**Schedule A**

**Addressing Legal Barriers to Reporting of, and Access to, OTC Derivatives Transaction Data**

**Information requested in Annex to 13 March letter from the FSB Chairman**

Barriers to reporting information into TRs or TR-like entities

In FSB's thematic peer review on OTC derivatives trade reporting (published in November 2015), the related assessment for Australia is coloured as amber in:

- Table 6 - "Reporting to a TR or TR-Like Entity Pursuant to Foreign Reporting Requirements - an amber rating provided where reporting was permitted in some cases/subject to certain conditions (e.g. client consent);

- Table 7 "Types of Legal Barriers to Domestic Participants Reporting Complete Information" Columns headed "Domestic participant reporting pursuant to foreign requirements" , Australia rated amber under the sub-headings "Data protection" and "Client confidentiality", with the notation "cured by counterparty consent"; and

- Table 8 - 'Masking' of counterparty information – The report notes that relief (permitting masking) is available through a class exemption.

| **Commitment required by FSB members** | **Response - Australia** |
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| • 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 | There is, in practice, no barrier to full reporting of trade information to a domestic or foreign TR pursuant to domestic or foreign requirement.<br><br>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 the identifier number 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.<br><br>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).<br><br>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. |

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| • 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. | As indicated above, there is no restriction to providing standing consent. |
| • Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting. | Transitional conditional relief [1] was made available (September 2015) through a class exemption that permits masking in certain circumstances - where blocked by foreign privacy restrictions and overseas government entities (both expiring on 30 September 2016) and historical transactions (expiring on 30 September 2018). |

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 relevant commitments.

[1] ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844

In response to your query, Michael Cleland (Australian Securities and Investments Commission) has provided the following explanation:

There are two types of relief under ASIC Corporation (Derivative Transaction Reporting Exemption) Instrument 2015/844 relevant to trades with foreign privacy restrictions or government entities. Their interaction is explained below.

a) The instrument provides reporting relief (subject to conditions) for transactions with foreign privacy restrictions or government entities. This relief applies to all transactions with foreign privacy restrictions or with government entities (i.e. not just transactions entered into after a particular date). This relief expires on 30 September 2016.

b) The instrument also provides reporting relief (subject to conditions) for transactions with ‘historic counterparties’, that is, transactions where the reporting entity has not entered into a new trade with the counterparty after 1 January 2015. This relief may also cover some ‘historic’ transactions with foreign privacy restrictions or with government entities. This relief expires on 30 September 2018.

Taken together, transactions with foreign privacy restrictions or with government entities would need to be reported from 1 October 2016, unless it is also covered by the relief for transactions with historic counterparties.