

Korea Response



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Financial Services
Commission

June 23, 2016

Dr. Mark Carney
Chairman of Financial Stability Board
And Governor of Bank of England

Dear Chairman Mark Carney

As an FSB member, I am writing to report the Republic of Korea's planned actions to address legal barriers in relation to trade reporting, as a follow-up measure to the FSB's thematic peer review on OTC derivatives trade reporting, published in November 2015.

In view to fulfilling the G20 commitment on OTC derivatives trade reporting, the Financial Services Commission (FSC), as the primary financial authority of Korea, is leading the discussion on TR introduction at the Working-level Committee with the Bank of Korea (BoK), the Financial Supervisory Service (FSS), the Korea Exchange (KRX) and relevant industry participants. Based on the discussion outcome, we are planning to overhaul trade reporting regime, including changing the legal framework, in an effort to address any legal barriers to trade reporting and implement the global standards in full. I would like to ask you to refer to the attached document for more information.

Lastly, I would like to take this opportunity to thank you for your excellent leadership toward setting a stable and robust global financial order.

Sincerely Yours,

Hakkyun Kim
Deputy Chairman for International Affairs
Financial Services Commission
Republic of Korea

Attachment. Korea's Planned Actions to Address Legal Barriers in Relation to the Trade Reporting

Attachment.

KOREA'S PLANNED ACTIONS TO ADDRESS LEGAL BARRIERS IN RELATION TO TRADE REPORTING

1. Trade Reporting Regime of Korea

At present, the BoK, the FSS and the KRX have in place separate trade reporting regimes in relation to derivatives transactions, based on which they store and manage relevant information. However, in order for full-fledged implementation of G20 commitment to mandatory trade reporting, it was necessary to set up a TR that is mandated to collect details of each OTC-derivative transaction. In acknowledging this, the FSC announced its plan to introduce TR in June 2014 and designated the KRX as a TR in August 2015, based on deliberation and resolution of the TR Designation Committee. Under this committee, the Subcommittee on Legal and Regulatory Framework is undergoing deliberation on matters which will be provided for in the laws and regulations including trade reporting requirements and legal basis for TR establishment. At the same time, the Subcommittee on Reporting Regime is discussing matters concerning TR operation including the scope of parties and products subject to reporting, reporting procedures and reporting items.

2. Planned Actions to Address Legal Barriers to Trade Reporting

(1) Reporting of Trade Information Pursuant to Domestic Requirements

We are planning to remove all legal barriers to information reporting into either domestic or foreign TRs or TR-like entities pursuant to domestic requirements. Currently, the FSC is reviewing whether amendment to relevant legal and regulatory framework, namely Financial Investment Services and Capital Markets Act (FSCMA), is needed towards this end.

- Reporting information into domestic TRs
Any person will be able to engage in trade data repository business if it received FSC's authorization and all derivative transaction data will be reported to domestic TRs without having to undergo any kind of consent procedure.
- Reporting information into foreign TRs
Any foreign TR that is approved of the regulatory equivalence will be permitted to receive FSC's authorization for TR business, and domestic and foreign financial institutions will be able to make trade reporting through foreign TRs.

(2) Reporting of Trade Information Pursuant to Foreign Requirements

There is no legal barrier to trade reporting into domestic or foreign TRs pursuant to foreign requirements, since we do not have any provision in the legal or regulatory framework that bans such action.

- **Reporting information into domestic TRs**

Reporting information into domestic TRs by domestic or foreign financial institutions pursuant to foreign requirements would be permitted once equivalence of domestic TR is approved in accordance with extraterritorial application of respective jurisdiction's laws and regulations. We believe it is not appropriate that this matter be stipulated in the domestic legal and regulatory regimes.

- **Reporting information into foreign TRs**

It is already permitted for domestic and foreign financial institutions to make trade reporting to foreign TRs on a standing consent basis. Thus no further change is required.

