

16 May 2014

Secretariat of the Financial Stability Board
c/o Bank for International Settlements
CH-4002
Basel
Switzerland

FINANCIAL
MARKETS
LAW
COMMITTEE

Dear Sirs

Financial Stability Board (“FSB”) Seventh Progress Report on Implementation of OTC Derivatives Market Reforms (the “Report”)

The role of the Financial Markets Law Committee (the “FMLC” or the “Committee”) is to identify issues of legal uncertainty, or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks, and to consider how such issues should be addressed.

The Report addresses the state of the implementation of OTC derivatives market reforms under the “Pittsburgh Commitments”, which resulted from the meeting of G20 leaders in Pittsburgh, U.S.A. in 2009. The FMLC considers it important to comment on the Report.

The FMLC notes that the implementation of regulatory requirements in a consistent and coordinated fashion across jurisdictions remains a primary concern for many authorities and market participants. Inadequate consistency and coordination in implementation is likely to give rise to issues of legal uncertainty, leading to a combination of, amongst other things, excessive compliance costs, inadvertent non-compliance, regulatory arbitrage and/or an unwarranted curtailment of business within specific jurisdictions. The cross-border nature of the OTC derivatives market exacerbates the risk of such issues arising.

In order to address issues of cross-border implementation, the Report urges jurisdictions to:

- put in place their remaining legislation and regulation promptly and in a form flexible enough to respond to cross-border consistency and other issues that may arise;

T +44 (0)20 7601 5118

contact@fmlc.org

8 Lothbury

London

EC2R 7HH

www.fmlc.org

- provide clarity on their processes for making equivalency or comparability decisions (including whether additional authority may be needed to defer to other jurisdictions' regimes, where appropriate); and
- continue to coordinate closely and cooperate as needed to seek promptly to resolve cross-border regulatory issues if and when they are identified.

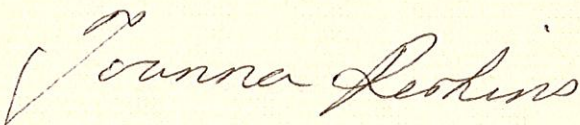
The FMLC wishes to endorse these recommendations. In particular, since there is no prospect of legislative uniformity in the field of OTC derivatives market reforms, the FMLC welcomes the call for clarity with respect to the criteria for equivalence and comparability.

The FMLC notes the progress made by the members of the OTC Derivatives Regulators Group, as stated in the Report, in their reaching the joint understanding that a flexible, outcomes-based approach should form the basis of final assessments regarding equivalence and substituted compliance.¹ The FMLC would nevertheless encourage the FSB to continue to work with national policymakers and regulators to develop a detailed methodology for achieving deference between authorities.

The FMLC takes the view that, in order to achieve the goal of cross-border consistency and cooperation, sufficient trust and confidence between national supervisors regarding their respective approaches to supervision and enforcement is desirable. This, in turn, requires significant political will among executives of the G20 jurisdictions. The FMLC is further of the view that, particularly in the case of cross-border activities such as the OTC derivatives market, a failure to address the challenges to achieving consistent implementation and cooperation inevitably leads to legal uncertainty and unwarranted complexity.

I and Members of the Committee would be delighted to meet you to discuss the issues raised in this letter. Please do not hesitate to contact me to arrange such a meeting or should you require further information or assistance.

Yours faithfully,



Joanna Perkins

FMLC Chief Executive

1. Report of the OTC Derivatives Regulators Group (ODRG) on Cross-Border Implementation Issues, March 2014.