



International Centre for  
Financial Regulation

## **Annual International Regulatory Summit**

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**Regulation without Borders - G20 Ideals and National Interests**

The Hilton, Amsterdam, Netherlands 8 – 9 November 2010

### **Session Bibliographies**

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**Working group I: Over-the-Counter Derivatives**

**9 November 2010****14:15 – 15:30****Working Group I: Over-the-Counter Derivatives**

**“We will promote the standardisation and resilience of credit derivatives markets, in particular through the establishment of central clearing counterparties subject to effective regulation and supervision.” – G20 London, Washington and Pittsburgh, July 2010**

How similar or divergent are the proposals under the European Commission’s draft legislation and US Dodd-Frank Act? How will this affect efficiency, price, market structure and the financial players involved?

**Session Background and Points for Consideration**

There is widespread agreement on the need to reform the regulation of Over-the-Counter (OTC) derivatives, drawing from the experiences during the latest crisis, and looking to limit the damage of the next one. The stage was set by the G20, requiring that:

- Standardised OTC derivative contracts to be traded on exchanges or electronic trading platforms and clearance by central counterparties (CCPs) by end-2012 at the latest
- OTC derivative contracts to be reported to trade depositaries
- Non-centrally cleared contracts to be subject to higher capital requirements
- Financial Stability Board to assess implementation

When it comes to details the debate is still open. Possible areas for the working group’s consideration include:

- Standardisation of OTC products:
  - What are ‘standard’ products?
- Mandated clearing on CCPs
  - What is “eligible”?
  - What is safe to clear centrally? What can be learned from existing cleared products?
  - Who should regulate the CCPs?
  - What is the best corporate structure for CCP? How many should there be?
  - Should the CCP’s be eligible for state aid?
  - CCP access to Central Bank support
- Mandated trading on “organised trading venues”
  - What is “eligible”?
- Capital requirements, collateral and margining, for bilateral OTC products
- Exceptions for non-financial counterparties
- Trade data repositories
  - Regulated by whom?
  - What is their main purpose? Macro or micro?
  - What issues with pre-existing laws on data privacy?

**Working Group I: Over-the-Counter Derivatives**

**November 2010**

- Pre-, post- trade transparency
  - Impact assessment? The technical details could be crucial
  
- Other areas for discussion:
  - Are the overall “aims” of OTC regulation reform clearly established?
  - What is the relevance of current topics such as banning of naked CDS and the alleged mis-selling of OTC derivatives to local governments and corporates?

**Bibliography:**

The ICFR has prepared a core bibliography on works relating to reform of financial regulation. Many of the works in that bibliography have sections relevant to this topic.

**Centre for Economic Policy Research (2010): *Systemic Liquidity Risk and Bankruptcy Exceptions***

- **Link to the publication:** <http://www.cepr.org/pubs/PolicyInsights/PolicyInsight52.pdf>

This paper highlights the role of bankruptcy privileges in the shifting of risk in the genesis of the crisis. It is argued that by extending bankruptcy privileges (allowing lenders to seize collateral and force a sale in the event of a default by borrowers) to overnight secured credit lenders and derivative products, that such lenders were able to 'front run' all other investors in the event of a default. The subsequent seizure of collateral and forced fire sales exacerbated the crisis yet these 'overnight lenders' did not suffer. The paper argues that such bankruptcy privileges should be taxed in the same way that retail depositors pay for the privilege of being protected by deposit insurance.

**Committee of European Securities Regulators (CESR) (2010): *Feedback Statement on the Consultation on "Classification and identification of OTC derivative instruments for the purpose of the exchange of transaction reports amongst CESR members"***

- **Link to the publication:** <http://www.cesr.eu/index.php?docid=6478>

This feedback paper documents the responses to CESR's proposals on the classification and identification of OTC derivative instruments for use in transaction reports on TREM, the system implemented by CESR to facilitate the exchange of transaction reports amongst regulators. Whilst there was general approval regarding CESR's suggestions, there was still a range of suggestions as to the means for classification and subsequent reporting. There was also a general view that any action taken must be done in light of the other reviews into the regulation of OTC derivatives markets. Respondents also highlighted the need to review the FSA's Transaction Reporting User Pack in any attempts to produce pan-European guidelines in this area.