(3) Counterparty Consent

Given that trade repositories handle OTC derivatives transaction information including counterparty-identifying data, counterparty-consent is required for provision to and use by TRs of such information. Korean financial institutions already receive counterparties' standing consent upon provision of financial transaction data to TRs. In addition, we are planning to exempt counterparty consent requirement when providing trade data to domestic and foreign TRs, and currently reviewing whether amendment to relevant legal and regulatory framework is needed towards this end.

(4) Discontinuation of Masking

Korean legal and regulatory framework permits provision of transaction information without masking, if counterparty-consent is obtained.

3. Planned Actions to Address Legal Barriers to Authorities' Access to TR-held Data

(1) Domestic and Foreign Authorities' Access to Information Held by Domestic TR

The FSC, as the primary authority responsible for management and supervision of TRs, is expected to have unlimited, direct access to TR-held data. We are reviewing adoption of legal basis to give non-primary authorities such as the BoK (central bank) and other relevant Government bodies the access to information held by TRs. On the other hand, foreign authorities will be able to access this information based on a Memorandum of Understanding (MoU) on Sharing of TR-held Data between

the supervisory authorities. We are currently reviewing to set forth legal basis for this type of cooperation.

(2) Information Sharing with Other Domestic TRs or Foreign TRs

We are planning to enable data access and sharing with other TRs based on MoU on Sharing of TR-held Data.

4. Use of TR-held Data

We are planning to adopt international recommendations on the use of identifier, to prepare for verification of reporting items and data qualifications, and for information sharing with foreign TRs.

- Unique Transaction Identifier (UTI): We are planning to adopt international standards on introduction and management of UTIs on which IOSCO is currently leading discussion in an attempt to consolidate issuance standards and data format.
- Unique Product Identifier (UPI): In view to ensuring that OTC-derivatives classification is globally aligned and that we have standardized data, we are planning to adopt ISDA Taxonomy.
- Legal Entity Identifier (LEI): As for legal entities, we are planning to require indicating LEI as counterparty identifier for book-keeping purposes.

TR will be responsible for providing data analysis to the supervisory authority to help systemic risk management, and for disclosing data related to outstanding balance and transaction performance to the general public.

Responses to follow up questions

The Korean response states that the Financial Services Commission (FSC), as the primary authority responsible for management and supervision of TRs, is expected to have unlimited, direct access to TR-held data. The response also states that the Korean authorities are reviewing adoption of legal basis to give nonprimary authorities such as the BoK (central bank) and other relevant Government bodies the access to information held by TRs. Please could you clarify in the case of non-primary regulators such as the BoK and other bodies whether access to TR held data would be direct from the TR or indirect (via the primary regulator)?

First of all, the Korean authorities are planning to adopt legal basis that non-primary authorities such as the FSS, BOK and Ministry of Strategy and Finance may access TR-held data directly. Secondly, TR(s) may provide information or aggregate data to non-primary authorities if requested for suitable purposes.

The Korean response states that the Korean authorities are planning to enable data access and sharing with other TRs based on MoU on Sharing of TR-held Data. Do Korean authorities intend to share data themselves or for the TR (KRX) to share the data? Is it intended to share data with foreign TRs directly, or only via foreign regulatory authorities?

In terms of sharing information or TR-held data among the domestic TRs, the Korean authorities are planning to set up legal ground that TRs can share respective information and data with each other directly: for instance, KRX as a TR will be able to provide information and data to TRs and receive them from other TRs for the data quality. In addition, TRs need MoU among themselves for the practical reasons such as the scope of information shared, how to share it, usage of provided information and data, etc. However, we are planning to have a single TR in the short run.

On the other hand, in terms of domestic TRs' sharing information and data with foreign TRs for the counterparty's issues, one way to share information is that the Korean authorities can request relevant information to foreign authorities for the domestic TRs and then related information can be provided via foreign authorities and TRs and vice versa. In this case, we need a specific MoU between both authorities on sharing such information. The other way to share information with foreign TRs is sharing information and data with foreign TRs directly based on prior permission from their respective authorities. This case needs MoU between authorities as well.

The Korean authorities are reviewing both cases above at present, since a necessary legal framework in Korea has not been finalized so far.