
Whitepaper
CROSS-BORDER
HARMONIZATION OF
DERIVATIVES REGULATORY
REGIMES:
A risk-based framework for
substituted compliance
via cross-border principles

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EXECUTIVE SUMMARY

The importance of cross-border harmonization is something that was recognized by regulators at the very start of the post-crisis regulatory reform effort. According to the Group of 20 (G-20), regulators should implement global standards to reform derivatives markets “consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage”.

While significant progress has been made by the industry and regulators to implement changes to improve the resilience of financial markets, the hoped-for march towards global consistency and cross-border harmonization has been much slower. This has resulted in duplication, complexity and unnecessary compliance challenges for derivatives users.

Given the progress made in implementation at the national level, ISDA believes the time is now ripe to relook at the cross-border framework, with the objective of developing a process for comparability determinations that is risk-centered and principles-based.

This whitepaper:

- Proposes a risk-based framework for the evaluation and recognition of the comparability of derivatives regulatory regimes of foreign jurisdictions;
- Establishes a set of risk-based principles that may be used as a tool in the assessment of derivatives regulatory regimes of foreign jurisdictions; and
- Analyzes the derivatives regulatory frameworks of representative G-20 nations against the proposed risk-based principles.

ISDA believes the proposed framework strikes the proper balance by focusing on risk and its cross-border implications, rather attempting to align each and every regulatory requirement between jurisdictions. This approach will allow for substituted compliance determinations, while reducing the chances of protracted negotiations that could lead to diminished liquidity and market fragmentation.

The proposed principles could be deployed globally, but this paper focuses on the cross-border framework introduced by the US Commodity Futures Trading Commission (CFTC). ISDA believes the proposed approach is more consistent with the intent of the Dodd-Frank Act by allowing for appropriate regulatory oversight of derivatives trading – specifically, the activities that contributed to the financial crisis – while giving deference to foreign rules that are not intended to address risk.

INTRODUCTION

The expectation of a global derivatives framework that can be applied across jurisdictions has not materialized

The G-20 leaders committed to undertake the following measures at a national level:

- Mandating clearing for standardized derivatives;
- Imposing a trading obligation to ensure certain derivatives are traded on exchanges or electronic platforms (where appropriate);
- Requiring reporting of all derivatives to trade repositories; and
- Subjecting non-centrally cleared derivatives to higher capital and margin requirements¹.

As many G-20 nations have progressed towards the fulfillment of their G-20 commitments² and have put in place the legal capacity to defer to another jurisdiction's regulatory framework³, global regulators are now well positioned to assess other foreign regulatory regimes and issue comparability determinations, as appropriate.

Currently, the expectation of flexible global standards across multiple jurisdictions has not materialized. The CFTC has imposed regulatory requirements in a manner that has extended the extraterritorial reach of US derivatives regulations beyond US shores and in ways that conflict with foreign national-level regulations in many instances. Over the past several years, ISDA members have identified a number of issues with the CFTC's Cross-Border Guidance⁴, primarily arising from the CFTC's unnecessarily broad jurisdictional reach and its overly burdensome substituted compliance approach.

¹ G-20 Leaders, Leaders' Statement The Pittsburgh Summit 9 (September 24-25, 2009), available at <http://www.g20.org/documents>. Margin requirements for non-cleared derivatives were endorsed at the G-20 Cannes meeting in November 2011. See Cannes Summit Declaration ¶ 24, available at <http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html>

² It is important to note that when the CFTC first issued its Cross-Border Guidance, most jurisdictions had not implemented their full derivatives reform regulations. Therefore, given that significant time has passed and most reforms have been or are nearly implemented, the CFTC and other regulators are well positioned to achieve substituted compliance. Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013) (Cross-Border Guidance)

³ The June 2017 Financial Stability Board (FSB) report identifies equivalence and substituted compliance determinations as an acceptable legal means to provide deference. The report emphasizes the importance of effective international cooperation and deference mechanisms to help minimize the potential for regulatory arbitrage and facilitate full and consistent implementation of the G-20 commitments. FSB Review of OTC Derivatives Market Reforms Effectiveness and Broader Effects of the Reforms 38, (June 29, 2017), available at <http://www.fsb.org/2017/06/review-of-otc-derivatives-market-reform-effectiveness-and-broader-effects-of-the-reforms/>

⁴ See Cross-Border Guidance, *supra* note 2

The CFTC's Broad Jurisdictional Reach

The CFTC has taken a sweeping approach to its jurisdiction outside the US by effectively requiring firms all over the globe to register with the agency and comply with most CFTC requirements, regardless of whether these firms have a US nexus. This approach is inconsistent with the intent of Congress to only regulate derivatives activities that have a direct and significant impact on the US⁵.

For example, the CFTC's current approach imposes numerous CFTC rules on derivatives transactions between two non-US entities if they use personnel located in the US to arrange, negotiate, or execute these trades. These transactions do not pose a risk to the US, as they are booked to entities located overseas.

The CFTC's Burdensome Substituted Compliance Approach

Although the CFTC has issued substituted compliance determinations under the Cross-Border Guidance for certain rules, it has done so on a rule-by-rule basis, rather than by applying an outcomes-based approach. This often results in the CFTC approving only portions of a foreign regulatory regime, putting participants in the position of running duplicative and (in many cases) conflicting compliance programs in order to meet various US and non-US requirements.

This approach has led to non-US firms ceasing to transact in US markets, thereby causing market fragmentation and diminished liquidity. There has also been a decrease in the competitiveness of US entities when compared to foreign firms. Additionally, non-US firms that are required to comply with the CFTC rules have become less competitive in foreign markets.

In sum, the CFTC has established a burdensome US regulatory framework that is not reflective of the global nature of the derivatives markets.

ISDA agrees with CFTC Chairman J. Christopher Giancarlo's observation of the current status of cross-border harmonization of the derivatives rules:

[While the agency has] made some progress . . . the CFTC's cross-border approach too often has been over-expansive, unduly complex and operationally impractical. And, its substituted compliance regime remains a somewhat arbitrary, rule-by-rule analysis of CFTC and foreign rules under which a transaction may be subject to a patchwork of US and foreign regulation⁶.

⁵ Commodity Exchange Act § 2(i), 7 U.S.C. § 2(i), provides that:

The provisions of [Title VII of the Dodd-Frank Act] (including any rule prescribed or regulation promulgated under the Act), shall not apply to activities outside the United States unless those activities—(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of [Title VII of the Dodd-Frank Act]

⁶ Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before SEFCON VII (Jan. 18, 2017), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-19>

A reevaluation and recalibration of the CFTC's approach to the cross-border regulation of derivatives is necessary and timely, especially given the recent Presidential Executive Order to rationalize the Federal financial regulatory framework, further American interests in international financial regulatory negotiations, and make regulation efficient, effective and appropriately tailored⁷.

This whitepaper proposes a more effective framework for comparability determinations. When assessing foreign regulatory regimes for comparability, ISDA believes that regulators should focus only on whether the regime has sufficient mechanisms in place to address or mitigate systemic risk. This can be achieved by the establishment of broad regulatory principles that focus on risk-based measures (the cross-border principles).

As discussed more fully below, these cross-border principles can be used by US prudential regulators, the CFTC, the Securities and Exchange Commission (SEC), and, more broadly, by foreign regulators as a tool to assess the comparability of foreign regulations. In doing so, the CFTC and other regulators should bear in mind that the specific risk-related regulatory requirements of a particular jurisdiction may reflect that jurisdiction's supervisory and/or industry practices. To the extent there is variability in the approaches of the respective jurisdictions to address risk, it should not be viewed as a gap in regulatory oversight or as a barrier to substituted compliance⁸.

The outcome of ISDA's proposed approach is to grant substituted compliance or equivalence to comparable (not necessarily identical) regulatory regimes⁹, and to allow firms that operate in jurisdictions that are deemed comparable to de-register with the CFTC and conduct their derivatives activities under local regulations, regardless of their organizational structure¹⁰. In all circumstances, these derivatives activities will still be regulated. However, there will be an opportunity for regulation through substituted compliance.

This whitepaper first reviews the CFTC's legal framework for comparability determinations, proceeds with a discussion of criteria for making comparability determinations, and then provides an assessment of foreign jurisdictions' regulatory frameworks against the cross-border principles¹¹. The paper also provides an overview of a proposed notification (self-certification) process to the CFTC where there has been a comparability determination.

⁷ See Exec. Order No. 13772, Presidential Executive Order on Core Principles for Regulating the United States Financial System (Feb. 3, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states>

⁸ See Keynote Address of CFTC Commissioner J. Christopher Giancarlo, *supra* note 6 (noting that that the CFTC "cannot expect to achieve cross-border harmonization if we continue to follow an identical, rule-by-rule substituted compliance analysis")

⁹ While this whitepaper supports the proposition that when a foreign jurisdiction satisfies the cross-border principles, it should be granted substituted compliance in full, ISDA recognizes there may be instances where a regulator may find a foreign jurisdiction comparable in some (but not all) categories of the cross-border principles. For example, as referenced in Appendix B, a regulator may find Brazil comparable with respect to its record-keeping requirements (cross-border principle 3), but not comparable with respect to its risk management requirements (cross-border principle 2) as these rules have not yet been implemented. Under these circumstances, it may be appropriate to grant substituted compliance on a category-by-category basis. See Appendix B (providing a high-level analysis of Brazil's derivatives regulatory regime against the cross-border principles)

¹⁰ For transactions between a swap dealer located in the US and a firm located outside of the US, regulators should allow the swap dealer to choose, or rely on protocols or industry best practices, to determine which of the two local regulatory frameworks to follow, provided the foreign jurisdiction's rule set is determined comparable and satisfies the cross-border principles

¹¹ This whitepaper is not intended to be exhaustive. It should be considered as a work in progress and could be complemented by consideration of additional principles and/or inclusion of additional regulations

THE RISK-BASED APPROACH TO COMPARABILITY DETERMINATIONS

ISDA believes comparability assessments should focus only on those rules that relate to risk

This whitepaper focuses on issues relating to substituted compliance and comparability determinations, and should not be taken as a complete statement by ISDA or its member firms on Dodd-Frank Title VII extraterritorial issues generally. Although the next section briefly discusses the jurisdictional limits of the CFTC's cross-border authority, the primary goal of this paper is to propose a risk-based approach to substituted compliance.

The CFTC Legal Framework

Section 2(i) of the Commodity Exchange Act (CEA) operates as a limitation on the CFTC's extraterritorial jurisdiction – not as a mandate to regulate all global derivatives transactions with any nexus to the US¹². For example, ISDA does not believe that a swap transaction between two swap dealers (SDs) operating outside the US that is arranged and negotiated by personnel located in the US, but executed, cleared and reported outside the US, has a direct connection to US commerce. Such a transaction should be outside the scope of CFTC jurisdiction.

Under its current approach, the CFTC Cross-Border Guidance captures almost all cross-border transactions and then applies the entire Title VII framework to those transactions. The result is that almost every entity around the globe engaged in derivatives trading must consider registration with the CFTC and the US regulatory implications of most derivatives transactions¹³. Although the CFTC has issued substituted compliance determinations for certain transactions, these determinations are based on a rule-by-rule analysis and are subject to various conditions.

When the US regulatory regime is unnecessarily extended, the competitiveness of US institutions and US markets is threatened, with no commensurate risk-reducing benefits. As the CFTC continues to review its rules to improve its oversight, it should do so with a view to recalibrating its cross-border regulatory regime and fulfilling its international commitments¹⁴. This can be achieved by providing recognition to foreign regulatory regimes that have implemented risk-related rules that meet similar regulatory outcomes¹⁵.

In sum, only cross-border swap transactions that directly impact the CFTC's regulatory interests should be within the scope of its jurisdiction. For these transactions, the CFTC should adopt a substituted compliance regime that is based on an assessment of the risk-related rules of a foreign jurisdiction against the risk-based cross-border principles.

¹² 7 U.S.C. § 2(i)

¹³ See Cross-Border Guidance, *supra* note 2

¹⁴ The CFTC's commitment to international cooperation and coordination was reinforced in the Path Forward agreement, in which the CFTC and European Union (EU) regulators pledged to "not seek to apply the rules [of their jurisdiction] (unreasonably) in the other jurisdiction, but ... rely on the application and enforcement of the rules by the other jurisdiction." See Cross-border Regulation of Swaps/Derivatives Discussions Between the Commodity Futures Trading Commission and the European Union – a Path Forward (July 11, 2013), available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/jointdiscussionscftc_europeanu.pdf

¹⁵ The Dodd-Frank Act requires the CFTC to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation... of swaps ... [and] swap entities. . . ." Dodd-Frank Wall Street Reform and Consumer Protection Act § 752

Criteria for Making Comparability Determinations

To be deemed comparable, a foreign jurisdiction should have rules that are intended to address the risks associated with derivatives and a supervisory authority that conducts regulatory oversight and enforces the law. This is consistent with the goals of the G-20 commitments.

Notably, ‘comparable’ does not mean ‘identical’. Comparability simply means regulations achieve the same overarching goals¹⁶. An assessment of the rules of a foreign jurisdiction can be performed based on functional groupings of rules that are geared to address risk. This assessment should isolate the objectives of each rule category (or grouping) and evaluate the rules of a foreign jurisdiction in light of these objectives. The result of this approach is a framework that provides concrete regulatory guidance that will allow for greater objectivity and transparency in the evaluation process, while retaining a principles-based approach¹⁷.

