

## Legal barriers to reporting and authorities' access to data

This document forms a separately published Annex (companion document) to 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/>. It should be read in conjunction with that Report.

*Note: in the following tables, the left hand side of the table reproduces the position as at November 2015, as reported in the Peer Review Report. The right hand side summarises responses received from jurisdictions to the FSB Chairman's letter dated 13 March 2016, as subsequently updated in May 2017. Yellow highlighting = text or status has changed from 2016 Report<sup>1</sup>*

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<sup>1</sup> FSB (2016), 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>.

Table 1

**Reporting to a TR or TR-Like Entity Pursuant to Domestic Reporting Requirements**

Status per Peer Review Report <sup>2</sup>								Status update (where required)	
Jurisdiction		Location of reporting entity							
		Domestic			Foreign				
		Location of TR							
		Domestic	Foreign	Domestic		Foreign			
		Location of counterparty							
		Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic	
Argentina									Explanatory update provided <sup>3</sup>
Australia									
Brazil									Explanatory update provided <sup>4</sup>
Canada									
China									Explanatory update provided <sup>5</sup>
EU	France								
	Germany								
	Italy								
	Netherlands								
	Spain								
	UK								

<sup>2</sup> Status as set out in Table 5 in Appendix E of FSB (4 November 2015), *Thematic Review on OTC Derivatives Trade Reporting: Peer Review Report* (the Peer Review Report).

<sup>3</sup> Argentina reported that there are no legal barriers within the regulatory framework to full reporting of OTC derivatives transactions data and that domestic reporting requirements must be complied with by submission of reports to domestic TRs.

<sup>4</sup> The Brazilian response states that reporting of OTC derivatives transactions to a domestic TR is mandatory, according to the law, with no exemptions. Moreover, there are no domestic requirements in place requiring the reporting of OTC derivatives to foreign TRs.

<sup>5</sup> The Chinese response states that there is no relevant regulation or rule relating to reporting to a foreign TR and that, in the following work, it needs careful consideration and cross-border regulatory cooperation.

Status per Peer Review Report <sup>2</sup>								Status update (where required)
Jurisdiction	Location of reporting entity							
	Domestic				Foreign			
	Location of TR							
	Domestic		Foreign		Domestic		Foreign	
Location of counterparty								
	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic	
Hong Kong								Explanatory update provided <sup>6</sup>
India								Explanatory update provided <sup>7</sup>
Indonesia								Explanatory update provided <sup>8</sup>
Japan								
Korea								Action under consideration <sup>9</sup>
Mexico								Action under consideration <sup>10</sup>
Russia								Explanatory update provided <sup>11</sup>
Saudi Arabia								Explanatory update provided <sup>12</sup>
Singapore								Action underway <sup>13</sup>

<sup>6</sup> The Hong Kong response states that foreign TRs can be engaged as agents to report to the domestic TR, which must be used to comply with Hong Kong reporting requirements.

<sup>7</sup> The Indian response states that reporting to a foreign TR to fulfil domestic requirements is not permitted.

<sup>8</sup> The Indonesian response states that reporting is obligatory to Bank Indonesia and that in such cases consent is not required but that banks may report their derivatives transaction with offshore counterparts to offshore TRs.

<sup>9</sup> The Korean response states that 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, and it is preparing to introduce a TR in order to facilitate systematic reporting. 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.

<sup>10</sup> The Mexican response states that Mexican financial authorities are currently analysing the most appropriate regulatory framework they may implement to allow domestic reporting entities to report to foreign TRs under conditions that may not represent a breach of secrecy provisions. This analysis is expected to be concluded by H1 2017.

<sup>11</sup> The Russian response states that reporting to foreign TRs by both domestic and foreign entities is permitted, but does not fulfil the obligation of Russian entities to report to Russian TRs.

<sup>12</sup> The Saudi Arabian response states that there are “no barriers” to full reporting. There is only one TR currently authorised to accept reports required under Saudi Arabian law, and that TR is located in Saudi Arabia.

<sup>13</sup> The Singaporean response states that 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.

