



CH-3003 Bern, SIF

By e-mail

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

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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