroom/content/20120329IPR42137/html/Clamping-down-on-the-derivatives-trade>

<sup>616</sup> Policy Statement by Shozaburo Jimi, Minister of State for Financial Services, at the Committee on Financial Affairs of the House of Representatives, Financial Services Agency (Tokyo) 22 February 2012. Date of Access 19 April 2012.

<http://www.fsa.go.jp/en/announce/state/20120222-1.html>

<sup>617</sup> Lack of liquidity in OTC derivatives market must not prevent the creation of a Korean CCP, Risk.net (London), 1 March 2012. Date of Access: 20 April 2012. [www.risk.net/asia-risk/news/2156287/lack-liquidity-otc-derivatives-market-prevent-creation-korean-ccp](http://www.risk.net/asia-risk/news/2156287/lack-liquidity-otc-derivatives-market-prevent-creation-korean-ccp)

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

*Analyst: Alexandre de Palma*

**Mexico: +1**

Mexico has fully complied to its' commitment to strengthen regulation of OTC Derivatives markets by developing regulation on central clearing, exchange or electronic platform trading, and reporting to trade repositories

In a March 2012 assessment of Mexico's financial sector, the International Monetary Fund noted that the Comisión Nacional Bancaria y de Valores (CNBV) "presently has no power whatsoever over the OTC derivatives market. Working arrangements are in place between the CNBV and BoM regarding MexDer. The division of roles and responsibilities with respect to the OTC market are under discussion but have not yet been determined." The report further considers that "there are gaps with respect to the supervision of the derivatives market owing to the fact that there is no specific legislation in this area. [...]This gap in legislation is particularly problematic given the G20's drive for additional regulation in the OTC and exchange traded derivatives markets."<sup>618</sup>

A 17 March 2012 article by FOW.com recalls that "MexDer, the derivatives subsidiary of the Bolsa Mexicana de Valores, has been active in implementing direct connections between itself and users such as US-based FCMs, as well as revamping technology [, in order to gain market share] in the area of OTC clearing for interest rate swaps." In April and August 2011, the Chicago Mercantile Exchange (CME) and MexDer "launched their south-to-north connection to provide Mexican investors with access to CME Group's derivative contracts [as well as] a reverse connection giving CME traders access to MexDer's contracts, including interest rate and lesser traded equity index derivatives."<sup>619,620</sup>

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

*Analyst: Laurène Vasseur*

**Russia: +1**

Russia has fully complied with its commitment to comply with FSB recommendations on strengthening regulation and supervision of OTC derivatives markets.

Russian authorities have taken measures with respect to OTC standardization.

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<sup>618</sup> Mexico: Detailed Assessment of Observance of International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation, International monetary Fund (Washington, D.C.) March 2012. Date of Access: 20 April 2012.  
<http://www.imf.org/external/pubs/ft/scr/2012/cr1268.pdf>

<sup>619</sup> Beyond Brazil : Latin American markets set to expand in 2012, FOW.com (London) 17 March 2012. Date of Access: 20 April 2012. <http://www.fow.com/Article/2997317/Beyond-Brazil-Latin-American-markets-set-to-expand-in-2012.html>

<sup>620</sup> CME Group to MexDer Order Routing Now Available, CME Group (Chicago). Date of Access: 20 April 2012. <http://www.cmegroup.com/international/partnership-resources/MexDer.html>

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On 21 November 2011, Russian authorities adopted amendments to the Federal Law on Clearing and Clearing Activities, which are aimed at enhancing effectiveness of its implementation and increasing the use of standardised OTC products in the Russian market.<sup>621</sup>

Russia has taken actions to stimulate organized platform trading in OTC derivatives.

On 21 November 2011, Russian President signed a law regulating the procedure of organized trading in different financial assets, including standardised derivatives.<sup>622</sup>

Russia has taken measures to establish trade repositories in the OTC derivative market.

On 14 November 2011, the Russian Federal Service for Financial Markets issued draft order providing for the establishment of trade repositories and defining the procedure of collecting data on OTC derivative transactions.<sup>623</sup>

Russia has undertaken measures with respect to three of the four FSB recommendation areas concerning OTC derivatives regulation. Thus, it is awarded a score of +1.

*Analyst: Andrey Sheleпов*

#### **Saudi Arabia: -1**

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

*Analyst: Alexandre de Palma*

#### **South Africa: 0**

South Africa has partially complied to its' commitment to strengthen regulation of OTC Derivatives markets by starting a regulatory process that shall (1) grant the Registrar of Securities Services the power to define rules and standards pertaining to the OTC Derivatives Market, (2) enable the set-up of CCPs for central clearing, and (3) enable the set-up of a trade repository.