Status per Peer Review Report <sup>2</sup>								Status update (where required)
Jurisdiction	Location of reporting entity							
	Domestic				Foreign			
	Location of TR							
	Domestic		Foreign		Domestic		Foreign	
Location of counterparty								
	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic	
South Africa								Action underway <sup>14</sup>
Switzerland								
Turkey								Action underway <sup>15</sup>
US								

- <sup>14</sup> South Africa, which does not currently have a domestic licensed TR, stated that legislative amendments are 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. It is expected that the framework will be in place at **least before end-2017**. South Africa also noted that its Protection of Personal Information Act 2013, when it comes into force, will regulate the processing and transmission of identifying information relating to natural and legal (juristic) persons, and that consent to data collection, processing or onward transmission would be required, absent an applicable exemption being provided in the legislation. **(Reported as action under consideration in the 2016 Report).**
- <sup>15</sup> The Turkish response states that under a draft Communiqué relating to trade reporting, all domestic participants should only report to MKK (the local TR) pursuant to domestic requirements. Reporting to foreign TRs to fulfil domestic reporting requirements is not permitted. **The Turkish authorities now expect the Communiqué to be finalised in Q3 2017, with first reporting at the end of 2017.** The relevant authority anticipates that it will take at least 2 years after first operation of reporting requirements to have adequate facts to help it evaluate and comment on necessary steps for action plan for removal of legal barriers. **(Reported as action under consideration in the 2016 Report).**

Table 2

### Reporting to a TR or TR-Like Entity Pursuant to Foreign Reporting Requirements

Status per Peer Review Report <sup>16</sup>								
Jurisdiction		Location of reporting entity						
		Domestic			Foreign			
		Location of TR						
		Domestic		Foreign		Domestic		Foreign
		Location of counterparty						
		Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic
Argentina								
Australia								
Brazil								
Canada								
China								
EU	France							
	Germany							

Status update (where required)	
Standing consent available <sup>17</sup>	
Standing consent available <sup>18</sup>	
Explanatory update provided <sup>19</sup>	
Action taken <sup>20</sup>	Action under consideration <sup>21</sup>

<sup>16</sup> Status as set out in Table 6 in Appendix E of the Peer Review Report.

<sup>17</sup> The Australian response states that while consent is required where personal information is to be provided to an entity located overseas, (i) the consent requirement is likely to be limited to situations where the data contains the name of an individual and in some cases the identifier number of an individual and does not apply to non-natural persons; and (ii) standing consent is permitted. Consent is typically provided as part of product execution by natural persons. On that basis, the response states that in practice, there is no barrier to full reporting pursuant to foreign requirements.

<sup>18</sup> The Brazilian response states that although client consent is necessary to the reporting of OTC Derivatives transactions (either by the domestic or foreign counterparties) to foreign TRs pursuant to foreign requirements, there is not in practice a legal barrier, as standing consent can always be provided in these scenarios.

<sup>19</sup> The Chinese response states that there is no relevant regulation or rule relating to reporting to a foreign TR and that, in the following work, it needs careful consideration and cross-border regulatory cooperation.

<sup>20</sup> 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.

<sup>21</sup> The European Commission (EC) provided a response to the FSB with regards to the status update, to which a number of the EU Member States' responses referred. The European Commission (EC) response states that any national barriers to reporting to domestic/foreign TRs pursuant to foreign requirements (stemming among others from the need to receive counterparty consent) would be superseded as soon as the EC has adopted an equivalence decision for the jurisdiction in question according to Article 13(1) and (3) of EMIR. Such an equivalence decision could potentially allow some transactions subject to both EMIR and non-EU reporting requirements to be reported pursuant to the non-EU requirements in satisfaction of the EMIR reporting requirements. If permitted pursuant to Article 13 of EMIR, such non-EU reporting would supersede any national barriers that may otherwise apply to the non-EU reporting requirements where

Status per Peer Review Report <sup>16</sup>								
Jurisdiction		Location of reporting entity						
		Domestic				Foreign		
		Location of TR						
		Domestic		Foreign		Domestic		Foreign
		Location of counterparty						
		Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic
	Italy							
	Netherlands							
	Spain							
	UK							
Hong Kong								
India								
Indonesia								
Japan								

Status update (where required)	
Standing consent available <sup>22</sup>	
Standing consent available <sup>23</sup>	
Standing consent available <sup>24</sup>	
Explanatory update provided <sup>25</sup>	
Standing consent available <sup>26</sup>	

Article 13 is not available. The Commission is currently assessing several jurisdictions with a view to establishing whether such equivalence can be granted, and is in close contact with each jurisdiction being assessed as part of this exercise.