**CESR (2010): *Consultation on guidance to report transactions on OTC derivative instruments***

- **Link to the publication:** [http://www.cesr.eu/data/document/09\\_768.pdf](http://www.cesr.eu/data/document/09_768.pdf)

This consultation paper sets out further information about the information that CESR would expect to see in transaction reports for OTC derivatives. CESR points out that it is aware of the other initiatives around this that are currently underway, and as such, the proposals in this document may be subject to change. Furthermore, the guidelines – much like the FSA's transaction reporting requirements in this area – only covers transaction reporting of OTC derivatives with a single underlying instrument on a regulated market. The primary driver for this reporting would be for the monitoring of market abuse, and not necessarily driven from other regulatory initiatives in this area.

**Commodity Futures Trading Commission (CFTC) (2010) *OTC Derivatives:***

- **Link to the publication:** <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>

The Dodd-Frank Act brings OTC Derivatives under the watchful eye of regulators although many rules remain to be written and numerous studies are to be conducted. There is a requirement for all standardised

derivatives to trade on open platforms and be subject to clearing through Central Counterparties. This publication details the work to be done by the CFTC in the US.

**CFTC (2010): *Open Meeting on First Series of Proposed Rules under the Dodd-Frank Act 1<sup>st</sup> October 2010***

- **Link to the publication:**

[http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcdoddfrank100110.html](http://www.cftc.gov/PressRoom/Events/opaevent_cftcdoddfrank100110.html)

The CFTC held an open meeting to discuss the first series of proposed rules under the Dodd-Frank Act, the rules discussed were financial resources requirements for derivatives clearing organisations (DCOs) and systemically important DCOs (SIDCOs), proposals to mitigate potential conflicts of interest in the operation of such DCOs and reporting requirements of transactions entered into before the enactment of the Act. The Commodity Exchange Act lays out the core principles by which a DCO must comply to be registered. Under the Act, DCOs are required to maintain sufficient financial resources to continue operations for a period of one year in the event of a default by the largest member (that could potentially cause the most damage by defaulting). SIDCOs are required to maintain enough financial resources to operate for the same time period in the event of the two largest members defaulting. Resources that DCOs would be allowed to use include:

- Margin of a defaulting clearing member
- DCO's own capital
- Guaranty fund deposits
- Default insurance and,
- Potential assessments for additional guaranty fund contributions

**European Central Counterparty Limited (EuroCCP) (2010): *Recommendations for Reducing Risks Among Interoperating CCPs***

- **Link to the publication:**

[http://www.euroccp.co.uk/docs/leadership/EuroCCP\\_InteroperatingCCPs.pdf](http://www.euroccp.co.uk/docs/leadership/EuroCCP_InteroperatingCCPs.pdf)

This discussion paper looks at the problem of interoperability of CCPs within Europe and the systemic risks posed to CCPs willing to undertake interoperability. This document has been published in advance of upcoming regulatory guidelines about how interoperability should work between some of the larger clearing houses in Europe. The recommendations to minimise systemic risk in this paper include requiring CCPs to augment their own default funds, and not the funds of other CCPs; neither should CCPs exchange margin. There needs to be a clear framework set out regarding regulation and risk management to ease the handling of problems in the future. Furthermore, commercial barriers should be removed (for instance, so that market participants do not have to connect to the clearer appointed to the trading venue), and there should be consideration, over the long-term, of inter-CCP netting, which ultimately could have the benefit of reducing liquidity and settlement risks.

**European Commission (EC) (2010): *Proposal to Regulate OTC Derivatives, Central Counterparties and Trade Repositories***

- **Link to the publication:** [http://ec.europa.eu/internal\\_market/financial-markets/docs/derivatives/20100915\\_proposal\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20100915_proposal_en.pdf)

The proposal marks the latest step by the European authorities to bring about increased stability and transparency to the financial system. The Commission proposes that information on OTC derivative contracts should be reported to trade repositories and be accessible to supervisory authorities. In line with

the Dodd-Frank Act, the Commission proposes that standard OTC derivative contracts are to be cleared through central counterparties. This is intended to reduce counterparty credit risk, i.e. the risk that one party to the contract defaults. There will be a new regulatory and supervisory framework for CCPs particularly in the areas of capital, liquidity, margin and exposure management requirements. Exemptions for non-financial company end-users provided they do not exceed a 'clearing threshold'. It is unclear whether CCPs will have recourse to central bank reserves (and which central bank's reserves if they are eligible). Unlike the Dodd-Frank Act, there are no restrictions on the type of derivative activity that banks can engage in. In another contrast with the Dodd-Frank Act, the Commission proposal does not include a 'spin-off' requirement i.e. banks will still be able to conduct derivatives transactions in-house rather than in a separate entity. There may be further developments once the MiFID review is complete. The proposal passes to the European Parliament and the EU Member States for consideration. Once adopted, the regulation would apply from end 2012.

