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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.