<sup>22</sup> The Dutch response states in the case of a natural person that had to report under a foreign reporting requirement in a jurisdiction that has not been deemed equivalent to EMIR, the Dutch data protection act could theoretically form a barrier to the reporting of derivatives transactions. However, if in that case the concerned natural persons provided standing consent, the Dutch data protection act would not constitute a barrier for the reporting of derivatives transactions.

<sup>23</sup> The Spanish response states that credit entities are forbidden under Spanish law (derived from the EU Capital Requirements Directive of 2013) to provide any information on clients' transactions (including OTC derivatives transactions) to any third party (including TRs) unless either: the client has given standing consent, which is feasible through a specific clause under derivatives contracts; or the law applicable in Spain authorises or requires such a provision, which is the case for providing TRs with information on OTC derivatives contracts under EMIR. Additionally, Article 13 of EMIR allows credit entities to provide TRs with information on OTC derivatives transactions following foreign reporting requirements in case the European Commission has adopted an equivalence decision for the jurisdiction in question. On that basis, the Spanish response concludes that the current regulatory framework (both at EU and national level) allows sufficient leeway to accommodate eventual reporting requirements by foreign authorities.

<sup>24</sup> The Indian response states that client consent can be taken at the on-boarding stage itself to address consent requirements.

<sup>25</sup> The Indonesian response stated that Bank Indonesia only regulates mandatory derivatives transaction reporting (for foreign exchange and interest rate) to Bank Indonesia and currently has not issued any regulation on bank reporting to offshore Trade Repositories (TR). Hence, banks may report their derivatives transaction with offshore counterparts to offshore TR's, without eliminating mandatory reporting to Bank Indonesia. Furthermore, Indonesian authorities report that they have not received any complaints from market participants regarding legal barriers to reporting of OTC derivatives transaction data that involves domestic banks. They conclude that they currently do not see any legal barriers to reporting. No details have been provided about whether consent to reporting is required in such circumstances and, if so, whether standing consent is permitted.

<sup>26</sup> Japan states that consent must be obtained only when personally identifiable information, such as name and address, of a natural person would be reported to a third party including a TR and that such consent requirement is satisfied by standing consent. Thus, the response states, in practice there is no legal barrier that prevents full reporting to a TR pursuant to foreign requirements.

Status per Peer Review Report <sup>16</sup>							
Jurisdiction	Location of reporting entity						
	Domestic				Foreign		
	Location of TR						
	Domestic		Foreign		Domestic		Foreign
Jurisdiction	Location of counterparty						
	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic
Korea							
Mexico							
Russia							
Saudi Arabia							
Singapore							
South Africa							
Switzerland							

Status update (where required)
Standing consent available <sup>27</sup>
Action under consideration <sup>28</sup>
Action taken <sup>29</sup>
Action underway <sup>30</sup>
Standing consent available <sup>31</sup>
Standing consent available <sup>32</sup>

<sup>27</sup> The Korean response states 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.

<sup>28</sup> See corresponding entry in Table 1. The Mexican response also states that in the case of Banco de México (Banxico) (a TR-like entity), reporting information to that TR 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 expected that such 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 the first half of 2017).

<sup>29</sup> The Saudi Arabian response states that the domestic authorities have authorised Saudi banks to report to foreign regulatory authorities as and when required. Saudi Arabia also reported that if there were any foreign legal or regulatory requirements for Saudi banks to submit information to a foreign TR, such requirements would be accommodated.

<sup>30</sup> See corresponding entry in Table 1.

<sup>31</sup> The South African response states that with respect to reporting to a domestic or foreign TR pursuant to foreign requirements, counterparty consent is required. In addition, South Africa noted that its Protection of Personal Information Act 2013, when it comes into force, will regulate the processing and transmission of identifying information relating to natural and legal (juristic) persons, and that consent to data collection, processing or onward transmission would be required, absent an applicable exemption being provided in the legislation. The response also stated that it would be possible for standing consent to be given, if the consent was worded in an appropriate manner that ensures that all applicable requirements in the PoPI Act are addressed.

<sup>32</sup> The Swiss response states that the Swiss legal framework currently in place generally does not require client consent for OTC derivatives trade reporting. In some cases, depending on specific foreign requirements, client consent is required. Standing consent is permitted; therefore, the client consent requirement (where it applies) is not considered a barrier to full reporting.

