

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 was in dialogue with ESMA and CFTC for an MOU relating to central counterparty (CCP) / Derivatives Clearing Organization (DCO) recognition / registration which includes information sharing. Recently, ESMA has recognised India’s CCP i.e CCIL to offer services of CCP and trade repository. 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

¹ In 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.

of access has been granted to the foreign authority, the manner of access, and how the 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. 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.