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Argentina response - ADDRESSING LEGAL BARRIERS TO REPORTING OF, AND ACCESS TO, OTC DERIVATIVES TRANSACTIONS DATA .

Argentinean authorities are committed to aligning the domestic regulatory framework to the recommendations in the “2010 Report” and other international requirements compatible with the characteristics of the financial system and the market needs.

It is of relevance to highlight that in Argentina almost all derivatives are traded in markets regulated and supervised by the Comisión Nacional de Valores (Argentine Securities Commission) (“CNV”). Furthermore, CNV mandates all agents to be registered in its records/registries to be able to operate in domestic markets. As mentioned in previous responses, there is a high degree of standardization of products and processes as well as the use of institutionalized electronic platforms in the derivatives domestic markets. Furthermore, most of the activity in standardized futures and options on commodities and financial assets is concentrated in ROFEX (<http://www.rofex.com.ar>) and MATBA (www.matba.com.ar), while other standardized derivatives (such as forwards and swaps) on financial assets are mainly traded in MAE (<http://www.mae.com.ar>).

Section 10, Chapter V, Title VI, of the CNV Rules provides that all markets, including those mentioned above, must keep an Operation Record where all the intermediaries should inform all the data regarding the contracts performed.

This Section also establishes that entities within the jurisdiction of the CNV (like issuers) and/or intermediaries registered in the CNV, are required to register all non-standardized derivatives contracts (where they are counterparties or where they bring intermediaries services for clients as counterparties) in systems developed by markets for the registration of OTC Derivatives contracts. Markets must record all details, grouped by type of contract and underlying asset.

In these cases, the CNV is the government authority responsible for adopting regulation, enforcing and supervising the implementation of Section 10 of Chapter V in Title VI of CNV’s Rules.

Furthermore, CNV in conjunction with the Secretaría de Agricultura, Ganadería y Pesca (Secretary of Agriculture and Fisheries) (“SAGyP”), establishes that all entities registered in the Registro Único de la Cadena Agroalimentaria (Single Register of Food Chain) (“R.U.C.A.”) must register all bilateral spot and OTC agricultural commodities derivatives contracts (such as forwards) on wheat, soybean, sunflower, corn, and others in a unique centralized electronic platform developed by Markets (Futures Markets) and Commodities Exchanges in www.siogranos.com.ar. (Please see joint Resolutions CNV 628/14 and SAGYP 208/14, and CNV 630/14 and SAGYP 299/14, and CNV 657/16).

In this case, in March 2016 CNV in conjunction with the Secretaría de Mercados Agroindustriales (Secretary of Agro-Industrial Markets) of the Ministerio de Agroindustria (Ministry of Agroindustry) establishes that the government authority responsible for enforcing and controlling SIOGRANOS system is the Secretary of Agro-Industrial Markets (CNV 657/16).

Moving into the barriers to reporting, it should be remarked that in Argentina there are no legal or regulatory barriers within our regulatory framework to full report OTC derivatives transactions data.

Regarding access to information, for standardized instruments, Capital Market Law (2012) establishes a mutually interconnected system among markets in order to promote transparency and information sharing of market data between them. This system is operative and markets are still working in continue expanding interconnectedness. CNV facilitates also identification data providing a unique identification code for each agent registered in CNV records.

However, it should be stress that at this moment all the above-mentioned systems for the registration of non-standardized OTC derivatives contracts are still in an implementation stage, so there is not full access to that specific data yet. And, as CNV is an IOSCO MMOU signatory member, once the markets make further progress in bilateral OTC reporting systems it is expected that access to this data will be available for all IOSCO signatory members.

Argentina Supplementary Response

1) The expected timeline for full implementation of the systems *for reporting non-standardized OTC derivatives contracts* is June 2018.

2) Regarding foreign TRs, there are no applicable requirements for these specific infrastructures (TRs) in the local law (TRs are even not considered in the law), and for that reason they could not be authorized or licensed by the National Securities Commission (CNV). Furthermore, there are no domestic rules in place requiring reporting of OTC derivatives to foreign TR or TR-like entities. And, while domestic reporting requirements must be complied with by submission of reports to domestic TR-like entities, Argentina law does not prevent the use of foreign TRs to satisfy foreign reporting requirements at all.

Schedule A**Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data****Information requested in Annex to 13 March letter from the FSB Chairman**Barriers to reporting information into TRs or TR-like entities

In FSB's thematic peer review on OTC derivatives trade reporting (published in November 2015), the related assessment for Australia is coloured as amber in:

- Table 6 - "Reporting to a TR or TR-Like Entity Pursuant to Foreign Reporting Requirements - an amber rating provided where reporting was permitted in some cases/subject to certain conditions (e.g. client consent);
- Table 7 "Types of Legal Barriers to Domestic Participants Reporting Complete Information" Columns headed "Domestic participant reporting pursuant to foreign requirements", Australia rated amber under the sub-headings "Data protection" and "Client confidentiality", with the notation "cured by counterparty consent"; and
- Table 8 - 'Masking' of counterparty information – The report notes that relief (permitting masking) is available through a class exemption.

Commitment required by FSB members	Response - Australia
<ul style="list-style-type: none"> • Where barriers to full reporting of trade information (including counterparty information) exist within a jurisdiction's legal and regulatory framework, such barriers should be removed by June 2018 at the latest, with respect to reporting pursuant to domestic and foreign requirements 	<p>There is, in practice, no barrier to full reporting of trade information to a domestic or foreign TR pursuant to domestic or foreign requirement.</p> <p>Whilst the Australian Privacy Principles and guidelines (APP&Gs) require consent to be provided where personal information is to be provided (for trade reporting likely to be limited to situations where the data contains the name of an individual and the identifier number an individual) to an entity that is located overseas, the APP&Gs do permit a standing consent to be provided (refer APP&Gs 8.32). The consent clauses are typically contained in product documentation and the associated product application and accordingly consent is provided as part of the execution of the product by the individual.</p> <p>With regards to reportable transactions with non-natural person entities, the APP&Gs do not apply (given the application only to personal information). Further, standing consent for provision of data/confidential information can be provided in the contract terms (i.e. of the master agreement or other associated documentation).</p> <p>There is no barrier to provision of reporting trade data to a trade repository (or a trade repository like entity) pursuant to foreign trade reporting requirements, given the absence of an overarching law in Australia that forbids standing consent.</p>

<ul style="list-style-type: none"> • Where there is a requirement in a jurisdiction's legal and regulatory framework that a trade participant must obtain a counterparty's consent to report trade data, by June 2018 at the latest all jurisdictions should permit transaction counterparties to provide standing consent to the reporting of such data to any domestic or foreign TR. 	<p>As indicated above, there is no restriction to providing standing consent.</p>
<ul style="list-style-type: none"> • Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting. 	<p>Transitional conditional relief¹ was made available (September 2015) through a class exemption that permits masking in certain circumstances - where blocked by foreign privacy restrictions and overseas government entities (both expiring on 30 September 2016) and historical transactions (expiring on 30 September 2018).</p>

Barriers to authorities' access to TR-held data

In FSB's thematic peer review on OTC derivatives trade reporting (published in November 2015) Australia reported green in Table 9 – accordingly no information is required in relation to the relevant commitments.

¹ [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#)

In response to your query, Michael Cleland (Australian Securities and Investments Commission) has provided the following explanation:

There are two types of relief under ASIC Corporation (Derivative Transaction Reporting Exemption) Instrument 2015/844 relevant to trades with foreign privacy restrictions or government entities. Their interaction is explained below.

a) The instrument provides reporting relief (subject to conditions) for transactions with foreign privacy restrictions or government entities. This relief applies to all transactions with foreign privacy restrictions or with government entities (i.e. not just transactions entered into after a particular date). This relief expires on 30 September 2016.

b) The instrument also provides reporting relief (subject to conditions) for transactions with 'historic counterparties', that is, transactions where the reporting entity has not entered into a new trade with the counterparty after 1 January 2015. This relief may also cover some 'historic' transactions with foreign privacy restrictions or with government entities. This relief expires on 30 September 2018.

Taken together, transactions with foreign privacy restrictions or with government entities would need to be reported from 1 October 2016, unless it is also covered by the relief for transactions with historic counterparties.

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).”



Questions to guide the preparation of reports

Barriers to reporting information into TRs

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that barriers to complete reporting of trades exist in its jurisdiction or where it is uncertain whether barriers exist. Please refer to Section 3 (pages 18–23) and Tables 5, 6, 7 and 8 (pages 44–47) of the peer review report for further context.

In particular, in all cases in Tables 5, 6 or 7 where an entry for your jurisdiction is not coloured green, or in Table 8 where the entry for your jurisdiction indicates an answer other than that no masking is permitted, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier to full reporting of trade information.

- 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.
- 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.
- 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.
- 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.

Masking is prohibited under Canadian trade reporting rules. However, time limited discretionary relief has been granted to certain market participants to accommodate foreign blocking and consent laws. This discretionary relief is subject to certain terms and conditions, including identification of foreign blocking and consent jurisdictions and back-loading of previously masked transactions. The time limited discretionary relief ends in December 2016. We expect that this relief will not be extended beyond 2018.



Barriers to authorities' access to TR-held data

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that legal barriers to authorities' access to TR data exist. Please refer to Section 4 (pages 23–30) and Table 9 (page 48) of the peer review report for further context.

In particular, in all cases in Table 9 where an entry for your jurisdiction is not coloured green, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier.

- 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.

There are no Canadian legal obstacles preventing access by domestic or foreign authorities to data held in a TR designated in Canada.

All TRs that are designated to receive Canadian trade data are located in the US. Therefore, Canadian and foreign regulators are subject to US access rules. The main legal barrier to direct access by non-primary authorities, the Dodd-Frank indemnification provision, was removed by Congress at the end of 2015. Canadian authorities are awaiting the incorporation of these legislative changes into the CFTC's rules before taking further action. As of now, direct access to Canadian TR data is still only possible for the securities regulators that are designating and directly overseeing the TRs.

- 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-primary 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.

See above. There are no actions required to be taken.

- 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).

Canadian securities regulators and the CFTC have entered into an MoU regarding cooperation and exchange of information in the supervision of entities such as TRs, intermediaries and dealers.

- 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.



Canadian authorities are in contact with the CFTC and are awaiting the Commission's rules changes to incorporate the amendments to Dodd-Frank Act.

Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data

1. Introduction

China Foreign Exchange Trade System (CFETS) provides electronic trade system for the market of RMB interest rate derivatives and RMB/FX derivatives and is the TR-like entity in China Inter-bank Market. Although CFETS has not gained legal status of TR from the People's Bank of China (PBC), PBC has authorized CFETS to perform TR functions such as receiving and storing transactions data reported by market participants. Pursuant to relevant regulations issued by PBC, market participants shall report transactions data to CFETS if such transactions are conducted outside CFETS electronic trade system. This is why CFETS is called TR-like entity.

The size of China IR and FX derivatives market is relatively small. IR derivatives notional outstanding is less than \$2 trillion and that of FX derivatives is a little more than \$2 trillion. The turnover of IR and FX derivatives transactions is also low. The average daily trade volume is about \$50 billion. Although some types of foreign investors may conduct derivatives transactions in the China Inter-Bank Market, the percentage of their trade volume can be

ignored. The market is dominated absolutely by domestic investors.

2. Data reporting to TRs

In terms of reporting to domestic TR-like entity, for the purpose of China Interbank markets' reporting requirements, there are no barriers for reporting to CFETS. Both counterparties shall report transactions data to CFETS if necessary no matter what size of derivatives transactions and what type of participants. Masking of counterparty information is not permitted. there is no need for a trade participant to obtain a counterparty's consent to report trade data.

In terms of reporting to foreign TR or TR-like entity, there is no relevant regulation or rule. In the following work, it needs careful consideration and cross-border regulatory cooperation..

3. Authorities' access to TR-held data

PBC is the primary authority in China Interbank Market and can access to TR data directly. Non-primary authority such as China Securities Regulatory Commission, China Banking Regulatory Commission etc can access to TR data indirectly within their respective mandate.

