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Trade register 3300 3396

**Re:**

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

**Date**

17 June 2016

**Your reference**

**Our reference**

2016/396769

Dear Madam, Dear Sir,

First of all, we would like to thank you for your work on improving the reporting of derivatives transactions. We think more transparency is an important part of the international derivatives reforms, as it is imperative to monitor systemic risks in the financial markets. In response to your request of 13 March to prepare a report on our planned actions to address legal barriers in relation to trade reporting, we kindly provide you with some more details in this letter.

In the FSB peer review report on OTC derivatives trade reporting of 4 November 2015, the Netherlands is mentioned as having some legal barriers in this respect. Concretely, tables 6, 7 and 9 of the Appendix E to the peer review report show that the Netherlands has barriers regarding (i) reporting to a trade repository pursuant to foreign reporting requirements and (ii) foreign authorities' direct access to EU trade repositories.

Regarding the first barrier – reporting to a trade repository pursuant to foreign reporting requirements – we note that the Dutch data protection act protects the processing of personal data of natural persons. The Dutch data protection act is a national implementation of the European data protection directive. Consequently, to the extent that this should be regarded a barrier at all, it would exist on a European level and it would not be a national barrier.

The Dutch data protection act does not hinder reporting of derivatives transactions of a natural person if a legal obligation exists to report the transaction, such as under EMIR. Moreover, if the natural person would give standing consent to the reporting, the Dutch data protection act would not form any barrier to the reporting of derivatives transactions. Only in the minor case of a natural person that would have 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 the European Commission would deem the reporting requirements in the relevant third country jurisdictions to be equivalent to EMIR,<sup>1</sup> or if the concerned natural persons would

**Enclosure(s)**

<sup>1</sup> We would like to refer to the separate response of the European Commission for the full details of this process.

provide standing consent, the Dutch data protection act would not constitute a barrier for the reporting of derivatives transactions.

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Regarding the second barrier – foreign authorities' direct access to EU trade repositories – we would like to refer to the response of the European Commission as this is not a national barrier but must be solved on the European level.

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In conclusion, we note that we have no national barriers to the reporting of derivatives transactions. We are thus of the opinion that we have fulfilled the FSB recommendations in this regard.

Please do not hesitate to contact us in case of any further questions. We remain at your disposal to provide you with more information on this important matter.

Kind regards,  
De Nederlandsche Bank N.V

Legal Counsel