FSB FINANCIAL STABILITY BOARD

FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data

Progress report

29 June 2017

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FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data: Progress report

Progress report

Executive summary

This report summarises progress made by FSB member jurisdictions in removing legal barriers to fully reporting, and to authorities appropriately accessing, trade reports about over-the-counter (OTC) derivatives transactions since the FSB published members' plans to remove such barriers in August 2016 (the 2016 Report).[1] The 2016 Report summarised members' plans to respond to Recommendations set out in a thematic peer review report in November 2015 (the Peer Review Report).[2]

Progress made

Since the 2016 Report, a number of significant actions by authorities to address these barriers have been taken or are underway in some of the largest OTC derivatives markets, as follows:

- *EU:* The European Commission (EC) released a proposal in May 2017 to amend targeted areas of the European Market Infrastructure Regulation (EMIR). Among other changes, this proposes that authorities in third countries that have trade repositories (TRs) are granted direct access to the data held in EU TRs if the EC has adopted an equivalence decision for that third country.[3] The proposal is currently before the European Parliament and Council.
- France: France adopted a law allowing relevant financial institutions to report information covered by secrecy law to TRs pursuant to foreign requirements, without requesting client consent. The law covers central counterparties, credit institutions and investment companies, and entered into force in December 2016.
- *Singapore:* Legislative amendments to remove the need for client consent to be obtained for the purposes of complying with domestic and foreign reporting obligations were passed by Parliament in January 2017. The amendments are targeted to take effect by end-2017.
- *US*: In January 2017, the Commodity Futures Trading Commission (CFTC) issued a proposed rule to amend Part 49 requirements to establish procedures governing certain

[1] 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-reforms-to-the-otc-derivatives-market-and-on-removal-of-barriers-to-trade-reporting. The plans of individual member jurisdictions (as updated for the present Report) are 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/*.

[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.

[3] https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-208_en. In the EU, direct access to TR data is already permitted in the case of jurisdictions that do not have TRs established in their territory, subject to the entry of an MoU with ESMA as the authority responsible for supervising TRs.

foreign and domestic authorities' access, in appropriate circumstances, to data held in swap data repositories, with finalisation pending. In addition, in August 2016 the Securities and Exchange Commission (SEC) adopted rules to provide authorities with conditional access to data held by SEC-registered security-based swap data repositories.

A number of other jurisdictions have also reported updates on their actions to address legal barriers, as reported further in this progress report.

One of the recommendations made in the Peer Review Report, namely that jurisdictions for which barriers to reporting can be overcome by counterparty consent should permit counterparties to provide standing consent, has been fully implemented, according to the relevant jurisdictions.

Gaps and issues outstanding

However, in relation to other recommendations, major gaps and issues outstanding remain to be addressed by the committed deadlines in 2018. In particular:

- Legislative or rulemaking initiatives underway should be finalised and implemented promptly so as to take effect prior to the due date for action, which in most cases is end-June 2018.
- Given the long lead-times associated with legal changes, those jurisdictions where action is still under consideration as to whether action is needed to remove barriers to full reporting, or barriers to domestic or foreign authorities' appropriate access to data, should accelerate their consideration so as to be able to take the necessary actions for meet the end-June 2018 deadline for legal changes or regulatory changes if these are needed.
- In general, jurisdictions (particularly those which have provided explanatory updates in response to the potential barriers identified in the Peer Review Report) should carefully review their respective legal and regulatory frameworks to ensure that any barriers have been removed or addressed (ahead of the due dates in 2018.
- Those FSB jurisdictions that are mentioned in other FSB authorities' masking relief as set out in Appendix A should take steps to remove or adequately address all barriers remaining, or to clarify publicly that such barriers do not exist.[4]

Authorities in FSB member jurisdictions may consider whether exercise of their mandates could materially benefit from access to foreign TR data and, if so, they may take suitable steps to open discussions with relevant TRs or TR supervisors over the potential establishment of cooperative arrangements or operational frameworks to facilitate access.

Next steps

The FSB will continue to monitor progress and will publish, ahead of the G20 Leaders' Summit in Argentina in 2018, a report on the extent to which member jurisdictions have met their commitments to remove barriers.

[4] In appropriate cases, jurisdictions should publicly clarify that standing consent is available to overcome a client consent condition. If that is the only barrier to trade reporting in the jurisdiction, masking relief in respect of that jurisdiction should be discontinued by other authorities as from end-2018 at the latest.

Addressing the legal barriers discussed in this report will assist the reporting of comprehensive data on OTC derivatives to individual TRs and facilitate individual authorities' access to data. It will also be important in addressing the legal and regulatory changes that would be needed to implement any future FSB decision on the potential development of a global aggregation mechanism for TR data that would meet the range of authorities' data access needs.[5]

1. Background

G20 Leaders agreed in September 2009, as part of their overall commitments to reform over-the-counter (OTC) derivatives markets, that OTC derivative contracts should be reported to TRs, and asked the FSB and its relevant members regularly to assess implementation including whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.