Our proposed comparability determination framework is based on the following considerations:

- Recalibrate the current US cross-border regulatory regime so that only firms that fall within the scope of CEA § 2(i) are required to comply with CFTC rules that primarily address risk (through substituted compliance), as opposed to the entire set of the Dodd-Frank Act’s Title VII derivatives rules.
 - Currently, non-US firms are expected to comply with the entire set of Dodd-Frank rules, some of which are not primarily designed to address risk to the US financial system. These CFTC rules include: (1) real-time public reporting (aimed at providing post-trade price transparency); (2) swap trading relationship documentation and trade confirmation requirements (aimed at ensuring the adequate on-boarding of swap counterparties for required disclosure purposes and that the terms of a swap are negotiated and properly recorded prior to the execution of a swap); (3) large trader reporting requirements (intended to be interim reporting requirements and expected to sunset once the CFTC fully implemented its swap data repository-related rules); (4) external business conduct requirements (aimed at prescribing business practices involving counterparties); (5) mandatory swap execution facility execution (intended to provide counterparties with a sufficient level of pre-trade price transparency)¹⁸; and (6) position limits (designed to address excessive speculation and prevent market manipulation, not address risk).
 - While these rules achieve important policy goals, such as ensuring customer protection, improving market structure and preventing market abuses, those goals are more appropriately left within the remit of regulators in the jurisdiction where that activity is taking place.
 - When assessing foreign regulatory regimes for equivalency or comparability, US regulators should focus on whether the regime has sufficient regulatory mechanisms in place to address or mitigate systemic risk. Should a regulator decide that a foreign regulatory regime is comparable (based on the assessment of risk-related rules), then the regulator should allow counterparties to operate in compliance with the rules of a local regulator, including non-risk based requirements.

¹⁶ As the EU equivalence assessment notes: “The implementation of these provisions involves in many cases an outcomes-based process. It is the equivalence of regulatory and supervisory results that is being assessed, not a word-for-word sameness of legal texts.” Commission Staff Working Document, EU Equivalence Decisions in Financial Services Policy: An Assessment (SWD(2017) 102 final) at 4 (Feb. 27, 2017), available at https://ec.europa.eu/info/sites/info/files/eu-equivalence-decisions-assessment-27022017_en.pdf (the EU equivalence assessment)

¹⁷ As discussed above, while this paper discusses these criteria in the context of the CFTC regulatory framework, ISDA believes they may also be utilized by US prudential regulators and the SEC in making comparability determinations

¹⁸ In February 2016, ISDA published Principles for US/EU Trading Platform Recognition that proposes a framework for finding comparability of foreign trading regimes

- Assume comparability in the review of the laws of the G-20 jurisdictions¹⁹. The comparability review should not look for disparities or variations in the minutiae of a foreign regulatory regime. The manner in which foreign regulators achieve compliance with the G-20 commitments and the objectives of the cross-border principles should be left to the front-line decision-makers (ie, foreign regulatory authorities).
- Consider the totality of risk-related regulations – specific derivatives regulations and general regulatory requirements, including regulatory guidance – in making comparability determinations. Some jurisdictions have not created the ‘swap dealer’ category as a defined regulated entity, which is a primary focal point of the CFTC’s derivatives regime. In instances where there is no one-to-one correlation, other relevant laws and regulation may apply and satisfy the risk-based cross-border principles.
- In cases of regulatory gaps, a comparability determination may be further achieved through various information-sharing agreements²⁰. At a minimum, partial or category-by-category substituted compliance should be considered, particularly in G-20 emerging market jurisdictions²¹.
- For US-based firms located outside of the US (whether trading through an overseas branch or overseas subsidiary), it should be permissible for the counterparties to conduct trading activity under local, foreign regulations, as long as that jurisdiction has been determined comparable ((or where such activity across all non-comparable jurisdictions is below some threshold percentage of a swap dealer’s total global activity, as per the CFTC’s cross-border guidance). For transactions between an SD located in the US and a firm located outside of the US, regulators should allow the SD to choose, or rely on protocols or industry best practices, to determine which of the two local regulatory frameworks to follow, provided the foreign jurisdiction’s rule set is determined to be comparable²².

In light of these considerations, the cross-border principles that may be evaluated for a comparability determination are listed below.

¹⁹ Similarly, Hong Kong’s regulatory framework also contemplates a presumption of equivalence where a foreign regulatory regime has implemented rules pursuant to the G-20 commitments. For example, in the context of margin rules, the Hong Kong Monetary Authority (HKMA) has determined that “[t]he margin and risk mitigation standards of [the Working Group on Margin Requirements] member jurisdictions are deemed as [sic] comparable from the day the respective standards have entered into force in such jurisdictions until the [Hong Kong Monetary Authority] has completed a comparability assessment.” See HKMA Margin Rules 2.3.2

²⁰ See International Organization of Securities Commissions (IOSCO) Task Force on Cross-border Regulation (Final Report) 11, (September 2015) (“[A] bilateral supervisory memorandum of understanding (MoU) also may be used to facilitate information sharing between or among regulators in supervisory matters or to undertake cross-border inspections or examinations of globally-active entities that are regulated in more than one jurisdiction”)

²¹ See supra note 9 and accompanying text (“While this whitepaper supports the proposition that when a foreign jurisdiction satisfies the cross-border principles, that jurisdiction should be granted substituted compliance in full, ISDA recognizes that there may be instances where a regulator may find a foreign jurisdiction comparable in some (but not all) categories of the cross-border principles. . . . Under such circumstances, it may be appropriate to grant substituted compliance on a category-by-category basis”)

²² This would allow US SDs to more effectively compete globally and would allow US SDs to transact as dictated by liquidity and business needs, not as dictated by artificial barriers. This is consistent with previous ISDA comments in its cross-border submissions to the CFTC. For example, see Letter from ISDA to the CFTC, Re: Proposed Interpretive Guidance and Policy Statement: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (RIN 3038-AD57); Notice of Proposed Exemptive Order and Request for Comment (RIN 3038-AD85) (August 10, 2012), available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58356&SearchText=ISDA> (asserting that the CFTC should permit US swap dealers transacting (either directly or through a branch or affiliate) in a non-US jurisdiction to comply only with local requirements in their transactions with non-US counterparties)

The Cross-border Principles Should Address Risk

The cross-border principles are consistent with the G-20 commitments to reduce risk associated with derivatives transactions, and the intent of the Dodd-Frank Act to establish a cross-border approach that is consistent. They are also in line with international standards for the regulation of derivatives to mitigate or reduce systemic risk. For each cross-border principle, we have provided the underlying policy goals that demonstrate comparability.

1. Foreign regulations that require firms to establish capital and margin requirements pursuant to the G-20 commitments demonstrate comparability.
 - Policy goal 1: Regulations should require firms to be capitalized pursuant to the Basel III framework.
 - Policy goal 2: Margin requirements should be compliant with the Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO) framework.
2. Foreign regulations that require firms to establish sound risk management policies to address risks posed by derivatives business demonstrate comparability.
 - Policy goal 1: Firms should establish risk management policies and procedures and an effective governance structure.
 - Policy goal 2: Firms should establish policies that address business continuity agreements.
 - Policy goal 3: Firms should conduct portfolio reconciliation.
3. Foreign regulations that require firms to maintain an effective and accurate system of records demonstrate comparability.
 - Policy goal 1: Swap data records should be kept for an extended period of time.
 - Policy goal 2: Swap data records should be sufficiently comprehensive to enable regulators to conduct trade reconstruction.
 - Policy goal 3: Regulators should have access to swap data records.
4. Foreign regulations that require firms to make swap data available to regulators demonstrate comparability.
 - Policy goal 1: Trade repositories (TRs) should meet the standards set out in the Principles for Financial Market Infrastructures (PFMIs)²³.
 - Policy goal 2: Reportable data should provide regulators sufficient information regarding a firm's derivatives exposure.

²³ Committee on Payment and Settlement Systems (CPSS), Principles for Financial Market Infrastructures (April 2012), available at <http://www.bis.org/cpmi/publ/d101a.pdf>

5. Foreign jurisdictions that have clearing and settlement services that comply with the Bank for International Settlements (BIS)/IOSCO principles and that have similar clearing mandates should be deemed comparable.
- Policy goal 1: Central counterparties (CCPs) should be PFMI-compliant.
 - Policy goal 2: Mandatory clearing obligations should achieve similar objectives.

COMPARABILITY ASSESSMENTS USING THE CROSS-BORDER PRINCIPLES

Comparability assessments can be made using ISDA's proposed cross-border principles

In this section, ISDA analyzes the cross-border principles and compares the regulatory frameworks of several G-20 jurisdictions (the EU, Australia, Canada, Hong Kong and Japan) and Singapore²⁴ against the cross-border principles, illustrating the similarities of the regimes and highlighting regulatory gaps²⁵. As noted earlier, the cross-border principles focus only on laws and regulations designed to address or mitigate systemic risk.

Although based on the US framework, our assessment of the cross-border principles will be relevant to EU and other foreign supervisory authorities when making comparability determinations. That's because any assessment of foreign regulatory regimes, per the G-20 commitments, should be based on whether foreign regulators have sufficient regulatory mechanisms in place to address and mitigate systemic risk. With respect to the EU, equivalence provisions of EU directives and regulations focus on ensuring that, to the extent there is equivalency, it ultimately should lead to financial stability and should not contribute to systemic risk²⁶. As noted by the European Commission (EC), an assessment of equivalence is guided by a risk-based approach:

[T]he Commission identifies risks to the EU financial system which may be arising as a result of an increased exposure to a specific third-country framework. It then specifically addresses those risks when verifying third countries' compliance with the equivalence criteria. In that way, it applies the criteria in a way which is proportionate to the risks identified. Those risks to the EU financial system are the primary focus of such assessment, but other aspects may need to be taken into consideration in accordance with the relevant EU legislation²⁷.

²⁴ While Singapore is not a G-20 nation, ISDA believes Singapore's derivatives regulatory regime is sufficiently in line with the G-20 commitments to warrant consideration for a comparability determination analysis

²⁵ A table illustrating the status of derivatives regulations in G-20 emerging markets is included in Appendix B, using Brazil and Mexico as examples. The table provides a high-level analysis of the status of implementation of derivatives regulations in Brazil and Mexico. The table shows that while certain G-20 emerging markets jurisdictions may not be fully comparable to other G-20 nations, progress is being made towards full comparability. Under these circumstances, it may be appropriate to grant substituted compliance on a category-by-category basis. See supra note 9

²⁶ The EU equivalence assessment notes that "equivalence provisions require verification by means of an assessment that a third-country framework demonstrates equivalence with the EU regime in some or all of the following aspects, depending on the actual scope of the equivalence provision under consideration: the comparable requirements being assessed are legally binding, they are subject to effective supervision for compliance and enforcement by domestic authorities, and they achieve the same results as the corresponding EU legal provisions and supervision" EU equivalence assessment, supra note 16, at 7

²⁷ Id. at 7 (emphasis supplied)

While the EC has yet to assess equivalence with regard to US SDs conducting business in the EU, it would appear that the risk-based approach of EU law should lead to equivalency decisions that maintain “open and globally integrated” EU financial markets with the US and “reduce or even eliminate overlaps in compliance” and allow for “a less burdensome prudential regime”, while providing “EU firms and investors with a wider range of services, instruments and investment choices”²⁸.

Principle 1: Foreign regulations that require firms to establish capital and margin requirements pursuant to the G-20 commitments demonstrate comparability.

Policy goal 1: Regulations should require firms to be capitalized pursuant to the Basel III framework.

The BCBS has established global capital standards and a streamlined process for margin model approval so that compliance in multiple jurisdictions is unnecessary. Therefore, general compliance with the BCBS standards should lead to a presumption of substituted compliance. Any additional analysis (eg, review and approval of models) would be redundant and unnecessary for BCBS jurisdictions because one of the primary purposes of negotiating capital requirements at the BCBS level is to ensure consistent outcomes and enforcement of such requirements. Cross-border counterparties to non-cleared derivatives should be able to comply with one of their respective regimes if it is in compliance with BCBS-IOSCO standards.

Policy goal 2: Margin requirements should be BCBS-IOSCO compliant.

Global regulators have agreed on consistent global margin standards implemented by the BCBS and IOSCO that reflect standard market practice and represent the consensus view of regulators across multiple jurisdictions. Therefore, rather than engage in a rule-by-rule analysis, ISDA proposes that the CFTC determine that the margin regime of a foreign jurisdiction is comparable to the CFTC’s margin rules as long as the foreign jurisdiction is in compliance with the BCBS-IOSCO standards.