**EC (2009):** *Ensuring efficient, safe and sound derivatives markets: Future Policy Actions*

- **Link to the publication:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0563:FIN:EN:PDF>

The commission proposals for OTC derivatives reform follow on from the G20 statements, and are articulated around four "tools":

- Increased standardisation: it considers the use of capital charges as a "stick" incentive towards standardisation, but it also acknowledges the need for tailor-made derivatives in servicing non-financial corporates, and the possibility of exceptions for them
- Use of trade repositories (under ESMA)
- Strengthened use of Central Counterparty clearing houses (CCPs), (to be regulated by ESMA), mandating CCP clearing for standardised OTC products, to be defined
- Increase the use of organised trading venues for "eligible" (to be defined), and mentions increased pre- and post- trade transparency in this venues

**EC (2009):** *Summary of the consultation paper on: Possible Initiatives to Enhance the Resilience of OTC Derivative Markets*

- **Link to the publication:** [http://ec.europa.eu/internal\\_market/consultations/docs/2009/derivatives/summaryderivcons\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2009/derivatives/summaryderivcons_en.pdf)

This document summarises responses to the consultation carried out by the EC in relation to the OTC Derivatives market. It highlights comments from participants (including industry members, infrastructure providers and regulators) in relation to each question asked, both positive and negative. For example, although increased use of "electronic means" should on the whole be seen as a good thing, it should not be assumed that being able to use "electronic means" for confirmation and life cycle monitoring can be considered analogous to being capable of being cleared. Neither is process automation analogous to product standardisation. A number of respondents argued that the perceived increased risk of non-standardised trades is already priced into such trades, as a means of mitigating counterparty risk. Furthermore, the industry has already committed to more standardisation (see letters discussed below). Regarding data repositories, there were widespread concerns over confidentiality and transparency, as well as who would be required to provide the repository with such information. There was a general aversion to mandatory clearing; general agreement that there should be minimum standards for CCPs created, as well as the necessary legislation for the regulation of CCPs.

**Federal Reserve Bank of New York (FED) (2010): *Policy Perspectives on OTC Derivatives Market Infrastructure***

- **Link to the publication:** [http://www.newyorkfed.org/research/staff\\_reports/sr424.pdf](http://www.newyorkfed.org/research/staff_reports/sr424.pdf)

This paper sets out the New York Fed's proposals regarding OTC derivative regulation. It discusses the greater use of CCPs, and in doing so, highlights the success in doing this for the CDS market; the need to introduce mandatory reporting of non-clearable products to data repositories to aid transparency both for regulators and the market; the use of exchanges and electronic trading platforms for those products that are sufficiently actively traded, and stronger operational and risk-management practices.

**Financial Services Agency, Japan (FSA) (2010): *Development of Institutional Frameworks Pertaining to Financial and Capital Markets***

- **Link to the publication:** <http://www.fsa.go.jp/en/news/2010/20100122-3/01.pdf>

This document sets out a number of recommendations for improvements to financial regulation in Japan as a result of the crisis. It ranges much wider than just discussion of how to deal with OTC derivative regulation; however, it also makes a number of suggestions in this area. It argues that there should be mandatory clearing of plain vanilla interest rate swaps and other derivative transactions of a certain turnover (for instance iTraxx Japan CDS index transactions), ideally in domestic CCPs. However, given the international nature of the transactions that Japanese institutions carry out, it also suggests forging alliances between domestic and international CCPs, thus increasing the number of CCPs that mandatory clearing can take place in. Any international CCPs would be subject to the same requirements as domestic CCPs. There should also be regulations on shareholdings in and the capital of CCPs. The new rules would require trade repositories, CCPs and the institutions themselves to give information on OTC derivative transactions to the J-FSA.

