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International Organization of Securities Commissions
Organisation internationale des commissions de valeurs
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IOSCO/MR/03/2012

Madrid, 29 February 2012

IOSCO makes recommendations on OTC derivative mandatory clearing

The Technical Committee of the International Organization of Securities Commissions has published a Final Report on [Requirements for Mandatory Clearing](#), which outlines recommendations that authorities should follow in establishing a mandatory clearing regime for standardised OTC derivatives in support of the G20's Leaders Commitments to improve transparency, mitigate systemic risk and protect against market abuse in these markets.

The Report has been prepared by the IOSCO Task Force on OTC Derivatives Regulation in order to provide guidance consistent with the Financial Stability Board's (FSB) Recommendation 12 in its report on *Implementing OTC derivatives Market Reforms*. This report asked IOSCO to coordinate the application of central clearing requirements on a product and participant level, and any exemptions from them, as a means of minimizing the potential for regulatory arbitrage.

The Report outlines recommendations that authorities should follow in establishing a mandatory clearing regime within their jurisdiction. These are in relation to:

- Determination of whether a mandatory clearing obligation should apply to a product or set of products;
- Consideration of potential exemptions to the mandatory clearing obligation;
- Establishment of appropriate communication among authorities and with the public;
- Consideration of relevant cross-border issues in the application of a mandatory clearing obligation; and
- Monitoring and reviewing the overall process and application of the mandatory clearing obligation.

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The Report itself is targeted at authorities that are developing and implementing a mandatory clearing requirement pursuant to the G-20 Commitments. Those stakeholders that may be affected by mandatory clearing requirements include: those engaged in OTC derivative transaction such as financial and non-financial companies, sovereigns or other public-sector bodies; those bodies such as CCPs and other firms who centrally clear OTC derivatives or act as clearing members of CCPs on behalf of customers; and entities that facilitate trading or provide services to counterparties, clearing members, or CCPs in connection with trading, which may include trading platforms, trade repositories and information vendors.

Recommendations on Requirements for Mandatory Clearing of OTC Derivatives

1. Authorities implementing a mandatory clearing regime should consider using a bottom-up approach to determine products that are subject to a mandatory clearing obligation;
2. A determining authority should clearly specify the information that should be contained in an eligible product notification under the bottom-up approach and whether the CCP or the supervisory authority is responsible for making the notification to the determining authority;
3. A determining authority should clearly set out the criteria against which mandatory clearing obligations will be assessed in its jurisdiction;
4. In assessing a mandatory clearing obligation, a determining authority should consider information from a range of sources, including trade repositories;
5. In assessing a proposal for a new clearing obligation under the bottom-up approach, a determining authority should conduct a public consultation;
6. Once a determining authority has reached a decision as to whether a product should be subject to a clearing obligation under the bottom-up approach, the determining authority should make the decision publicly available;
7. A determining authority implementing mandatory clearing should assess the timeframe over which an obligation to clear will become effective, with the objective of implementing clearing as soon as practicable so as to maximize the risk mitigation benefits provided by central

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- clearing while ensuring the obligation is implemented in a safe and sound manner;
8. A determining authority should consider using a top-down approach and may utilise a range of information sources in order to identify products which it considers may be suitable for mandatory clearing;
 9. A determining authority should consult with stakeholders as part of its decision-making processes under the top-down approach to allow stakeholders to provide input on whether a product may be appropriate for a mandatory clearing obligation;
 10. A determining authority should clearly identify and disclose what steps are available to it for products identified under the top-down approach as suitable for mandatory clearing but which are not currently cleared;
 11. A determining authority should seek to narrowly define exemptions and limit their number, as appropriate. A determining authority should clearly communicate the terms of any exemptions from mandatory clearing obligations, whether permanent or temporary, for both product and participant level exemptions;
 12. As jurisdictions implement mandatory clearing regimes, the determining authority should, prior to implementation of the regime, provide a means through which other authorities can communicate information, including on a confidential basis, where appropriate;
 13. In order to inform other authorities, promote international consistency and help minimise the risk of regulatory arbitrage, determining or supervising authorities, as applicable, should communicate information to other authorities regarding the mandatory clearing regimes in place - or proposed to be adopted - within their jurisdiction. The authority should attempt to include the following:
 - The product(s) that is (are) subject to the mandatory clearing obligation in a way that allows relevant product(s) to be clearly identified;
 - The CCP(s) that is (are) authorised to clear such product;
 - the timeframes in which the mandatory clearing obligation becomes applicable; and
 - Details of any exemptions from the mandatory clearing obligation (whether at the product or participant level, including the timeframes under which such exemptions

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become effective or remain effective.

14. It is recommended that IOSCO explore whether to establish a central information repository such as a web portal to consolidate, in a consistent fashion, the information set out in Recommendation XIII at a global level. It is recommended that IOSCO undertake a feasibility study to determine whether there would be a net benefit provided to determining authorities and market participants from a portal along these lines, and the content that should be held on such a portal. This feasibility study should also include consultation with determining authorities as to the impact on their own systems of linking to such a portal. Such information should be made publicly available where possible with any non-public information restricted to access by determining authorities only;
15. It is recommended that determining authorities closely cooperate to identify overlaps, conflicts and gaps between regimes with respect to cross-border application of the clearing obligation. It is further recommended that determining authorities coordinate their approaches via multilateral or bilateral channels to reduce such issues, to the extent possible;
16. In implementing mandatory clearing, a supervising authority should give due consideration to allowing the use of third country CCPs to meet mandatory clearing obligations. Where they do so, a supervising authority should comply with relevant international standards to implement a system through which participants in their markets can access these third country CCPs; and
17. Authorities should consider what information they require in order to monitor compliance with mandatory clearing and should regularly reassess the ongoing suitability of mandatory clearing regimes. Any information required and any changes to the regime should be clearly communicated to the market.

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NOTES FOR EDITORS

1. [OR05/12 Requirements for Mandatory Clearing](#) 29 February 2012.
2. [FSB Report on Implementing OTC Derivatives Market Reforms](#).
3. IOSCO is the leading international policy forum for securities regulators is recognised as the global standard setter for securities regulation. The organization's membership regulates more than 95% of the world's securities markets in 115 jurisdictions and its membership continues to expand.
4. The [Technical Committee](#), a specialised working group established by IOSCO's Executive Committee, is made up of 18 agencies that regulate some of the world's larger, more developed and internationalized markets. Its objective is to review major regulatory issues related to international securities and futures transactions and to coordinate practical responses to these concerns. Mr. Masamichi Kono, Vice Commissioner for International Affairs at the Financial Services Agency of Japan (JFSA), is the Chairman of the Technical Committee. The members of the Technical Committee are the securities regulatory authorities of Australia, Brazil, China, France, Germany, Hong Kong, India, Italy, Japan, Mexico, the Netherlands, Ontario, Quebec, Spain, Switzerland, United Kingdom and the United States.
5. IOSCO aims through its permanent structures:
 - to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks;
 - to enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries; and
 - to exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

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