Status per Peer Review Report <sup>16</sup>								Status update (where required)	
Jurisdiction	<i>Location of reporting entity</i>								
	Domestic				Foreign				
	<i>Location of TR</i>								
Domestic		Foreign		Domestic		Foreign			
<i>Location of counterparty</i>									
Domestic		Foreign	Domestic	Foreign	Domestic	Foreign	Domestic		
Turkey								Action underway <sup>33</sup>	Standing consent available <sup>34</sup>
US									

■ = reporting permitted

■ = reporting permitted in some cases / subject to certain conditions (e.g. client consent)

■ = reporting not permitted

■ = not applicable (e.g. domestic requirements not in place) / situation not clear / information not provided

■ = Action underway (*i.e.* action is set out in a formal proposal to address barrier); or action taken (*i.e.* action has been taken to address barrier since the Peer Review Report)

■ = Action under consideration to address barrier

■ = Standing consent available to overcome barrier; or other explanatory update provided

■ = situation not clear / information not provided

<sup>33</sup> The Turkish response states that a Draft Communique for trade reporting has been drafted and communicated to major related institutions and market participants for consultation; the plan is to finalise before end 2016. Reporting pursuant to foreign requirements is subject to provisions of the third country; there is no limitation on these requirements specifically arising from the Draft Communique.

<sup>34</sup> The Turkish response states that with regards to personal data, the Law on Protection of Personal Data of 2016 does not specifically regulate standing consent. Standing consent to data being transferred abroad, however, is permitted as long as the data subject gives explicit and specific consent to the processing of his/her personal data that will apply to all future transactions. Otherwise, data export is permitted in certain cases where the third country has a similar level of protection for personal data.



Table 3

## Types of Legal Barriers to Domestic Participants Reporting Complete Information

Status per Peer Review Report <sup>35</sup>									
Jurisdiction		Domestic participant reporting pursuant to <i>domestic</i> requirements				Domestic participant reporting pursuant to <i>foreign</i> requirements			
		Data protection	Client confidentiality	Blocking statutes	Other	Data protection	Client confidentiality	Blocking statutes	
Argentina									
Australia						cured by counterparty consent	cured by counterparty consent		
Brazil							cured by counterparty consent		
Canada									
China									
EU	France						cured by counterparty consent		
	Germany								
	Italy								
	The Netherlands					cured by counterparty consent			

Status update (where required)	
Standing consent available <sup>36</sup>	
Standing consent available <sup>37</sup>	
Explanatory update provided <sup>38</sup>	
Action taken <sup>39</sup>	Action under consideration <sup>40</sup>
Standing consent available <sup>41</sup>	

<sup>35</sup> Status as set out in Table 7 in Appendix E of the Peer Review Report.

<sup>36</sup> See corresponding entry in Table 2.

<sup>37</sup> See corresponding entry in Table 2.

<sup>38</sup> The Chinese response states that there is no need for a trade participant to obtain a counterparty's consent to report trade data.

<sup>39</sup> See corresponding entry in Table 2. (Reported as action underway in 2016 Report).

<sup>40</sup> See corresponding entry in Table 2.

<sup>41</sup> See corresponding entry in Table 2.

Status per Peer Review Report <sup>35</sup>									
Jurisdiction		Domestic participant reporting pursuant to <i>domestic</i> requirements				Domestic participant reporting pursuant to <i>foreign</i> requirements			Other
		Data protection	Client confidentiality	Blocking statutes	Other	Data protection	Client confidentiality	Blocking statutes	
	Spain					cured by counterparty consent	cured by counterparty consent		
	UK								
	Hong Kong								
	India						cured by counterparty consent		
	Indonesia								
	Japan					cured by counterparty consent			
	Korea	cured by counterparty consent	cured by counterparty consent			cured by counterparty consent	cured by counterparty consent		
	Mexico								
	Russia								
	Saudi Arabia							cured by domestic authority authorisation	

Status update (where required)	
Standing consent available <sup>42</sup>	
Standing consent available <sup>43</sup>	
Explanatory update provided <sup>44</sup>	
Standing consent available <sup>45</sup>	
Action under consideration <sup>46</sup>	Standing consent available <sup>47</sup>
Action under consideration <sup>48</sup>	
Action taken <sup>49</sup>	

<sup>42</sup> See corresponding entry in Table 2.