In terms of foreign authorities access to CFETS-held data, there

is no relevant legislation and regulation in China. In the future, if the requirement of foreign authorities for accessing the CFETS-held data is indeed, indirect access to CFETS by foreign authorities may be considered, which means that foreign authorities may sign regulatory cooperation agreement or a MOU with PBC and through the way of data exchange between regulatory authorities.

**EUROPEAN COMMISSION**Directorate General Financial Stability, Financial Services and Capital Markets Union
FINANCIAL MARKETS

Director-General

Brussels, **16 JUN 2016**
FISMA C2 MF/BD/cd (2016) 3439354Mr Mark Carney
Chairman
Financial Stability BoardBy email: fsb@bis.org**Subject: Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data**

Dear Mr Carney,

Further to your letter of 13 March 2016 in which you remind all FSB member jurisdictions to report by June this year on their planned actions to address legal barriers in relation to trade reporting, which FSB members committed to as a follow-up action to the FSB's thematic peer review on OTC derivatives trade reporting published in November 2015, please find below the European Commission's response.

Please note that the present response addresses the points that were identified as legal barriers stemming from the implementation of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ('EMIR'). The responses concerning legal barriers arising from specific national laws will be provided separately by the relevant EU Member State jurisdictions.

Finding 3 – Recommendations 2A and 2B**Reporting pursuant to foreign reporting requirements and Article 13 EMIR equivalence**

As the Final Report of the Thematic Peer Review on OTC Derivatives Reporting correctly states, there are no legal barriers at EU level to reporting to domestic trade repositories pursuant to foreign reporting requirements. Moreover, any national barriers to reporting pursuant to foreign requirements (stemming among others from the need to receive counterparty consent) would be superseded as soon as the European Commission has adopted an equivalence decision for the jurisdiction in question according to Article 13(1) and (3) of EMIR. The Commission is currently assessing several jurisdictions with a view to establishing whether such equivalence can be granted, and is in close contact with each jurisdiction being assessed as part of this exercise.

Reporting to a foreign TR pursuant to foreign reporting requirements and Article 13 EMIR equivalence

At EU level, EMIR allows counterparties to fulfil their reporting requirements by reporting to a foreign trade repository if the foreign trade repository has been recognised by ESMA to receive reports for that purpose. Such recognition de facto requires the conclusion of an international agreement and a cooperation arrangement with the relevant foreign authority. This requirement stems from the broader requirement within EMIR for an international agreement to be signed between the EU and a third-country jurisdiction in order to grant the relevant authorities within that jurisdiction direct access to data held in EU trade repositories.

As described in the following section, the international agreement requirement is currently being looked at as part of a review of EMIR.

Finding 8 – Recommendations 3A and 3B

Under EU law, where a trade repository is established in the jurisdiction of the foreign authority, direct access to EU trade repository data is granted only after the execution of both an international agreement and a cooperation arrangement with the relevant foreign authority. The Final Report of the Peer Review states that this is seen by some jurisdictions as a potential legal barrier to access to trade repository data.

As required by Article 85(1) of EMIR, the European Commission is currently undertaking an in-depth review of this Regulation. One of the elements being looked at as part of this review is the requirement for an international agreement. Options are being considered which would allow for the elimination of any legal barriers to access to data held by EU trade repositories and the reduction of burdens for authorities requesting such access, while at the same time continuing to ensure that European authorities' access to data held in foreign trade repositories is guaranteed by law.

It is at this stage too early to predict the outcome of the review, but the outcome should, in principle, be known in the second half of 2017. However, it is important to note that the recently adopted Securities Financing Transactions Regulation¹ has taken a more flexible approach towards this issue, considering that a relevant third-country legislative act which ensures foreign direct access to data held in domestic trade repositories can be considered as just such a legal guarantee and is therefore sufficient for direct access to be granted to authorities from that jurisdiction to data held in EU trade repositories.

Finding 10 – Recommendation 3C

With respect to operational and technical issues in authorities' access to trade repository-held data, the Commission fully supports the conclusions of the Final Report of the Peer Review calling for authorities and trade repositories to work together to facilitate the creation of appropriate operational frameworks that facilitate access to trade repository-held data.

In this respect, the European Commission is already quite active. In addition to the present group, it participates – either as a full member or as an observer – in several international work streams aiming at greater harmonisation and standardisation of reporting and access to OTC derivatives data. This includes the Working Group on the governance of the UTI and UPI (GUUG) and the ODRF, to name just a couple.

¹ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012

Moreover, the European Commission is currently in the process of adopting revised technical standards on trade reporting drafted by ESMA, which include direct references to several international standards (ISO, LEI, etc.) as well as a number of other steps to simplify the reporting, aggregation, and access to data.

Finally, the ongoing review of EMIR is also looking at ways to minimise any operational and technical challenges with regard to authorities' access to trade repository data. More clarity is expected in this respect in the second half of 2017.

I trust that the above information will prove helpful. I take this opportunity to reiterate the Commission's support and appreciation for the FSB's continuing efforts to facilitate authorities' access to OTC derivatives data held in trade repositories. By allowing them to fulfil their legal obligations, this work will greatly contribute to achieving the goals set by the G20 in its Pittsburgh declaration.

I remain at your disposal should you have any questions on this matter.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping initial 'O' followed by a vertical line and a stylized 'G'.

Olivier GUERSENT



MINISTÈRE DES FINANCES
ET DES COMPTES PUBLICS

MINISTÈRE DE L'ÉCONOMIE,
DE L'INDUSTRIE ET DU NUMÉRIQUE

DIRECTION GÉNÉRALE DU TRÉSOR

Paris, le

Mr Mark Carney
Chairman
Financial Stability Board
Basel, Switzerland

Dear Mark,

Thank you for your letter of 13 May 2016, in which you invite us to provide a report on the measures taken by France in order to facilitate the OTC derivatives trade reporting, following the report of 4 November 2015 published in the context of a FSB thematic review.

Please note that this report focuses on the legal barrier (secrecy law) stemming from the French law. We understand that the European Commission will, in a separate response, address any barriers arising directly from the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ('EMIR'), which is directly applicable in France as well as in other EU Member States.

Secrecy law was the only barrier to OTC trade reporting stemming from the French law identified in the report (see Tables 6 and 7 of the report). More specifically, it was identified as a barrier to the reporting of information by French market participants to trade repositories (TR) pursuant to a foreign reporting requirement.


Under French law, financial institutions such as central counterparties (CCP), credit institutions or investment firms are indeed subject to specific requirements regarding secrecy law pursuant to Articles L.440-4, L.511-13 and L.531-12 of the Monetary and Financial Code, which prevent them to provide information covered by secrecy law (such as the counterparty ID) without a prior consent of their counterparty.

In order to remove this barrier, the French Government proposed, on 30 March 2016, to amend the relevant Articles of the Monetary and Financial Code so as to allow financial institutions to report information covered by secrecy law to TR pursuant to the legislation or regulation of a non-EU jurisdiction, without requesting prior consent of their clients (which is the usual way to cure secrecy law, as noted in the report of the FSB Thematic Review).

This amendment (which can be found at Article 23 of a draft law entitled « *projet de loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique* », <http://www.assemblee-nationale.fr/14/projets/pl3623.asp>) has been adopted on 9 June 2016 by the National Assembly, and should be adopted in the coming weeks by the Senate. It will then directly enter into force, thus allowing France to comply with the recommendation #2 of the FSB Thematic Review.

As you can see, France is and will remain committed to increasing the transparency of OTC derivatives markets, which is a key objective of the G20.

Yours sincerely,



Bruno Bézard

13.06.2016
GZ: IFR 2-QIN 5618-2016-0002

Mark Carney
Chairman
of the Financial Stability Board
Basel, Switzerland

Dear Mark,

Thank you for your letter of 13 May 2016. We have taken careful note of your reminder to prepare a detailed report on planned actions to address legal barriers in relation to trade reporting, which we are happy to provide.

Let us, first of all, take the opportunity to stress that Germany considers the FSB's thematic peer review on OTC derivatives trade reporting (the "peer review report") published by the end of last year to be a comprehensive, well-structured and concentrated report. We are of the opinion that it marks a major step towards a better usability of OTC derivatives trade repository data enhancing our abilities to monitor systemic risks. Therefore, we reiterate our strong commitment to its objectives by actively participating in the due follow-up of its findings.

As you will most certainly remember, the peer review report did not identify any legal barriers to reporting information to trade repositories (TRs) established in Germany. Therefore, no planned actions to address such barriers can be reported.

In terms of barriers to authorities' access to TR-held data, the peer review report revealed that foreign authorities' direct access to TR data is generally limited. In particular, under EU law, where a TR is established in the jurisdiction of the foreign authority, direct access to EU TR data is granted only after the execution of both an international agreement and the subsequent conclusion with the European Securities and Markets Authority (ESMA) of a dedicated memorandum of understanding. Irrespective of whether this arrangement can be considered a legal barrier or not, we would like to note that the European Union is the competent body for enacting any modifications, leaving Germany and all other EU member States with no room to enact own measures. You might also recall that the questionnaire jurisdictions have provided in preparation of the report left this point to be answered by competent European Union authorities.

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Therefore, there are no German actions or planned actions to be reported relevant to the current follow up of the peer review report.

Apart from that, please note that the European Commission will send a separate reply to your request addressing any legal barriers arising directly from relevant EU regulation.

We look forward to being kept informed of the next steps envisaged in the process, in particular the draft report collecting all member jurisdiction's replies.

Yours sincerely,



Felix Hufeld

Subject: Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data

We are writing in response to your letter of 13 March 2016 requesting for reports from member jurisdictions of their planned actions to address legal barriers in relation to trade reporting as follow-up action to the FSB's November 2015 thematic peer review on OTC derivatives trade reporting.

2. Under our domestic reporting requirements, reporting obligation has to be complied with by submission of transaction reports to the trade repository operated by the Hong Kong Monetary Authority (HKTR), as in Table 5 of the peer review report. Foreign domiciled counterparties are not normally subject to our domestic reporting requirements, except in circumstances where an overseas incorporated authorised institution books a transaction in a Hong Kong branch or uses its Hong Kong office to conduct a transaction for a group affiliate. Although TRs in foreign locations cannot be used for purpose of compliance with our reporting requirements, such TRs can be used as agent by a foreign reporting entity in the event that any entity within the group happens to have to report with respect to a transaction under our rules. We intend to keep this mechanism to facilitate any reporting entity, in local or foreign location, to report to the HKTR pursuant to our domestic reporting requirements.

3. Regarding barriers to reporting information into TRs, we reported in the November 2015 peer review that there are no legal or statutory barriers to trade reporting and masking is currently accommodated in our jurisdiction as a transitory measure. Following FSB peer review report recommendations, it is expected that such legal barriers to reporting would be gradually removed by respective jurisdictions towards the deadline of June 2018. To meet the June 2018 timeline to remove masking once barriers to reporting are removed, we plan to (i) review regularly and remove jurisdictions from our 'list of jurisdictions for the purposes of the masking relief' once changes in their domestic law which had prevented the disclosure of counterparty particulars are made; and (ii) discontinue the masking relief by the agreed timeline, subject to the completion of the necessary legislative procedure.

4. Regarding the barriers to authorities' access to TR-held data, we have established appropriate gateway under our regulatory regime to share TR data with local and foreign authorities. Relevant policies and procedures have also been set up to facilitate the process of access to TR data. Regulatory authorities can access the

HKTR data directly via the HKTR web portal after applying for their own unique account. Authorities can also obtain data on a by-request basis.

The objective of trade reporting is to improve transparency of the OTC derivatives market. We appreciate the importance of authorities' mutual access and sharing of TR data and will continue to participate and contribute our effort in global regulatory initiative in enhancing TR data quality and its usage to facilitate monitoring and surveillance of the OTC derivatives markets.