**Financial Services Authority (FSA) (2009): *Transaction Reporting User Pack***

- **Link to the publication:** <http://www.fsa.gov.uk/pubs/other/trup.pdf>

This guide sets out how the FSA requires transaction reporting to be carried out (this should be considered in light of potential trade reporting requirements under new US legislation). In particular, it discusses how OTC derivatives should be reported (section 7.2). This is limited to those OTC derivatives with a single underlying instrument admitted to trading on a regulated or prescribed market, and the FSA has explicitly stated that it feels that no other transaction reports are necessary as they do not aid in their fulfilling statutory objectives of market confidence and reduction of financial crime. Market participants have stated that CESR should be aware of this document before implementing similar procedures throughout Europe.

**FSA UK and HM Treasury (2009): *Reforming OTC Derivative Markets***

- **Link to the publication:** [http://www.fsa.gov.uk/pubs/other/reform\\_otc\\_derivatives.pdf](http://www.fsa.gov.uk/pubs/other/reform_otc_derivatives.pdf)

This document focuses on the FSA and HM Treasury's view of proposed US and EU legislation. It discusses the proposals at length and often comes to differing conclusions about the best way to reform regulation in this area. Significantly, the paper raises concerns about the risk involved in "over-standardisation" of products and the risk of mandating clearing of all standardised derivatives, as this "could lead to a situation where a CCP is required to clear a product that it is not able to risk manage adequately"<sup>1</sup>. There is a clear

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<sup>1</sup> Quotations in all the summaries are from the works summarised

requirement for an increase in the robustness of counterparty risk, whether centrally cleared or not; there is a call for “consistent and high global standards for CCPs”, as well as the general responsibility for counterparties “to bear the cost of mitigating their counterparty risk”, whether using CCPs, collateral or capital charges. Furthermore, the paper clearly states that neither the FSA nor HM Treasury sees the requirement for the mandating of trading of standardised derivatives on organised trading platforms.

**House of Lords (2010):** *The future regulation of derivatives markets: is the EU on the right track?*

- **Link to the publication:**

<http://www.publications.parliament.uk/pa/ld200910/ldselect/ldecom/93/93.pdf>

This document comments on the EC proposals above. Broadly speaking in agreement, its main point is to dispute the desirability to have CCPs regulated by ESMA – as the EC would not have the financial means to bail out a failed CCP. Another observation is that it lacks any reference to the EC proposal to “increase the use of organised trading venue”. The report has useful, if simplified, summaries of global data and definitions.

**International Monetary Fund (IMF) (2010):** *Global Financial Stability Report Chapter III ‘Making Over-the-Counter Derivatives Safer: The Role of Central Counterparties’*

- **Link to the publication:** <http://www.imf.org/external/pubs/ft/gfsr/2010/01/pdf/chap3.pdf>

This chapter proposes that risk-based incentives based on capital charges would be a preferred incentive to explicit mandating that OTC derivatives must move to CCPs. If authorities decide to mandate such a move there will be high upfront costs, and therefore the move would need to be phased in gradually.

The report notes the following best-practice risk management elements:

- CCPs should be established with independent decision-making bodies that are designed to minimise potential conflicts of interest and maintain a high level of risk management.
- CCP membership should be objective and subject to stringent financial resources and operational capacity requirements to ensure members can meet their obligations to the CCP, including contributions to the guarantee fund.
- CCPs should arrange for emergency credit lines from other financial institutions that are not members and, if systemically important, from the central bank.
- CCPs should have crisis management arrangements in place in the event of a member's default, including mechanisms to close out or transfer positions to non-defaulting members in a timely manner.
- Members should be required to post high-quality collateral as margin against their positions, margin adjustments should be made daily and even intra-day during market stress periods.

Furthermore, the report makes the following recommendations:

- Central banks should provide CCPs access to their payment infrastructure and put in place emergency liquidity backstops with the CCPs.
- CCPs should be able to deposit cash collateral with their local central banks to facilitate ease of access in stress conditions.
- Where a CCP is not present to assume counterparty risk, market participants should be mandated to record and store all transactions in regulated and supervised central trade repositories with details of individual transaction data being available to all relevant regulators.
- Authorities should have contingency plans and appropriate powers to ensure that the failure of a CCP does not lead to systemic disruptions in markets, including plans for emergency liquidity provision and orderly resolution.

The report concludes that to avoid regulatory arbitrage a global framework for CCP, risk management should be instituted. A coordinated response from authorities to a CCP failure in any jurisdiction is also necessary.