On 27 March 2012 the National Treasury published an Explanatory Memorandum that promotes and seeks comments on the Financial Market Bill expected to go through parliament in 2012. The Financial Market Bill draws upon the conclusions of the OTC Derivatives Regulation Working Group that was set up in 2010. "Clause 77 of the bill authorises the Registrar of Securities Services, in accordance with the regulation stipulated by the Minister, to prescribe requirements, conditions and standards to regulate the OTC derivatives market. The bill further provides for an independent clearing house/central counterparty and trade repository to be set up to expedite central clearing and reporting of OTC derivatives transactions." The regulation is expected to

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<sup>621</sup> Federal Law of 21 November 2011 No. 327-FZ on Making Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of Federal Law on Organised Trading, Office of the President (Moscow) 21 November 2011. Date of Access: 31 March 2012. <http://graph.document.kremlin.ru/page.aspx?1582356>.

<sup>622</sup> Federal Law of 21 November 2011 No. 325-FZ on Organised Trading, Office of the President (Moscow) 21 November 2011. Date of Access: 31 March 2012. <http://graph.document.kremlin.ru/page.aspx?1582223>.

<sup>623</sup> Russian Federal Service for Financial Markets Draft Order on the Procedure of Keeping the Register of Contracts Concluded under the Master Agreement, National Securities Market Association 14 November 2011. Date of Access: 31 March 2012. <http://www.nfa.ru/docs/fcsm20111114.pdf>.

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follow a three-pronged process. Phase 1 will witness the implementation of a code of conduct, the definition of the conditions of registration of market participants, and the implementation of central reporting requirements. Phase 2 will strengthen standardisation, central clearing and central trading “where appropriate.” Phase 3 will set standards for risk management, margining, and capital requirements for non-centrally cleared derivatives.<sup>624</sup>

South Africa has taken steps towards the regulation of the OTC Derivatives market and has thus been awarded the score of 0.

*Analyst: Alexandre de Palma*

**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.

On October 2011 the Financial Stability Board’s OTC Derivative Market Reform progress report noted that Turkey has not increased initiatives to standardise derivatives and there has not been any legislative or regulatory steps to increase the use of standardise products. “Investment firms are prohibiting from dealing in OTC derivatives in Turkey; banks use mostly plain vanilla products with standardised features.”<sup>625</sup>

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

*Analyst: Rizal Adam Pany*

**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.

On 30 January 2012 David Lawton, Acting Director, Markets, Financial Services Authority, stated that “the extension of the transaction reporting obligations to over the counter (OTC) derivatives, such as credit default swaps (CDS), is long overdue. We already require this in the UK and have found the data useful for market surveillance.” David Lawton further insisted that the FSA supports “the proposals in MiFID II to define a new type of trading venue — the

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<sup>624</sup> Reducing the risks of over-the-counter derivatives in South Africa, National Treasury of the Republic of South Africa (Pretoria) 27 March 2012. Date of Access: 12 April 2012.

<http://www.treasury.gov.za/legislation/bills/2012/FMB/Annexure%20B%20Reducing%20the%20Risks%20of%20OTC%20Derivatives.pdf>

<sup>625</sup> OTC Derivatives Market Reforms: Progress on Implementation, Financial Stability Board (Basel) 11 October 2011. Date of Access: 2 March 2012.

[http://www.financialstabilityboard.org/publications/r\\_111011b.pdf](http://www.financialstabilityboard.org/publications/r_111011b.pdf)

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organised trading facility (OTF) — as the basis for bringing an existing trading space for liquid and standardised OTC derivatives within a more structured regulatory box.”<sup>626</sup>

On 9 February 2012, the Council of the European Union reached agreement on new regulations regarding OTC derivatives and market infrastructure. These new rules require that i) detailed information on OTC derivative contracts entered into by EU financial and non-financial firms are reported to trade repositories and made accessible to supervisory authorities, and that ii) trade repositories publish aggregate positions by class of derivatives accessible to all market participants.<sup>627</sup> Moreover, the EU will now require mandatory CCP-clearing for contracts that have been standardized, while also requires the use of electronic platforms for the timely confirmation of the terms of OTC derivatives contracts.<sup>628</sup> On 29 March 2012 the European Parliament adopted the legislative package.<sup>629</sup>

The United Kingdom has taken steps toward compliance 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.

Throughout 2011, the SEC and CFTC released new rules and recommendations for standardization, central clearing, and regulatory oversight of OTC derivatives markets. While a number of key Dodd-Frank derivatives regulations have yet to be published, the SEC published a tentative timeline for implementation that suggests the following regulations will be adopted before June 2012: (1) rules for clearing agencies for security-based swaps; (2) rules regarding the registration and regulation of security-based swap data repositories; (3) rules regarding mandatory clearing of security-based swaps; and (4) rules regarding the end-user exception to mandatory clearing of security-based swaps.<sup>630</sup> Moreover, in a 24 February 2012 speech, SEC

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<sup>626</sup> MiFID II: A Regulator’s viewpoint, Speech by David Lawton, Acting Director, Markets, FSA at the BBA MiFID Conference, London, Financial Services Authority (London), 30 January 2012. Date of Access: 12 April 2012.

