

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

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Executive Summary

G20 Leaders agreed in 2009 that OTC derivative contracts should be reported to trade repositories. The FSB published a thematic peer review of OTC derivative trade reporting in November 2015 (Peer Review Report),¹ which identified a number of remaining legal barriers in FSB member jurisdictions to reporting complete transaction information to trade repositories and trade repository-like entities (together referred to in this document as TRs) and impediments to authorities' access to TR-held data.

The FSB members agreed as a follow up that, by June 2018 at the latest, all jurisdictions should remove barriers to full reporting of trade information (including counterparty information) and all jurisdictions should have a legal framework in place to permit authorities' access to data in accordance with their mandates.

The FSB Chairman wrote to members in March 2016 (Appendix B) asking that each FSB member jurisdiction report by June 2016 on its planned actions to address the identified legal barriers. Reports have been received from all member national jurisdictions, as well as from the European Commission.² This report summarises the responses received.

In summary, while some work is in process to remove barriers to both reporting of complete OTC derivatives transaction information to TRs and authorities' access to TR-held data, significant work remains across FSB member jurisdictions to achieve this and concrete plans to address the barriers have not been formulated in a number of cases. Therefore, based on the reports received to date, it appears that, across FSB member jurisdictions, further significant planning and implementation efforts will be needed in order to meet the agreed June 2018 deadlines. The FSB will publish a further progress report ahead of the G20 Summit in July 2017.

Globally, significant work is still needed in a number of jurisdictions to remove barriers to full reporting of trade information.

The Peer Review Report had identified a total of 13 jurisdictions where there were potential barriers, conditions or a need for further information concerning *reporting to a TR pursuant to domestic requirements* (Argentina, Brazil, China, Hong Kong, India, Indonesia, Korea, Mexico, Russia, Saudi Arabia, Singapore, South Africa and Turkey). In their responses to the FSB Chair's letter, one of these jurisdictions (Singapore) reported action underway to address this barrier and two jurisdictions (Korea and Mexico) reported action under consideration. The 10 remaining jurisdictions provided explanatory updates, mainly explaining that there are in practice no barriers to reporting pursuant to domestic requirements.

The Peer Review Report had identified 16 jurisdictions where there were potential barriers, conditions or a need for further information concerning *reporting to a TR pursuant to foreign requirements* (Australia, Brazil, China, France, Netherlands, Spain, India, Indonesia, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland and Turkey). In 12 of these

¹ Available at <http://www.fsb.org/2015/11/thematic-review-of-otc-derivatives-trade-reporting/>.

² This report address only FSB member jurisdictions. It does not, for example, address EU jurisdictions that are not members of the FSB.

jurisdictions, the potential barriers in this area relate to data protection or client confidentiality requirements that could be overcome with client consent to report full information. Some progress has been made in this area: four jurisdictions report action taken or underway to address barriers to reporting pursuant to foreign requirements (France, Saudi Arabia, Singapore and Turkey), while four jurisdictions (EU, addressing barriers identified in the three jurisdictions of France, Netherlands and Spain; and Mexico) report action under consideration.

The Peer Review Report recommends that, where counterparty consent must be obtained to report data, counterparties should, by June 2018 at the latest, be permitted to provide standing consent. Eleven of the 12 jurisdictions with requirements that can be overcome by counterparty consent report that standing consent is permitted (Australia, Brazil, India, Japan, Korea, Netherlands, Singapore, South Africa, Spain, Switzerland and Turkey). The remaining jurisdiction with requirements that can be overcome by counterparty consent has action underway to address the requirement (France).

The Peer Review Report had identified five jurisdictions that permit or accommodate *'masking'* of counterparty identifying information in trade reports (Australia, Canada, Hong Kong, Singapore and US³), and a sixth jurisdiction (South Africa) where masking was under consideration. The Peer Review Report recommended that masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed. Four of the jurisdictions that permit masking (Australia, Canada, Singapore and US⁴) report that their current masking relief would, by its terms, expire by a specified date before end-2018. Canada notes that it expects that the relief will not be extended beyond 2018. The fifth such jurisdiction, Hong Kong, indicates that it plans to discontinue masking by the agreed timeline, but notes that this is subject to the completion of the necessary legislative procedure. South Africa indicates that while the issue is still under consideration, it is unlikely to permit masking.

Globally, progress has been mixed with respect to legal frameworks to permit authorities' access to TR-held data.

The Peer Review Report recommended that all jurisdictions should have a legal framework to permit access by both domestic and foreign authorities to data held in a domestic TR, and that direct access is preferable to indirect access to enable authorities to have continuous and unintermediated access. Progress to date in setting out plans to remove barriers or material conditions to access has been mixed. Progress to date by authorities in developing plans to shift from indirect to direct access by foreign authorities to TR-held data is even more limited; a number of FSB member jurisdictions are not yet planning or considering action to provide such access.