The FSB undertook a thematic peer review of OTC derivatives trade reporting and published the results in the 2015 Peer Review Report, which identified a number of remaining legal barriers in FSB jurisdictions that prevent or hinder reporting of complete transaction information to TRs or that limit authorities' access to information held in TRs.

In August 2016, FSB published the 2016 Report on the responses received from FSB member jurisdictions detailing their planned actions to remove these legal barriers in response to a request by the FSB Chair, together with copies of jurisdictions' individual responses.

This report updates on progress in removing barriers since the 2016 Report. Where relevant, these planned actions have been published in updated form.[6]

Tables 1–5 (also published[7] separately) provide updated versions of the summary information originally reported by each jurisdiction in the 2016 Report on their actions taken or planned (or other explanatory information) in response to the potential legal barriers to reporting and authorities' access identified in the Peer Review Report.

2. Update on progress in addressing barriers to full reporting of OTC derivatives trade data

This section reports on additional progress reported by FSB jurisdictions since the 2016 Report in addressing legal barriers to (i) reporting complete information to TRs; and (ii) authorities' access to TR-held data. The section follows the same structure as in the 2016 Report.

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6 http://www.fsb.org/2017/06/fsb-members-plans-to-address-legal-barriers-to-reporting-and-accessing-otc-derivatives-trade-data-progress-report/

7 See URL referenced in footnote 6.

2.1 Legal barriers to reporting complete information to TRs

The three recommendations of the Peer Review Report relevant to this section are (with due date shown at right):[8]

Recommendation 2A: 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, with respect to reporting pursuant to domestic and foreign requirements**.[9]	by June 2018 at the latest
Recommendation 2B: 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, all jurisdictions should permit transaction counterparties to provide **standing consent** to the reporting of such data to any domestic or foreign TR.	by June 2018 at the latest
Recommendation 2C: Masking of newly reported transactions should be discontinued once barriers to reporting are removed, since masking prevents comprehensive reporting.[10]	by end-2018

2.1.1 Removal of barriers to full reporting of trade information pursuant to domestic requirements.

(a) Summary of Peer Review Report findings and 2016 Report status

The Peer Review Report identified a total of 13 jurisdictions where there were potential barriers, conditions or a need for further information concerning reporting to a TR pursuant to domestic requirements.

- Eight jurisdictions did not permit reporting to foreign TRs pursuant to domestic reporting requirements in at least some circumstances (Argentina, Hong Kong, India, Indonesia, Korea, Mexico, Russia and Saudi Arabia).
- Four jurisdictions permitted reporting pursuant to such requirements in some cases or subject to certain conditions (e.g. client consent) (Brazil, Korea, Singapore and South Africa).
- In five jurisdictions, reporting pursuant to such requirements in some cases was not applicable (e.g. domestic requirements not in place) or the situation was not clear or information was not provided (China, Mexico, Russia, Saudi Arabia and Turkey).

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8 In the 2016 Report these were renumbered 1, 2 and 3 respectively.

9 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.

10 Masking refers to data elements within trade reports being deleted, encrypted or otherwise treated such that the full trade details are not available to the TR or to particular authorities accessing the TR. For example, a counterparty identifier may be left blank or replaced with encrypted or dummy data or an indication that the data element is masked, in order to preserve the data privacy or bank secrecy of the counterparty who may be a client.

In their 2016 reports, one of these 13 jurisdictions (Singapore) reported action underway to address barriers to reporting pursuant to domestic requirements, while two jurisdictions (Korea and Mexico) reported action under consideration in this area. Explanatory updates were provided by 10 of the 13 jurisdictions that had been identified in the Peer Review Report as having potential barriers to reporting pursuant to domestic requirements (Argentina, Brazil, China, Hong Kong, India, Indonesia, Russia, Saudi Arabia, South Africa and Turkey). A number of these updates were to the effect that while the trade reporting regime did not contemplate reporting to foreign TRs to fulfil domestic reporting requirements, there was no barrier to reporting to domestic TRs to fulfil those requirements.

(b) Updates to responses of particular jurisdictions since 2016 Report

Action underway

In Singapore, legislative amendments to remove the need for client consent to be obtained for the purposes of complying with domestic and foreign reporting obligations were passed by Parliament in January 2017. The amendments are targeted to take effect by end-2017.

Action under consideration

In Korea, all OTC-derivatives trading data are currently held by the Financial Supervisory Service (FSS) and the Bank of Korea (BoK), both TR-like entities,[11] and it is preparing to introduce a TR in order to facilitate systematic reporting. For this, the Financial Services Commission (FSC) announced relevant plans in November 2016 and is cooperating with the FSS, the BoK and the KRX to come up with detailed measures.