**Roe MJ (2010):** *Bankruptcy's Financial Crisis Accelerator: The Derivatives Players' Priorities in Chapter 11*

- **Link to the publication:** <http://www.southbaylawfirm.com/blog/upload/Financial-Crisis-Accelerator-Derivatives.pdf>

Chapter 11 bankruptcy law bars creditors from rushing to a bankrupt firm before the court has had the time to reorganise the debtor assets, allowing a firm to continue operations to preserve some value. However none of the rules stated in Chapter 11 apply to a bankrupt's derivatives counterparties. Derivatives markets can in fact jump to the front of the bankruptcy repayment line without respecting general priorities. This privileged capacity can induce a run on the failing financial institutions which then results with what occurred in the cases of Lehman, Bear Stearns and AIG. The paper, underlines that "the best regulatory reaction to this monitoring disconnect is for the Congress to repeal the extensive de facto priorities now embedded in chapter 11 for these derivatives counterparties". However, as the paper states, the recent major financial reform packages now in Congress does not seem to contemplate the need for the cited repeal.

**United States Congress (2010):** *Dodd-Frank Wall Street Reform and Consumer Protection Act Title VII*

- **Link to the publication:** <http://thomas.loc.gov/cgi-bin/query/z?i111:l03017:i111DIX.html>

The aim of Title VII of the Act (which deals with derivatives) is to increase transparency in the over-the-counter (OTC) derivatives market and reduce risk of contagion. As a result of the 'Lincoln Amendment' (named after Senator Blanche Lincoln who introduced it), financial institutions face limits on the types of derivatives trading that they may engage in. For example, banks are able to retain operations for derivatives on instruments such as interest-rate swaps, foreign-exchange swaps and cleared credit default swaps but in-house desks handling agricultural, energy, metals, equity and uncleared credit default swaps are to be moved into separately capitalised holding companies. These entities are banned from receiving Federal assistance. Regulators will be able to require particular types of swaps to be cleared. A point of contention among non-financial companies was that derivatives regulations would penalise firms using such products for risk mitigation purposes. Therefore, "Commercial End users" will be exempted from clearing provided they can evidence they can meet their financial obligations. The Act requires that all swaps must be cleared by a derivatives clearing organisation (a central counterparty) regulated by the CFTC. The Securities and Exchange Commission (SEC) will be responsible for regulating security based swaps. All swaps that are required to be cleared must be traded on exchanges or a 'swap execution facility' electronic platforms and that all swaps must be reported to repositories or regulators. A large number of these rules must still be written and there are numerous studies and papers due within the next year therefore this topic will be evolving for some time.

**Speeches:**

**Commodity Futures Trading Commission (CFTC) (2009):** *Remarks of Gary Gensler, Chairman, "OTC Derivatives Reform", American Bar Association, Committee on Derivatives and Futures Law*

- **Link to the publication:** <http://www.cftc.gov/PressRoom/SpeechesTestimony/ChairmanGaryGensler/opagensler-26.html>

This speech discusses the proposed regime in the US. Chairman Gensler is clear in his desire for all standardised products to be “moved into transparent trading venues and regulated clearinghouses”; “...all standardised transactions, regardless of whether they are between two Wall Street banks or between a bank and a corporation, should be subject to a trading requirement and a clearing requirement.” He argues that this would serve to reduce “interconnectedness between Wall Street banks, their customers and the economy”. This arguably goes against the exemptions that made it into the Bill as passed by the House of Representatives in December: he underlines this disagreement further by commenting that “an end-user [i.e. corporation] exemption could leave up to 60 percent of standardised transactions out of the transparency and clearing requirements”. He continues that a key element in this reform is the ability to bring transparency not only to the regulators, but to the public as a whole, arguing that “the more transparent a marketplace is, the more competitive it is”.