The Peer Review Report had identified 8 jurisdictions where access to domestic TR-held data by domestic authorities other than the primary authority was not permitted or was only permitted with very significant or challenging conditions (Canada, India and US), or was permitted with material conditions (China, Japan, Korea, Mexico and Saudi Arabia). The US reports action taken and additional action under consideration to address its conditions, and

³ For the US, masking is permitted pursuant to Commodity Futures Trading Commission (CFTC) staff no-action relief discussed later in the report. Securities and Exchange Commission (SEC) rules do not allow for masking.

⁴ See footnote 3.

Canada reports that at present all TRs designated to receive Canadian trade data are located in the US and subject to US access rules, and that Canadian authorities are awaiting the incorporation of recent US legislative changes⁵ into the CFTC's rules before taking further action. India has not reported any action taken, while stating that there are no legal obstacles to sharing with domestic and foreign authorities. Two of the jurisdictions with material conditions report action under consideration to address those barriers (Korea and Saudi Arabia), but the other three do not, while stating that indirect or direct access is available (China, Mexico and Japan).

In the case of access by foreign authorities to TR-held data, progress is also mixed. The Peer Review Report had indicated that China and India either do not permit *indirect access* or permit such access only with very significant or challenging conditions; China has not reported plans for change, while India reports it is in dialogue with ESMA and the US CFTC for MoUs which would permit the indirect sharing of data. Limited progress has been made across the 18 jurisdictions that the Peer Review Report had indicated did not permit *direct access* by foreign authorities to TR-held data or permitted it only with very significant or challenging conditions in at least some cases (Brazil, Canada, China, India, Indonesia, Japan, Korea, Mexico, Russia, Saudi Arabia, Turkey and US, as well as the 6 EU jurisdictions (France, Germany, Italy, Netherlands, Spain and UK)). The US reports action taken and additional action under consideration to address these conditions, and the EU has action under consideration in this area. However, it appears that most of these jurisdictions are not yet planning or considering action to provide direct access to TR-held data.

The Peer Review Report also recommended that authorities should coordinate in establishing cooperative arrangements that facilitate authorities' access to TR-held data and that authorities and TRs should work together, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data. While some jurisdictions provided reports on these subjects, generally jurisdictions did not report significant concrete action or consideration.

1. Introduction

G20 Leaders agreed in September 2009, as part of their overall commitments to reform over-the-counter (OTC) derivatives markets, that OTC derivative contracts should be reported to TRs, and asked the FSB and its relevant members to assess regularly implementation and whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.

The FSB undertook a thematic peer review of OTC derivatives trade reporting and published the results in the November 2015 Peer Review Report. The main objectives of the review included identification of any legal barriers that prevent or hinder reporting of complete transaction information to TRs or that limit authorities' access to information held in TRs.

⁵ A legal barrier to direct access by non-primary authorities, the Dodd-Frank Act indemnification provision, was removed by Congress at the end of 2015.

The Peer Review Report noted that a widespread concern of authorities has been the existence of legal barriers to reporting complete OTC derivatives transaction information. In particular, in some cases legal barriers prohibit reporting counterparty-identifying information, while in other cases legal barriers prohibit reporting any information about an OTC derivatives trade. Authorities have raised concerns that restrictions on reporting complete data limit the usefulness of TR-held data to authorities in carrying out their regulatory mandates, including monitoring and analysing systemic risk and market activity. Similarly, authorities have expressed concerns in relation to barriers to their access to TR-held data, since complete and timely access to this data is intended to be a key resource for authorities in fulfilling their respective mandates.

The Peer Review Report found that barriers to reporting were widespread among FSB member jurisdictions, particularly in the case of reporting pursuant to foreign reporting requirements. While in many cases these barriers could be overcome through obtaining counterparty consent or authority authorisation, or through equivalence and recognition frameworks, in other cases barriers could not be addressed in these ways. FSB members therefore agreed that jurisdictions should remove barriers to reporting complete information by June 2018 at the latest, and that masking of counterparty-identifying data be discontinued by end-2018 once barriers to reporting are removed. By June 2018 at the latest, jurisdictions should also permit trade participants to provide standing consent where consent is required to report trade data.