Explanatory updates provided

South Africa, which does not currently have a domestic licensed TR, in 2016 reported that legislative amendments were proposed to enable domestic 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, and the framework was expected to be in place by early 2017. The authorities now expect that the framework will be in place at least before end-2017.

Turkey reported in 2016 it had drafted and communicated to major related institutions and market participants for consultation a Reporting Communiqué that would regulate trade reporting and that it expected the draft Reporting Communiqué to be finalised before end-2016, with first reporting at the beginning of 2017. The authorities now expect it to be finalised in Q3 2017, with first reporting at the end of 2017.

(c) Key remaining gaps and areas for attention

Turkey has reported that it would take at least two years after the end-2017 first operation of trade reporting to have adequate facts to evaluate the necessary steps to be taken for the removal of legal barriers. This would take the jurisdiction beyond the mid-2018 agreed deadline for removal of legal barriers; the authorities should therefore consider whether steps can be accelerated.

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[11] In some jurisdictions, reporting of OTC derivatives transactions is facilitated by means of an entity, facility, service, utility, government authority, etc. that is not established as an authorised TR but that is used by market participants to report OTC derivatives trade data, or provides TR-like services.

Given the long lead-times associated with legal changes, those jurisdictions (such as Korea and Mexico) where action is still under consideration to address barriers to full reporting should accelerate their consideration of whether action is required so as to be able to take the necessary actions by mid-2018.

Other jurisdictions which have provided explanatory updates (Argentina, Brazil, China, Hong Kong, India, Indonesia, Russia and Saudi Arabia) should carefully review the situation to ensure that any barriers under this heading have been fully addressed by mid-2018.

2.1.2 Removal of barriers to full reporting pursuant to foreign requirements

(a) Summary of Peer Review Report findings

The Peer Review Report identified 16 jurisdictions that had potential barriers to reporting pursuant to foreign requirements. (Australia, Brazil, China, France, Netherlands, Spain, India, Indonesia, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland and Turkey).

- Fourteen of these jurisdictions were identified as permitting reporting in some cases/subject to certain conditions (e.g. client consent) in at least some circumstances (Australia, Brazil, France, Netherlands, Spain, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland and Turkey).
- In three jurisdictions, the situation was not clear/information not provided in at least some circumstances (China, Indonesia and Turkey, which was also in the cohort of 14 jurisdictions listed in the first bullet point).

In 2016, four of the 16 jurisdictions (France, Saudi Arabia, Singapore and Turkey) reported action taken or action underway to address barriers to reporting pursuant to foreign requirements, while authorities representing three other of the 16 jurisdictions (EU (addressing Netherlands and Spain) [12] and Mexico) reported that action was under consideration. Explanatory updates were received from the remaining nine jurisdictions (Australia, Brazil, China, India, Indonesia, Japan, Korea, South Africa, and Switzerland).

(b) Updates to responses of particular jurisdictions since 2016 Report

Action taken

In December 2016, France adopted a law allowing relevant financial institutions to report information covered by secrecy law to TRs pursuant to foreign requirements, without requesting client consent. The law covers central counterparties, credit institutions and investment companies, and entered into force in December 2016.[13]

[12] Three of the EU jurisdictions (Germany, Italy and the UK) were not identified in the Peer Review Report as having potential barriers to reporting pursuant to foreign requirements.

[13] Article 56 of the law of 9 December 2016; available (in French) at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&categorieLien=id.

Action underway

In Singapore, legislative amendments to remove the need for client consent to be obtained for the purposes of complying with domestic and foreign reporting obligations were passed by the Parliament in January 2017. The amendments are targeted to take effect by end-2017.

Action under consideration

Mexico stated in 2016 that its central bank was preparing a regulation to permit domestic or foreign entities to report trading information to the TR maintained by the central bank on a voluntary basis. Mexico reports it is now expected that the regulation will be released in draft format for discussion with the industry during the second half of 2017 (delayed from 2016) so that it may be issued during the second half of 2017 (delayed from first half of 2017).

Explanatory update provided

Korea stated that there is no legal barrier to the reporting of transactions to TR pursuant to foreign requirements in the domestic framework and that currently, domestic financial institutions are reporting to a foreign TR pursuant to foreign requirements based on standing consents.

(c) Key remaining gaps and areas for attention

Given the long lead-times associated with legal changes, those jurisdictions (such as the EU and Mexico) where action is still under consideration to address barriers to full reporting should accelerate their consideration of whether action is required so as to be able to take the necessary actions by mid-2018.

Jurisdictions which have provided explanatory updates (i.e., Australia, Brazil, China, Netherlands, Spain, India, Indonesia, Japan, Korea, South Africa, Switzerland and Turkey) should carefully review the situation to ensure that any barriers under this heading have been fully addressed by mid-2018.