<sup>43</sup> See corresponding entry in Table 2.

<sup>44</sup> See corresponding entry in Table 1.

<sup>45</sup> See corresponding entry in Table 2.

<sup>46</sup> See corresponding entry in Table 1.

<sup>47</sup> See corresponding entry in Table 2.

<sup>48</sup> See corresponding entries in Tables 1 and 2.

<sup>49</sup> See corresponding entry in Table 2.

Status per Peer Review Report <sup>35</sup>								
Jurisdiction	Domestic participant reporting pursuant to <i>domestic</i> requirements				Domestic participant reporting pursuant to <i>foreign</i> requirements			Other
	Data protection	Client confidentiality	Blocking statutes	Other	Data protection	Client confidentiality	Blocking statutes	
Singapore		cured by counterparty consent				cured by counterparty consent		
South Africa		cured by counterparty consent				cured by counterparty consent (only if report is made to TR or authority)		
Switzerland						cured by counterparty consent		
Turkey						cured by counterparty consent		
US								

■ = no legal barriers

■ = barrier exists, but mitigant available to at least some degree

■ = situation not clear / information not provided

Status update (where required)	
Action underway <sup>50</sup>	
Explanatory update provided <sup>51</sup>	Standing consent available <sup>52</sup>
Standing consent available <sup>53</sup>	
Action underway <sup>54</sup>	Standing consent available <sup>55</sup>

■ = Action underway (*i.e.* action is set out in a formal proposal to address barrier); or action taken (*i.e.* action has been taken to address barrier since the Peer Review Report)

■ = Action under consideration to address barrier

■ = Standing consent available / Explanatory update provided

■ = situation not clear / information not provided

<sup>50</sup> See corresponding entry in Table 1.

<sup>51</sup> See corresponding entry in Table 1.

<sup>52</sup> See corresponding entry in Table 2.

<sup>53</sup> See corresponding entry in Table 2.

<sup>54</sup> See corresponding entry in Table 2.

<sup>55</sup> See corresponding entry in Table 2.

Table 4

**‘Masking’ of counterparty information**

Status per Peer Review Report <sup>56</sup>		Status update (where required)
Jurisdiction	Masking permitted? <sup>57</sup>	
Argentina	No	
Australia	Yes	Transitional conditional relief permits masking in certain circumstances – a) transactions where blocked by foreign privacy restrictions of specified jurisdictions (31 December 2018) and b) transactions with ‘historic counterparties’, <i>i.e.</i> , transactions where the reporting entity has not entered into a new trade with the counterparty after 1 January 2015 (expiring 30 September 2018). Australia expects that this relief will not be extended beyond 2018.
Brazil	No	
Canada	Yes	The time limited discretionary relief ends in December 2017, and is available only to accommodate foreign laws. Canada expects that this relief will not be extended beyond 2018.
China	No	
EU		
France	No	
Germany	No	
Italy	No	
The Netherlands	No	
Spain	No	
UK	No	
Hong Kong	Yes	To meet the June 2018 timeline to remove masking once barriers to reporting are removed, HK authorities plan to (i) review regularly and remove jurisdictions from HK’s ‘list of jurisdictions for the purposes of the masking relief’ once changes in their domestic law which had prevented the disclosure of counterparty particulars are made; and (ii) discontinue the masking relief by the agreed timeline, subject to the completion of the necessary legislative procedure. If the relevant barrier is confirmed to have been removed, masking relief can no longer be relied upon for new transactions even though there is not a specified date of expiry.
India	No	
Indonesia	No	
Japan	No	
Korea	No	
Mexico	No	

<sup>56</sup> Status as set out in Table 8 in Appendix E of the Peer Review Report.

<sup>57</sup> Is masking of TR data permitted or accommodated for counterparties which report according to the domestic reporting regime

Status per Peer Review Report <sup>56</sup>		
Jurisdiction	Masking permitted? <sup>57</sup>	
Russia	No	
Saudi Arabia	No	
Singapore	Yes	
South Africa	Under consideration	
Switzerland	No	
Turkey	No	
US	No for security-based swaps (SEC)	Yes for swaps (CFTC) <sup>(a)</sup>