**CFTC (2010):** *Remarks of Gary Gensler, Chairman, “OTC Derivatives Reform”, Institute of International Bankers Washington Conference*

- **Link to the publication:**

<http://www.cftc.gov/PressRoom/SpeechesTestimony/ChairmanGaryGensler/opagensler-28.html>

This speech expands on Chairman Gensler’s speech detailed above. He highlights three “critical components of reform”: explicit regulation to lower risk (including capital and margin requirements, business conduct standards and recordkeeping requirements), enhanced transparency (through moving transactions to exchanges and other trading facilities), and a reduction in interconnectedness (through the introduction of central clearing). He goes on to discuss clearinghouse rules: they should have open access (so that there would be no discrimination between exchanges), open governance (to mitigate conflicts of interest) and open membership (to parties other than derivatives dealers). In terms of standardisation/eligibility, Chairman Gensler suggests that derivative dealers should not take a lead role in determining what is standardised/eligible, but that this should be done by clearinghouses and the SEC/CFTC, and that both regulators should retain regulatory responsibility for CCPs. Furthermore, both regulators should be given enhanced powers to require derivatives dealers to segregate counterparty margin from their own funds.

**Corrigan G (2010):** *“Too Important to Fail?” Inquiry by Gerald Corrigan, Managing Director, Goldman Sachs USA*

- **Link to the publication:** <http://www.parliament.uk/business/committees/committees-archive/treasury-committee/tctooimportanttofail/>

This testimony in front of the UK Treasury Select Committee looks at much more than the open questions regarding OTC derivatives reform, however, there is discussion of derivative transactions carried out with sovereigns (in light of the deals carried out by Greece), and whether the transparency surrounding such deals was sufficient.

**Depository Trust and Clearing Corporation (DTCC) (2009):** *Larry E. Thompson, General Counsel of DTCC, testimony before the Committee on Financial Services hearing on “Improvements of Over-the-Counter Derivative Markets”*

- **Link to the publication:**

[http://www.dtcc.com/downloads/leadership/speeches/Congress\\_Testimony.pdf](http://www.dtcc.com/downloads/leadership/speeches/Congress_Testimony.pdf)

This testimony focuses on the benefits of having a single worldwide data repository for collating OTC trade information for those trades that are not eligible for CCP clearing. It would stand as a means of reducing the fragmentation of information, enabling regulators to gain a much more complete view. It must be borne in mind that DTCC’s arguments are based on the fact that the single global repository would be their own

Trade Information Warehouse (TIW), which currently acts as a repository for information regarding CDS contracts.

### Letters:

**Derivative Dealers and Buy-Side Institutions (2009):** *Letter to William Dudley, President, Federal Reserve Bank of New York*

- **Link to the publication:** <http://www.newyorkfed.org/newsevents/news/markets/2009/060209letter.pdf>

Several institutions (buy and sell side), write to the President of the New York Fed, detailing their commitment to the implementation of several important measures to reduce systemic risk, including engaging with CCPs to broaden the range of clearable products, increase customer access to CDS clearing solutions, improve industry governance, operational oversight and collateral management, all prior to the end of 2009.

**Derivative Dealers and Buy-Side Institutions (2010):** *Letter to William Dudley, President, Federal Reserve Bank of New York*

- **Link to the publication:** [http://www.newyorkfed.org/newsevents/news/markets/2010/100301\\_letter.pdf](http://www.newyorkfed.org/newsevents/news/markets/2010/100301_letter.pdf)

This letter highlights the steps that have been taken to meet the goals set out in the June 2009 letter. While several goals set out in that letter have been met, there is still more work to do in terms of the provision and storage of data, increasing clearing-eligible products, standardisation of products where possible, collateralisation of bilateral transactions and operational performance.

**G15 Financial Institutions (2009):** *Letter to William C Dudley*

- **Link to the publication:** <http://www.ny.frb.org/newsevents/news/markets/2009/ma090908c.pdf>

This letter sets out the performance targets set by the G15 financial institutions for the clearing of eligible interest rate derivatives and CDS by December and October 2009 respectively.

**International Swaps and Derivatives Association, Inc. (ISDA) (2009):** *Letter to Commissioner Charlie McCreevy (with industry signatories)*

- **Link to the publication:** [http://ec.europa.eu/internal\\_market/financial-markets/docs/derivatives/2009\\_02\\_17\\_isda\\_letter\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/2009_02_17_isda_letter_en.pdf)

Following a meeting of the Working Group on Derivatives on 10 December 2008, ISDA, along with several large derivative dealers, agree to use European-based CCPs, once ready, to clear CCP-eligible CDS on "European reference entities and indices based on these entities", and certainly no later than 31 July 2009.