2.1.3 Permitting transaction counterparties to provide standing consent in order to satisfy consent requirements

(a) Summary of Peer Review Report findings

The Peer Review Report identified 12 FSB member jurisdictions where full reporting of OTC derivatives transactions pursuant to domestic and/or foreign requirements was subject to data protection or client confidentiality requirements that could be overcome with counterparty consent. In the 2016 Report, all but one of the 12 jurisdictions reported that standing consent is permitted, the exception being France.[14]

[14] Three of these jurisdictions (Australia, Japan and Netherlands) also noted that consent requirements apply only with respect to natural persons. One jurisdiction (Australia) noted that consent is typically provided as part of product execution. In the case of South Africa, standing consent would be permissible, provided that the consent was appropriately worded to cater for all of the applicable requirements in the Protection of Personal Information Act, 2013. Turkey confirmed that standing client consent can overcome barriers to reporting pursuant to foreign trade reporting obligations when the barriers arise from business secrets, banking secrets or customer information laws which apply to both natural and legal persons.

(b) Updates to responses of particular jurisdictions since 2016 Report

In December 2016, France removed its client consent requirement through a change of law.[15]

(c) Key remaining gaps and areas for attention

Recommendation 2B of the 2015 Peer Review Report has been fulfilled, according to the reports by all FSB member jurisdictions. In other words, 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, all jurisdictions report that they permit transaction counterparties to provide standing consent to the reporting of such data to any domestic or foreign TR.

If, in the future, other jurisdictions address any remaining barriers to reporting of TR data through permitting counterparty consent, such jurisdictions should permit counterparties to provide standing consent.

2.1.4 Discontinuing 'masking' once barriers to reporting are removed

(a) Summary of Peer Review Report findings

In the Peer Review Report, five jurisdictions were identified as permitting or accommodating masking of counterparty identifying information in trade reports (Australia, Canada, Hong Kong, Singapore and US[16]). A sixth jurisdiction, South Africa, was reported as having the matter under consideration pending the finalisation of TR reporting requirements for providers of OTC derivatives products.

In their 2016 reports, four of these jurisdictions (Australia, Canada, Singapore and US[17]) stated that their current masking relief would, by its terms, expire by a specified date before end-2018 and one of those (Canada) stated that it expects that this relief will not be extended beyond 2018.

(b) Updates to responses of particular jurisdictions since 2016 Report

In Australia, the expiry date of transitional conditional relief provided by ASIC that permits masking for transaction reports where affected by foreign privacy restrictions (of specified jurisdictions) was extended from 30 September 2016 to 31 December 2018. Australia expects that the relief will not be further extended, consistent with the FSB objective of discontinuing masking of newly reported transactions by end-2018.

In Hong Kong, the provision sets out that if the legal barrier in a relevant jurisdiction is confirmed to have been removed, masking relief can no longer be relied upon for new transactions, regardless of whether that jurisdiction has been removed from the list, even though there is not a specified date of expiry.

In Singapore, the masking relief is set to expire on 30 June 2017. Singapore intends to extend the relief to a date no later than end-2018.

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[15] See section 2.1.2.

[16] For the US, masking is permitted pursuant to Commodity Futures Trading Commission (CFTC) staff no-action relief discussed later in the report. The SEC does not permit or accommodate masking of data.

[17] See the immediately preceding footnote.

In the US, the CFTC's relief to permit masking, which had been reported in 2016 as ending by its terms when the reporting party no longer holds the requisite reasonable belief that non-US law prohibits reporting, is now subject to a backstop date of no later than 1 September 2017 for swaps with a certain nexus to France or to Swiss counterparties.

(c) Key remaining gaps and areas for attention

A list of FSB member jurisdictions and other jurisdictions in respect of which FSB member jurisdictions have granted 'masking' relief is set out in Appendix A, which however, does not imply necessarily that there is a legal barrier in the jurisdiction concerned.

Some of the jurisdictions in respect of which masking relief has been given are jurisdictions which have stated as part of this exercise that there are no barriers, or no barriers in practice, to the full reporting of counterparty information to foreign TRs.

Those FSB jurisdictions that are mentioned in other FSB authorities' masking relief (as set out in Appendix A) should take steps to remove or address all barriers remaining, or to clarify publicly that such barriers do not exist. [18]

If barriers in place within FSB jurisdictions to the full reporting of trade reports to foreign TRs are not removed by the end-June 2018 deadline, there is a risk that the due date of ending masking by end-2018 will be missed. Those jurisdictions that are yet to remove such barriers should accelerate their efforts, as set out in sections 2.1.1 and 2.1.2 above.