Response on Addressing “Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data” (PLEN/2016/29)

1. In India, only the Reserve Bank of India, which is the primary authority, is legally allowed to access the domestic Trade Repository (TR) data. However, **there are no legal obstacles to sharing information with domestic and foreign authorities, should the need arise.** The Payment & Settlement Systems Act, 2007 (under which the TR is now governed) provides for disclosure of such document / information to any person in the larger public interest.

2. India has only one Trade Repository i.e., CCIL that is authorized TR and there is no other TR-like entity though CCIL does not cover all entity classes¹. Further, India does not have a framework in place for allowing direct access by foreign authorities to TR data. Therefore, reporting to a foreign TR to fulfil domestic requirements is not permitted. In this context, it may be recommended that “as long as a domestic or foreign trade participant reports trade data to any recognised TR, there should not be any additional requirement of reporting the same data to any other TR”. **When FSB and CPMI are setting international standards and G20 member jurisdictions are complying with them, there should be no role for regulators of other jurisdictions to have rights to directly access from TRs bypassing the host regulator.** It may also be noted that RBI has not been approached by any entity to access the TR data. RBI is in dialogue with ESMA and CFTC for an MOU relating to central counterparty (CCP) / Derivatives Clearing Organization (DCO) recognition / registration which includes information sharing. We feel that in the case of a MoU, the express written consent of participants should be obtained before sharing information with foreign authorities. Indirect access would enable a foreign authority to access data in a TR with the intermediation of the TR’s primary authority. This indirect access may depend on the conclusion of legal documentation, such as a MoU between the authorities. Once the legal right of access has been granted to the foreign authority, the manner of access, and how the

¹In India, under self reporting, mandatory reporting in some asset classes covers 90-100% with exemption to entities that are not banks and with less than USD 1 million in FX derivatives and Interest rate options in foreign currency.

foreign authority can make a request for TR data, will be governed by the terms of the MoU.

3. On the issue of masking of transactions, it may be noted that in India masking of TR data is not permitted or accommodated for counterparties. Hence, the need to discontinue masking of newly reported transactions does not arise in our case.

4. We strongly feel that mandating a 'legal' provision in authorities' access to TR-held data, may delay early implementation which otherwise may be implemented easily through co-operative frameworks.

India Supplementary Response

In this connection, it is further clarified that banks in India can report the OTC trade details to foreign TR subject to concurrence of the client to address the client confidentiality requirement. This concurrence can be taken at on-boarding stage itself.

Indonesian Response on Legal Barriers to Reporting of and Access to OTC Derivatives Transaction Data

According to the Indonesian Banking Act, bank secrecy is anything related to information regarding depositor and his deposits. In addition, Bank Indonesia only regulates mandatory derivatives transaction reporting (for foreign exchange and interest rate) to Bank Indonesia in pursuant to domestic requirements. Bank Indonesia currently does not issue any regulation for domestic banks to report their OTC derivative transactions to offshore Trade Repositories (TRs). Hence, there is a possibility that banks may report their derivatives transactions with offshore counterparts to offshore TRs, without eliminating mandatory reporting to Bank Indonesia.

Furthermore, third parties are allowed to obtain direct access of derivative transactions data reported to Bank Indonesia in aggregated form by applying membership access to bank daily reporting information system. There is a potential for foreign authority to access trade-by-trade data of domestic banks derivative transactions with offshore counterparts, should the domestic banks report their transaction with foreign parties to offshore TR.

In practice, Bank Indonesia has not received any complaints of legal barriers to reporting of, and access to, OTC derivatives transaction data that involves domestic banks from market participants and foreign authorities. Hence, Bank Indonesia is of the view that action plan is not urgently required. Nevertheless, Bank Indonesia will take consideration of issuing such plan upon receiving reports of legal barriers from any of the aforementioned parties.



Al Direttore Generale del Tesoro

Rome, 30 June 2016

Dear Mark,

I am writing in response to your letter dated 13 March 2016, in which you asked FSB jurisdictions to report by June this year about planned actions to follow up on some specific recommendations of the FSB's thematic peer review on OTC derivatives trade reporting. In particular, the focus of the recommendations being drawn to our attention was related to the need that OTC derivatives transactions be reported to trade repositories and that such data be accessible to relevant authorities as a way to improve transparency, mitigate systemic risk and protect against market abuse.

The above policy principles to which we subscribed as part of the G20 are very dear to Italy because of the potential disruptions that opaque OTC derivatives markets can cause to financial stability and integrity. In this respect, against the background of the relevant EU legislation applicable in this area, I am pleased to report that Italy's national legislation does not contemplate any legal barrier to OTC derivatives' trade reporting and to relevant authorities' access to such data. Of course, for any possible issues related to the implementation of the so-called EMIR regulation in the EU, I would like to refer to the European Commission's response to your letter.

Looking forward to the full implementation of the relevant G20 framework to enhance OTC derivatives markets' transparency and resilience, the Italian jurisdiction stands ready to cooperate fruitfully within the FSB in order to pursue this aim.

Yours sincerely,

(Vincenzo La Via)

Mr Mark Carney
Chairman of the Financial Stability Board
Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel (Switzerland)

JFSA's response

Questions to guide the preparation of reports

Barriers to reporting information into TRs

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that barriers to complete reporting of trades exist in its jurisdiction or where it is uncertain whether barriers exist. Please refer to Section 3 (pages 18–23) and Tables 5, 6, 7 and 8 (pages 44–47) of the peer review report for further context.

In particular, in all cases in Tables 5, 6 or 7 where an entry for your jurisdiction is not coloured green, or in Table 8 where the entry for your jurisdiction indicates an answer other than that no masking is permitted, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier to full reporting of trade information.

- 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.

⇒ **In our jurisdiction, there is no legal barrier that prevents full reporting to a TR pursuant to domestic requirements. Therefore, we recognize that no specific action is necessary in this area.**

- 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.

⇒ **In our jurisdiction, consent must be obtained only when personally identifiable information defined by the Act, such as name and address, of a natural person would be reported to a third party including a TR. In any case, such consent requirement is satisfied by standing consent. Thus, in practice there is no legal barrier that prevents full reporting to a TR pursuant to foreign requirements.**

Source: Act on the Protection of Personal Information (Act No. 57 of May 30, 2003), Article 23

http://www.japaneselawtranslation.go.jp/law/detail_main?id=130&

- 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.

⇒ **As we suggested above, standing consent is permitted under the current legislation.**

- 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.

- ⇒ **Our jurisdiction does not allow for masking of information required to be reported. Therefore, we recognize that no specific action is necessary in this regard.**

Barriers to authorities' access to TR-held data

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that legal barriers to authorities' access to TR data exist. Please refer to Section 4 (pages 23–30) and Table 9 (page 48) of the peer review report for further context.

In particular, in all cases in Table 9 where an entry for your jurisdiction is not coloured green, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier.

- 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.
 - ⇒ **Under the law, the TR is obliged to report trade data to the JFSA. Foreign authorities and domestic authorities other than the JFSA are permitted to indirectly access to TR data through the JFSA by establishing the cooperation framework with JFSA.**
- 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-primary 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.
 - ⇒ **In our jurisdiction, it is easier to allow access to TR data through the JFSA rather than directly to TR. Because TR data generally include confidential information, these data should be provided by TR in accordance with the request of Japanese authority (JFSA). This policy is consistent with TR's current operating rules which are agreed by all TR participants and approved by JFSA.**
- 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).
 - ⇒ **Cooperative arrangements with other domestic or foreign authorities could be established under the supervisory cooperation framework. The JFSA could coordinate such arrangements as necessary, for instance when other authorities' needs would be revealed.**

As reference, we have already established the supervisory cooperation framework with the CFTC so far. The Memorandum of Cooperation describes about information sharing of relevant regulatory information that a cross-border covered entity including a TR is required to submit to JFSA.

Source: Memorandum of Cooperation, Supervision of Cross-Border Covered Entities, March 10 (2014), p5, Item 25b; available at:

<http://www.fsa.go.jp/en/news/2014/20140311-1.html>
- 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.

⇒ **Regarding the creation of appropriate operational frameworks that facilitate access to TR-held data, the JFSA could work with other domestic or foreign authorities and TRs as necessary, for instance when other authorities' needs would be revealed.**

As reference, we have already established the supervisory cooperation framework with the CFTC so far. The Memorandum of Cooperation describes about information sharing of relevant regulatory information that a cross-border covered entity including a TR is required to submit to JFSA.

Source: Memorandum of Cooperation, Supervision of Cross-Border Covered Entities, March 10 (2014), p5, Item 25b; available at:

<http://www.fsa.go.jp/en/news/2014/20140311-1.html>



June 23, 2016

Dr. Mark Carney
Chairman of Financial Stability Board
And Governor of Bank of England

Dear Chairman Mark Carney

As an FSB member, I am writing to report the Republic of Korea's planned actions to address legal barriers in relation to trade reporting, as a follow-up measure to the FSB's thematic peer review on OTC derivatives trade reporting, published in November 2015.

In view to fulfilling the G20 commitment on OTC derivatives trade reporting, the Financial Services Commission (FSC), as the primary financial authority of Korea, is leading the discussion on TR introduction at the Working-level Committee with the Bank of Korea (BoK), the Financial Supervisory Service (FSS), the Korea Exchange (KRX) and relevant industry participants. Based on the discussion outcome, we are planning to overhaul trade reporting regime, including changing the legal framework, in an effort to address any legal barriers to trade reporting and implement the global standards in full. I would like to ask you to refer to the attached document for more information.

Lastly, I would like to take this opportunity to thank you for your excellent leadership toward setting a stable and robust global financial order.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Hakkyun Kim".

Hakkyun Kim
Deputy Chairman for International Affairs
Financial Services Commission
Republic of Korea

Attachment. Korea's Planned Actions to Address Legal Barriers in Relation to the Trade Reporting

Attachment.

KOREA'S PLANNED ACTIONS TO ADDRESS LEGAL BARRIERS IN RELATION TO TRADE REPORTING

1. Trade Reporting Regime of Korea

At present, the BoK, the FSS and the KRX have in place separate trade reporting regimes in relation to derivatives transactions, based on which they store and manage relevant information. However, in order for full-fledged implementation of G20 commitment to mandatory trade reporting, it was necessary to set up a TR that is mandated to collect details of each OTC-derivative transaction. In acknowledging this, the FSC announced its plan to introduce TR in June 2014 and designated the KRX as a TR in August 2015, based on deliberation and resolution of the TR Designation Committee. Under this committee, the Subcommittee on Legal and Regulatory Framework is undergoing deliberation on matters which will be provided for in the laws and regulations including trade reporting requirements and legal basis for TR establishment. At the same time, the Subcommittee on Reporting Regime is discussing matters concerning TR operation including the scope of parties and products subject to reporting, reporting procedures and reporting items.

2. Planned Actions to Address Legal Barriers to Trade Reporting

(1) Reporting of Trade Information Pursuant to Domestic Requirements

We are planning to remove all legal barriers to information reporting into either domestic or foreign TRs or TR-like entities pursuant to domestic requirements. Currently, the FSC is reviewing whether amendment to relevant legal and regulatory framework, namely Financial Investment Services and Capital Markets Act (FSCMA), is needed towards this end.

- Reporting information into domestic TRs
Any person will be able to engage in trade data repository business if it received FSC's authorization and all derivative transaction data will be reported to domestic TRs without having to undergo any kind of consent procedure.
- Reporting information into foreign TRs
Any foreign TR that is approved of the regulatory equivalence will be permitted to receive FSC's authorization for TR business, and domestic and foreign financial institutions will be able to make trade reporting through foreign TRs.

(2) Reporting of Trade Information Pursuant to Foreign Requirements

There is no legal barrier to trade reporting into domestic or foreign TRs pursuant to foreign requirements, since we do not have any provision in the legal or regulatory framework that bans such action.