²⁸ Id. at 5

Principle 1 Assessment

Principle 1 ²⁹	Policy Goal 1: Regulations Should Require Firms to be Capitalized Pursuant to the Basel III Framework			
	US	EU	Australia	Canada
<p>Jurisdictions appear to set out comparable capital requirements that are generally consistent with the Basel III framework (see footnote 31).</p>	<p>>BCBS has determined that US capital requirements are largely consistent with the Basel III framework.</p> <p>>The US capital rules incorporate Basel III capital adequacy requirements for provisionally registered SDs.</p> <p>Source: BCBS, Assessment of Basel III regulations – United States of America (Dec. 2014); Regulatory Capital Rules, 78 Fed. Reg. 62018 (Oct. 11, 2013)³⁰.</p>	<p>>With respect to the standards that define the eligible components of regulatory capital, as well as certain credit risk and market risk standards, the EU is considered largely Basel III compliant. With respect to the capital conservation buffer established by Basel III, the EU framework is compliant. Overall, the EU is therefore consistent in large part with the Basel III framework³¹.</p> <p>>The EU has implemented minimum capital requirements largely in line with the Basel framework that apply to investment firms and credit institutions³².</p> <p>Sources: BCBS, Assessment of Basel III regulations—European Union (Dec. 2014); Regulation (EU) No 575/2013 (CRR) and CRD IV Directive (2013/36/EU) (CRD), Part 3 (together, CRD IV, which applies to credit institutions and to investment firms).</p>	<p>>BCBS has determined that Australia's capital requirements are consistent with the Basel III framework.</p> <p>>Authorized deposit-taking institutions (ADIs) are required to adhere to capital adequacy rules and standards for measuring capital³³.</p> <p>Sources: BCBS, Assessment of Basel III regulations – Australia (March 2014); Banking Act § 11AF; Prudential Standard APS 110; Prudential Standard APS 111.</p>	<p>>BCBS has determined that Canada's capital requirements are consistent with the Basel III framework.</p> <p>>The Office of the Superintendent of Financial Institutions (OSFI) requires banks (including federal credit unions), bank holding companies, federally regulated trust companies, federally regulated loan companies and cooperative retail associations to maintain adequate capital³⁴.</p> <p>Sources: BCBS, Assessment of Basel III Regulations: Canada (June 2014); OSFI Guideline, Capital Adequacy Requirements; 484.1 of the Bank Act.</p>

²⁹ The laws and regulations of foreign jurisdictions discussed in this whitepaper are not intended to provide an exhaustive list of the full scope of foreign laws or regulations that may be comparable to CFTC rules. Instead, these laws and regulations of foreign jurisdictions provide a roadmap for the CFTC to create a substituted compliance regime. Web links to the foreign laws and regulations cited here are listed in Appendix A

³⁰ While the CFTC's swap dealer capital rules have yet to be finalized, ISDA believes firms that adopt the Basel III capital approach should only have to comply with the Basel III requirements and not also calculate capital based on a margin-based measure. Additionally, the CFTC should offer substituted compliance with respect to capital models if such models have been approved by prudential regulators or the SEC

³¹ Amendments to the EU Capital Requirements Directive (CRD V), the Capital Requirements Regulation (CRR II), the EU Bank Recovery and Resolution Directive and the Single Resolution Mechanism are under way and are expected to come into force no earlier than 2019. The proposed changes include a number of modifications to capital and liquidity requirements that would make the EU largely compliant with Basel III. For a high-level summary see Frequently Asked Questions: Capital requirements (CRR/CRD IV) and resolution framework (BRRD/SRM) amendments, available at http://europa.eu/rapid/press-release_MEMO-16-3840_en.htm

³² Under EU law, there is no direct equivalent to a 'swap dealer'. As a result, this chart outlines the regulatory framework implemented by the EU that applies to 'credit institutions' and 'investment firms'. A credit institution is defined, in pertinent part, as "an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account"; while an investment firm is defined, in pertinent part, as "any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis". See Regulation (EU) No. 575/2013 Article 4(1)(1); MIFID II Article 4(1)(1)

³³ Under Australian law, there is no direct equivalent to a 'swap dealer'. This chart outlines the regulatory framework implemented by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC), which applies to ADIs and Australian financial services (AFS) licensees. An ADI is an entity that carries out state banking authorized by parliament under the Australian constitution or a body corporate authorized by APRA to carry on banking business in Australia. Corporations Act 2001, § 9; Banking Act 1959, §§ 5, 9(3); Australian Constitution, ¶ 51(xiii). ADIs include: banks; building societies; and credit unions. ADIs are primarily regulated by the APRA, which is the prudential regulator of the Australian financial services industry. AFS licensees, on the other hand, are generally entities that carry on a business of providing financial services. AFS licensees are regulated by ASIC, which is Australia's corporate, markets and financial services regulator. An entity that offers, sells or makes a market in swaps, but is not a bank, would likely be regulated as an AFS licensee by ASIC

³⁴ In Canada, the responsibility to oversee the derivatives markets is divided between OSFI, Canada's prudential regulator, and the individual regulators of Canada's provinces, like the Ontario Securities Commission (OSC). Accordingly, this chart analyzes regulations implemented at both the national and provincial level, using OSC regulations as an exemplar. We note that other Canadian provinces have all adopted regulations that are similar to OSC regulations

Principle 1	Policy Goal 1: Regulations Should Require Firms to be Capitalized Pursuant to the Basel III Framework		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable capital requirements that are generally consistent with the Basel III framework.	<p>>BCBS has determined that Hong Kong's capital requirements are consistent with the Basel III framework.</p> <p>>Authorized institutions (AIs) are required to adhere to capital requirements³⁵.</p> <p>Sources: BCBS, Assessment of Basel III risk-based capital regulations – Hong Kong SAR (March 2015); Banking Ordinance, Part XVIA.</p>	<p>>BCBS has determined that Japan's capital requirements are consistent with the Basel III framework.</p> <p>>Japan has implemented capital requirements for banks and certain financial instruments business operators (FIBOs) on a consolidated basis³⁶.</p> <p>Sources: BCBS, Follow-up assessment of Basel III risk-based capital regulations – Japan (Dec. 2016); 金融商品取引法第五十七条の五及び五十七条の十七 (Financial Instruments and Exchange Act, Articles 57-5 and 57-17); 銀行法第14条の2及び第52条の25 (Banking Act, Articles 14-2 and 52-25).</p>	<p>>BCBS has determined that Singapore's capital requirements are consistent with the Basel III framework.</p> <p>>Banks incorporated in Singapore (reporting banks) are required by the Monetary Authority of Singapore (MAS) to adhere to group and standalone capital adequacy ratio requirements³⁷.</p> <p>Sources: BCBS, Assessment of Basel III regulations – Singapore (March 2013); Banking Act § 10; MAS Notice 637 3-1.</p>

Principle 1	Policy Goal 2: Margin Requirements Should be BCBS-IOSCO Compliant			
	US	EU	Australia	Canada
Jurisdictions appear to set out comparable margin requirements that are consistent with BCBS-IOSCO standards.	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>The US has implemented requirements for the collection and posting of initial and variation margin on non-cleared swaps.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); CEA § 4s(e); 17 C.F.R. §§ 23.150-23.161; Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74840 (Nov. 30, 2015).</p>	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>The EU has established initial and variation margin standards for OTC derivatives not cleared by a central counterparty.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); Regulation EU No 648/2012 (EMIR), Article 11; Commission Delegated Regulation (EU) 2016/2251 (Regulatory Technical Standard).</p>	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>Australia has established initial and variation margin requirements for non-centrally cleared derivatives transactions.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); Banking Act § 11AF; Prudential Standard CPS 226.</p>	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>OSFI requires all federally regulated financial institutions (FRFIs)³⁸ to post initial and variation margin for non-centrally cleared derivatives.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); OSFI Guidelines: Margin Requirements for Non-Centrally Cleared Derivatives, No. E-22.</p>

³⁵ Under Hong Kong law, there is no direct equivalent to a 'swap dealer'. In Hong Kong, the derivatives market and derivatives market participants are regulated by the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission of Hong Kong (SFC). The HKMA regulates and supervises AIs, which are institutions authorized under the Hong Kong Banking Ordinance to carry out the business of taking deposits, and generally comprise banks, restricted license banks and deposit-taking companies. See definition in § 2 of the Hong Kong Banking Ordinance (Cap. 155). The SFC regulates Hong Kong's securities and futures markets. Entities that sell, offer or make a market in swaps, except for AIs, would be subject to regulation by the SFC. These entities are generally referred to as licensed corporations (LCs). Hong Kong is expected to undertake further rule-making pertaining over-the-counter (OTC) derivatives trading in due course

³⁶ While there is no direct equivalent to a 'swap dealer' in Japan, the Japanese Financial Services Agency (JFSA) regulates both banks and non-banks that offer, sell or make a market in swaps. Banks are regulated as registered financial institutions (RFIs), while non-banks are regulated as FIBOs

³⁷ Under Singapore law, there is no direct equivalent to a 'swap dealer'. As a result, this chart outlines the regulatory framework that applies to 'financial institutions'. The MAS regulates all of Singapore's financial institutions. The term 'financial institution' is defined to include any: (a) bank licensed under the Banking Act (Cap. 19); (b) merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); or (c) finance company licensed under the Finance Companies Act (Cap. 108). SFA, Second Schedule, Part II. Singapore is expected to undertake further rule-making pertaining OTC derivatives trading in due course

³⁸ FRFIs refer to banks, foreign bank branches, bank holding companies, trust and loan companies, cooperative credit associations, cooperative retail associations, life insurance companies, property and casualty insurance companies and insurance holding companies

Principle 1	Policy Goal 2: Margin Requirements Should Be BCBS-IOSCO Compliant		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable margin requirements that are consistent with BCBS-IOSCO standards.	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>Hong Kong has established initial and variation margin standards for AIs in connection with non-centrally cleared OTC derivatives transactions with certain covered entities³⁹.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); Banking Ordinance § 7(3); Hong Kong Monetary Authority (HKMA) Supervisory Policy Manual CR-G-14.</p>	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>Japan's regulations require FIBOs and registered financial institutions (RFIs)⁴⁰ to post minimum margin for non-centrally cleared OTC derivatives transactions, specify the type of transactions applicable to non-centrally cleared transactions and specify calculation methods of variation margin deposit and initial margin deposit by type of asset.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); 金融商品取引業等に関する内閣府令第百二十三条第一項第二十一号の五及び第二十一号の六、第七項、第八項、第九項、第十項、及び第十一 (Cabinet Office Ordinance on Financial Instruments Business etc, Article 123(1) (xxi-v) and (xxi-vi); Article 123(7); Article 123(8); Article 123(9); Article 123(10); Article 123(11)).</p>	<p>>Margin requirements are consistent with BCBS-IOSCO standards.</p> <p>>Singapore has established initial and variation margin requirements for 'MAS covered entities'⁴¹ in connection with non-centrally cleared derivatives transactions.</p> <p>Sources: BCBS, Twelfth progress report on adoption of the Basel regulatory framework (April 2017); Securities and Futures Act (SFA) §§ 34(2)(i), (3)(a), 81S(2)(d); Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts.</p>

Principle 2: Foreign regulators that require firms to establish sound risk management practices to address the risks posed by derivatives business demonstrate comparability.

Rules requiring firms to establish sound risk management practices constitute an important element of effective market oversight. Requiring firms to establish procedures for monitoring risk reduces the likelihood of significant losses, which in turn may reduce the risk that spreading losses would cause defaults by multiple firms, thereby increasing the safety and soundness of the derivatives market as a whole.

In order to find a foreign jurisdiction's risk management regulatory regime comparable to that of the US, the foreign jurisdiction should have policies that require firms to establish: (1) risk management procedures and governance; (2) business continuity agreements; and (3) portfolio reconciliation.

³⁹ A 'covered entity' is defined as including a financial counterparty, significant non-financial counterparty or another entity designated by the HKMA, but excludes a sovereign, central bank, public sector entity, multilateral development bank and the BIS. A 'financial counterparty' in turn may refer to: (i) an AI; or (ii) a corporation licensed by the SFC under the Securities and Futures Ordinance (Cap 571). For a full list of entities that may be covered entities, please refer to paragraph 1 of Supervisory Policy Manual CR-G-14

⁴⁰ A 'registered financial institution' means a bank, cooperative structured financial institution or other financial institution specified by a cabinet order that is registered under Article 33-2 of the Financial Instruments and Exchange Act. See Financial Instruments and Exchange Act, Article 2(11). The financial institutions specified by the relevant cabinet order are: (i) the Shoko Chukin Bank Limited; (ii) an insurance company; (iii) a mutual loan company; (iv) a securities finance company; and (v) among the persons who mainly make call loans or act as intermediaries for the lending and borrowing of such call money in the course of trade, those designated by the commissioner of the Financial Services Agency. See Order for Enforcement of the Financial Instruments and Exchange Act, Article 1-9

⁴¹ 'MAS covered entity' means a person who is exempt from holding a capital markets services license under SFA § 99(1)(a) or (b) (ie, licensed banks and merchant banks)

Policy goal 1: Firms should establish risk management policies and procedures and effective governance structures.

Effective regulatory oversight should allow firms sufficient flexibility to account for the types of risks specific to their business operations. Consistent with prevailing business practices and existing supervisory expectations, firms should be expected to implement model risk management policies that coincide with their business activities and overall organizational structure. Regulatory policies should also encourage model testing⁴² and active assessment of different types of risks, including market, liquidity and credit risks. As part of its overall governance structure, a firm's board and senior management should also be responsible for establishing and implementing adequate risk management policies and procedures that ensure its overall compliance.

Policy goal 2: Firms should establish practices that address business continuity agreements.