**ISDA, London Investment Banking Association (LIBA) and Securities Industry and Financial Markets Association (SIFMA) (2009):** *Response to EC Consultation on Enhancing OTC Derivatives Infrastructure*

- **Link to the publication:** <http://www.isda.org/press/press090209.pdf>

The industry bodies respond to the EC Consultation Paper, highlighting their concerns for process, and not product, uniformity; the need for CCPs to work with clearing members to determine the eligibility of products; the need for CCPs to be robust in operational and financial terms; the lack of support for financial disincentives for non-cleared products, but broad agreement in the need for collateralisation of interdealer OTC trades; and also agreement on the use of data repositories, provided that they do not stifle product innovation.

**ISDA (2009): *Document on the Treasury's Proposal Mandating Clearing of "Standardized" Swaps***

- **Link to the publication:** [http://www.isda.org/c\\_and\\_a/pdf/ISDA-Mandated-Clearing-Standardized-Swaps.pdf](http://www.isda.org/c_and_a/pdf/ISDA-Mandated-Clearing-Standardized-Swaps.pdf)

ISDA sets out why initiatives to standardise the terms of all OTC swaps are counterproductive. This is primarily down to the inability to hedge effectively using standardised products, greatly increasing end-user basis risk. It also discusses how standardisation would affect clearing. It argues that standardisation is not sufficient for a product to become clearable; this requires several other factors, such as the frequency of trading in the contract, the liquidity being sufficient to aid price discovery and so on. It argues that the need and ability for clearing will depend upon the asset class, and where it has been possible, there have been market-led initiatives to push this through (as seen in the letters above). It argues that mandatory clearing of standardised products could actually increase risk, by replacing counterparty risk with credit, basis and liquidity risks.

**Press Releases:**

**Committee on Payment and Settlement System (CPSS) and International Organisation of Securities Commissions (IOSCO) (2010): *Review standards for payment, clearing and settlement systems***

- **Link to the publication:** <http://www.bis.org/press/p100202.htm>

The Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of IOSCO have launched a comprehensive review of their existing standards for financial market infrastructure such as payment systems, securities settlement systems and central counterparties. Their existing standards are set out in the *Core Principles for Systemically Important Payment Systems* (<http://www.bis.org/publ/cpss43.htm>), the *Recommendations for Securities Settlement Systems* (<http://www.bis.org/publ/cpss46.htm>), and the *Recommendations for Central Counterparties* (<http://www.bis.org/publ/cpss64.htm>). They aim to issue a draft of the revised standards for public consultation.

**International Centre for Financial Regulation:**

ICFR has promoted debate on OTC reform among parties from the four main interested areas; the financial sell-side (the wholesalers of OTC derivatives), the financial buy-side and the non-financial corporates (the consumers of OTCs), the regulators and the service sectors (law and accountancy firms, CCPs, exchanges and data repositories).

**(2010) *OTC Derivatives: Clearing and Settlement***

- **Link to the publication:** <http://www.icfr.org/Events/ICFR-Forum--OTC-Derivatives--Clearing-and-Settleme.aspx>

**(2009) *The Future of OTC Derivatives Regulation***

- **Link to the publication:** <http://www.icfr.org/Events/The-Future-of-International-OTC-Derivatives-Regula.aspx>

**SIX x-clear and LCH.Clearnet (2010): *Interoperability Summary***

- **Link to the publication:** [http://www.lchclearnet.com/media\\_centre/press\\_releases/2010-02-08.asp](http://www.lchclearnet.com/media_centre/press_releases/2010-02-08.asp)

This press release details a link agreement which provides the framework for successful interoperability across Europe; it is the same arrangement as between the LSE and SIX Swiss Exchange. The model has been designed to minimise the risk of contagion: key features include each CCP retaining the authority to determine the eligibility of trades for clearing, with margining processes that preserve the integrity and safeguards of each CCP.

**US Securities and Exchange Commission (SEC) and Financial Services Authority (FSA) (2010): *Fifth Meeting of the SEC-FSA Strategic Dialogue***

- **Link to the publication:** <http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/021.shtml>

SEC chairman Mary Schapiro met with FSA Chairman Lord Turner and Chief Executive Hector Sants as part of the SEC-FSA strategic dialogue. In their meeting they discussed, amongst other things, market structure, particularly relating to central counterparties for OTC derivatives, and the need to review the existing Memorandum of Understanding to facilitate cooperation in this and other areas.





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