- **Reporting information into domestic TRs**
Reporting information into domestic TRs by domestic or foreign financial institutions pursuant to foreign requirements would be permitted once equivalence of domestic TR is approved in accordance with extraterritorial application of respective jurisdiction's laws and regulations. We believe it is not appropriate that this matter be stipulated in the domestic legal and regulatory regimes.
- **Reporting information into foreign TRs**
It is already permitted for domestic and foreign financial institutions to make trade reporting to foreign TRs on a standing consent basis. Thus no further change is required.

(3) Counterparty Consent

Given that trade repositories handle OTC derivatives transaction information including counterparty-identifying data, counterparty-consent is required for provision to and use by TRs of such information. Korean financial institutions already receive counterparties' standing consent upon provision of financial transaction data to TRs. In addition, we are planning to exempt counterparty consent requirement when providing trade data to domestic and foreign TRs, and currently reviewing whether amendment to relevant legal and regulatory framework is needed towards this end.

(4) Discontinuation of Masking

Korean legal and regulatory framework permits provision of transaction information without masking, if counterparty-consent is obtained.

3. Planned Actions to Address Legal Barriers to Authorities' Access to TR-held Data

(1) Domestic and Foreign Authorities' Access to Information Held by Domestic TR

The FSC, as the primary authority responsible for management and supervision of TRs, is expected to have unlimited, direct access to TR-held data. We are reviewing adoption of legal basis to give non-primary authorities such as the BoK (central bank) and other relevant Government bodies the access to information held by TRs. On the other hand, foreign authorities will be able to access this information based on a Memorandum of Understanding (MoU) on Sharing of TR-held Data between



Financial Services
Commission

209 Sejong-daero, Jongno-gu,
Seoul, 03171, Republic of Korea

the supervisory authorities. We are currently reviewing to set forth legal basis for this type of cooperation.

(2) Information Sharing with Other Domestic TRs or Foreign TRs

We are planning to enable data access and sharing with other TRs based on MoU on Sharing of TR-held Data.

4. Use of TR-held Data

We are planning to adopt international recommendations on the use of identifier, to prepare for verification of reporting items and data qualifications, and for information sharing with foreign TRs.

- Unique Transaction Identifier (UTI): We are planning to adopt international standards on introduction and management of UTIs on which IOSCO is currently leading discussion in an attempt to consolidate issuance standards and data format.
- Unique Product Identifier (UPI): In view to ensuring that OTC-derivatives classification is globally aligned and that we have standardized data, we are planning to adopt ISDA Taxonomy.
- Legal Entity Identifier (LEI): As for legal entities, we are planning to require indicating LEI as counterparty identifier for book-keeping purposes.

TR will be responsible for providing data analysis to the supervisory authority to help systemic risk management, and for disclosing data related to outstanding balance and transaction performance to the general public.

Responses to follow up questions

The Korean response states that the Financial Services Commission (FSC), as the primary authority responsible for management and supervision of TRs, is expected to have unlimited, direct access to TR-held data. The response also states that the Korean authorities are reviewing adoption of legal basis to give nonprimary authorities such as the BoK (central bank) and other relevant Government bodies the access to information held by TRs. Please could you clarify in the case of non-primary regulators such as the BoK and other bodies whether access to TR held data would be direct from the TR or indirect (via the primary regulator)?

First of all, the Korean authorities are planning to adopt legal basis that non-primary authorities such as the FSS, BOK and Ministry of Strategy and Finance may access TR-held data directly. Secondly, TR(s) may provide information or aggregate data to non-primary authorities if requested for suitable purposes.

The Korean response states that the Korean authorities are planning to enable data access and sharing with other TRs based on MoU on Sharing of TR-held Data. Do Korean authorities intend to share data themselves or for the TR (KRX) to share the data? Is it intended to share data with foreign TRs directly, or only via foreign regulatory authorities?

In terms of sharing information or TR-held data among the domestic TRs, the Korean authorities are planning to set up legal ground that TRs can share respective information and data with each other directly: for instance, KRX as a TR will be able to provide information and data to TRs and receive them from other TRs for the data quality. In addition, TRs need MoU among themselves for the practical reasons such as the scope of information shared, how to share it, usage of provided information and data, etc. However, we are planning to have a single TR in the short run.

On the other hand, in terms of domestic TRs' sharing information and data with foreign TRs for the counterparty's issues, one way to share information is that the Korean authorities can request relevant information to foreign authorities for the domestic TRs and then related information can be provided via foreign authorities and TRs and vice versa. In this case, we need a specific MoU between both authorities on sharing such information. The other way to share information with foreign TRs is sharing information and data with foreign TRs directly based on prior permission from their respective authorities. This case needs MoU between authorities as well.

The Korean authorities are reviewing both cases above at present, since a necessary legal framework in Korea has not been finalized so far.

08 July, 2016

Mexico's report on its planned actions to address legal barriers to OTC derivatives trade reporting

This note provides a consolidated report from Banco de México, the National Banking and Securities Commission (CNBV) and the Ministry of Finance and Public Credit (SHCP and jointly with Banco de México and the CNBV, the "Mexican Financial Authorities" (MFAs)) on Mexico's planned actions to address legal barriers in relation to trade reporting, in response to the letter number PLEN/2016/29, dated March 13, 2016, from the FSB Chairman. The report follows the structure suggested in the annex of such letter.

1. Barriers to reporting information into TRs or TR-like entities

(a) Report to a domestic TR or a TR-like entity by a foreign reporting entity pursuant to Domestic Reporting requirements

There are no barriers with respect to reporting information to a domestic TR or TR-Like Entity by a foreign reporting entity pursuant to domestic reporting requirement. Mexican reporting requirements apply only to domestic entities.

(b) Report to a foreign TR or a TR-like entity by a domestic reporting entity pursuant to Domestic Reporting requirements

A domestic reporting entity could report transactions to foreign TR or TR-like entities subject to a reporting requirement provided that: i) an appropriate regulatory framework is implemented by MFAs to allow such reporting to foreign TRs or TR-like entities under conditions that may not represent a breach of secrecy provisions, and ii) such TR or TR-like entities are recognized as TR by Banco de México¹.

MFAs are currently analyzing the most appropriate regulatory framework they may implement to allow domestic reporting entities to report under conditions that may not represent a breach of secrecy provisions. This analysis is expected to be concluded by the first 2017 semester.

¹ Rule 12 of "Rules to carry out derivative transactions" (Circular 4/2012) issued by Banco de México lays down the criteria according to which Banco de Mexico may recognize a foreign TR or TR-like entity as such (see <http://www.banxico.org.mx/disposiciones/circulares/%7BD7250B17-13A4-B0B7-F4E5-04AF29F37014%7D.pdf>).

(c) Report to a foreign TR or TR-like entity by a domestic reporting entity pursuant to foreign reporting requirement

MFAs are of the opinion that there is no need to compel a domestic reporting entity to report to a foreign TR or TR-like entity under a foreign reporting requirement. Double reporting may increase costs for domestic reporting entities. Under our domestic legal framework, any foreign financial authority may have indirect access to trade information reported to domestic TRs, provided such authority has entered into a memorandum of understanding (MoU) with Banco de México or the CNBV in order to request and obtain such trade information.

Notwithstanding the opinion of the MFAs, trade reporting by a domestic trade participant to a foreign TR or TR-like entity is allowed with respect to transactions traded in a foreign jurisdiction.

Direct reporting by a domestic entity to foreign TRs or TR-like entities is not allowed with respect to transactions traded in Mexico, due to legal provisions related to secrecy obligations applicable to domestic entities under articles 142 of the Credit Institutions Law and 192 of the Securities Market Law.

To remove the barrier to direct reporting by a trade participant, MFAs are currently analyzing the most appropriate regulatory framework they may implement to allow such a reporting under conditions that may not represent a breach of secrecy provisions. Analysis is expected to be concluded by the first 2017 semester.

(d) Report to a domestic TR or TR-like entity by a domestic or foreign reporting entity pursuant to foreign reporting requirement

There are no barriers with respect to reporting information to central counterparties (CCP/TR-like entities) by a domestic or foreign reporting entity given that reporting of information by any entity, other than those clearing derivative contracts in the relevant central counterparty, is on a voluntary basis².

In the case of Banco de México (Banxico/TR-like entity), reporting information pursuant to a foreign requirement is not allowed. However, Banco de México is preparing a regulation to allow domestic or foreign entities to report trading information through a voluntary procedure. It is

² According to Rule 20 (w) of the “Rules to which participants in the derivatives contracts market must be subject to” (Tripartite Rules) central counterparties must provide trade repository services regarding all the contracts that they receive for clearing and settlement or for any other transactions reported on a voluntary basis. <http://www.banxico.org.mx/disposiciones/circulares/reglas-tripartitas/%7B3CDF1BA6-3C84-D430-483E-3ACAA3949332%7D.pdf>

expected that such regulation will be released in draft format for discussion with the industry during the second 2016 semester so that it may be issued during the first 2017 semester.

2. Barriers to authorities' access to TR-held data

(a) Access to domestic TR data by domestic authorities' other than the primary authority

(i) Banxico/TR-like entity

There are no barriers regarding the access by domestic financial authorities to the information held in Banxico/TR-like entity. Banco de Mexico is obligated by law to provide to other domestic financial authorities³ information obtained from the execution of its powers, provided that the objective of such delivery is to preserve the financial stability and facilitate the adequate fulfillment of such authorities' duties. In consideration of this legal framework, MFAs have endeavored to avoid duplicating reporting requirements to financial institutions.

Pursuant to such framework, other domestic financial authorities legally empowered to obtain information directly from reporting entities have access to data held by Banxico/TR-like entity according to an MoU entered into by such authorities in 2000⁴. Currently CNBV has direct access to the information held in the Banxico/TR-like via the Banxico/TR-like portal.

Based on the legal mechanism explained above, MFAs are of the opinion that the execution of an information sharing agreement should not be considered a material barrier to such information sharing because the main purpose of such agreement is to preserve the confidentiality of the information. Furthermore, under amendments to the banking and securities law in 2014, MFAs are currently revising the terms of the information sharing agreement to enhance the efficiency of the procedures imposed by such agreement to ensure that the information possessed by the authorities is duly kept in confidentiality, and to strengthen the oversight and cooperation by the MFAs.

³ The Mexican financial authorities that are legally allowed to access information held in the Banxico – TR-like entity are the SHCP, the CNBV, the Institute for the Protection of Banking Savings, the National Insurance and Bond Commission, the National Commission for the Retirement Savings System and the National Commission for the Protection of Financial Services Users, pursuant to an agreement executed among them and Banco de México.

⁴ Such access is allowed based on the agreement referred to in footnote 3 for information sharing purposes among Banco de México, the SHCP, the CNBV, the Institute for the Protection of Banking Savings and the National Commission for the Protection of Users of Financial Services.

(ii) CCP/TR-like entity

There are no barriers to access to CCP/TR-like entity's information by domestic authorities. Direct access to the CCP/TR-like entity's data by Mexican financial authorities is not conditioned on any MoU or agreement of any kind. CCP/TR-like entities must keep at the disposal of such authorities, detailed information in connection with the derivative contracts they received for clearing and settlement⁵.

Regarding other Mexican financial authorities, access to data held by the CCP/TR-like entities is indirect, via one of the primary authorities i.e. the MFA and in terms of an information sharing agreement described in the section (i) Banxico/TR-like entity.

(b) Access to domestic TR data by foreign authorities

(i) Banxico/TR-like entity

Given that the Banxico/TR-Like entity is operated by the central bank foreign financial authorities would have a direct access to the information held in this TR. The only requirement that foreign authorities must fulfil to access information held in Banxico TR-like is the execution of an information-sharing agreement with Banco de México.

(ii) CCP/TR-like entity

There are no barriers with respect to the indirect access by foreign authorities to the information held in this type of TR. The only requirement that foreign authorities must fulfil to access information held in the CCP/TR-like is the execution of an information-sharing agreement with the CNBV. Notwithstanding the foregoing, Mexican financial authorities are considering to amend Tripartite Rules in order to establish a better and efficient mechanism to grant access to the information held by CCP/TR-Like entities. This amendment is expected to be issued for public consultation by mid-2017.