The interconnectedness of the global derivatives markets requires firms to be prepared for unanticipated and potentially disruptive market events. Foreign jurisdictions should therefore require firms to establish and maintain a business continuity and disaster recovery plan designed to effectively respond to crises, minimize unanticipated market disruptions, and resume essential business operations in a timely manner.

Policy goal 3: Firms should conduct portfolio reconciliation

Regular participation in portfolio reconciliation and portfolio compression reduces risk exposure and improves systemic stability by minimizing the volatility of portfolio values. This reduces disputes caused by differing portfolio valuations, minimizes the impact of default and increases the efficient use of capital.

ISDA believes the specifics of how these services are performed should be dictated by the requirements of local jurisdictions, which are in a better position to assess the operational challenges of individual firms.

⁴² Risk models and related systems, processes and controls are used extensively by financial institutions both for capital adequacy and risk management purposes. To be effective, risk management and capital adequacy rules should be implemented on an integrated basis by a consistent set of supervisory standards. Inconsistencies in supervisory standards only create inefficiency, confusion and opportunities for control failures. Many firms are subject to both the CFTC's and the prudential regulators' risk management requirements. To avoid redundancy and to minimize compliance costs, the CFTC should permit US and non-US swap dealers to comply with the CFTC's risk management practices on a substituted compliance basis, through compliance with the risk management requirements of their prudential regulator. ISDA plans to explore domestic regulatory efficiencies in other advocacy efforts

Principle 2 Assessment

Principle 2	Policy Goal 1: Firms Should Establish Risk Management Policies and Procedures and Effective Governance Structures			
	US	EU	Australia	Canada
<p>Jurisdictions appear to set out comparable requirements for the establishment of risk management policies and procedures.</p>	<p>>Requires SDs and major swap participants (MSPs) to establish, document, maintain and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the swaps activities of the SD or MSP (ie, establish a 'risk management program').</p> <p>>The risk management program should identify risks and risk tolerance limits, and take into account market, credit, liquidity, foreign currency, legal, operational, settlement and any other applicable risks.</p> <p>>Requires the governing body of the SD to approve, in writing, the SD or MSP's risk management program.</p> <p>Sources: CEA § 4s(j)(2); 17 C.F.R. § 23.600.</p>	<p>>Requires credit institutions and investment firms to: (1) establish, implement and maintain adequate risk management policies and procedures that identify the risks relating to the firm's activities, processes and systems and, where appropriate, set the level of risk tolerated by the firm; and (2) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems in light of that level of risk tolerance.</p> <p>>Requires investment firms and credit institutions to monitor their risk management policies and procedures in order to ensure they continue to adequately and effectively address the firm's risks.</p> <p>>Requires senior management of investment firms and credit institutions to assess and periodically review the effectiveness of policies, arrangements and procedures designed to address risk.</p> <p>Sources: Directive 2004/39/EC (MIFID), Article 13(5) and 13(6)⁴⁴; Directive 2014/65/EC (MIFID II), Articles 16(5), 16(2); Commission Directive 2006/73/EC (MIFID-ID), Articles 7, 9; Commission Delegated Regulation (EU) 2017/565 (MIFID II-SR), Articles 23, 25; CRD Articles 76, 88(1).</p>	<p>>The Australian Prudential Regulation Authority (APRA) requires ADIs to maintain a risk management framework that is appropriate to the size, business mix and complexity of the institution. This risk management framework must have policies and procedures that address: credit risk; market and investment risk; liquidity risk; insurance risk; operational risk; risks arising from the strategic objectives and business plans; and other risks that, singly or in combination with different risks, may have a material impact on the institution.</p> <p>>The Australian Securities and Investments Commission (ASIC) guidelines encourage Australian financial services (AFS) licensees⁴⁴ to maintain documented risk management systems that include clearly defined roles and responsibilities and policies and procedures for identifying, assessing and understanding each of the material risks of the responsible entity's business and schemes operated, among other things.</p> <p>>Requires ADIs and AFS licensees to consider adoption of governance-related risk management policies.</p> <p>>Requires the board of an ADI to approve the institution's risk management strategy, and requires senior management to monitor and manage all material risks consistent with the institution's board-approved risk management policies and procedures.</p> <p>Sources: Banking Act § 11AF; Prudential Standard APS 310 Paragraphs 23-29; Corporations Act, § 912A(1) (h); ASIC Regulatory Guide 259.</p>	<p>>Guidelines provide that FRFIs should be in a position to identify the material risks (including, but not limited to, market, credit, liquidity and operational risks) they face with respect to derivatives activities, assess their potential impact, and have policies and controls in place to manage risk effectively.</p> <p>>Guidelines also provide that an FRFI should subject its derivatives activities to risk limits approved by the institution's board of directors.</p> <p>Source: OSFI's Guidelines: Sound Derivatives Practices – Risk Management, No. B-7.</p>

⁴⁴ A person who carries out a financial services business in Australia must hold an Australian financial services license covering the provision of the financial services. See Corporations Act, § 911A

Principle 2	Policy Goal 1: Firms Should Establish Risk Management Policies and Procedures and Effective Governance Structures		
	Hong Kong	Japan	Singapore
<p>Jurisdictions appear to set out comparable requirements for the establishment of risk management policies and procedures.</p>	<p>>Requires AIs to adopt policies and procedures that enable firm-wide risks to be managed in a proactive manner with emphasis on achieving: (1) objective and consistent risk identification and measurement approaches; (2) comprehensive and rigorous risk assessment and reporting systems; (3) sound valuation and stress-testing practices; and (4) effective risk monitoring measures and controls.</p> <p>>Requires AIs to put in place a set of risk limits in order to control exposure to credit, market, interest rate and liquidity risk.</p> <p>>Firms licensed by or registered with the Securities and Futures Commission (SFC) and engaging in derivatives activities, such as licensed corporations (LCs), must have written policies and procedures related to risk management. These firms must also have an independent market risk management function that monitors the application of risk limits and an independent credit risk management function that monitors credit limits and reviews leverage, among other things.</p> <p>>AIs and LCs are expected to establish firm-wide risk management framework requirements, including with respect to governance.</p> <p>Sources: Banking Ordinance § 7(3); HKMA Supervisory Policy Manual IC-1; Core Operational and Financial Risk Management Controls For Over-the-Counter Derivatives Activities of Persons Licensed by or Registered with the Securities and Futures Commission (SFC guidelines).</p>	<p>>Requires FIBOs and RFIs to establish risk management systems for managing administrative risk, information technology risk, market risk, counterparty risk, liquidity risk and specific risks related to currency linked or securities-related OTC derivatives transactions.</p> <p>>Requires a FIBO's board of directors to establish compliance and risk management policies and implement risk management practices.</p> <p>>Requires a bank's board of directors to establish risk management policies and implement risk management practices.</p> <p>Sources: 金融商品取引業者等向けの総合的な監督指針 III-2-7, III-2-8, IV-2-3, IV-2-4, IV-2-5, IV-3-3-5, 及び IV-3-3-6 (Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, III-2-7, III-2-8, IV-2-3, IV-2-4; IV-2-5; IV-3-3-5; IV-3-3-6); 金融商品取引業者等向けの総合的な監督指針III-1 (Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, III-1); 主要行等向けの総合的な監督指針 III-2-3-1-3 (Comprehensive Guidelines for Supervision of Major Banks, etc, III-2-3-1-3).</p>	<p>>MAS guidelines provide that risk management policies and processes should provide a comprehensive institution-wide view of the financial institution's exposures to material risks, such as credit, market, underwriting, liquidity, country and transfer, interest rate, legal, compliance, fraud, reputational, strategic, regulatory and operational risks.</p> <p>>MAS guidelines provide that risk assessments should review risks arising from the macroeconomic environment that affect relevant markets.</p> <p>>MAS guidelines provide that the board of a financial institution should ensure that senior management establishes a risk management system for identifying, measuring, evaluating, monitoring, reporting and controlling or mitigating risks regularly. The risk management function should also be independent.</p> <p>Source: MAS Guidelines on Risk Management Practices.</p>

Principle 2	Policy Goal 2: Firms Should Establish Policies that Address Business Continuity Agreements			
	US	EU	Australia	Canada
<p>Jurisdictions appear to set out comparable requirements for the establishment of business continuity agreements.</p>	<p>>SDs and MSPs must have business continuity and disaster recovery plans that outline the procedures to be followed in the event of an emergency or other disruption of its normal business activities.</p> <p>>Business continuity and disaster recovery plans should be designed to enable the SD or MSP to continue or resume any operations by the next business day with minimal disturbance to its counterparties and the market.</p> <p>>CFTC rules also require periodic testing of business continuity and disaster recovery plans.</p> <p>Sources: CEA § 4s(j); 17 C.F.R. § 23.603.</p>	<p>>Requires investment firms and credit institutions to establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities; or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.</p> <p>>Investment firms and credit institutions must conduct periodic testing of back-up facilities.</p> <p>Sources: MIFID, Article 13(4); MIFID II, Article 16(4); MIFID-ID, Articles 5(3), 14(2)(k); MIFID II-SR, Articles 21(3), 31(2)(k).</p>	<p>>Requires ADIs to develop and maintain a business continuity plan that documents policies, standards and procedures for ensuring that critical business operations can be maintained or recovered in a timely fashion in the event of a disruption. Further requires ADIs to review and test their business continuity plans annually.</p> <p>>ASIC guidance requires AFS licensees to consider the implementation of potential risk treatments in their risk management systems, including business continuity plans.</p> <p>Sources: Banking Act § 11AF; Prudential Standard CPS 232; Corporations Act, §912A(1); ASIC Regulatory Guide 259.89.</p>	<p>>OSFI requires FRFI applicants to submit, for OSFI's approval, a proposed business continuity management policy, business impact analysis, and plans for business continuity and disaster recovery. In particular, the FRFI's business continuity plan should ensure that the proposed FRFI has in its possession, or can readily access, all records necessary to allow it to sustain business operations, meet its regulatory obligations, and provide all information as may be required by OSFI.</p> <p>Source: OSFI's Guide for Incorporating Banks and Federally Regulated Trust and Loan Companies (Revised June 2015).</p>

Principle 2	Policy Goal 2: Firms Should Establish Policies that Address Business Continuity Agreements		
	Hong Kong	Japan	Singapore
<p>Jurisdictions appear to set out comparable requirements for the establishment of business continuity agreements.</p>	<p>>Guidance for AIs provides that senior management should establish policies, standards and processes for business continuity planning, which should be endorsed by the board.</p> <p>>Guidance for AIs states that business continuity plans should provide detailed guidance and procedures to respond to and manage a crisis in order to resume and continue critical business services and functions identified in business impact analysis and ultimately to return to business as usual. Additionally, business continuity plans should be periodically tested.</p> <p>>LCs are expected to develop and maintain business continuity plans and establish and maintain appropriate internal controls and risk management measures to protect their key business functions and recover them in a timely fashion in the event of operational disruptions.</p> <p>Sources: HKMA Supervisory Policy Manual TM-G-2; Circular to Licensed Corporations concerning Effective Business Continuity Plans.</p>	<p>>Requires FIBOs and RFIs engaging in securities business to have business continuity management (BCM) and business continuity plan (BCP) processes in place. This was included in the CFTC's entity level comparability determination for Japan⁴⁵.</p> <p>>Guidelines provide that management should actively manage and improve BCM and BCP constantly. Additionally, business continuity plans should be periodically tested.</p> <p>Sources: 金融商品取引業者等向けの総合的な監督指針 IV-3-1-6 (Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, IV-3-1-6); 事業継続ガイドライン 第三版、内閣府 (Business Continuity Guidelines 3rd ed., Cabinet Office).</p>	<p>>MAS guidelines encourage financial institutions to adhere to business continuity principles including board oversight of business continuity management, regular testing, and certain recovery strategies and objectives⁴⁶.</p> <p>>All components of a business process should be meaningfully tested (eg, from front-line through to supporting and processing components, etc).</p> <p>Source: MAS Guidelines on Risk Management Practices – Business Continuity Management.</p>

⁴⁵ See Comparability Determination for Japan: Certain Entity-Level Requirements, 78 Fed. Reg. 78910 (Dec. 27, 2013), available at <http://www.cftc.gov/LawRegulation/FederalRegister/OrdersandOtherAnnouncements/2013-30976a>

⁴⁶ While these are guidelines, MAS reviews business continuity plans implemented by financial institutions in the course of its supervision of institutions, taking into consideration the extent to which the institution has observed such guidelines and its risk profile