Status update (where required)
<p>Regulation 11 of the SF(RDC)R provides relief to a specified person from reporting counterparty information if:</p> <p>a) he is prohibited from doing so under the laws of a list of prescribed jurisdictions specified in the Fifth Schedule to the SF(RDC)R, or by any requirements imposed on him by any authority of any jurisdiction specified in the Fifth Schedule; or</p> <p>b) where the laws or the requirements imposed on him by any authority of any jurisdiction allow him to report the counterparty information only with the consent of the counterparty to the specified derivatives contract, and he was unable to obtain such consent after having made reasonable efforts to do so.</p> <p>The deferred reporting arrangement is set to expire on 30 June 2017. Singapore intends to extend the relief to a date no later than end-2018.</p> <p>South Africa reported that it is not envisaged that masking of counterparty information will be allowed. The current draft proposal contains requirements for the identification of counterparties by either the use of a legal entity identifier or a pre- legal entity identifier.</p>
<p><b>SEC:</b> The SEC does not permit or accommodate masking of data.</p> <p><b>CFTC:</b> Masking is not expressly provided for by statute. Nevertheless, pursuant to time-limited no-action relief, the CFTC staff will not recommend enforcement action for a failure to report certain identifying information for enumerated jurisdictions. The relief provided under no-action letter (NAL) 17-16 (the most recent NAL) ends by its terms on the earlier of: (i) 12:00am Eastern standard time on September 1, 2017 for swaps with a certain nexus to France or to Swiss counterparties, as explained in NAL 17-16; or (ii) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting, as discussed in NAL 17-16 and prior NALs. While CFTC staff has extended masking relief several times, CFTC staff retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief.</p> <p>On a practical level, the most effective way to ensure that CFTC staff rescinds the relevant no-action relief by the end of 2018, thereby ending permitted masking, is for all foreign regulators, whose statutory regimes ISDA claims make masking necessary, to expressly and publicly advise the CFTC that the claimed barriers to reporting do not, or no longer, exist and consequently that there is no basis, or is no longer any basis, for reporting parties to claim otherwise. CFTC staff also notes that even if all relevant Financial Stability Board (“FSB”) member jurisdictions remove such restrictions by the end of 2018, the requests for relief submitted to-date by ISDA reference certain jurisdictions that are not represented in the FSB.</p>

Table 5  
**Authorities' Access to Data**

Status per Peer Review Report <sup>58</sup>				Status update (where required)	
Jurisdiction	Access to domestic TR data by domestic authorities other than the primary authority?	Is foreign authorities' direct access possible?	Is foreign authorities' indirect access possible?	Barriers – domestic	Barriers – foreign
Argentina					
Australia			Direct access available		
Brazil					Explanatory update provided <sup>59</sup>
Canada			Uncertain	Explanatory update provided <sup>60</sup>	Explanatory update provided <sup>61</sup>

<sup>58</sup> Status as set out in Table 9 in Appendix E of the Peer Review Report.

<sup>59</sup> Brazil stated that access for foreign authorities to a domestic TR without going through a national authority would require the express consent of the participant whose data would be shared. This consent could allow for data to be shared on an ongoing basis, but the determination would be made on a participant-by-participant basis. The Brazilian response also states that foreign authorities have indirect access to data held in domestic TRs through bilateral or multilateral MoUs between national and foreign authorities, or by formally submitting their requests to the national authorities (Central Bank of Brazil or CVM).

<sup>60</sup> The Canadian response states that **there are no Canadian legal obstacles preventing access by domestic or foreign authorities to data held in a TR designated in Canada, and** all TRs that are designated to receive Canadian trade data are located in the US. Therefore, Canadian (non-primary) and foreign regulators are subject to US access rules. The main legal barrier to direct access by non-primary authorities, the Dodd-Frank indemnification provision, was removed by Congress at the end of 2015. **Canadian authorities are 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.**

<sup>61</sup> **Since all of Canada's TRs are domiciled in the US, the US rule changes discussed in footnote 60. Box 1, subject to applicable conditions (and subject to final rulemaking in the case of the proposed CFTC rules), will also facilitate access to TR data by relevant foreign authorities.**

Status per Peer Review Report <sup>58</sup>						Status update (where required)	
Jurisdiction		Access to domestic TR data by domestic authorities other than the primary authority?	Is foreign authorities' direct access possible?		Is foreign authorities' indirect access possible?	Barriers – domestic	Barriers – foreign
China						Explanatory update provided <sup>62</sup>	Explanatory update provided <sup>63</sup>
EU	France		(a)	(b)			Action underway (D) <sup>64</sup>
	Germany		(a)	(b)			
	Italy		(a)	(b)			
	The Netherlands		(a)	(b)			
	Spain		(a)	(b)			
	UK		(a)	(b)			
Hong Kong					Direct access available		
India						Explanatory update provided <sup>65</sup>	Explanatory update provided <sup>66</sup>

<sup>62</sup> The Chinese response states that non-primary domestic authorities can access TR data indirectly within their respective mandates.