3. Cooperative arrangements with other domestic or foreign authorities that facilitate authorities' access to TR-held data

To strengthen cross-border oversight of OTC derivative transactions, MFAs are promoting the execution of new information sharing agreements or MoUs with foreign authorities. The MoUs aim to enhance cooperation and information sharing among authorities by allowing broader and direct access, upon request,

⁵ Rule 20 (w) 1 of the Tripartite Rules.

to data to oversee OTC derivative markets and financial market infrastructures in general.

As part of these efforts, Banco de México and CNBV are finalizing an MoU with the U.S. Commodity Futures Trade Commission regarding the exchange of information obtained as a result of the supervision and oversight of CCPs and TRs established in the United States and Mexico.

4. Creation of appropriate operational frameworks that facilitate access to TR-held data

a) Operational frameworks with other domestic and foreign authorities

Banco de México is preparing new regulation to enhance the legal and operational framework of the Banxico/TR-like entity. Among other issues that such new regulation may include are technical terms and security conditions under which the information of the Banxico/TR-like entity will be shared to local and foreign financial authorities.

Secretariat to the Financial Stability Board
Bank for International Settlements
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Trade register 3300 3396

Re:
Addressing Legal Barriers to Reporting of, and Access to OTC Derivatives
Transaction Data

Dear Madam, Dear Sir,

First of all, we would like to thank you for your work on improving the reporting of derivatives transactions. We think more transparency is an important part of the international derivatives reforms, as it is imperative to monitor systemic risks in the financial markets. In response to your request of 13 March to prepare a report on our planned actions to address legal barriers in relation to trade reporting, we kindly provide you with some more details in this letter.

In the FSB peer review report on OTC derivatives trade reporting of 4 November 2015, the Netherlands is mentioned as having some legal barriers in this respect. Concretely, tables 6, 7 and 9 of the Appendix E to the peer review report show that the Netherlands has barriers regarding (i) reporting to a trade repository pursuant to foreign reporting requirements and (ii) foreign authorities' direct access to EU trade repositories.

Regarding the first barrier – reporting to a trade repository pursuant to foreign reporting requirements – we note that the Dutch data protection act protects the processing of personal data of natural persons. The Dutch data protection act is a national implementation of the European data protection directive. Consequently, to the extent that this should be regarded a barrier at all, it would exist on a European level and it would not be a national barrier.

The Dutch data protection act does not hinder reporting of derivatives transactions of a natural person if a legal obligation exists to report the transaction, such as under EMIR. Moreover, if the natural person would give standing consent to the reporting, the Dutch data protection act would not form any barrier to the reporting of derivatives transactions. Only in the minor case of a natural person that would have to report under a foreign reporting requirement in a jurisdiction that has not been deemed equivalent to EMIR, the Dutch data protection act could theoretically form a barrier to the reporting of derivatives transactions. However, if the European Commission would deem the reporting requirements in the relevant third country jurisdictions to be equivalent to EMIR,¹ or if the concerned natural persons would

¹ We would like to refer to the separate response of the European Commission for the full details of this process.

Date
17 June 2016

Your reference

Our reference
2016/396769

Enclosure(s)

provide standing consent, the Dutch data protection act would not constitute a barrier for the reporting of derivatives transactions.

Date
17 June 2016

Regarding the second barrier – foreign authorities' direct access to EU trade repositories – we would like to refer to the response of the European Commission as this is not a national barrier but must be solved on the European level.

Our reference
2016/396769

In conclusion, we note that we have no national barriers to the reporting of derivatives transactions. We are thus of the opinion that we have fulfilled the FSB recommendations in this regard.

Please do not hesitate to contact us in case of any further questions. We remain at your disposal to provide you with more information on this important matter.

Kind regards,
De Nederlandsche Bank N.V

Legal Counsel



**CENTRAL BANK OF RUSSIAN FEDERATION
(BANK OF RUSSIA)**

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date 06.06.2016
our no 01-35-2/4373

Mark Carney
Chairman
Financial Stability Board
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Dear Mr Carney,

I am writing to you in response to your letter on addressing legal barriers to reporting of, and accessing to, OTC derivatives transaction data.

One of the recommendations provided by the thematic review on OTC derivatives trade reporting is permitting access to data held in domestic trade repositories (TR) by foreign authorities.

Russian legislation has certain confidentiality requirements and the access to data held in Russian TRs can be provided to a limited list of parties which includes reporting entities, investigating authorities, courts and the Bank of Russia. Thus foreign authorities could not be granted direct access to TR data.

However access to data held in Russian TRs by foreign authorities can be executed on indirect basis with the intermediation of the Bank of Russia. According to the Article 51.1 of the Federal Law No. 86-FZ the Bank of Russia exchanges information and (or) documents, which may be confidential, including those that contain data constituting bank secrecy (hereinafter confidential information), with a foreign financial market regulator pursuant to and in compliance with:

- the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information of the International Organisation of Securities Commissions, the Multilateral Memorandum of

Understanding on Cooperation and Information Exchange of the International Association of Insurance Supervisors;

- an international treaty of the Russian Federation;
- a bilateral treaty with a foreign financial market regulator envisaging an exchange of information, if the legislation of the corresponding foreign state stipulates the level of security for information provision at least matching the level of information security envisaged by the Russian Federation legislation.

In order to facilitate continuous access to TR-held data by foreign authorities the Bank of Russia proposes to amend the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information in order to cover all types of data needs. We stand ready to conclude bilateral treaties with interested foreign regulators and create appropriate operational frameworks however conclusion of a significant number of bilateral treaties in our view would be less efficient.

Sincerely yours,



Elvira Nabiullina

**PROGRESS REPORT FROM SAUDI ARABIAN MONETARY AGENCY ADDRESSING LEGAL
BARRIERS TO REPORTING OF, AND ACCESS TO, OTC DERIVATIVES TRANSACTIONS DATA**

JUNE 2016

I. Background

- OTC Derivatives (OTCD) transactions are primarily carried out by local Banks with Large Corporates, Private Business Groups and High Networth Individuals. The Banks also carryout such transactions with major International Banks and Financial Institutions in regional and international markets.
- The value of all OTCD contracts traded in 2014 was a notional SAR 2.6 Trillion (\$690 billion), an amount equal to approximately 0.11% of global OTCD market.
- Fx and Interest Swaps represent about 85% of the total activity.
- OTCD transactions between Saudi corporates and business entities and International Banks and Investment firms that are booked offshore are not reflected in this report.

II. Progress in Meeting FSB Recommendations

- In 2012, Saudi Arabian Monetary Agency (SAMA) has required the Banking Industry to develop standard contracts for OTCD transactions. This was successfully implemented in 2012.
- Also in 2012, SAMA created the Saudi Arabian Trade Repository (SATR) and has required Banks to submit all transactional data.
- SAMA has developed an internal Reporting system to use such data for supervision purposes.
- In 2012, SAMA took a position that the OTCD volumes in KSA did not justify an electronic exchange or the creation of a Central Counterparty (CCP). This decision is currently under study by Tadawul (Saudi Stock Exchange), which is considering acting as a future CCP for OTCD.

III. Progress in Relation to Addressing Legal Barriers to Reporting of and Access to OTCD

- This section contains the specific progress made by Saudi Arabia in relation to the Recommendations contained in the FSB Peer Review Report on "*Thematic Review on OTCD Trade Reporting*" dated 4th November 2015.

1. Comprehensive Reporting

- 1A. Saudi Arabia has implemented the Trade Reporting requirements in December 2012 by creating the Saudi Arabian Trade Repository under SAMA.
- 1B. The current Reporting requirements cover all Fx and Interest Rate transactions that represent about 85% of all OTCD transactions. SATR is currently looking into inclusion of other OTCD transactions related to equities and commodities in the TR.

2. Barriers to Reporting Information into TR or TR like Entities

- 2A. Currently, there are no barriers to full reporting of TR information (including counterparty information). The current reporting meets SAMA requirements although relevant foreign authorities requirements need to be arranged through SAMA.
- 2B. There is no legal or regulatory requirement that a trade participant (Bank or FI) must obtain a counterparty consent to report trade data. Therefore, no legal or regulatory change is required.
- 2C. There is no masking of newly reported transactions, and SATR is able to obtain all the information.

3. Authorities Access to TR held Data

- 3A. There are no legal restrictions for domestic supervisory authorities to have access to TR data. Such access can be provided between the primary and secondary supervisory authorities under an existing MOU.

Access to SATR data by foreign supervisory authorities can be arranged between SAMA and the relevant foreign authorities through an MOU. Such access is normally granted on a reciprocal basis.

- 3B. In Saudi Arabia, SAMA and the Capital Market Authority (CMA) are the two relevant authorities. An MOU covering, among others, the exchange of supervisory information, already exists between the two regulators.
- 3C. The Saudi Arabian Trade Repository is currently operated and managed by a Department in SAMA, which is the Central Bank and the Banking, Insurance, and Finance Companies Supervisory Authority. Consequently, all TR held data is available to SAMA.

4. Usability of TR Data

- 4A. SAMA is working with SATR and the Banks (the only financial intermediaries in the domestic OTCD Market) to improve the quality of the data. This includes data validation activities and inspection of data provided by the Banks.
- 4B. Saudi Arabia is committed to the projects related to Universal Global Identifiers (such as LEI, UPI and UTI) and harmonized data standards. SAMA is working with relevant authorities and institutions to promote these standards.
- 4C. SAMA is currently planning a complete review of the access, process and interpretation of the TR data.

Saudi Arabia Supplementary Response

SAMA has authorised Saudi banks participating in OTC Derivatives activities to report to foreign regulatory authorities as and when required.

If there were any foreign legal or regulatory requirements for Saudi banks to submit information to a foreign TR, such requirements would be accommodated.

While there have been no requests for exchange of information by a foreign TR, such requests can be dealt with on a reciprocal basis subject to MOUs.

Barriers to reporting information into TRs or TR-like entities

- Where barriers to full reporting of trade information (including counterparty information) exist within a jurisdiction's legal and regulatory framework, such barriers should be removed by June 2018 at the latest, with respect to reporting pursuant to domestic and foreign requirements.
- Where there is a requirement in a jurisdiction's legal and regulatory framework that a trade participant must obtain a counterparty's consent to report trade data, by June 2018 at the latest all jurisdictions should permit transaction counterparties to provide standing consent to the reporting of such data to any domestic or foreign TR.
- Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting.

By June 2016 jurisdictions should report what actions are planned to address these barriers to reporting trade information.

MAS' Response:

Banks can report counterparty information for the purpose of trade reporting to domestic or foreign TRs as long as client consent is obtained. Client consent can be in the form of a standing consent.

To facilitate the reporting of counterparty information, MAS has proposed¹ legislative amendments to the Securities and Futures Act ("SFA") that will remove the need for client consent to be obtained, for the purposes of complying with domestic and foreign reporting obligations. The amendments are targeted to be tabled in Parliament in 2H 2016, and to take effect in 2017.

MAS has allowed for deferred reporting of counterparty information under the Securities and Futures (Reporting of Derivatives Contracts) Regulation ["SF(RDC)R"]. Regulation 11 of the SF(RDC)R provides relief to a specified person from reporting counterparty information if –

- a) he is prohibited from doing so under the laws of a list of prescribed jurisdictions specified in the Fifth Schedule to the SF(RDC)R, or by any requirements imposed on him by any authority of any jurisdiction specified in the Fifth Schedule; or
- b) where the laws or the requirements imposed on him by any authority of any jurisdiction allow him to report the counterparty information only with the consent of the counterparty to the specified derivatives contract, and he was unable to obtain such consent after having made reasonable efforts to do so.

The deferred reporting arrangement expires on 30 June 2017.