Principle 2	Policy Goal 3: Firms Should Conduct Portfolio Reconciliation			
	US	EU	Australia	Canada
<p>Most jurisdictions appear to set out comparable portfolio reconciliation requirements.</p>	<p>>Requires SDs and MSPs to engage in periodic portfolio reconciliation with respect to their non-cleared swaps.</p> <p>>Requires SDs and MSPs to have policies and procedures in place for portfolio compression with respect to their non-cleared swaps, when appropriate.</p> <p>Sources: CEA § 4s(i); 17 C.F.R. §§ 23.502, 23.503.</p>	<p>>Requires financial counterparties and non-financial counterparties to engage in periodic portfolio reconciliation with respect to their non-cleared derivatives⁴⁷.</p> <p>>Requires financial counterparties and non-financial counterparties that have 500 or more OTC derivatives contracts outstanding with a given counterparty to have policies and procedures in place that would enable counterparties to analyze the possibility of conducting a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise.</p> <p>Sources: Commission Delegated Regulation (EU) No 149/2013 (EMIR RTS), Article 13-14 supplementing EMIR; Regulation (EU) 600/2014 Article 31 (MIFIR)⁴⁸.</p>	<p>>ADIs must have policies and procedures in place to: (i) ensure their non-cleared derivatives portfolios are reconciled at regular intervals; and (ii) regularly assess and conduct portfolio compression to the extent appropriate.</p> <p>>Portfolio reconciliation and compression is consistent in principle with risk management practices set out in ASIC regulatory guidance.</p> <p>Sources: Banking Act § 11AF; Prudential Standard CPS 226; ASIC Regulatory Guide 259.</p>	<p>>Guidelines provide that an FRFI should seek to periodically engage in portfolio reconciliation of non-cleared derivatives with counterparties with which it has a material number of derivatives outstanding in order to identify and facilitate resolution of discrepancies, particularly with respect to the valuation of OTC derivatives transactions. Additionally, procedures should be in place to resolve any discrepancies or disputes with respect to material terms and valuations in a timely manner.</p> <p>>For portfolios with large numbers of non-cleared derivatives contracts containing substantially similar economic terms, guidelines state that an FRFI should periodically assess the potential for portfolio compression and, where appropriate, engage in portfolio compression on a bilateral and multilateral basis to reduce the risk, cost and inefficiency of maintaining redundant transactions on the counterparties' books.</p> <p>Source: OSFI's Guidelines: Sound Derivatives Practices – Portfolio Reconciliation & Compression, No. B-7 (Nov. 2014).</p>

Principle 2	Policy Goal 3: Firms Should Conduct Portfolio Reconciliation		
	Hong Kong	Japan	Singapore
<p>Most jurisdictions appear to set out comparable portfolio reconciliation requirements.</p>	<p>>Als must have policies and procedures in place to ensure that their non-cleared derivatives portfolios are reconciled at regular intervals; Als should also have policies and procedures in place to regularly assess the need for (and, if appropriate, engage in) portfolio compression.</p> <p>>SFC guidelines encourage portfolio reconciliation.</p> <p>Sources: Banking Ordinance § 7(3); HKMA Supervisory Policy Manual CR-G-14, §§ 4.4, 4.5; SFC guidelines.</p>	<p>>Japan does not yet have a specific rule requiring portfolio reconciliation and compression. However, risk management procedures applicable to RFIs and FIBOs may in practice achieve satisfaction with this principle (cross-border principle 2).</p>	<p>>While the MAS does not yet have a specific regulation on portfolio reconciliation and compression, risk management procedures may in practice achieve satisfaction with this principle.</p> <p>>Additionally, rules for portfolio reconciliation and compression are being proposed in the latest amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations⁴⁹.</p>

⁴⁷ The term 'financial counterparty' includes both investment firms and credit institutions, among other things. The term 'non-financial counterparty' refers to an entity that is not an investment firm, credit institution or other financial entity (eg, insurance undertaking). See Regulation (EU) No. 648/2012, Article 2(8)-(9)

⁴⁸ MIFIR applies to credit institutions "when providing one or more investment services and/or performing investment activities". MIFIR, Article 1(2)

⁴⁹ See MAS, Consultation Paper II on Draft Regulations Pursuant to the Securities and Futures Act, available at <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2017/Consultation-Paper-II-on-Draft-Regulations-Pursuant-to-the-Securities-and-Futures-Act.aspx>

Principle 3: Foreign regulations that require firms to maintain an effective and accurate system of records demonstrate comparability.

Swap data record-keeping is an important component of an effective internal risk management process. Timely, accurate and comprehensive record-keeping of a swap transaction enhances a firm's internal supervision, as well as a regulator's ability to detect and address market or regulatory abuses. Effective record-keeping requirements should allow regulators and firms to conduct trade reconstructions in the event of market disruptions, disputes between counterparties or significant market losses.

Notably, records required to be kept by a foreign jurisdiction should not have to match the records required to be kept under CFTC rules. To be comparable, foreign regulations should instead require SDs to keep records of their trading to enable trade reconstruction and allow regulators access to this information.

To that end, foreign jurisdictions should have regulations in place that meet the policy goals set out below.

Principle 3 Assessment

Principle 3	Policy Goal 1: Swap Data Records Should be Kept for an Extended Period of Time			
	US	EU	Australia	Canada
Jurisdictions appear to set out comparable records requirements.	<p>>SDs and MSPs must keep records of a transaction during the life of a swap and for five years after the termination of the swap.</p> <p>Sources: CEA § 4s(f)-(g); 17 C.F.R. §§ 23.202, 23.203.</p>	<p>>Requires investment firms and credit institutions to keep and maintain records of all services and transactions undertaken for a period of not less than five years.</p> <p>Sources: MIFID, Articles 13(6), 25(2); MIFID II, Articles 16(6)-(7); MIFID-ID, Articles 5.1(f), 51; Commission Regulation (EC) No. 1287/2006 (MIFID-IR); MIFIR Article 25; MIFID II-SR, Articles 72 to 76.</p>	<p>>Certain entities, including 'Australian entities'⁵⁰, are required to comply with a five-year record-keeping obligation for OTC derivatives transactions (measured from the date the record is made or amended)⁵¹.</p> <p>Sources: Corporations Act § 901A(3)(h); Derivative Transaction Rules (Reporting) Rules, Part 2.3.</p>	<p>>Ontario Securities Commission (OSC) requires reporting counterparties⁵² to maintain records of transactional data for at least seven years after the date on which the derivatives transaction expires or terminates.</p> <p>Source: OSC Trade Reporting Rules Part 3, S. 36(1).</p>

⁵⁰ 'Australian entity' means an entity (including a corporation, partnership, managed investment scheme or trust) that is incorporated or formed in Australia. ASIC Derivative Transaction Rules (Reporting) 2013, Rule 1.2.3

⁵¹ Note that entities subject to the record-keeping requirements are not required to keep the records where such entities have arrangements in place to access those records in a licensed repository or prescribed repository, either directly or through another person for the aforementioned five-year period. ASIC Derivative Transaction Rules (Reporting) 2013, Rule 2.3.1(4)

⁵² 'Reporting counterparty' means the counterparty to a derivatives transaction as determined under § 25 of the OSC Trade Reporting Rules that is required to report derivatives data under § 26 of the OSC Trade Reporting Rules

Principle 3	Policy Goal 1: Swap Data Records Should be Kept for an Extended Period of Time		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable records requirements.	>'Prescribed persons' ⁵³ are subject to a five-year record-keeping obligation (from date of termination) for certain OTC derivatives transactions. Sources: SFO § 101E; Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, Part 3.	>Requires preservation of data of transactions by FIBOs and RFIs, unless FIBOs or RFIs provide TRs with data of transactions. >Rules require data of OTC derivatives transactions to be preserved by FIBOs or RFIs unless TRs preserve the data. Sources: 金融商品取引法第百五十六条の六十四 (Financial Instruments and Exchange Act, Article 156-64); 店頭デリバティブ取引等の規制に関する内閣府令第四条第一項、第七条及び第十条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Articles 4(1); 7; 10); 店頭デリバティブ取引等の規制に関する内閣府令第七条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 7); 店頭デリバティブ取引等の規制に関する内閣府令第四条第一項 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 4(1)).	>'Specified persons' ⁵⁴ are required to retain records of all relevant books and all transaction information and other information as may be required by the MAS for the purposes of the SFA for five years. Sources: SFA §§ 125 and 129; Reporting of Derivatives Contracts Regulations, Part 1, Regulation 4.

Principle 3	Policy Goal 2: Swap Data Records Should be Sufficiently Comprehensive to Enable Regulators to Conduct Trade Reconstruction			
	US	EU	Australia	Canada
Jurisdictions appear to set out comparable requirements that would enable regulators to conduct trade reconstructions.	>Requires each SD or MSP to keep daily trading records and ensure its records include all information necessary to conduct a comprehensive and accurate trade reconstruction for each of its swap transactions. Sources: CEA § 4s(f)-(g); 17 C.F.R. §§ 23.202, 23.203.	>Requires investment firms and credit institutions to maintain records in a form and manner to enable regulators to reconstitute each key stage of the processing of each transaction. Sources: MIFID, Articles 13(6), 25(2); MIFID II, Articles 16(6)-(7); MIFID-ID, Articles 5.1(f), 51; Commission Regulation (EC) No. 1287/2006 (MIFID-IR); MIFIR Article 25; MIFID II-SR, Articles 72 to 76.	>ASIC rules appear to facilitate trade reconstruction ⁵⁵ . Sources: Corporations Act § 901A(3)(h); Derivative Transaction Rules (Reporting) Rules, Part 2.3.	>Requires firms that engage in derivatives transactions to keep records of all transactional data for their derivatives transactions. Source: OSC Rule 91-507 S.36(1) and S.18(2).

⁵³ 'Prescribed persons' in this context includes (but is not limited to) an: (i) authorized financial institution; (ii) approved money broker; and (iii) an LC. Note that Schedule 1 of the SFO defines an 'authorized financial institution' as an AI. SFO § 101A

⁵⁴ 'Specified persons' includes any: (a) bank in Singapore licensed under the Banking Act; (b) subsidiary of a bank incorporated in Singapore; (c) merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); (d) finance company licensed under the Finance Companies Act (Cap. 108); (e) insurer licensed under the Insurance Act (Cap. 142); (f) approved trustee referred to in § 289; (g) holder of a capital markets services license; or (h) other person who is, or who belongs to a class of persons which is, prescribed by the MAS by regulations made under SFA § 129 for the purposes of this definition. SFA § 124

⁵⁵ For example, ASIC requires ADIs and AFS licensees to maintain records in a manner that would enable ASIC to determine such entity's compliance with ASIC rules. See Derivative Transaction Rules (Reporting) Rules, Part 2.3

Principle 3	Policy Goal 2: Swap Data Records Should be Sufficiently Comprehensive to Enable Regulators to Conduct Trade Reconstruction		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable requirements that would enable regulators to conduct trade reconstructions.	>Records required to be kept under SFC rules appear to be sufficiently comprehensive to enable regulators to conduct trade reconstructions ⁵⁶ . Sources: SFO § 101E; Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules, Part 3.	>Records required to be kept under Japan's rules appear to be sufficiently comprehensive to enable regulators to conduct trade reconstructions ⁵⁷ . Sources: 金融商品取引法第五十六条の六十四 (Financial Instruments and Exchange Act, Article 156-64); 店頭デリバティブ取引等の規制に関する内閣府令第四条第一項、第七条及び第十条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Articles 4(1); 7; 10); 店頭デリバティブ取引等の規制に関する内閣府令第七条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 7); 店頭デリバティブ取引等の規制に関する内閣府令第四条第一項 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 4(1)).	>Records required to be kept under MAS's rules appear to be sufficiently comprehensive to enable regulators to conduct trade reconstructions ⁵⁸ . Sources: SFA §§ 125 and 129; Reporting of Derivatives Contracts Regulations, Part 1, Regulation 4.

Principle 3	Policy Goal 3: Regulators Should Have Access to Swap Data Records			
	US	EU	Australia	Canada
Jurisdictions appear to set out comparable requirements for accessing of swap data records.	>The records that SDs and MSPs are required to maintain must be made available for disclosure to and inspection by the CFTC and their prudential regulator, promptly upon request. Sources: CEA § 4s(f); 17 C.F.R. § 23.606.	>Requires that investment firms and credit institutions maintain records in a form and manner that would enable local regulators to readily access such records. Sources: MIFID, Articles 13(6), 25(2); MIFID II, Articles 16(6)-(7); MIFID-ID, Articles 5.1(f), 51; Commission Regulation (EC) No. 1287/2006 (MIFID-IR); MIFIR Article 25; MIFID II-SR, Articles 72 to 76.	>ASIC rules compel release of records to ASIC, APRA and the Reserve Bank of Australia upon request. Sources: ASIC Act §§ 29-33; Derivative Transaction Rules (Reporting) Rule 2.3.2; ASIC Derivative Trade Repository Rules § 2.3.4(5).	>OSFI requires FRFIs to disclose transactional data to OSFI periodically. Source: OSFI Guidelines, Derivatives Disclosures, No. D-6 (Revised July 2010).

Principle 3	Policy Goal 3: Regulators Should Have Access to Swap Data Records		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable requirements for accessing of swap data records.	>Prescribed persons must provide to the SFC or HKMA access to its records upon the SFC's or HKMA's request. Sources: SFO § 101E(7)-(8); SFO §186A.	>When necessary, the prime minister may order a FIBO, RFI, a subsidiary of FIBO or a holding company of a FIBO or RFI to submit reports or materials as a reference with regard to its business or assets, and may have the relevant officials inspect the state of its business or assets, documents, and other objects. Source: 金融商品取引法第五十六条の二 (Financial Instruments and Exchange Act, Article 56-2).	>MAS has the authority to require any person to furnish information or documents relating to derivatives contracts or transactions. Sources: SFA § 126; SFA § 150B.