2.2 Legal barriers to authorities' access to TR-held data

The three recommendations of the Peer Review Report relevant to this section are (with due date shown at right): [19]

Recommendation 3A: 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. [20] • The legal framework should include eliminating the conditions that, in practice, prevent this access. [21]	By June 2018 at the latest

[18] The inclusion of a jurisdiction in Appendix A records which jurisdictions are mentioned in FSB jurisdiction authorities' masking relief. It does not imply necessarily that there is a legal barrier in the jurisdiction concerned. In appropriate cases, jurisdictions should publicly clarify that standing consent is available to overcome a client consent condition. If that is the only barrier to trade reporting in the jurisdiction, masking relief in respect of that jurisdiction should be discontinued by other authorities as from end-2018 at the latest.

[19] In the 2016 Report these were renumbered 1, 2 and 3 respectively.

[20] For more details on the level of data access in the 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.

[21] 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

• 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.[22]	
Recommendation 3B: All relevant authorities should coordinate in establishing cooperative arrangements that facilitate authorities' access to TR data (whether it be through direct or indirect access).[23]	No specific due date
Recommendation 3C: 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.	No specific due date

2.2.1 Removal of barriers to non-primary domestic authorities' access to TR-held data

(a) Summary of Peer Review Report findings

The Peer Review Report identified:

1. three jurisdictions where access to TR data by domestic authorities other than the primary authority was not permitted or permitted with very significant/challenging conditions (Canada, India, US);
2. an additional five jurisdictions where such access was permitted but with material conditions (China, Japan, Korea, Mexico and Saudi Arabia); and
3. an additional two jurisdictions where access by non-primary domestic authorities was under consideration (South Africa and Turkey).

With regard to the jurisdictions in group 1 above, in the 2016 Report:

- the US reported that a legal barrier to direct access by non-primary authorities, the Dodd-Frank Act indemnification provision, was removed by Congress at the end of 2015;
- Canada reported that there were no Canadian legal obstacles preventing access by domestic or foreign authorities to data held in a TR designated in Canada, and noted that all TRs designated to receive Canadian trade data are located in the US and subject to US access rules, and that Canadian non-primary authorities were awaiting the incorporation of US legislative changes into the CFTC's rules before taking further action;

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.

[22] See pp.23–24 of the CPMI–IOSCO 2013 report on authorities' access to TR data: "In instances where direct access by an authority is blocked because of legal constraints on direct access, the legal framework may provide for indirect access via another authority, which will typically be a TR supervisor or another authority having direct access to the data. In such circumstances, indirect access may be a second best solution to address these situations, but it should be viewed as the exception, not the norm."

[23] See footnote to Recommendation 3A.

- India provided an explanatory update stating that the primary domestic regulatory (the Reserve Bank of India) was empowered to share date with domestic and foreign authorities in the larger public interest.

Of the five jurisdictions in group 2 above:

- two reported that action was under consideration to address the barriers to access (Korea and Saudi Arabia); and
- three other jurisdictions provided explanatory updates (China, Japan and Mexico).

In group 3 above, South Africa and Turkey both reported that action was underway to address barriers to access by non-primary domestic regulators.

(b) Updates to Responses of Particular Jurisdictions since 2016 Report

Action taken and action underway

Box 1. Removal of indemnification requirement to access TR data held in CFTC-registered TRs and US rules for data access

In the US, in January 2017, the CFTC issued a proposed rule to amend Part 49 requirements to establish procedures governing certain foreign and domestic authorities' access, in appropriate circumstances, to data held in swap data repositories. The comment period for these revisions closed in March 2017 and the CFTC is considering its proposal in light of the comments received. That proposed rule change would remove rules reflecting the now-repealed indemnification requirement found in the Dodd-Frank Act. In addition, in August 2016 the SEC adopted rules to provide authorities with conditional access to security-based swap data held by SEC-registered security-based swap data repositories. Authorities must agree to keep confidential the data they receive from the repository, and the rules adopted require a memorandum of understanding or other arrangement between the SEC and the data recipient addressing the confidentiality of information made available.

Since all of Canada's TRs are domiciled in the US, the US rule changes discussed in Box 1, subject to applicable conditions (and subject to final rulemaking in the case of the proposed CFTC rules), are also steps toward facilitating access to TR data by relevant authorities.

Turkey had indicated in 2016 that it had drafted and communicated to major related institutions and market participants for consultation an Implementing Regulation that, if adopted, would provide access to non-primary domestic authorities without material conditions, and that it expected the Implementing Regulation to be finalised before end-2016; it now expects the date to be Q3 2017.

Explanatory update provided

Japan reported that the JFSA has reviewed the current regulatory framework and stated its view that there is no legal barrier to be addressed. The JFSA, the primary authority, could share information as appropriate with the Bank of Japan, the non-primary domestic authority, based on the existing supervisory guideline for FMIs including TRs. JFSA also states that a non-primary domestic authority would have direct access to TR data based on the cooperative arrangements with JFSA. On this basis, JFSA advised that action is no longer under consideration to address any legal barrier in this regard.