¹ Consultation Paper on Proposed Amendments to the SFA, Feb 2015, <http://www.mas.gov.sg/news-and-publications/consultation-paper/2015/consultation-paper-on-proposed-amendments-to-the-sfa.aspx>

Authorities' access to TR-held data

- By June 2018 at the latest all jurisdictions should have a legal framework in place to permit access to data held in a domestic TR by domestic authorities and by foreign authorities, on the basis of these authorities' mandates and in accordance with the domestic regulatory regime.³
 - The legal framework should include eliminating the conditions that, in practice, prevent this access.⁴
 - In general, consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities' access to TR-held data, it is preferable that access to relevant data held in TRs be direct rather than indirect access, to enable authorities to have continuous and un-intermediated access to relevant TR-held data.⁵
- All relevant authorities should coordinate in establishing cooperative arrangements that facilitate authorities' access to TR-held data (whether it be through direct or indirect access).⁴
- Authorities and TRs should work together, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data, whether direct or indirect.

By June 2016 jurisdictions should report what actions are planned to permit and facilitate authorities' access to data held in a domestic TR.

MAS' Response:

NA. Singapore allows access without material conditions.



June 27, 2016

Chairman Mark Carney
Financial Stability Board
Basel, Switzerland

Re: **Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data (PLEN/2016/29)**

Dear _____,

South Africa appreciates the opportunity to provide comment to the Chairman's request (PLEN/2016/29) of member jurisdictions' planned actions to address legal barriers to reporting OTC derivatives transactions, as well as regulatory access to reported data. We agree with the Chairman that addressing barriers is critical for fully delivering on the G20 Leaders' objectives, particularly from our point of view, as a significant share of South Africa's OTC derivatives transactions are cross-border and the likelihood is that South African OTC derivatives data can be expected to be held in foreign trade repositories (TRs). The ability to observe market developments and to monitor systemic risk build up is as important for South Africa as it is for other jurisdictions and we therefore remain committed to integrating appropriate regulatory and legislative reforms to ensure consistency with international best practice.

The National Treasury, together with the Financial Services Board and the South African Reserve Bank are leading the OTC derivatives reform agenda in South Africa, and this document represents our consolidated submission to the survey on proposed action.

I. Progress towards implementing OTC derivatives trade reporting

Since 2012, South Africa has made steady progress towards implementing the OTC derivatives reforms. The Financial Markets Act, which was enacted in 2013, together with the draft Ministerial Regulations (draft Regulations)¹ and Board Notices, provide the legal and regulatory framework for the establishment and licensing of domestic TRs. The framework provides for additional requirements and duties related to the design and operation of the TR. These requirements include the development of policies and

¹ National Treasury, see: <http://www.treasury.gov.za/otc/>

procedures that define the rights and interests of users and other relevant stakeholders with respect to the transaction data stored in the TR's systems; and a duty to provide continuous, direct and immediate electronic access to all transaction data in accordance with internationally acceptable communication procedures and standards for messaging to the primary authority (that is the Financial Services Board) and other relevant supervisory authorities. The regulatory requirements also extend to market participants' obligations to report of OTC derivative transaction information to TRs, in line with international standards. It is anticipated that these requirements will be in force by end-2016.

Progress in implementing the reforms is further dependent on the realisation of the Twin Peaks regulatory regime that is currently being established through the Financial Sector Regulation Bill. When the Financial Sector Regulation Bill is enacted, the Financial Sector Conduct Authority will replace the Financial Services Board as the primary authority responsible for regulating TRs in South Africa, and the Prudential Authority will be established and have oversight responsibilities in the regulation of TRs. Additionally, the South African Reserve Bank through its enhanced oversight role in maintaining financial stability, will be responsible for assessing the observance on principles developed for market infrastructures, such as the *Principles for Financial Market Infrastructures*.

Further legislative amendments are also being proposed to the Financial Markets Act, through the Financial Sector Regulation Bill, to enable South African market participants to utilise the services of foreign TRs to satisfy domestic and foreign reporting requirements, subject to an equivalence assessment of home country regulatory standards by the South African Authorities. We recognise that the South African OTC derivatives market is primarily characterised by interbank trades between domestic and foreign banks, and as such domestic participants face significant exposure to global markets. The practical implication is that a majority of these trades will be reported to foreign/global TRs in fulfilment of counterparties' statutory reporting obligations in the home country. The proposals will therefore forge a path to further cooperation with foreign regulators, and extends to information sharing and supervisory arrangements, consistent with international standards. It is expected that the framework will be in place by at least by early 2017.

II. Barriers to reporting information into TRs

South African law permits reporting to a licensed domestic and foreign TR (when the amendments to the Financial Markets Act become effective) to satisfy domestic reporting requirements and requires counterparty consent. Similarly, market participants' voluntary reporting requires consent and covers reporting to a domestic as well as a foreign TR.

Fulfilment of domestic reporting requirements to licensed foreign TRs will be possible when the Promotion and Protection of Personal Information Act commences (expected to be end-2017), with consent of the counterparty or receiving authorisation.

With respect to reporting to a domestic or foreign TR pursuant to foreign requirements, counterparty consent is required. South African Authorities may facilitate full reporting of transactions, subject to entering into regulatory and co-operation arrangements with the foreign regulators, and ensuring appropriate safeguards with respect to the protection of the security of the information.

III. Barriers to Authorities' access to TR-held data

Currently there is no licensed TR in South Africa, nonetheless it is envisaged that there would be no barriers to Authorities' access (direct or indirect) to domestic TR data. Exemptions under the Promotion and Protection of Personal Information Act permit Authorities to obtain information without consent to the extent necessary to enable the proper fulfilment of supervisory obligations imposed by law. The Financial Markets Act and the draft Regulations enable Authorities other than the TR's primary Authority to obtain access to data held at a domestic TR in respect of reporting obligations imposed on transactions or positions.

Indirect access by foreign regulators to data held in domestic TRs can be facilitated by entering into appropriate information sharing and co-operation arrangements with the foreign regulators. The provisions of Section 22 of the Financial Services Board Act enable the sharing of information by the Financial Services Board with other Authorities, including foreign regulators. Moreover, draft Regulations impose an additional duty on a TR to provide access to transaction data held by the TR to other supervisory authorities relevant to those authorities' mandate and responsibilities, where a supervisory cooperation arrangement with the Financial Services Board as contemplated in section 22 of the Financial Services Board Act have been entered into. This position will be further clarified in proposed wording of section 239 in the Financial Sector Regulation Bill, which will also be applicable to the Prudential Authority and the South African Reserve Bank, so the scope of potential information sharing will be expanded.

One aspect to note is that regarding the sharing of information in terms of MOUs, while with section 22 of the Financial Services Board Act, MOUs are deemed to be compliant with section 72 of the Promotion and Protection of Personal Information Act as it relates to cross border processing of information; in terms of section 239 of the Financial Sector Regulation Bill there is not a deeming provision or an exemption that would be in place. It would, therefore, be necessary for Authorities to include appropriate measures in MOUs, and put in place appropriate arrangements with third parties when sharing information, to ensure that there is not a violation of section 72 of the Promotion and Protection of Personal Information Act as a result.

In conclusion, South Africa is committed to seeing the reforms to the OTC derivatives market, and going forward will monitor any further issues arising, and respond accordingly.

Yours sincerely,

Mr Roy Havemann
Chief Director, National Treasury

Date:

Supplementary questions regarding barriers to authorities' access to TR-held data

Access by domestic authorities to data held in domestic TR

Does the barrier relate only to personal identifying information or does it relate to non-individual clients as well?

The definition of “personal information” in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (“the PoPI Act”) applies to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person. The barrier would relate to non-individual clients, to the extent that the client was an identifiable, existing juristic person.

Could you please confirm that standing consent would be possible under this regime (or would consent need to be given trade-by-trade)?

Section 11 of the PoPI Act does not explicitly provide for the potential for providing standing consent. However, it would be possible for standing consent to be given, if the consent was worded in an appropriate manner that ensures that all applicable requirements in the PoPI Act are addressed. The onus remains on the ‘responsible party’ collecting information to ensure that proper consent has been obtained. Also, any consent could be revoked at any time by the ‘data subject’, and if that occurred, any further processing of information must cease. It would be advisable for any consent to consider and appropriately provide for any potential envisaged further processing of information that might be required, and the purposes for that further processing of information, to ensure that any further processing of the information would be covered by the consent.

From whom and in what circumstances would the authorisation referred to be obtained?

In the initial response provided, “authorisation” as referred to relates to the ability of the Information Regulator which is established in terms of section 39 of the PoPI Act to authorise the processing of personal information, through the granting of an exemption in terms of section 37 of the PoPI Act, to process personal information, even if that processing is in breach of a condition for the processing of that personal information.

It is also relevant to note, that in terms of section 38, the processing of information in respect of certain other “relevant functions” is already authorised and is granted an exemption from certain requirements in the PoPI Act.

Please could you answer the same questions for reporting to foreign TRs pursuant to foreign legal requirements.

The above responses would also apply in relation to reporting to foreign TRs pursuant to foreign legal requirements. It would be important, in any MoUs that are entered into by South African authorities with other foreign authorities, to ensure that matters relating to consent are appropriately provided for.

Discontinuing ‘masking’ once barriers to reporting are removed (Recommendation 3)

In relation to this matter, based on an understanding of the concept as meaning that information is distorted so that it no longer identifies the subject, it would be appropriate to note that South Africa is busy developing reporting requirements to TRs by providers of OTC derivatives. It is not envisaged that masking of counterparty information will be allowed. The current draft proposal contains requirements for the identification of counterparties by either the use of a legal entity identifier or a pre-legal entity identifier.

Spain Response

Dear FSB Chair,

We would like to provide our national input regarding your letter of 13 March requesting feedback on planned actions to address legal barriers in relation to trade reporting.

In the FSB Thematic peer review on the reporting of OTC derivatives transactions to trade repositories Spain is mentioned as one of the EU member states with legal barriers in the case of reporting to a TR or TR-like entity pursuant to foreign reporting requirements.

In the Spanish case, this barrier derives from banking secrecy provisions contained in article 83 of the Spanish law transposing the 2013 EU Capital requirements directive –CRDIV- (<https://www.boe.es/boe/dias/2014/06/27/pdfs/BOE-A-2014-6726.pdf>), which reads as follows:

[Unofficial translation]

Article 83. Duty of secrecy.

“1. All persons subject to the discipline rules of credit entities are obliged to keep under strict confidentiality all information related to balances, positions, transactions and all other operations of their clients, without these being communicated to third parties or being subject to public disclosure.

2. Exempted from this duty is every piece of information whose disclosure or communication to third parties has been authorized by the client or by the law”

Thus, credit entities are forbidden under Spanish law to provide any information on clients' transactions (including OTC derivatives transactions) to any third party (including TR or TR-like entities) unless:

- A) Either the client has given standing consent, which is perfectly feasible through a specific clause under derivatives contracts;
- B) Or the law applicable in Spain authorizes or requests such a provision, which is the case for providing TRs with information on OTC derivatives contracts under the EU Regulation on OTC derivatives, central counterparties and trade repositories (EMIR). Additionally, Article 13 of EMIR allows credit entities to provide TRs with information on OTC derivatives transactions following foreign reporting requirements in case the European Commission has adopted an equivalence decision for the jurisdiction in question.

Consequently, we deem our current regulatory framework (both at EU and national level) allows sufficient leeway to accommodate eventual reporting requirements by foreign authorities.

Besides, given that the specific legal regime for reporting information on OTC derivatives transaction to TRs derives from an EU Regulation that is directly applicable in Spain and that equivalence decisions are taken by the European Commission, we prefer to refer to the response provided by the latter.

Your sincerely,

Juan Luis Díez Gibson

Análisis Estratégico y Sistema Financiero Internacional

Secretaría General del Tesoro y Política Financiera

Ministerio de Economía y Competitividad

Strategic Analysis and International Financial System

General Secretariat of the Treasury and Financial Policy

Ministry of Economy and Competitiveness



CH-3003 Bern, SIF

By e-mail

Mr Mark Carney
Chairman Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
4002 Basel

Document ID: 3-06.2
Bern, 15 June 2016

Switzerland / Barriers to OTC Derivatives Trade Reporting and Data Access

Dear Mr Chairman

, Dear Mark

I am writing to respond to your request of 13 March 2016 for a report on planned actions of FSB Member jurisdictions to address legal barriers in relation to OTC derivatives trade reporting. This request follows the FSB's thematic peer review on OTC derivatives trade reporting, published in November 2015 ("Peer Review")¹.