⁵⁶ Specifically, the records required to be kept include: records evidencing the existence and purpose of the specified OTC derivatives transaction, including all agreements relating to the transaction; records showing particulars of the execution of the specified OTC derivatives transaction, including orders, ledgers and confirmations of the transaction; and records showing particulars of the terms and conditions of the specified OTC derivatives transaction, including particulars relating to all payments and margin requirements relating to the transaction

⁵⁷ Data required to be kept includes: identity of FIBOs or RFIs; type and date of contract; date when transaction entered into effect or extinguished; and other matters related to transactions, including date of delivery, whether the transaction is for selling or purchasing and agreed price

⁵⁸ Requires entities to keep all transactional information

Principle 4: Foreign regulations that require firms to make swap data available to regulators demonstrate comparability.

To be comparable, foreign jurisdictions should have TRs in place that are PFMI-compliant. Also, reportable (both foreign and domestic) data should be sufficiently detailed to allow regulators to assess systemic risk and conduct market surveillance and enforcement.

Policy goal 1: TRs should meet the standards set out in the PFMIs.

To have a comparable reporting regime, a foreign jurisdiction should have a TR that meets the standards of systems integrity, security and resiliency consistent with the standards set out in the PFMIs.

Policy goal 2: Reportable data should provide regulators sufficient information regarding a firm's derivatives exposure.

Foreign regulators should be able to examine the entire global network of derivatives transactions at a detailed level. Reportable data should provide sufficient information regarding the nature and magnitude of derivatives exposures, the interconnections among firms, the formation of transactions and any material changes in such transactions.

Consistent with the IOSCO report⁵⁹, data stored in TRs should be available to regulators in three dimensions: depth, breadth and identity⁶⁰.

Depth specifies the granularity of information that should be accessible to regulators on a transaction level (contract terms, counterparties' execution price, economic terms that are material to determining valuation), position level (a snapshot of all positions for a particular product) or aggregate level (gross notional amount outstanding for an underlier) basis.

Breadth refers to the access to data at various levels of depth in terms of counterparty or underlying product.

Identity refers to whether the reported data identifies counterparty information (at the transaction or position level) or contains only anonymized data⁶¹. A common understanding among regulators on what constitutes sufficient information would facilitate the aggregation of data maintained in multiple trade repositories.

For the purposes of assessing comparability of a foreign reporting regime, the inquiry should be focused on whether the foreign reporting regime makes reporting data available to the regulators in the three dimensions set out above.

⁵⁹ See IOSCO report, Authorities' Access to Trade Repository Data (August 2013), available at <http://www.bis.org/cpmi/publ/d110.htm>

⁶⁰ While IOSCO has evaluated and determined the extent to which foreign jurisdictions' TRs are able to provide local regulators with position-, aggregate-, and transactional-level swap data, IOSCO has to date not released standardized data sets for TRs. Once IOSCO releases standardized data sets for TRs, G-20 jurisdictions are expected to demonstrate that their TRs are compliant with such data sets. For the purposes of this paper, foreign jurisdictions' TRs that are able to provide local regulators with position-, aggregate-, and transactional-level swap data should be determined comparable

⁶¹ Identification of participants will be facilitated by the use of legal entity identifiers (LEIs)

Principle 4 Assessment

Principle 4	Policy Goal 1: TRs Should Meet the Standards Set Out in the PFMI			
	US	EU	Australia	Canada
Jurisdictions appear to set out comparable requirements for the establishment of PFMI-compliant trade repositories.	<p>>Swap data repositories (SDRs) are largely consistent with the PFMI standards.</p> <p>>CFTC requires SDs to report transactional and positional data to SDRs.</p> <p>>CFTC has rules in place that provide for the registration, establishment, and supervision of SDRs.</p> <p>Sources: Committee on Payments and Market Infrastructures (CPMI), Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); CEA § 21; 17 C.F.R. 43, 17 C.F.R. 45, 17 C.F.R. 49.</p>	<p>>TRs are consistent with the PFMI standards.</p> <p>>Requires financial counterparties and non-financial counterparties⁶² to ensure that the details of any derivatives contract they have concluded and of any modification or termination of the contract are reported to a registered or authorized TR.</p> <p>>The EU has implemented rules regarding establishment and registration of trade repositories.</p> <p>Sources: CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); EMIR, Article 9, Title VI.</p>	<p>>TRs are consistent with the PFMI standards.</p> <p>>ASIC requires ADIs and AFS licensees to report certain transactional and positional information to derivative TRs.</p> <p>>Australia has regulations related to the establishment and operation of trade repositories.</p> <p>Sources: CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); Corporations Act § 903A; Derivative Trade Repository Rules 2013.</p>	<p>>TRs are consistent with the PFMI standards.</p> <p>>OSC requires counterparties to derivatives transactions to report specified derivatives data to TRs.</p> <p>>OSC has implemented rules relating to the establishment and operation of TRs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); OSC's Trade Reporting Rules, Annex D.</p>

Principle 4	Policy Goal 1: TRs Should Meet the Standards Set Out in the PFMI		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable requirements for the establishment of PFMI-compliant trade repositories.	<p>>TRs are consistent with the PFMI standards.</p> <p>>Requires that prescribed persons report certain OTC derivatives transactions to HKMA; the information is reported to the Hong Kong Trade Repository (HKTR), established by the HKMA.</p> <p>Sources: CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); SFO § 101B.</p>	<p>>TRs are consistent with the PFMI standards.</p> <p>>Japan has regulations in place relating to the establishment and designation of TRs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); 金融商品取引法第百五十六條の六十七から第百五十六條の八十四 (Financial Instruments and Exchange Act, Articles 156-67 to 156-84).</p>	<p>>TRs are consistent with the PFMI standards.</p> <p>>MAS requires specified persons to report certain transactional data for interest rate derivatives and credit derivatives to a licensed TR or licensed foreign TR.</p> <p>>MAS has implemented regulations related to the licensing and supervision of TRs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017); SFA Part IIA; Trade Repositories Regulations.</p>

⁶² The term 'financial counterparty' includes both investment firms and credit institutions, among other things. The term 'non-financial counterparty' refers to an entity that is not an investment firm, credit institution or other financial entity (eg, insurance undertaking). See Regulation (EU) No. 648/2012, Article 2(8)-(9)

Principle 4	Policy Goal 2: Reportable Data Should Provide Regulators Sufficient Information Regarding a Firm's Derivatives Exposure			
	US	EU	Australia	Canada
Jurisdictions appear to set out comparable requirements that provide regulators with sufficient exposure information.	>TRs appear to have transaction-, position- and aggregate-level data. Sources: CEA §§ 2(a)(13), 21(b); 17 C.F.R. 43, 17 C.F.R. 45, 17 C.F.R. 49.	>TRs appear to have transaction-, position- and aggregate-level data. Sources: Commission Delegated Regulation (EU) No. 148/2013 (EMIR RTS); Commission Delegated Regulation (EU) No. 1247/2012 (EMIR ITS); MIFIR Article 26.	>TRs appear to have transaction-, position- and aggregate-level data. Sources: Corporations Act § 901A; ASIC Derivative Transaction Rules (Reporting) 2013, Schedule 2.	>TRs appear to have transaction-, position- and aggregate-level data. Source: OSC Trade Reporting Rules, Appendix A.

Principle 4	Policy Goal 2: Reportable Data Should Provide Regulators Sufficient Information Regarding a Firm's Derivatives Exposure		
	Hong Kong	Japan	Singapore
Jurisdictions appear to set out comparable requirements that provide regulators with sufficient exposure information.	>HKTR appears to have transaction-, position- and aggregate-level data. Sources: Reporting and Record Keeping Rules, Schedule 1, Part 4.	>TRs appear to have transaction-, position- and aggregate-level data. Sources: 金融商品取引法第五十六条の六十四第三項 (Financial Instruments and Exchange Act, Articles 156-64(3)); 店頭デリバティブ取引等の規制に関する内閣府令第四条第一項及び第九条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Articles 4(1) and (9)).	>TRs appear to have transaction-, position- and aggregate-level data. Sources: SFA Part VIA; Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 (No. S 668/2013), First Schedule.

Principle 5: Foreign jurisdictions that have clearing and settlement services that comply with the BIS/IOSCO principles and have similar clearing mandates should be deemed comparable.

Policy goal 1: CCPs should be PFMI compliant.

The PFMIs provide an appropriate framework for determining comparability of CCPs. The PFMIs represent a comprehensive set of key considerations that address organization, governance, credit and liquidity risk management, settlement, default management, general business and operational risk management, access, efficiency and transparency, among other things. A foreign CCP should therefore be deemed comparable to a US CCP⁶³ if such CCP is subject to supervision by an appropriate regulator in its home country and is in compliance with the PFMIs⁶⁴.

⁶³ CEA § 5b(h), 7 U.S.C. § 7a-1(h) allows the CFTC to exempt a CCP from registration for clearing of swaps if the CFTC determines that the CCP is “subject to comparable, comprehensive supervision and regulation by . . . the appropriate government authorities in the home country of the organization”. Four exemptions have been granted so far – to ASX Clear, Korea Exchange, Inc, Japan Securities Clearing Corporation and OTC Clearing Hong Kong for purposes of clearing proprietary swap positions of US clearing members

⁶⁴ In the context of clearing (and as indicated in this section), most jurisdictions have established CCPs that comply with the PFMI standards and have established agency oversight over clearing activities. These agencies are charged with specific duties to regulate clearing activities and other goals (eg, ensuring that CCPs operate in a safe and efficient manner and reducing systemic risk through central clearing)

Policy goal 2: Mandatory clearing obligations should achieve similar objectives.

Substituted compliance standards for the clearing mandate should permit application of another jurisdiction's clearing exceptions where the exceptions are based on fundamentally shared policy objectives. These exceptions should prevail over any tendency on the part of any regulator to apply its rules in cases of some differences. In other words, variations in the scope or the application of the clearing mandate were anticipated by the G-20 leaders, and should be respected as long as they remain subordinate to the overall policy objectives⁶⁵.

The end-user exception is a prime example of the above noted premise. Commercial end users use derivatives to hedge the risk of their commercial activities through unrestricted access to the derivatives markets. The derivatives regulations in the US recognize that commercial end users do not pose significant systemic risk to the markets. The Dodd-Frank Act exempts SDs and buy-side firms from the clearing mandate for transactions with a commercial end user that is hedging or mitigating commercial risk⁶⁶.

In line with the same policy objectives, the EU clearing mandate provides a partial exemption for non-financial counterparties where their positions (exclusive of hedging transactions) fall below a certain clearing threshold determined by the European Securities and Markets Authority. Since the scope and specifics of the exemption are based on particular characteristics of the EU market, the CFTC should recognize such exemptions because the clearing policy objectives in these two jurisdictions are aligned.

Another example is the clearing exception provided by certain foreign jurisdictions to smaller financial institutions. The primary benefit of clearing is the reduction of counterparty risk. Small financial institutions present significantly less risk to the derivatives markets given their market positions and activity, even if a small financial institution fails to perform under the terms of a cleared product. The exception is appropriate for US firms executing a transaction subject to mandatory clearing with a small financial institution located in a foreign jurisdiction, if such transaction is not yet subject to a mandatory clearing obligation in that foreign jurisdiction. To preserve the competitive advantage of US firms, the Dodd-Frank Act allowed the CFTC to exempt certain transactions from the mandatory clearing obligation⁶⁷. Such an exception will ensure US firms can continue to expand their business activities and invest in the US economy.

The examples above reinforce the overarching point that even if the scope of the clearing obligation in a foreign jurisdiction does not precisely align with the US clearing mandate, the two jurisdictions can still be comparable when assessing the risk the counterparty poses to the system and the potential it has to affect other parties in the system and the derivatives markets in general.