(c) Key remaining gaps and areas for attention

Given the long lead-times associated with legal changes, those jurisdictions (such as Korea, Saudi Arabia and South Africa) where action is still under consideration to address barriers to sharing of TR data with domestic authorities should accelerate their consideration of whether action is required so as to be able to take the necessary actions by mid-2018.

Jurisdictions which have provided explanatory updates (Canada, China, India, Japan, Mexico, Saudi Arabia) should carefully review the situation to ensure that any barriers under this heading that are within the respective jurisdiction's control have been fully addressed by mid-June 2018.

2.2.2 Removal of barriers to indirect access by foreign authorities to TR-held data

(a) Summary of Peer Review Report Findings

The Peer Review Report identified 3 jurisdictions where foreign authorities' **indirect** access (i.e., access by request of the primary domestic authority with oversight of the TR) to TR data was not permitted or was permitted with very significant or challenging conditions (Canada,[24] China and India). The Peer Review Report also identified 2 jurisdictions where indirect access by foreign authorities was under consideration (South Africa and Turkey).

In the 2016 Report, one jurisdiction (Canada) where foreign authorities' access was not permitted or permitted with very significant or challenging conditions reported that all TRs designated to receive Canadian trade data are located in the US and subject to US access rules, and indicated that Canadian authorities were awaiting the incorporation of US legislative changes[25] into the CFTC's rules before taking further action. The other two jurisdictions provided explanatory updates (China and India). Two jurisdictions reported action underway (South Africa and Turkey).

(b) Updates to Responses of Particular Jurisdictions since 2016 Report

Action underway

As noted in 2.2.1 above, Turkey reported a delay to the expected start date of its draft Implementing Regulation, which would include provision to foreign authorities with indirect access to TR-held data, from end-2016 to Q3 2017.

Explanatory update provided

In a further update for the present report, Canada indicated that Canadian authorities were awaiting the incorporation of US legislative changes into the CFTC's rules, because all TRs designated to receive Canadian trade data are located in the US, and that Canadian regulators have the ability to provide indirect access to TR data reported pursuant to Canadian reporting rules.

Korea updated by stating that foreign authorities will be able to access data based on an MoU, once such an MoU is put in place.

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[24] In Canada the result was noted as uncertain, because due to being located in the US, Canadian-designated TRs are also subject to US TR data access provisions.

[25] A legal barrier to direct access by non-primary authorities, the Dodd-Frank Act indemnification provision, was removed by the US Congress at the end of 2015.

Russia updated by explaining that, while according to Russian legislation foreign authorities are not granted direct access to TR data (which is limited to a limited list of parties), access to data held in Russian TRs by foreign authorities could be executed on an indirect basis with the intermediation of the Bank of Russia pursuant to two existing multilateral memoranda of understanding (MoUs),[26] an international treaty, or a bilateral treaty with a foreign financial market regulators. Russia also stated that no requests for access to such data have been received and that no significant changes are planned to the existing arrangements.

(c) Key remaining gaps and areas for attention

Actions underway in South Africa should be finalised ahead of the end-June 2018 due date for action in this area.

Given the long lead-times associated with legal changes, those jurisdictions (such as Saudi Arabia) where action is still under consideration to put in place a legal framework to facilitate indirect sharing of TR data with foreign authorities should accelerate their consideration of whether action is required. They should also further consider their options in light of the CPMI-IOSCO recommendation that direct access is the preferred arrangement.

Jurisdictions which have provided explanatory updates (i.e., Brazil, Canada, China, India, Mexico, Russia) or for which the situation is not clear (Indonesia) should carefully review the situation to ensure that such a framework is in place ahead of the mid-June 2018 due date.

2.2.3 Removal of barriers to direct access by foreign authorities to TR-held data

(a) Summary of Peer Review Report Findings

The Peer Review Report identified 12 jurisdictions where **direct** access by foreign authorities to TR data was not permitted or permitted with very significant/challenging conditions (Brazil, Canada, China, India, Indonesia, Japan, Korea, Mexico, Russia, Saudi Arabia, Turkey and US). The Peer Review Report also identified that for the 6 EU jurisdictions (France, Germany, Italy, Netherlands, Spain and UK) such access was not permitted or permitted with very significant or challenging conditions in some cases. In addition, the Peer Review Report identified one jurisdiction where foreign authorities' direct access to TR data was under consideration (South Africa).