The following remarks have been coordinated with the Swiss National Bank and the Swiss Financial Market Supervisory Authority (FINMA) and thereby represent a consolidated response of all relevant Swiss authorities.

As a general remark, please note that on 1 January 2016, the Swiss Financial Market Infrastructure Act (FMIA) entered into effect. The FMIA (together with its implementing ordinances) provides for a comprehensive regulatory framework for OTC derivatives transactions. This framework specifically addresses the reporting of OTC derivatives transactions to trade repositories and authorities' access to trade repository-held data.

A. Barriers to reporting information into trade repositories

In your request, each FSB member jurisdiction was asked to report its actions planned to address circumstances where the Peer Review reported that barriers to complete reporting of trades exist or where it is uncertain whether barriers exist.

¹ <http://www.fsb.org/wp-content/uploads/Peer-review-on-trade-reporting.pdf>

Regarding potential barriers to reporting of OTC derivative transactions in Switzerland (cf. Tables 6 and 7 Peer Review), the Swiss framework currently in place does generally not require client consent in connection with trade reporting.

In certain cases, depending on specific foreign requirements, there may exist constellations that, in practice, will require client consent. In the Peer Review, the FSB recommended that in such cases, jurisdictions permit trade participants to provide standing consent (as opposed to trade-by-trade consent). The applicable Swiss framework does not require trade-by-trade consent and, therefore, counterparties can provide such standing consent. The client consent requirement (where it applies) is thus not considered a barrier to full reporting of trade information on OTC derivatives transactions. Against this background, no specific actions are envisaged in that regard at this stage.

B. Barriers to authorities' access to trade repository-held data

In addition, information was requested on actions planned to permit and facilitate authorities' access to data held in domestic trade repositories.

As mentioned, the FMIA that entered into force on 1 January 2016 provides for a framework governing the access to trade repository-held data by authorities. The framework specifically provides for a direct access mechanism by domestic and foreign authorities to such data.

Based on the framework set out in the FMIA, the competent Swiss authorities (namely FINMA), upon request, will generally engage in discussions with foreign authorities to establish cooperative arrangements facilitating authorities' access to trade repository-held data and, as appropriate, will seek to work with trade repositories on operational frameworks facilitating access to trade repository-held data. Against this background, at this stage, no further actions are currently envisaged in this regard.

To conclude, on 1 January 2016 the Swiss Financial Market Infrastructure Act (FMIA) entered into effect. The FMIA (and its implementing ordinances) provide for a comprehensive framework on OTC derivatives. This specifically includes provisions on trade reporting and authorities' access to trade repository-held data, thereby addressing the concerns outlined in the Peer Review regarding barriers to reporting and authorities' access.

Kind regards



Alexander Karrer
Deputy State Secretary

Copy to:

- Mr. Svein Andresen, Secretary General, Financial Stability Board
- Mr. Thomas Jordan, Chairman of the Governing Board, Swiss National Bank
- Mr. Mark Branson, Chief Executive Officer, Swiss Financial Market Supervisory Authority

Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data-CMB's Responses

Recommendations on which jurisdictions are to report planned actions by June 2016

Recommendation

Barriers to reporting information into TRs or TR-like entities

- Where barriers to full reporting of trade information (including counterparty information) exist within a jurisdiction's legal and regulatory framework, such barriers should be removed by June 2018 at the latest, with respect to reporting pursuant to domestic and foreign requirements.

CMB's Response

(The Reporting Communiqué/Communiqué) has been drafted and communicated to major related institutions and market participants for consultation. Trade reporting requirements are regulated through this regulation. The draft Communiqué is planned to be revised based on the proposals received from and finalized before end 2016.

Regarding the Communiqué, one of the most important points that should be noted is that, within the limited scope of the authority that has been given to CMB by Capital Markets Law, trade reporting by foreign participants is not regulated in the Communiqué. Thus related fields are still kept N/A. On the other hand, reporting pursuant to foreign reporting requirements are subject to the provisions of the related third country, there is no extra limitation on these reporting requirements resulting specifically from the Communiqué.

One another point to note is that all domestic participants should only report to MKK (Local TR) pursuant to domestic requirements. Reporting to foreign TRs is not permitted.

Additionally there are no specific provisions in the Communiqué regarding reporting to TR-like entities.

According to the provisions of Draft Reporting Communiqué, some table fields in the FSB's thematic peer review report on OTC derivatives trade reporting, published in November 2015 should be updated as below:

Reporting to a TR or pursuant to domestic reporting requirements:

In the Communiqué, reporting by domestic trade participant to a foreign TR is not permitted

		Trade Data:	
		Domestic counterparties	Foreign counterparties
Reporting by domestic trade participant	<i>To a domestic TR</i>	No limitation	No limitation
	<i>To a foreign TR</i>	Not permitted	Not permitted.
Reporting by foreign trade participant	<i>To a domestic TR</i>	N/A	N/A
	<i>To a foreign TR</i>	N/A	<i>Intentionally left blank</i>

Reporting to a TR-like entity pursuant to domestic reporting requirements:

In the Communiqué, reporting by domestic trade participant to a foreign TR-like entity is not permitted. Reporting by domestic trade participant to a domestic authority is not regulated in the Communiqué.

		Trade Data:	
		Domestic counterparties	Foreign counterparties
Reporting by domestic trade participant	<i>To a domestic entity¹</i>	No limitation ²	No limitation ²
	<i>To a foreign entity¹</i>	Not permitted	Not permitted.
	<i>To a domestic authority³</i>	N/A	N/A
	<i>To a foreign authority³</i>	Not permitted	Not permitted.
Reporting by	<i>To a domestic entity¹</i>	N/A	N/A

¹ Include TR-like entities that are owned/operated by the private sector or public sector. Do not include government authorities (such as a central bank, market regulator or prudential regulator) that collect trade data on a TR-like basis.

² In the in the FSB's thematic peer review report on OTC derivatives trade reporting, Takasbank has been cited as a private sector operated TR-like entity receiving trade data limited with leveraged transactions. Since leveraged transactions were excluded from reporting requirements in the Communiqué, Takasbank may not be taken as a TR-like entity anymore.

³ Include government authorities (such as a central bank, market regulator or prudential regulator) that collect trade data on a TR-like basis.

		Trade Data:	
		Domestic counterparties	Foreign counterparties
foreign trade participant	<i>To a foreign entity¹</i>	N/A	<i>Intentionally left blank</i>
	<i>To a domestic authority³</i>	N/A	N/A
	<i>To a foreign authority³</i>	N/A	<i>Intentionally left blank</i>

After revision and finalization of the draft Communiqué based on the proposals, it will be adopted and related parties will be given time for adaptation to the regulations. In the meantime, CMB, MKK and other related public authorities will work on practical issues and additional working papers to guide market participants on reporting requirements.

First reporting of transactions are expected to take place at the beginning of 2017 and no gradual transition is planned. Within this calendar, CMB will be able consider revision of regulations, including removing the legal barriers to trade reporting, only after collecting some trade data based on actual reporting experiences.

CMB's anticipation is that, it will take at least two years after first operation of reporting requirements pursuant to the Reporting Communiqué to have adequate material facts that will help CMB to evaluate and comment on the necessary steps that has to be taken for an action plan for the removal of the legal barriers.

- Where there is a requirement in a jurisdiction's legal and regulatory framework that a trade participant must obtain a counterparty's consent to report trade data, by June 2018 at the latest all jurisdictions should permit transaction counterparties to provide standing consent to the reporting of such data to any domestic or foreign TR.

According to Reporting Communiqué, transfer of trade data should be displayed according to The Law on Protection of Personal Data, No: 6698 (Data Protection Law) which has been released in Official Gazette on 24th March 2016.

According to the Law, personal data cannot be transferred abroad without data subject giving his consent which is freely given, specific and informed. A transfer of personal data to a third country may take place where the Personal Data Protection Board has decided that the third country in question ensures an adequate level of protection. Such a transfer shall not require any specific authorization. In the absence of such decision, personal data may be transferred to a third country only if the controllers or processors both in Turkey and in the third country provide a written pledge of adequate protection, and on condition that Personal Data Protection Board approves the transfer.

The related provisions in the Law, No: 6698 regarding derogations for specific situations, processing of special categories of personal data and lawfulness of processing are reserved in transfers of personal data to third countries.

In this context, there are no constraints specified in Data Protection Law on counterparties to provide standing consent to the reporting of trade data to any domestic or foreign TR.

- Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting.

Masking is not permitted in trade reporting requirements regulated in the Reporting Communiqué.

Authorities' access to TR-held data

- By June 2018 at the latest all jurisdictions should have a legal framework in place to permit access to data held in a domestic TR by domestic authorities and by foreign authorities, on the basis of these authorities' mandates and in accordance with the domestic regulatory regime.³

– The legal framework should include eliminating the conditions that, in practice, prevent this access.⁴

2 In some jurisdictions there are restrictions or prohibitions on the use of certain types of counterparty identifying information, particularly in relation to natural persons (for instance, national identity numbers or social security numbers), that may affect what types of information can legally be included in transaction reports. In such cases, jurisdictions should ensure other counterparty identifying information is able to be included in transaction reports made pursuant to domestic or foreign requirements so as to prevent counterparty anonymity.

3 For more details on the level of data access in relation to the authorities' functional mandates, please refer to CPMI–IOSCO (2013), Authorities' access to trade repository data, August; available at: <http://www.bis.org/cpmi/publ/d110.htm> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD417.pdf>.

4 Legal frameworks, processes and procedures, and any TR-related cooperative arrangements for authorities' access should be consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities' access to TR-held data, and consistent with Responsibility E of the CPMI–IOSCO Principles for Financial Market Infrastructures which states: “Central banks, market regulators, and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMIs.” Within this Responsibility, key consideration 8 states: “Relevant authorities should coordinate to ensure timely access to trade data recorded in a TR.” See CPMI–IOSCO (2012), Principles for financial market infrastructures, April, pp.133–137; available at: <http://www.bis.org/cpmi/publ/d101a.pdf> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377-PFMI.pdf>.

4

– In general, consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities' access to TR-held data, it is preferable that access to relevant data held in TRs be direct rather than indirect access, to enable authorities to have continuous and un-intermediated access to relevant TR-held data.⁵

- All relevant authorities should coordinate in establishing cooperative arrangements that facilitate authorities' access to TR-held data (whether it be through direct or indirect access).⁴
- Authorities and TRs should work together, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data, whether direct or indirect.

By June 2016 jurisdictions should report what actions are planned to permit and facilitate authorities' access to data held in a domestic TR.

CMB's Response

Issues on authorities' access to trade data is regulated in the Implementing Regulation on Procedures Concerning TR's Activities (The Implementing Regulation) that has been drafted and communicated to major related institutions and market participants for consultation simultaneously with the Communiqué on Reporting Obligations to TRs.

The draft Regulation is planned to be revised based on the proposals received from and finalized before end 2016.

In the regulation, access to domestic TR data by domestic authorities other than CMB is permitted without any material conditions while foreign authorities are given indirect access.

After revision and finalization of the Reporting Communiqué and the Implementing Regulation based on the proposals, they will be adopted and related parties will be given time for adaptation to the regulations. In the meantime, CMB, MKK and other related public authorities will work on practical issues and additional working papers to guide market participants on reporting requirements.

First reporting of transactions are expected to take place at the beginning of 2017 and no gradual transition is planned. Within this calendar, CMB will be able consider revision of regulations, including facilitating authorities' direct access to data held in MKK, only after collecting some trade data based on actual reporting experiences.

CMB's anticipation is that, it will take at least two years after first operation of reporting requirements pursuant to the Reporting Communiqué to have adequate material facts that will help CMB to evaluate and comment on the necessary steps that has to be taken for an action plan for the giving direct access to foreign authorities.

