

Legal barriers to reporting OTC derivatives trade data

Questionnaire for reporting entities

DUE DATE: Wednesday 25 April 2018

The FSB has committed¹ to continue to monitor progress in addressing legal barriers relating to trade reporting of OTC derivatives transactions and to publish, ahead of the Argentine G20 Leaders' Summit, a report on the extent to which its member jurisdictions have met their commitments to remove such legal barriers.

The FSB recognises that there still remain a number of jurisdictions where legal barriers such as blocking laws, client confidentiality laws, data protection laws, and related requirements and restrictions, continue to prevent or hinder reporting entities from reporting complete transaction information to TRs.² Furthermore, in many jurisdictions it is unclear if those barriers can be cured by obtaining the appropriate consent from clients and if so, whether obtaining such consent applies to all future transactions or if consent must be obtained from clients on a trade-by-trade basis. As a result, ahead of reporting on overall progress on implementation to the G20 Leaders' Summit at end-November 2018, the FSB's OTC Derivatives Working Group (**ODWG**) is evaluating whether the actions by jurisdictions (including FSB member jurisdictions and non-FSB member jurisdictions) to date are sufficient to remove or address these barriers, and identify the extent to which concerns remain.

As part of this evaluation, the ODWG is seeking input from market participants in order to (i) identify the jurisdictions that continue to give rise to concerns; and (ii) obtain more specific details about the legal barriers that prevent the reporting of complete transaction information to trade repositories (**TRs**).

Assessing the views of market participants will be relevant to evaluating whether the actions reported by FSB member jurisdictions are sufficient to have removed or addressed the barriers to reporting complete transaction information.

¹ See Next Steps section of the June 2017 progress report on FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data.

² FSB (2015), *Thematic Review on OTC Derivatives Trade Reporting: Peer Review Report*, available at <http://www.fsb.org/wp-content/uploads/Peer-review-on-trade-reporting.pdf>.

Instructions for completion of survey template

Definitions: please see Annex.

As-at date: Please answer, as far as possible, according to current conditions that apply to any new OTC derivatives transactions as at the date of submission.

Group-wide response: Please answer each question as it pertains to your firm. Respondents are asked to complete this survey on a group-wide basis. Any pertinent differences between parts of a group can be mentioned in suitable places in the survey.

Confidentiality: While individual questionnaire responses submitted by a market participant will not be made publicly available, aggregated information will be made publicly available if the FSB Plenary members agree to its publication (see for example the jurisdiction-specific information made available in the Peer Review Report and the subsequent progress reports).³ Please note that your individual responses will be shared with the ODWG and its trade reporting legal barriers workstream and related support staff

Submissions: Please submit your responses using the Excel template provided (not as PDFs or other format). Please make no changes (including unlocking) the template, other than to insert your answers. You may lock your completed answers with a password if you wish. Respondents are requested kindly to return the completed questionnaire to **FSB Secretariat** (fsb@fsb.org) by **Wednesday 25 April 2018**.

³ See FSB (2016), Report on FSB Members' Plans to Address Legal Barriers to Reporting and Accessing OTC Derivatives Transaction Data, available at <http://www.fsb.org/2016/08/fsb-publishes-progress-reports-on-implementation-of-reformsto-the-otc-derivatives-market-and-on-removal-of-barriers-to-trade-reporting> and FSB (2017), FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data: Progress report, available at <http://www.fsb.org/2017/06/fsb-members-plans-to-address-legal-barriers-to-reporting-and-accessing-otc-derivatives-trade-data-progress-report/>.

Annex - Definitions

For purposes of this questionnaire, the below terms are defined as follows:

- **Blocking Law** means any Official Requirement that would restrict or limit a subject person's disclosure of information relating to a subject transaction or to the counterparty of such transaction.
- **Client Confidentiality** means any Official Requirement related to confidentiality that would restrict or limit a market participant from sharing information about an Identifiable entity with a TR or other entity or authority.
- **Consent** means all governmental and other consents of any party (including any consent, approval, agreement, authorisation or other action) that are required to have been obtained with respect to reporting Trade Data to a TR or other entity or authority.
- **Data Protection** means any statute, law, enactment, rule, order, judgement, practice, guideline or decree related to privacy or data protection that would restrict or limit a market participant from sharing data about a counterparty with a TR or other entity or authority.
- **Masking** means an entity subject to a Reporting Requirement not revealing full identifying information of its counterparty or other relevant entity (such as a central counterparty, trading venue, custodian, beneficiary, etc.), through redaction of Trade Data or by other means.
- **Masking Relief** means being allowed by a jurisdiction as an entity with a Reporting Requirement under an Official Requirement of that jurisdiction to Mask Trade Data.
- **Official Requirement** of a jurisdiction means any statute, law, enactment, rule, order, judgement, practice, guideline or decree.
- **Reporting Requirement** means a domestic or foreign Official Requirement by which Trade Data is reportable to a TR.
- **Standing Consent** means a Consent that can be provided once but applies to all future transactions between the same counterparties.
- **Trade Repository (TR)** means an entity, facility, service, utility, etc. that has been authorised as a trade repository, and includes a TR-like entity.
- **TR-like entity** means an entity, facility, service, utility, government authority, etc. that is not an authorised TR but that is used by market participants to report OTC derivatives trade data, or provides TR-like services.
- **Trade Data** means data regarding OTC derivatives transactions.