In the 2016 Report, action was reported as having been taken in one jurisdiction (US) to address an existing barrier to direct access by foreign authorities to TR data and additional action is under consideration in that jurisdiction. Action was under consideration in the EU to remove existing barriers to direct access by foreign authorities to TR data, which would affect a total of six FSB jurisdictions.[27] Canada reported that all TRs designated to receive Canadian trade data were located in the US and subject to US access rules. Nine jurisdictions (Brazil, Canada, China, Japan, Korea, Mexico, Russia, Saudi Arabia, and Turkey) provided explanatory updates,

[26] The MoUs referred to are the Multilateral MoU Concerning Consultation and Cooperation and the Exchange of Information of the International Organization of Securities Commissions (IOSCO), and the Multilateral MoU on Cooperation and Information Exchange of the International Association of Insurance Supervisors.

[27] France, Germany, Italy, Netherlands, Spain and UK

in many, but not all, cases suggesting that direct access was not contemplated in the near future, while the situation in Indonesia was not clear.[28]

(b) Updates to Responses of Particular Jurisdictions since 2016 Report

Action taken and action underway

Box 2. Proposal to allow direct access to TR data held in EU-regulated TRs

The European Commission (EC) released a proposal in May 2017 to amend targeted areas of the European Market Infrastructure Regulation (EMIR). Among other changes, this proposes that authorities in third countries that have TRs are granted direct access to the data held in EU TRs if the EC has adopted an equivalence decision for that third country.[29] The proposal is currently before the European Parliament and the European Council.

The US has taken action and has action underway to provide for direct access by foreign authorities to TR data in US-registered TRs: see Box 1 and the related description on page 11.

Since all of Canada's TRs are domiciled in the US, the US rule changes discussed in Box 1, subject to applicable conditions (and subject to final rulemaking in the case of the proposed CFTC rules), are also steps toward facilitating access to TR data by relevant foreign authorities.

Explanatory update provided

Japan stated that the JFSA has reviewed the current regulatory framework and concluded that there is no legal barrier to be addressed. The JFSA also stated that foreign authorities could have direct access to TR data through appropriate cooperative arrangements with the JFSA.

2.2.4 Establishing cooperative arrangements and operational frameworks that facilitate authorities' access to TR data

(a) Summary of Peer Review Report Findings

In the 2016 Report, those jurisdictions that had reported barriers to authorities' access to data also in some cases reported on progress in addressing recommendations 3B and 3C relating to establishing cooperative arrangements and operational frameworks that facilitate authorities' access to TR-held data.[30]

Three jurisdictions (Canada, Japan and US) had reported having taken action to establish cooperative arrangements that facilitate access to TR-held data. Eight jurisdictions (the EU, with six FSB member jurisdictions, India and Mexico), had reported actions underway in that regard; while Brazil and Korea reported action was under consideration.

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[28] The Indonesian response refers to the possibility of aggregate data being requested by a foreign authority, or foreign authorities accessing data from foreign TRs. It does not deal with the case of foreign authority's request for access to trade by trade data from an Indonesian TR.

[29] https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-208_en**Error! Hyperlink reference not valid.**. In the EU, direct access to TR data is already permitted in the case of jurisdictions that do not have TRs established in their territory, subject to the entry of an MoU with ESMA as the authority responsible for supervising TRs.

[30] Some of the reported arrangements pre-date the publication of the Peer Review Report.

(b) Updates to Responses of Particular Jurisdictions since 2016 Report

In October 2016, the EC adopted[31] revised technical standards on trade reporting, which include direct references to several international standards as well as a number of other steps to simplify the reporting, aggregation and access to TR-held data. In addition, an ongoing review by the EU authorities is looking at ways to minimise operational and technical challenges with regard to authorities' access to TR-held data, and more clarity is expected in this respect in the second half of 2017.

(c) MoUs and other arrangements reached

There are a number of bilateral MoUs or other arrangements in place between authorities of FSB member jurisdictions specifically to enable sharing by authorities of TR data.[32] Other bilateral MoUs would permit the exchange of TR data. For example, typically when a foreign central counterparty is authorised to carry on business in a jurisdiction, an MoU between the home and host supervisors is signed, under which supervisory data, including TR data, can be shared. In addition, other MoUs such as the IOSCO (2012), *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*[33] may allow the exchange of TR data in the circumstances set out therein.

MoUs specifically providing for sharing of TR data among domestic authorities have been reached in a number of individual FSB member jurisdictions (Brazil, Indonesia, Italy, Korea, Mexico, Netherlands, Saudi Arabia, UK). In some other jurisdictions, there are statutory powers to share data between domestic authorities which do not depend on MoUs (Australia, Hong Kong, Japan, Spain, Switzerland), or there are integrated financial authorities in place (Russia, Singapore). In the EU, US and Switzerland, the primary method of sharing TR data is or is envisaged to be direct access by the relevant authorities concerned. In Canada, some authorities are looking to have others act as an agent to handle their data from the TR. India reported no MoU or other arrangements in place among domestic authorities because no request had been received by the primary supervisor. Two jurisdictions (Argentina and China) did not report any MoUs or other mechanisms that would allow sharing of TR data among domestic authorities.