<http://www.fsa.gov.uk/library/communication/speeches/2012/0130-dl.shtml>

<sup>627</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>628</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>629</sup> Clamping down on the derivatives trade, European Parliament (Brussels, Strasbourg) 29 March 2012. Date of Access: 12 April 2012.

<http://www.europarl.europa.eu/news/en/pressroom/content/20120329IPR42137/html/Clamping-down-on-the-derivatives-trade>

<sup>630</sup> Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act — Upcoming Activity (Washington). Date of Access: 27 February 2012. <http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml#01-06-12>

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Chairman Mary Schapiro stated her hope that “in the near term, [the SEC and CFTC] will complete the last remaining proposals regarding capital, margin, segregation and recordkeeping requirements.”<sup>631</sup>

The G20 commitment to establishing central counterparties for central clearing of OTC derivatives contracts has international implications. In response, the SEC and CFTC delivered to the US Congress on 31 January 2012 a report on how swaps are regulated in the United States, Asia, and Europe to identify areas of regulation that are similar and other areas of regulation that could be harmonized.<sup>632</sup>

On 13 January 2012 the Securities and Exchange Commission and the Financial Industry Regulation Authority (FINRA) published a Notice of Filing and Immediate Effectiveness of Proposed Rule Change to extend to January 17, 2013 the implementation of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which “temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.”<sup>633</sup>

On 7 March 2012 the Securities and Exchange Commission and the Financial Industry Regulation Authority (FINRA) published a Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Extend the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps), which “intended to address concerns arising from counterparty credit risk posed by CDS, including, among other things, risks to the financial system arising from credit risk resulting from bilateral CDS transactions and from a concentration of credit risk to a central counterparty that clears and settles CDS.”<sup>634</sup> The SEC and FINRA also published a Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) “to limit the application of the rule at this time to certain transactions in credit default swaps that are security-based swaps and to make other revisions to update the rule. FINRA Rule 4240 implements an interim pilot program with respect to margin requirements for certain transactions in credit default swaps.”<sup>635</sup>

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: Graham Smith*

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<sup>631</sup> Remarks by SEC Chairman: Remarks at the Practicing Law Institute’s SEC Speaks (Washington) 24 February 2012. Date of Access: 27 February 2012.

<http://www.sec.gov/news/speech/2012/spch022412mls.htm>

<sup>632</sup> SEC and CFTC - Joint Report on International Swap Regulation (Washington) 31 January 2012. Date of Access: 27 February 2012. <http://www.sec.gov/news/studies/2012/sec-cftc-intlswapreg.pdf>

<sup>633</sup> Securities and Exchange Commission Release No. 34-66156; File No. SR-FINRA-2012-004, Securities and Exchange Commission (Washington, D.C.), 13 January 2012. Date of Access: 20 May 2012. <http://sec.gov/rules/sro/finra/2012/34-66156.pdf>

<sup>634</sup> Securities and Exchange Commission Release No. 34-66528; File No. SR-FINRA-2012-014, Securities and Exchange Commission (Washington, D.C.), 7 March 2012. Date of Access: 20 May 2012. <http://sec.gov/rules/sro/finra/2012/34-66528.pdf>

<sup>635</sup> Securities and Exchange Commission Release No. 34-66527; File No. SR-FINRA-2012-015, Securities and Exchange Commission (Washington, D.C.), 7 March 2012. Date of Access: 20 May 2012. <http://sec.gov/rules/sro/finra/2012/34-66527.pdf>

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### **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.

On 9 February 2012, the Council of the European Union reached agreement on new regulations regarding OTC derivatives and market infrastructure. These new rules require that i) detailed information on OTC derivative contracts entered into by EU financial and non-financial firms are reported to trade repositories and made accessible to supervisory authorities, and that ii) trade repositories publish aggregate positions by class of derivatives accessible to all market participants.<sup>636</sup> Moreover, the EU will now require mandatory CCP-clearing for contracts that have been standardized, while also requires the use of electronic platforms for the timely confirmation of the terms of OTC derivatives contracts.<sup>637</sup> On 29 March 2012 the European Parliament adopted the legislative package.<sup>638</sup>

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

*Analyst: Alexandre de Palma*

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<sup>636</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>637</sup> EUROPA – New European rules on Over-the-Counter Derivatives and Market infrastructures – Frequently Asked Questions (Brussels) 9 February 2012. Date of Access: 27 February 2012.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/91&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>638</sup> Clamping down on the derivatives trade, European Parliament (Brussels, Strasbourg) 29 March 2012. Date of Access: 12 April 2012.

<http://www.europarl.europa.eu/news/en/pressroom/content/20120329IPR42137/html/Clamping-down-on-the-derivatives-trade>