

Brazil: Report on planned actions to address legal barriers in relation to trade reporting

Barriers to reporting information into TRs

Questions:

1. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) full reporting of transactions to a TR pursuant to domestic requirements. Please provide detail relating to the applicability of these actions to different types of transaction, types of counterparty, location of reporting entity, location of TR or location of counterparty.

Not applicable. Currently, reporting of OTC derivatives transactions to a domestic TR is mandatory, according to the Law, with no exemptions. In Brazil there are no TR-like entities other than the TRs of BM&FBovespa and Cetip. Moreover, there are no domestic requirements in place requiring the reporting of OTC derivatives to foreign TR or TR-like entities.

2. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) full reporting of transactions to a TR pursuant to foreign requirements. Please provide detail relating to the applicability of these steps to different types of transaction, types of counterparty, location of reporting entity, location of TR or location of counterparty.

Even though client consent is necessary to the reporting of OTC Derivatives transactions (either by the domestic or foreign counterparty) to foreign TRs or TR-like entities pursuant to foreign requirements, there is not in practice a legal barrier, as standing consent can always be provided in the indicated scenarios.

3. If your jurisdiction requires that counterparty consent be provided before a trade participant may make transaction reports (whether pursuant to domestic or foreign reporting requirements), but counterparties are not currently permitted to give 'standing consent', please report the actions to be taken (or that have been taken) that will permit standing consent to the reporting of transactions to any domestic or foreign TR to be given by June 2018.8

Not applicable. Counterparties are currently permitted to give 'standing consent'.

4. Where masking is currently accommodated in your jurisdiction, please set out the actions that will be taken (or that have been taken) in your jurisdiction, or any pre-conditions that would need to be met, such that masking will be discontinued by end-2018.

Not applicable. Masking is not permitted in Brazil.

Barriers to authorities' access to TR-held data

Questions:

1. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) access by domestic authorities and foreign authorities to data held in a domestic TR in your jurisdiction.

Not applicable. Domestic authorities already have direct access to data held in domestic TRs, while foreign authorities have indirect access to this data through bilateral or multilateral MoU or by formally submitting its request to the authorities (Central Bank of Brazil or the CVM).

2. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) direct access by both non-primary¹⁰ domestic authorities and foreign authorities to data held in a domestic TR. Alternatively, please describe why direct access for these authorities will not be permitted in your jurisdiction.

Not applicable. Domestic authorities already have direct access to data held in domestic TRs. Direct access for foreign authorities may be provided only with the express consent of the participants of the domestic TR and case by case. That is, a foreign authority accessing a domestic TR database in Brazil without going through a national authority, it would require the express consent of the participant whose data would be shared. This consent could allow for the data to be shared on an ongoing basis (standing consent). However, this determination would be made on a case-by-case (by which we mean participant-by-participant, not request-by-request) basis; in other words, the data-sharing agreement would have to be negotiated with each participant individually.

3. Please report the actions to be taken (or that have been taken) to coordinate with other domestic or foreign authorities in establishing cooperative arrangements that facilitate authorities' access to TR-held data (whether it be through direct or indirect access).

We look forward to achieve a concrete demand to coordinate with foreign authorities in order to establish the parameters necessary for the indirect access case by case. We also intend to map financial institutions' cross-border derivatives exposures in order to elaborate a priority list of jurisdictions/TRs for potential bilateral agreements. Meanwhile, we continue to follow how other jurisdictions have been dealing with cross-border regulatory issues on a multilateral basis in order to evaluate possible improvements in our regulatory framework.

4. Please report the actions to be taken (or that have been taken) to work with other domestic or foreign authorities and TRs, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data, whether direct or indirect.

We look forward to achieve a concrete demand to work with foreign authorities or TRs in order to establish the parameters necessary for the access case by case. Meanwhile, we continue to follow how other jurisdictions have been dealing with this issue on a multilateral basis in order to evaluate possible improvements in our regulatory framework.

Brazil Supplementary Response

“For a foreign authority to access a domestic TR database in Brazil without going through a national authority, it would require the express consent of the participant whose data would be shared. This consent could allow for the data to be shared on an ongoing basis (standing consent). However, this determination would be made on a case-by-case (meaning participant-by-participant, not request-by-request) basis; in other words, the data-sharing agreement would have to be negotiated with each participant individually. In the case of indirect access, the express consent (on case-by-case basis) from the participants of the domestic TR is not required. Foreign authorities have indirect access to data held in domestic TR through bilateral or multilateral MoU between national and foreign authorities, or by formally submitting its request to the national authorities (Central Bank of Brazil or CVM).”