<sup>63</sup> The Chinese response states that there is no relevant legislation and regulation relating to foreign authorities' access to TR-held data. China also stated that, in the future, if foreign authorities require access to TR-held data, indirect access may be considered, which means that foreign authorities may sign a regulatory cooperation agreement or MoU with the People's Bank of China.

<sup>64</sup> The European Commission's response states that 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 are granted direct access to the data held in EU trade repositories if the EC has adopted an equivalence decision for that third country.<sup>64</sup> The proposal is currently before the European Parliament and the European Council. (Previously reported as action under consideration).

<sup>65</sup> The Indian response states that only the Reserve Bank of India is legally allowed to access domestic TRs; however, there are no legal obstacles to sharing with domestic and foreign authorities. The Payment and Settlement Systems Act, 2007, provides for disclosure to any person in the larger public interest.

<sup>66</sup> See footnote 65.

Status per Peer Review Report <sup>58</sup>				Status update (where required)	
Jurisdiction	Access to domestic TR data by domestic authorities other than the primary authority?	Is foreign authorities' direct access possible?	Is foreign authorities' indirect access possible?	Barriers – domestic	Barriers – foreign
Indonesia					Situation not clear <sup>67</sup>
Japan				Explanatory update provided <sup>68</sup>	Explanatory update provided <sup>69</sup>
Korea				Action under consideration <sup>70</sup> (D)	Explanatory update provided <sup>71</sup>
Mexico				Explanatory update provided <sup>72</sup>	Explanatory update provided <sup>73</sup>

<sup>67</sup> 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.

<sup>68</sup> The Japanese response states that the JFSA, the primary authority, could share information as appropriate with the Bank of Japan, as a non-primary domestic authority, based on the existing supervisory guideline for FMIs including TRs. JFSA also states that a non-primary domestic authority could have direct access to TR data based on the cooperative arrangements with JFSA.

<sup>69</sup> The Japanese response states that foreign authorities could have direct access to TR through appropriate cooperative arrangements with JFSA.

<sup>70</sup> 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 non-primary authorities such as the Bank of Korea and other relevant government bodies direct access to information held by TRs.

<sup>71</sup> The Korean response states that foreign authorities could have access to TR data through an MoU, once such an MOU is put in place.

<sup>72</sup> The Mexican response states that there are in practice no legal barriers to access by non-primary domestic authorities because they have access through MoUs with the primary authority.

<sup>73</sup> The Mexican response explained states that, subject to execution of an information-sharing agreement with Mexican financial authorities, foreign financial authorities would have direct access to information held in the TR operated by the central bank and that, also subject to execution of an information-sharing agreement with Mexican financial authorities, there are no barriers with respect to indirect access by foreign authorities to other TRs.



Status per Peer Review Report <sup>58</sup>				Status update (where required)	
Jurisdiction	Access to domestic TR data by domestic authorities other than the primary authority?	Is foreign authorities' direct access possible?	Is foreign authorities' indirect access possible?	Barriers – domestic	Barriers – foreign
Russia					Explanatory update provided <sup>74</sup>
Saudi Arabia				Action under consideration <sup>75</sup>	Action under consideration <sup>77</sup>
Singapore			Direct access available	Explanatory update provided <sup>76</sup>	
South Africa				Action underway (D) <sup>78</sup>	Action underway <sup>79</sup>

<sup>74</sup> The Russian response states 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), 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.

<sup>75</sup> The Saudi Arabian response states that the authorities are planning a complete review of access to, and processing and interpretation of, TR data.

<sup>76</sup> The Saudi Arabian response states that the securities regulator (CMA) can already access data held by the TR, which is operated by the central bank (SAMA), by request from SAMA under an existing MOU.

<sup>77</sup> See footnote [75]. The Saudi Arabian response also states that access to TR-held data by foreign supervisory authorities can be arranged between SAMA and the relevant foreign authorities through an MOU. Such access is normally granted on a reciprocal basis.