⁶⁵ With respect to the US, the CEA's anti-evasion provision permits the CFTC to prevent abuse of the clearing exception if the CFTC determines that a transaction is structured to evade the mandate. CEA § 2(h)(7)(F), 7 U.S.C. § 2(h)(7)(F)

⁶⁶ CEA § 2(h)(7)(A)(ii), 7 U.S.C. § 2(h)(7)(A)(ii)

⁶⁷ CEA § 4(c)(1), 7 U.S.C. § 6(c)(1) provides in relevant part that "[i]n order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation or order . . . may . . . exempt any agreement contract or transaction (or class thereof) . . . either unconditionally or on stated terms or conditions . . . from any requirements of this Act"

Principle 5 Assessment

Principle 5	Policy Goal 1: CCPs Should be PFMI Compliant			
	US	EU	Australia	Canada
<p>Jurisdictions have CCPs that have been established and operate in a manner that is consistent with PFMI standards.</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>>The US has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); 17 C.F.R. 39; CEA § 2(h); 17 C.F.R. 50.</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>>The EU has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); Commission Delegated Regulation (EU) No. 153/2013; Commission Delegated Regulation (EU) No. 152/2013; EMIR, Articles 4-6.</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>>Australia has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); Corporations Act Part 7.3, § 901A(2)(c); Derivative Transaction Rules (Clearing) 2015.</p>	<p>>CCPs are established largely consistent with PFMI standards.</p> <p>>Canada has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); National Instrument 24-102 Clearing Agency Requirements.</p>

Principle 5	Policy Goal 1: CCPs Should be PFMI Compliant		
	Hong Kong	Japan	Singapore
<p>Jurisdictions have CCPs that have been established and operate in a manner that is consistent with PFMI standards.</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>>Hong Kong has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); SFO § 399(1); SFC Guidelines on the Application of the CPSS-IOSCO Principles for Financial Market Infrastructures; Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules.</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>>Japan has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); 金融商品取引法第百五十六條の六十二 (Financial Instruments and Exchange Act, Article 156-62); 店頭デリバティブ取引等の規制に関する内閣府令第二条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 2); 金融庁告示第六十号 (平成二十四年七月十一日) (Public Notice No. 60 (July 11, 2012)).</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>>Singapore has implemented rules related to the establishment and operation of CCPs.</p> <p>Sources: CPMI, Implementation Monitoring of PFMIs: Fourth Update to Level 1 Assessment Report (July 2017); SFA Part II, §§ 129C, 129G; Securities and Futures (Clearing Facilities) Regulations; SFA Part VIB.</p>

Principle 5	Policy Goal 2: Mandatory Clearing Obligations Should Achieve Similar Objectives			
	US	EU	Australia	Canada
Jurisdictions appear to have comparable clearing objectives and exemptions.	>The US clearing mandate currently covers certain interest rate and credit default swaps. Exemptions from the clearing mandate include end users entering into such transactions for hedging purposes, as well as inter-affiliate swap transactions. Sources: 17 C.F.R. 39; CEA § 2(h); 17 C.F.R. 50.	>Requires mandatory clearing of interest rate derivatives and credit derivatives (ie, index credit default swaps) by financial counterparties and non-financial counterparties ⁶⁸ that exceed certain thresholds. Certain types of intra-group transactions are also exempt from the clearing obligation. Sources: Commission Delegated Regulation (EU) No. 153/2013; Commission Delegated Regulation (EU) No. 152/2013; EMIR, Articles 4-6 ⁶⁹ .	>Requires ADIs and AFS licensees that exceed certain thresholds for gross notional outstanding positions held to clear certain types of interest rate derivatives. Sources: Corporations Act Part 7.3, § 901A(2)(c); Derivative Transaction Rules (Clearing) 2015.	>Requires mandatory clearing of certain interest rate derivatives by counterparties that exceed certain trading thresholds. Source: National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and Related Companion Policy (Jan. 2017).

Principle 5	Policy Goal 2: Mandatory Clearing Obligations Should Achieve Similar Objectives		
	Hong Kong	Japan	Singapore
Some jurisdictions appear to have comparable clearing objectives and exemptions.	>Hong Kong's clearing obligation covers basis swaps, overnight index swaps and interest rate swaps between an AI or licensed corporation and an AI, licensed corporation or financial service provider, provided such institutions exceed predetermined trading thresholds. Sources: SFO § 399(1); SFC Guidelines on the Application of the CPSS-IOSCO Principles for Financial Market Infrastructures; Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules.	>Certain types of interest rate swaps and credit default swaps are required to be cleared. >Clearing requirement generally applies to FIBOs or RFIs. Sources: 金融商品取引法第百五十六条の六十二 (Financial Instruments and Exchange Act, Article 156-62); 店頭デリバティブ取引等の規制に関する内閣府令第二条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 2); 金融庁告示第六十号 (平成二十四年七月十一日) (Public Notice No. 60 (July 11, 2012)).	>The clearing obligation will cover derivatives entered into by a 'specified person' ⁷⁰ . Regulations that will provide more details, including with respect to which products must be cleared, have not yet been finalized. Sources: SFA Part II, §§ 129C, 129G; Securities and Futures (Clearing Facilities) Regulations; SFA Part VIB.

⁶⁸ The term 'financial counterparty' includes both investment firms and credit institutions, among other things. The term 'non-financial counterparty' refers to an entity that is not an investment firm, credit institution or other financial entity (eg, insurance undertaking). See Regulation (EU) No. 648/2012, Article 2(8)-(9), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=GA>

⁶⁹ Clearing determinations appear as regulatory technical standards, available at <https://www.esma.europa.eu/regulation/post-trading/otc-derivatives-and-clearing-obligation>

⁷⁰ 'Specified person' in this context means any: (a) bank in Singapore licensed under the Banking Act; (b) merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); (c) finance company licensed under the Finance Companies Act (Cap. 108); (d) insurer licensed under the Insurance Act (Cap. 142); (e) approved trustee referred to in § 289 (a category of regulated entity being expanded to cover dealing in OTC derivative products); (f) holder of a capital markets services license; or (g) other person who is, or who belongs to a class of persons which is, prescribed by the MAS by regulations made under SFA § 129G for the purposes of this definition. See SFA § 129B, available at <http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?Compld:4cfe0106-a826-4adc-a05a-847ad3c11c6>

The CFTC could consider allowing any swap dealer located in a comparable jurisdiction to de-register as an SD, removing duplicative compliance burdens

NOTIFICATION PROCESS TO THE CFTC

Where the CFTC has determined that a foreign regulatory regime is comparable to the US regulatory regime based on an analysis of the foreign jurisdiction's risk-based rules, the CFTC may consider allowing any SD located in that jurisdiction to file a notice of de-registration if it is currently registered with the CFTC. A notice of de-registration should include a self-certification that the firm is located in a jurisdiction that has been determined comparable and is subject to its home country's supervisory oversight.

If the CFTC has determined that a foreign regulatory regime is partially comparable, the CFTC may consider providing limited registration designation.

CONCLUSION

The opportunity to make meaningful changes in the CFTC's cross-border determinations comes at a time when the current approach has resulted in a fragmented global derivatives market with unnecessary costs that provide little benefit in terms of overall risk reduction. This whitepaper has set out a substituted compliance framework based on risk-centered cross-border principles that the CFTC and other regulators could deploy in their substituted compliance determinations. ISDA stands ready to assist the CFTC and other regulators in their efforts to harmonize cross-border regulatory regimes.

APPENDIX A

United States

Principle 1: Capital and Margin Requirements

BCBS, Assessment of Basel III regulations – <http://www.bis.org/bcbs/implementation.htm>

United States of America (Dec. 2014) (<http://www.bis.org/bcbs/publ/d301.pdf>)

Regulatory Capital Rules, 78 Fed. Reg. 62018 (Oct. 11, 2013) (<https://www.gpo.gov/fdsys/pkg/FR-2013-10-11/pdf/2013-21653.pdf>)

BCBS, Twelfth progress report on adoption of the Basel regulatory framework (Apr. 2017) (<https://www.bis.org/bcbs/publ/d404.pdf>)

CEA § 4s(e), 7 U.S.C. § 6s(e) (<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title7/pdf/USCODE-2011-title7-chap1-sec6s.pdf>)

17 C.F.R. §§ 23.150-23.161 (<https://www.gpo.gov/fdsys/pkg/CFR-2016-title17-vol1/pdf/CFR-2016-title17-vol1-part23-subpartE.pdf>)

Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74840 (Nov. 30, 2015) (<https://www.gpo.gov/fdsys/pkg/FR-2015-11-30/pdf/2015-28671.pdf>)

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17 C.F.R. § 23.603 (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title17-vol1/pdf/CFR-2014-title17-vol1-sec23-603.pdf>)

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17 C.F.R. § 23.502 (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title17-vol1/pdf/CFR-2014-title17-vol1-sec23-502.pdf>)

17 C.F.R. § 23.503 (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title17-vol1/pdf/CFR-2014-title17-vol1-sec23-503.pdf>)

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17 C.F.R. § 23.202 (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title17-vol1/pdf/CFR-2014-title17-vol1-sec23-202.pdf>)

17 C.F.R. § 23.203 (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title17-vol1/pdf/CFR-2014-title17-vol1-sec23-203.pdf>)

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CEA § 21, 7 U.S.C. § 24a (<https://www.gpo.gov/fdsys/pkg/USCODE-2011-title7/pdf/USCODE-2011-title7-chap1-sec24a.pdf>)

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17 C.F.R. 45 (<https://www.gpo.gov/fdsys/pkg/CFR-2012-title17-vol1/pdf/CFR-2012-title17-vol1-part45.pdf>)

17 C.F.R. 49 (<https://www.gpo.gov/fdsys/pkg/CFR-2012-title17-vol1/pdf/CFR-2012-title17-vol1-part49.pdf>)

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17 C.F.R. 39 (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title17-vol1/pdf/CFR-2014-title17-vol1-part39.pdf>)

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BCBS, Twelfth progress report on adoption of the Basel regulatory framework (Apr. 2017) (<https://www.bis.org/bcbs/publ/d404.pdf>)

Regulation EU No. 648/2012 (EMIR), Article 11 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=GA>)

Commission Delegated Regulation (EU) 2016/2251 (Regulatory Technical Standard) (<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R2251&from=EN>)

Principle 2: Risk Management Requirements

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Directive 2014/65/EC (MIFID II), Articles 16(5), 16(2) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>)

Commission Directive 2006/73/EC (MIFID-ID), Articles 7, 9 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:241:0026:0058:EN:PDF>)

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CRD, Articles 76, 88(1) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:En:PDF>)

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Regulation (EU) 600/2014 Article 31 (MIFIR) (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN>)

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MIFIR, Article 25 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN>)

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Prudential Standard CPS 226 (<http://www.apra.gov.au/CrossIndustry/Documents/160225-DRAFT-CPS-226-FINAL.pdf>)

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Prudential Standard APS 310, Paragraphs 23-29 (<http://www.apra.gov.au/adi/Documents/Draft-APS-310-November-2008.pdf>)

Corporations Act § 912A(1) (http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s912a.html)

ASIC Regulatory Guide 259 (<http://download.asic.gov.au/media/4196472/rg259-published-27-march-2017.pdf>)

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Prudential Standard CPS 226 (<http://www.apra.gov.au/CrossIndustry/Documents/161206-Final-CPS-226-implementation-timetable.pdf>)

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Corporations Act § 901A(3)(h) (http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s901a.html)

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Principle 4: Reporting Requirements

CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

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Principle 5: Clearing Requirements

CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

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ASIC Derivative Transaction Rules (Clearing) 2015 (<https://www.legislation.gov.au/Details/F2015L01960>)

Canada

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BCBS, Assessment of Basel III Regulations: Canada (June 2014) (http://www.bis.org/bcbs/implementation/l2_ca.pdf)

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OSFI Guidelines, Derivatives Disclosures, No. D-6 (Revised July 2010) (http://www.osfi-bsif.gc.ca/Eng/Docs/d6_ifrs.pdf)

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CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

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OSC Trade Reporting Rules, Appendix A (http://www.osc.gov.on.ca/documents/en/Securities-Category9/rule_20160512_91-507_derivatives-data-reporting.pdf)

Principle 5: Clearing Requirements

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Hong Kong**Principle 1: Capital and Margin Requirements**

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HKMA Supervisory Policy Manual CR-G-14 (<http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CR-G-14.pdf>)

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HKMA Supervisory Policy Manual IC-1 (<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2010/20101231e1.pdf>)

Core Operational and Financial Risk Management Controls For Over-the-Counter Derivatives Activities of Persons Licensed by or Registered with SFC (<http://www.sfc.hk/web/EN/assets/components/codes/files-current/web/core-operational-and-financial-risk-management/core-operational-and-financial-risk-management.pdf>)

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HKMA Supervisory Policy Manual CG-3, 2.4 (<http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CG-3.pdf>)

SFC Code of Conduct, GP6, 16.7 (<http://www.sfc.hk/web/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/Code%20of%20Conduct%20for%20Persons%20Licensed%20by%20or%20Registered%20with%20the%20Securities%20and%20Futures%20Commission.pdf>)

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Japan⁷¹**Principle 1: Capital and Margin Requirements**

BCBS, Follow-up assessment of Basel III risk-based capital regulations – Japan (Dec. 2016) (<http://www.bis.org/bcbs/publ/d392.pdf>)

金融商品取引法代五十七条の五及び五十七条の十七(Financial Instruments and Exchange Act, Articles 57-5 and 57-17) (<http://law.e-gov.go.jp/htmldata/S23/S23HO025.html>) (Last revision: Sept. 4, 2015)

銀行法第14条の2及び第52条の25 (Banking Act, Articles 14-2 and 52-25) (<http://law.e-gov.go.jp/htmldata/S56/S56HO059.html>) (Last revision: June 3, 2016)

BCBS, Twelfth progress report on adoption of the Basel regulatory framework (Apr. 2017) (<https://www.bis.org/bcbs/publ/d404.pdf>)

金融商品取引業等に関する内閣府令第二百二十三条第一項第二十一号の五及び第二十一号の六、第七項、第八項、第九項、第十項、及び第十一 (Cabinet Office Ordinance on Financial Instruments Business, etc., Article 123(1) (xxi-v) and (xxi-vi); Article 123(7); Article 123(8); Article 123(9); Article 123(10); Article 123(11)) (<http://law.e-gov.go.jp/htmldata/H19/H19F10001000052.html>) (Last revision: Aug. 31, 2016)

⁷¹ ISDA cites to weblinks that provide the reader with Japan's derivatives regulations in the Japanese language, not the English language, because available English translations are not always up to date

Principle 2: Risk Management Requirements

金融商品取引業者等向けの総合的な監督指針III-2-7, III-2-8, IV-2-3, IV-2-4, IV-2-5, IV-3-3-5, 及び IV-3-3-6 (Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, III-2-7, III-2-8, IV-2-3, IV-2-4; IV-2-5; IV-3-3-5; IV-3-3-6) (http://www.fsa.go.jp/common/law/guide/kinyushohin/guideline_20170410.pdf) (Last revision: Apr. 2017)