(c) Key remaining gaps and areas for attention

A number of jurisdictions report that, while they would be willing to enter MoUs for TR data sharing, they have not been approached by other jurisdictions seeking such information.

Authorities in FSB member jurisdictions may consider whether exercise of their mandates could materially benefit from access to foreign TR data, for instance as a supplementary source of information about OTC derivatives transactions undertaken by market participants based in their jurisdictions, or as a source of information about OTC derivatives denominated in the local currency or relating to local underlying (such as locally listed securities). If so, they may take

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[31] Commission Implementing Regulation (EU) 2017/105 of 19 October 2016, amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to TRs according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and TRs, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN

[32] MOUs or other arrangements have been put in place between authorities in FSB member jurisdictions with authorities of other FSB member jurisdiction specifically to enable sharing by authorities of TR data for the following pairs of FSB jurisdictions: Australia and EU; Australia and Singapore; Canada and US; EU and Hong Kong; Japan and US; Mexico and US. Source: FSB jurisdictions; as at December 2016.

[33] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf

suitable steps to open discussions with relevant TRs or TR supervisors over the potential establishment of cooperative arrangements or operational frameworks to facilitate access.

Appendix A: List of jurisdictions mentioned in FSB member jurisdictions' masking relief

***Note**: The inclusion of a jurisdiction in columns 2 or 3 of this table records which jurisdictions are mentioned in FSB authorities' masking relief. It does not imply necessarily that there is a legal barrier in the jurisdiction concerned.*

Jurisdiction granting relief	FSB Jurisdictions mentioned in masking relief	Other jurisdictions mentioned in relief
Australia	Argentina Australia France India Indonesia China Saudi Arabia Singapore Korea Switzerland	Algeria Austria Bahrain Belgium Hungary Israel Luxembourg Pakistan Samoa Taiwan
Canada	*The relief does not list individual jurisdictions.* *Relief is provided if the Canadian counterparty meets certain conditions and determines that its counterparty is subject to a Blocking Law or a Consent Requirement (as defined) that has not been provided; or the Canadian counterparty has yet to or could not determine if its transaction counterparty is subject to a Blocking Law or Consent Requirement. Among other requirements, the Canadian counterparty needs to provide regulators with a list of jurisdictions in which consent requirements exist, and make diligent efforts to obtain consent.*	
Hong Kong	Argentina France India Indonesia China Singapore Korea Switzerland	Algeria Austria Bahrain Belgium Hungary Israel Luxembourg Pakistan Samoa Taiwan
Singapore	Argentina China France India Korea Singapore Switzerland	Algeria Austria Bahrain Belgium Hungary Luxembourg Pakistan

Jurisdiction granting relief	FSB Jurisdictions mentioned in masking relief	Other jurisdictions mentioned in relief
		Samoa Taiwan
United States	Argentina China France India Korea Singapore Switzerland Spain	Algeria Austria Bahrain Belgium Hungary Luxembourg Pakistan Samoa Taiwan Costa Rica Philippines Romania Uruguay Venezuela

Source: FSB jurisdictions. As at June 2017.

Appendix B: List of abbreviations and acronyms

2016 Report	See footnote 1
APRA	Australian Prudential Regulation Authority
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
CCP	central counterparty
CFTC	US Commodity Futures Trading Commission
CGFS	Committee on the Global Financial System
covered entity	financial firms and systemically important non-financial entities (as defined in the BCBS–IOSCO standards for margin requirements for NCCDs)
CPMI	Committee on Payments and Market Infrastructures
DAT	Derivatives Assessment Team, established by chairs of BCBS, CGFS, CPMI, FSB and IOSCO
EC	EC
ESMA	European Securities Markets Authority
FMI	financial market infrastructure
FSB	Financial Stability Board
IOSCO	International Organization of Securities Commissions
LEI	legal entity identifier
MiFID II/MiFIR	EU Markets in Financial Instruments Directive/Regulation
MoU	Memorandum of Understanding
NCCD	non-centrally cleared derivative
NDF	non-deliverable forward
ODRF	OTC Derivatives Regulators' Forum
ODRG	OTC Derivatives Regulators Group
ODSG	OTC Derivatives Supervisors Group
OSFI	Canadian Office of the Superintendent of Financial Institutions
OTC	over-the-counter
Peer Review Report	See footnote 2
PFMI	CPMI-IOSCO *Principles for Financial Market Infrastructures*
SDR	swap data repository
SEC	US Securities and Exchange Commission
TR	trade repository
UPI	Unique Product Identifier
UTI	Unique Transaction Identifier
WGMR	BCBS–IOSCO Working Group on Margin Requirements