Turkey's Supplementary Responses

1. In the tables included in your response, what is the difference in substance between boxes marked "N/A" and boxes marked "Intentionally left blank"?

The tables were taken from the original formats of the tables in the "Questionnaire circulated to national authorities for the Thematic Peer Review on OTC Derivatives Trade Reporting" which constitutes the basis of the assessments regarding Turkey in "FSB's thematic peer review report on OTC derivatives trade reporting, published in November 2015. According to the "Questionnaire" the fields were intentionally left blank since the related fields were logically impossible to fill. Thus, the fields which were intentionally left blank were not CMB's choice. Some of the boxes are marked N/A either because it does not apply to the particular case in question or because the answer is not available.

2. Your letter indicates that personal data may be transferred abroad with consent of the data subject. It also indicates that personal data may be transferred abroad upon certain actions by the Personal Data Protection Board. Please clarify whether both consent of the data subject and action of the Personal Data Protection Board are required, or whether either would be sufficient.

According to the Data Protection Law, consent of the data subject is the pre-condition of transferring the data abroad. But in the cases where

- The Personal Data Protection Board decides that a third country in question ensures an adequate level of protection or
- In spite of the absence of an adequacy decision of Data Protection Board on the level of the protection in the third country, if controllers or processors both in Turkey and in the third country provide a written pledge of adequate protection and the Personal Data Protection Board approves the transfer upon this written pledge, data may be transferred abroad without the consent of the data subject provided that if one of the following applies:
 - a) Processing of data is explicitly necessary according to laws.
 - b) Processing of data is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent;
 - c) Processing of data is necessary for the conclusion or performance of a contract concluded in the interest of the data subject's part to the contracts
 - d) Processing is necessary for compliance with a legal obligation to which the controller is subject
 - e) Data has been publicized by the data subject himself
 - f) Processing is necessary for the establishment, exercise or defence of legal claims
 - g) Processing is necessary for the purposes of the legitimate interests pursued by the controller, except where such interests are overridden by the fundamental rights and freedoms of the data subject

Additionally, save for the exceptions or derogations provided for in international agreements, personal data may be transferred abroad with the permission of the Personal Data Protection Board after taking the opinion of the related public institution in the cases where it is likely that interests of Turkey or data subject will be harmed seriously upon this transfer.

3. Do the restrictions on transfer of personal data apply only to natural persons, or do they apply to non-natural persons as well?

The restrictions on transfer of data within the framework of the Data Protection Law apply to natural persons. Disclosure of business secrets, banking secrets or information relating to customers with unauthorized persons is prohibited by the provisions of Turkish Penal Code, which apply to both natural and non-natural persons. Turkish Penal Code also has some provisions prohibiting unlawful recording, sharing and obtaining of personal data.

4. Your letter states that there are no constraints in the Data Protection Law on counterparties providing standing consent to trade reporting. Are there constraints on standing consent outside the Data Protection Law, or is standing consent permitted?

“Standing consent” is not specifically regulated in either the Data Protection Law or other laws. Where the processing is based on consent pursuant to the provisions of Data Protection Law, “explicit consent” of data subject which is freely given, specific and informed is sought. Thus, it can be commented that standing consent for “trade reporting requirements” is permitted on the condition that data subject gives explicit and specific consent to the processing of his/her personal data that will apply to all future transactions.

5. Your letter states that foreign authorities would be given indirect access to TR data under the current draft of the Implementing Regulation on Procedures Concerning TR’s Activities. Please describe any conditions to indirect access that are contained in the current draft of the Implementing Regulation or any other laws or regulations.

According to Capital Market Law, sharing of information kept at trade repositories with third persons, including public legal entities, is subject to the approval of the CMB. In the draft Implementing Regulation on Procedures Concerning TR’s Activities,

The requests of the relevant authorities of third countries to access information on derivatives contracts held in Turkish trade repository are subject to approval of CMB. CMB assesses these requests considering

- a) Existence of bilateral or multilateral reciprocity based cooperation agreements between two countries or MoUs between CMB and the relevant authority.
- b) Existence of guarantees of professional secrecy, including the protection of business secrets shared with third parties by the authorities, their equivalency to those set out in the draft Regulation.
- c) The purpose for which shared data will be used.



BANK OF ENGLAND

Sir Jon Cunliffe
Deputy Governor Financial Stability

30 June 2016

Mr Mark Carney
Chairman
Financial Stability Board

Dear Mr Chairman

ADDRESSING LEGAL BARRIERS TO REPORTING OF, AND ACCESS TO, OTC DERIVATIVES TRANSACTION DATA UK RESPONSE

We are writing in response to your letter of 13 March 2016 (PLEN/2016/29) reminding all FSB member jurisdictions to report on their planned actions to address legal barriers in relation to trade reporting.

This UK response should be read in conjunction with the response from the European Commission as much of the relevant law in the UK stems from EMIR¹.

In summary, the UK does not believe that it has to take any action as there are no relevant legal barriers that exist in UK law.

Barriers to reporting information into TRs or TR-like entities

There are no barriers in UK law to reporting under EMIR. Indeed, Article 9 (4) of EMIR specifically ensures that this will be the case. In our understanding, masking is not permitted on an EMIR report.

In some circumstances, UK entities will also have reporting obligations under non-EU law, including to non-EU TRs where there are no equivalence agreements in place. There are no UK legal barriers as such to doing this. There are no requirements in UK law to mask any of the data. For such reporting, the reporting obligation could include information that would require the consent of counterparties or clients to be reported. There are no barriers in UK law to those counterparties or clients providing such consent on a standing basis.

Authorities' access to TR-held data

This is governed by EMIR in the UK.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Cunliffe'.

Sir Jon Cunliffe
Deputy Governor, Financial Stability

¹ Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

U.S. Response: Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)¹ provides for a comprehensive new regulatory framework for swaps subject to the jurisdiction of the U.S. Commodity Futures Trading Commission (“CFTC”) and security-based swaps subject to the jurisdiction of the U.S. Securities and Exchange Commission (“SEC”).

The CFTC and SEC are responsible for promulgating, overseeing, and enforcing new trade reporting requirements for swaps and security-based swaps, respectively. Accordingly, this U.S. Response presents a response from each of the CFTC and SEC, as relevant and appropriate, to the questions in the annex to Chairman Carney’s letter dated March 13, 2016.

I. Barriers to reporting information into TRs

Instructions:

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that barriers to complete reporting of trades exist in its jurisdiction or where it is uncertain whether barriers exist. Please refer to Section 3 (pages 18–23) and Tables 5, 6, 7 and 8 (pages 44–47) of the peer review report for further context.

In particular, in all cases in Tables 5, 6 or 7 where an entry for your jurisdiction is not coloured green, or in Table 8 where the entry for your jurisdiction indicates an answer other than that no masking is permitted, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier to full reporting of trade information.

- **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.**
- **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.**

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (available at: <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>).

- **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.**
- **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.**

Response:

CFTC and SEC

The Financial Stability Board’s *Thematic Review on OTC Derivatives Trade Reporting* (“Peer Review Report”) identified no U.S. legal or regulatory barriers to full reporting of trade information to trade repositories, whether such reporting is pursuant to U.S. domestic requirements or pursuant to foreign requirements. In particular, the entries corresponding to the United States are colored green in all cases in Tables 5, 6, and 7 of the Peer Review Report.

The entry corresponding to the CFTC in Table 8 of the Peer Review Report indicates both that masking is not permitted in the United States by statute and that the CFTC’s Division of Market Oversight (“DMO”) nevertheless has issued time-limited relief stating that it will not recommend enforcement action for a failure to report certain identifying information for enumerated jurisdictions. A fuller explanation with respect to the CFTC is provided below. The SEC does not permit or accommodate masking of data.

CFTC

DMO has issued a series of staff “no-action” letters (“NALs”) stating that DMO would not recommend that the CFTC take enforcement action against swap counterparties for masking certain identifying information required to be reported, subject to various conditions. DMO commenced issuing these NALs in 2012. DMO has extended and, in some cases, amended and expanded these NALs (e.g., in NAL 16-03, DMO permitted masking based on reporting restrictions in additional jurisdictions identified by the International Swaps and Derivatives Association, Inc. (“ISDA”)).² The relief provided under NAL 16-03 (the most recent NAL) ends by its terms on the earlier of: (i) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting, as discussed in the prior NALs and modified in NAL 16-03; and (ii) 12:01 a.m. eastern standard time on March 1, 2017. While DMO has extended masking relief several times, DMO retains the authority to, in its discretion,

² See Peer Review Report, at 12 (noting that ISDA has delivered letters to authorities requesting that such authorities allow masking when the reporting of identifying information of a transaction party may conflict with, or violate, statutory or regulatory requirements in certain jurisdictions).

further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief.

Should the barriers to swap reporting be lifted such that reporting parties no longer reasonably believe that non-U.S. law prohibits swap reporting pursuant to the Commodity Exchange Act (“CEA”), as amended by the Dodd-Frank Act, then masking should end, theoretically, as such barriers are lifted and entities, that were masking their reports, stop doing so as a result. On a practical level, the most effective way to ensure that DMO rescinds the relevant no-action relief by the end of 2018, thereby ending permitted masking, is for all foreign regulators, whose statutory regimes ISDA claims make masking necessary, to expressly and publicly advise the CFTC that the claimed barriers to reporting do not, or no longer, exist and consequently that there is no basis, or is no longer any basis, for reporting parties to claim otherwise. DMO also notes that even if all relevant Financial Stability Board (“FSB”) member jurisdictions remove such restrictions by the end of 2018, the requests for relief submitted to-date by ISDA reference certain jurisdictions that are not represented in the FSB.

II. Barriers to authorities’ access to TR-held data

Instructions:

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that legal barriers to authorities’ access to TR data exist. Please refer to Section 4 (pages 23–30) and Table 9 (page 48) of the peer review report for further context.

In particular, in all cases in Table 9 where an entry for your jurisdiction is not coloured green, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier.

- **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.**
- **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-primary 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.**
- **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).**
- **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.

Response:

CFTC and SEC

The entries in Table 9 of the Peer Review Report corresponding to the United States indicate that, as of November 2015, authorities' direct access to data held in trade repositories was permitted only with very significant or challenging conditions. This conclusion reflects the impact of statutory restrictions that at the time of publication of the Peer Review Report required a requesting authority to indemnify the relevant repository and the CFTC or the SEC (as applicable). On December 4, 2015, these statutory indemnification requirements were repealed by amendments of the CEA and the Securities Exchange Act of 1934.³

CFTC

Although the confidentiality requirements related to swap data access by other authorities will remain in effect, the removal of the indemnification requirement from the CEA addresses a significant barrier to other authorities' access to U.S. swap data repositories

In order to implement the amendments to the CEA, the CFTC intends to work to incorporate these changes so as to facilitate swap data access.

The CFTC is committed to working with other domestic and foreign authorities to facilitate appropriate access to data held at swap data repositories.

SEC

Trade information concerning security-based swaps will be required to be reported to an SEC-registered security-based swap data repository in accordance with the Dodd-Frank Act and the SEC's Regulation SBSR. As noted above, the statutory indemnification requirement was repealed on December 4, 2015.

The Peer Review Report noted that in September 2015 the SEC proposed rules to govern both domestic and foreign authorities' direct access to security-based swap data held by security-based swap data repositories, including a proposed conditional exemption from the statutory indemnification requirement described above. As a condition to direct access, the proposal contemplated cooperative arrangements between the SEC and the recipient authority. The SEC proposed that such arrangements would address the confidentiality of the security-based swap information made available to the recipient entity and could be in the form of a memorandum of understanding or otherwise. Following the repeal of the statutory indemnification requirement described above, the SEC re-opened the public comment period on this proposal, and this re-

³ Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015) (available at <https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf>).

opened consultation period closed on 22 February 2016. The SEC is considering its proposal in light of comments received and the repeal of the statutory indemnification provision.