

Report on FSB Members’ Plans to Address Legal Barriers to Reporting and Accessing OTC Derivatives Transaction Data

Individual response – Australia

Barriers to reporting information into TRs or TR-like entities

In the Report on FSB Members’ Plans to Address Legal Barriers to Reporting and Accessing OTC Derivatives Transaction Data, the related assessment for Australia contains amber ratings with regards to the following Tables:

- Table 2 - "Reporting to a TR or TR-Like Entity Pursuant to Foreign Reporting Requirements - an amber rating is provided on the basis that consent is required where personal information is to be provided to an entity located overseas. It is noted, however, that (i) the consent requirement is likely to be limited to situations where the data contains the name of an individual and/or number or code that can be used to identify 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;

- Table 3 "Types of Legal Barriers to Domestic Participants Reporting Complete Information" Columns headed "Domestic participant reporting pursuant to foreign requirements" - an amber rating is provided on the basis of the rationale and explanation as provided for Table 2, above.

- Table 8 - ‘Masking’ of counterparty information – an amber rating is provided as 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.e.*, transactions where the reporting entity has not entered into a new trade with the counterparty after 1 January 2015 (expiring 30 September 2018).

Commitment required by FSB members	Response - Australia
<ul style="list-style-type: none"> 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 by June 2018 at the latest, with respect to reporting pursuant to domestic and foreign requirements 	<p>There is, in practice, no barrier to full reporting of trade information to a domestic or foreign TR pursuant to domestic or foreign requirement.</p> <p>Whilst the Australian Privacy Principles and guidelines (APP&Gs) require consent to be provided where personal information is to be provided (for trade reporting likely to be limited to situations where the data contains the name of an individual and/or a number or code that can be used to identify an individual) to an entity that is located overseas, the APP&Gs do permit a standing consent to be provided (refer APP&Gs 8.32). The consent clauses are typically contained in product documentation and the associated product application and accordingly consent is provided as part of the execution of the product by the individual.</p>

	<p>With regards to reportable transactions with non-natural person entities, the APP&Gs do not apply (given the application only to personal information). Further, standing consent for provision of data/confidential information can be provided in the contract terms (i.e. of the master agreement or other associated documentation).</p> <p>There is no barrier to provision of reporting trade data to a trade repository (or a trade repository like entity) pursuant to foreign trade reporting requirements, given the absence of an overarching law in Australia that forbids standing consent.</p>
<ul style="list-style-type: none"> • 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, by June 2018 at the latest all jurisdictions should permit transaction counterparties to provide standing consent to the reporting of such data to any domestic or foreign TR. 	<p>As indicated above, there is no restriction to providing standing consent.</p>
<ul style="list-style-type: none"> • Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting. 	<p>Transitional conditional relief ¹has been made available (September 2015 and extended in September 2016) through a class exemption that permits masking in certain circumstances - where blocked by foreign privacy restrictions (expiring on 31 December 2018).</p> <p>(Note that for historical transactions prior to 1 January 2015, masking is permitted on the basis of certain conditions including that consent to disclose identifying information was permitted in the jurisdiction where the counterparty was located and has yet not been obtained and where the reporting entity has not entered into a new trade with the counterparty after 1 January 2015. This relief expires on 30 September 2018.</p>

Barriers to authorities' access to TR-held data

In FSB's thematic peer review on OTC derivatives trade reporting (published in November 2015) Australia reported green in Table 9 – accordingly no information is required in relation to the

¹ Relief provided by Exemption 5 of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844 and extended from 30 September 2016 to 31 December 2018 by ASIC Corporations \(Amendment\) Instrument 2016/913](#)

relevant commitments. There has been no change in this regard since the FSB's thematic peer review.