金融商品取引業者等向けの総合的な監督指針III-1 (Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, III-1) (http://www.fsa.go.jp/common/law/guide/kinyushohin/guideline_20170410.pdf) (Last revision: Apr. 2017)

金融商品取引業者等向けの総合的な監督指針IV-3-1-6 (Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc, IV-3-1-6) (http://www.fsa.go.jp/common/law/guide/kinyushohin/guideline_20170410.pdf) (Last revision: Apr. 2017)

事業継続ガイドライン 第三版、内閣府 (Business Continuity Guidelines 3rd ed., Cabinet Office) (<http://www.bousai.go.jp/kyoiku/kigyou/keizoku/pdf/guideline03.pdf>) (Last revision: Aug. 2013)

Principle 3: Record-keeping Requirements

金融商品取引法第五十六条の六十四 (Financial Instruments and Exchange Act, Article 156-64) (<http://law.e-gov.go.jp/htmldata/S23/S23HO025.html>) (Last revision: Sept. 4, 2015)

店頭デリバティブ取引等の規制に関する内閣府令第四条第一項、第七条及び第十条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Articles 4(1); 7; 10) (<http://law.e-gov.go.jp/htmldata/H24/H24F10001000048.html>) (Last revision: March 1, 2016)

店頭デリバティブ取引等の規制に関する内閣府令第七条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 7) (<http://law.e-gov.go.jp/htmldata/H24/H24F10001000048.html>) (Last revision: March 1, 2016)

店頭デリバティブ取引等の規制に関する内閣府令第四条第一項 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 4(1)) (<http://law.e-gov.go.jp/htmldata/H24/H24F10001000048.html>) (Last revision: March 1, 2016)

金融商品取引法第五十六条の二 (Financial Instruments and Exchange Act, Article 56-2) (<http://law.e-gov.go.jp/htmldata/S23/S23HO025.html>) (Last revision: Sept. 4, 2015)

Principle 4: Reporting Requirements

CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

金融商品取引法第五十六条の六十七から第五十六条の八十四 (Financial Instruments and Exchange Act, Articles 156-67 to 156-84) (<http://law.e-gov.go.jp/htmldata/S23/S23HO025.html>) (Last revision: Sept. 4, 2015)

金融商品取引法第五十六条の六十四第三項 (Financial Instruments and Exchange Act, Articles 156-64(3)) (<http://law.e-gov.go.jp/htmldata/S23/S23HO025.html>) (Last revision: Sept. 4, 2015)

店頭デリバティブ取引等の規制に関する内閣府令第四条第一項及び第九条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Articles 4(1) and (9)) (<http://law.e-gov.go.jp/htmldata/H24/H24F10001000048.html>) (Last revision: March 1, 2016)

Principle 5: Clearing Requirements

CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

金融商品取引法第五十六条の六十二 (Financial Instruments and Exchange Act, Article 156-62) (<http://law.e-gov.go.jp/htmldata/S23/S23HO025.html>) (Last revision: Sept. 4, 2015)

店頭デリバティブ取引等の規制に関する内閣府令第二条 (Cabinet Office Ordinance on the Regulation of Over-the-Counter Derivatives Transactions, Article 2) (<http://law.e-gov.go.jp/htmldata/H24/H24F10001000048.html>) (Last revision: March 1, 2016)

金融庁告示第六十号(平成二十四年七月十一日 (Public Notice No. 60 (July 11, 2012)) (<http://www.fsa.go.jp/common/law/kokuji/20120711kin60.pdf>)

Singapore

Principle 1: Capital and Margin Requirements

BCBS, Assessment of Basel III regulations – Singapore (March 2013) (http://www.bis.org/bcbs/implementation/l2_sg.pdf)

Banking Act § 10 (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:af119fb0-b122-41e3-8a03-b7709fd2f5fd>)

MAS Notice 637 3-1 (MAS Notice 20637 Effective Jan 20 2017.pdf)

BCBS, Twelfth progress report on adoption of the Basel regulatory framework (Apr. 2017) (<https://www.bis.org/bcbs/publ/d404.pdf>)

SFA §§ 34(2)(i),(3)(a), 81S(2)(d) (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts (<http://www.mas.gov.sg/-/media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%20Licensing/Guidelines/Guidelines%20on%20Margin%20Requirements%20for%20NonCentrally%20Cleared%20OTC%20Derivatives%20Contracts.pdf>)

Principle 2: Risk Management Requirements

Guidelines on Risk Management Practices (http://www.mas.gov.sg/-/media/MAS/Regulations%20and%20Financial%20Stability/Regulatory%20and%20Supervisory%20Framework/Risk%20Management/Board%20and%20Senior%20Mgmt_1%20Apr%202013.pdf)

Guidelines on Risk Management Practices – Business Continuity Management (<http://www.mas.gov.sg/-/media/MAS/Regulations%20and%20Financial%20Stability/Regulatory%20and%20Supervisory%20Framework/Risk%20Management/BCMGuidelines.pdf>)

Principle 3: Record-keeping Requirements

SFA §§ 125, 129 (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

Reporting of Derivatives Contracts Regulations, Part 1, Regulation 4 (Reporting of Derivatives Contracts Regulations, Part 1, Regulation 4)

SFA § 126 (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

SFA § 150B (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

Principle 4: Reporting Requirements

CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

SFA Part IIA (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

Trade Repositories Regulations (http://www.mas.gov.sg/-/media/resource/legislation_guidelines/securities_futures/sub_legislation/sfa_reg/SFTR%20Regulations%202013.pdf)

SFA Part VIA (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 (No. S 668/2013), First Schedule (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:064f9826-1939-4a89-96f9-04e7c1ffce9c>)

Principle 5: Clearing Requirements

CPMI, Implementation Monitoring of PFMI: Fourth Update to Level 1 Assessment Report (July 2017) (<http://www.bis.org/cpmi/publ/d166.pdf>)

SFA Part II, §§ 129C, 129G (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

Securities and Futures (Clearing Facilities) Regulations (<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A47295b9f-a88c-4d56-8ab0-28ec3c7db202%20Depth%3A0%20Status%3Ainforce;rec=0;whole=yes>)

SFA Part VIB (<http://statutes.agc.gov.sg/aol/download/0/0/pdf/binaryFile/pdfFile.pdf?CompId:4cfe0106-a826-4adc-a05a-847ad3cff1c6>)

APPENDIX B

Assessment of G-20 Emerging Market Nations

- Key:**
- Regulations established appear to fulfill the relevant policy goal
 - Progress is being made toward establishing regulations in order to fulfill the relevant policy goal (ie, proposed regulations)
 - No regulations have been established that would fulfill the relevant policy goal

Principles and Policy Goals	Brazil	Mexico
Regulations Should Require Firms to be Capitalized Pursuant to the Basel III Framework	>Brazilian monetary authorities are in the process of implementing Basel III capital requirements.	>Mexican regulators have established capital requirements in line with the Basel III framework. Sources: Disposiciones de Caracter General Aplicables a las Instituciones de Crédito (the Banking Rules) issued by the National Banking and Securities Commission (CNBV); Disposiciones de Carácter General Aplicables a las Casas de Bolsa (the Broker Dealer Rules) issued by the CNBV.
Margin Requirements Should be BCBS-IOSCO Compliant	>N/A	>Expected to have proposed margin rules by the end of 2017, which are intended to be BCBS-IOSCO compliant.
Firms Should Establish Risk Management Policies and Procedures and an Effective Governance Structure	>N/A	>Regulators require banks and broker-dealers (collectively, 'firms') to adopt policies and procedures related to risk management and establish effective governance structures. Sources: Circular 4/2012 issued by Banco de México; Rules for Market Participants in the Derivatives Market (Reglas a las que Habrán de Sujetarse los Participantes del Mercado de Contratos de Derivados; the Listed Derivatives Rules) issued by the CNBV, Banco de México and the Ministry of Finance (Secretaría de Hacienda y Crédito Público); Prudential Regulations to Which Market Participants of Listed Derivatives Should be Subject (Disposiciones de Caracter Prudencial a que se Sujetarán en sus Operaciones los Participantes del Mercado de Contratos de Derivados Listados en Bolsa; Listed Derivatives Regulations) issued by the CNBV.
Firms Should Establish Policies that Address Business Continuity Agreements	>N/A	>Regulators require firms to establish business continuity plans. Sources: Circular 4/2012 issued by Banco de México; Listed Derivatives Rules; Listed Derivatives Regulations.
Firms Should Conduct Portfolio Reconciliation	>N/A	>Regulators require firms to have policies and procedures related to portfolio reconciliation and compression. Source: Circular 4/2012 of Banco de México.
Swap Data Records Should be Kept for an Extended Period of Time	>Central Bank of Brazil (BCB) requires that all financial institutions keep records of their swap transactions for a period of five years. Source: Articles 6 and 11, II, of Circular 3,461, issued by the BCB (July 24, 2009) ⁷² .	>Regulators require firms to maintain records of all transactions for a period of at least five years after the termination of such transaction. Sources: Banking Rules; Broker-Dealer Rules.
Swap Data Records Should be Sufficiently Comprehensive to Enable Regulators to Conduct Trade Reconstruction	> Swap data records that are required to be kept by firms appear to be sufficiently comprehensive to enable trade reconstruction. Source: Articles 6 and 11, II, of Circular 3,461, issued by the BCB (July 24, 2009).	>Swap data records that are required to be kept by firms appear to be sufficiently comprehensive to enable trade reconstruction. Sources: Banking Rules; Broker Dealer Rules; Circular 4/2012; Listed Derivatives Rules; Listed Derivatives Regulations.

⁷² Swap transactions qualify under the general rule of articles 6 and 11, II, of Circular 3,461

Regulators Should Have Access to Swap Data Records	<p>>BCB and the Brazilian Securities and Exchange Commission (CVM) can request for swap data records registered at CETIP⁷³ and BM&FBovespa⁷⁴ at any moment⁷⁵.</p> <p>We note, however, that this authority is not prescribed by any law or regulation. Rather, the above statement is a conclusion drawn from the fact that CETIP and BM&FBovespa render registration and depository services comprised within the so-called ‘systemically important’ settlement systems (authorized to operate under Law 10,214/01). One of the purposes of such systems is to allow the regulators (ie, BCB and CVM) to exercise their surveillance over market participants and transactions. Accordingly, CVM and BCB may request swap data records registered at CETIP and BM&FBovespa at any moment.</p>	<p>>All books and records of firms are subject to inspection and audit by the CNBV and other regulators.</p> <p>Sources: Banking Rules; Broker Dealer Rules.</p>
A Trade Repository Should Meet the Standards Set Out in the PFMIs	<p>> TRs are established consistent with PFMI standards.</p> <p>Source: CPMI, Implementation monitoring of PFMIs: Second update to Level 1 assessment Report (June 2015).</p>	<p>>Largely PFMI compliant; progress being made towards full PFMI compliance.</p> <p>Source: CPMI, Implementation monitoring of PFMIs: Second update to Level 1 assessment Report (June 2015).</p>
Reportable Data Should Provide Regulators Sufficient Information Regarding a Firm’s Derivatives Exposure	<p>>Information reported to TRs provide regulators with sufficient information regarding a firm’s derivatives exposure⁷⁶.</p>	<p>> Information reported to Banco de Mexico provides regulators with sufficient information regarding a firm’s derivatives exposure.</p>
CCPs Should Be PFMI Compliant	<p>> CCPs are established consistent with PFMI standards.</p> <p>Source: CPMI, Implementation monitoring of PFMIs: Second update to Level 1 assessment Report (June 2015).</p>	<p>>CCPs are established consistent with PFMI standards.</p> <p>Source: CPMI, Implementation monitoring of PFMIs: Second update to Level 1 assessment Report (June 2015).</p>
Mandatory Clearing Obligations Should Achieve Similar Objectives	<p>>No mandatory clearing requirements. On March 31, 2017, however, CVM provided updates on the research of the working group created to study the feasibility and advisability of adopting mandatory settlement by central counterparties of transactions carried out in the Brazilian derivatives market. The report established methodologies for determining whether certain derivatives contracts should be mandatorily cleared by a CCP. In principle, the working group decided not to impose mandatory clearing at this time, and stated the need for a permanent evaluation of the market.</p> <p>Source: CVM Memorandum No. 4/2017 (March 31, 2017).</p>	<p>> Mandatory clearing of 28 day-THE swap contracts.</p> <p>Source: Circular 4/2012 of Banco de México.</p>

⁷³ CETIP is largest central depository for OTC and private securities and derivatives in Latin America

⁷⁴ BM&FBovespa is an exchange in Brazil and the leading exchange in Latin America

⁷⁵ CETIP and BM&FBovespa have been merged and, as of March 29, 2017, the adopted corporate name is B3 S.A. - Brasil, Bolsa, Balcão

⁷⁶ Generally, the information to be reported for CETIP and BM&FBovespa registration purposes will encompass the nature of the transaction, underlying assets and indexes, amounts, currency, terms, parties and methods for settlement, among other relevant information that may be required by the registration systems to accurately describe the transaction