<sup>78</sup> The South African response states that currently there is no licensed TR in South Africa; nonetheless it is envisaged that there would be no barriers to domestic authorities' access (direct or indirect) to domestic TR data. The Financial Markets Act and the draft Regulations, when made, would enable authorities other than the TR's primary Authority to obtain access to data held at a domestic TR in respect of reporting obligations imposed on transactions or positions.

<sup>79</sup> The South African response states that indirect access by foreign regulators to data held in domestic TRs (when they are licensed) can be facilitated by entering into appropriate information sharing and co-operation arrangements with the foreign regulators. The provisions of Section 22 of the Financial Services Board Act enable the sharing of information by the Financial Services Board with other Authorities, including foreign regulators.

Status per Peer Review Report <sup>58</sup>					
Jurisdiction	Access to domestic TR data by domestic authorities other than the primary authority?		Is foreign authorities' direct access possible?		Is foreign authorities' indirect access possible?
Switzerland					Direct access available
Turkey					
US	CFTC	SEC	CFTC	SEC	CFTC      SEC

Status update (where required)	
Barriers – domestic	Barriers – foreign
Action underway <sup>80</sup>	Action underway <sup>81</sup>
Action taken, <sup>82</sup> Action taken and underway <sup>83</sup> (D)	Action taken, <sup>84</sup> Action taken and underway <sup>85</sup> (D)

<sup>80</sup> The Turkish response states that an Implementing Regulation on Procedures Concerning TR's Activities (Draft Implementing Regulation) has been drafted and communicated to major related institutions and market participants for consultation; plan is to finalise before end-2017 (previously end-2016). The Draft Implementing Regulation would provide access to domestic authorities without material conditions.

<sup>81</sup> The Turkish response states that the draft Implementing Regulation would provide foreign authorities with indirect access on the conditions set out in that legislation. The CMB's anticipation is that it will take at least 2 years after first operation of reporting requirements at the start of 2017 to have adequate facts to help CMB evaluate and comment on necessary steps for action plan for giving direct access to foreign authorities.


<sup>82</sup> The US response states that as of November 2015, authorities' direct access to data held in TRs was permitted only with very significant or challenging conditions. This conclusion reflects the impact of statutory restrictions that at the time of publication of the Peer Review Report required a requesting authority to indemnify the relevant repository and the CFTC or the SEC (as applicable). On December 4, 2015, these statutory indemnification requirements were repealed by amendments of the Commodity Exchange Act and the Securities Exchange Act of 1934.


<sup>83</sup> The US response states that following the repeal of the statutory indemnification requirement described above, 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 ended in March 2017 and the CFTC is considering its proposal in light of the comments received. In August 2016, the SEC adopted rules to provide authorities with direct access to security-based swap data held by SEC-registered security-based swap data repositories, subject to a memorandum of understanding or other arrangement between the SEC and the recipient authority addressing the confidentiality of the information made available.


<sup>84</sup> See footnote 82.


<sup>85</sup> See footnote 83.

Status per Peer Review Report <sup>58</sup>			
Jurisdiction	Access to domestic TR data by domestic authorities other than the primary authority?	Is foreign authorities' direct access possible?	Is foreign authorities' indirect access possible?

 = Access permitted, without any material conditions

 = Access permitted, but with material conditions


 = Access not permitted, or permitted with very significant/challenging conditions


 = Under consideration

(a) For non-EU jurisdictions where there is no TR established, direct access to EU TR data can be granted to a foreign authority following the conclusion with ESMA of a MoU in accordance with the recommendations of the CPMI-IOSCO 2013 report on authorities' access to TR data.


(b) For non-EU jurisdictions where there is a TR established, direct access to EU TR data can be granted to a foreign authority following the conclusion with the EU of an International Agreement and with ESMA of a MoU in accordance with the recommendations of the CPMI-IOSCO 2013 report on authorities' access to TR data.

Status update (where required)	
Barriers – domestic	Barriers – foreign

 = Action underway (*i.e.* action is set out in a formal proposal to address barrier); or action taken (*i.e.* action has been taken to address barrier since the Peer Review Report)

 = Action under consideration to address barrier

 = Explanatory update provided

 = situation not clear / information not provided

(D) = action taken or underway or under consideration to give direct access to TR data to a domestic or foreign authority (as indicated)