As with barriers to reporting, the Peer Review Report found that impediments to authorities' access to TR-held data are widespread. Restrictions to effective access for relevant domestic authorities were evident within some jurisdictions, and there were very few effective arrangements established for cross-border access by foreign authorities to TR-held data. To address these access issues, FSB members agreed that by June 2018 at the latest all jurisdictions should have a legal framework in place to permit access to data held in a domestic TR by domestic authorities and by foreign authorities, on the basis of these authorities' mandates and in accordance with the domestic regulatory regime. Direct access for both domestic and foreign authorities is the preferred arrangement, consistent with existing guidance from the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO).⁶ Jurisdictions should also take steps as necessary for the establishment and effective operation of cooperative arrangements that support authorities' access to TR-held data, consistent with the responsibilities for authorities set out by CPMI and IOSCO.⁷

The Peer Review Report noted, in summary, that most jurisdictions have made and are making substantial reforms to their regulatory regimes to meet the G20 commitment that OTC derivatives should be reported to TRs, and good progress in implementation is underway.⁸ To ensure that reporting of OTC derivative transactions delivers on the G20's goals, however, further work needed to be undertaken, including addressing legal barriers to reporting and authorities' access to TR-held data. To monitor progress on the Peer Review Report's recommendations, the report noted that FSB member jurisdictions would be asked to report to

⁶ See CPMI-IOSCO (2013), *Authorities' access to trade repository data*, October; available at: <http://www.bis.org/cpmi/publ/d110.pdf>, at p. 22-23.

⁷ See document cited at footnote 6, at p. 28.

⁸ See, e.g., FSB (2016), *OTC Derivatives Market Reforms: Eleventh Progress Report on Implementation*, August; available at www.fsb.org/2016/08/otc-derivatives-market-reforms-eleventh-progress-report-on-implementation/.

the FSB by June 2016 on their planned actions to address such legal barriers. In March of this year, the FSB Chairman wrote to member jurisdictions requesting that they provide detailed reports on their proposed actions (see Appendix B).

This is a report on the responses received from FSB member jurisdictions detailing their planned actions to implement the recommendations of the Peer Review Report regarding legal barriers to reporting complete information to TRs and to authorities' access to TR-held data. The report includes a narrative summary of progress by member jurisdictions in addressing the legal barriers identified in the Peer Review Report. It also includes five tables that reproduce the tables from the Peer Review Report and incorporate summary information reported by jurisdictions on their planned actions to address legal barriers to reporting and authorities' access (Appendix A). Tables 1-5 in Appendix A to this report correspond to and incorporate Tables 5-9, respectively, in Appendix E to the Peer Review Report. The responses submitted by the member jurisdictions are available on the FSB's web site.⁹

2. Progress in Addressing Legal Barriers to Reporting Complete Information to TRs and to Authorities' Access to TR-Held Data

This section reports on progress in addressing legal barriers to (i) reporting complete information to TRs; and (ii) authorities' access to TR-held data. Within each of these two areas, the section provides the recommendations of the Peer Review Report, followed by a summary of the progress reported by member jurisdictions in addressing the recommendations and fuller detail regarding jurisdictions' actions.¹⁰

⁹ www.fsb.org/2016/08/report-on-fsb-members-plans-to-address-legal-barriers-to-reporting-and-accessing-otc-derivatives-transaction-data/.

¹⁰ This report does not summarise general updates received from jurisdictions in relation to issues where the Peer Review Report had reported that no barrier existed with regard to that jurisdiction.

2.1 Legal Barriers to Reporting Complete Information to TRs

Recommendations of the Peer Review Report¹¹

Recommendation 1. 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.¹

Recommendation 2. 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.

Recommendation 3. Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting.

¹ In some jurisdictions there are restrictions or prohibitions on the use of certain types of counterparty identifying information, particularly in relation to natural persons (for instance, national identity numbers or social security numbers), that may affect what types of information can legally be included in transaction reports. In such cases, jurisdictions should ensure other counterparty identifying information is able to be included in transaction reports made pursuant to domestic or foreign requirements so as to prevent counterparty anonymity.

2.1.1 Removal of barriers to reporting pursuant to domestic requirements (Recommendation 1) (Table 1 in Appendix A)

(a) Summary of Peer Review Report Findings and Jurisdictions’ Planned Actions

The Peer Review Report identified a total of 13 jurisdictions where there were potential barriers, conditions or a need for further information concerning reporting to a TR pursuant to domestic requirements (Argentina, Brazil, China, Hong Kong, India, Indonesia, Korea, Mexico, Russia, Saudi Arabia, Singapore, South Africa, and Turkey) as follows. Eight jurisdictions did not permit reporting to foreign TRs pursuant to domestic reporting requirements in at least some circumstances (Argentina, Hong Kong, India, Indonesia, Korea, Mexico, Russia and Saudi Arabia). Four jurisdictions permitted reporting pursuant to such requirements in some cases or subject to certain conditions (e.g. client consent) (Brazil, Korea, Singapore and South Africa). In five jurisdictions, reporting pursuant to such requirements in some cases was not applicable (e.g. domestic requirements not in place) or the situation was not clear or information was not provided (China, Mexico, Russia, Saudi Arabia and Turkey).

In their recent responses, one of these 13 jurisdictions (Singapore) reported action underway to address barriers to reporting pursuant to domestic requirements, while two jurisdictions (Korea and Mexico) reported action under consideration in this area. Explanatory updates were provided by 10 of the 13 jurisdictions that had been identified in the Peer Review Report as having potential barriers to reporting pursuant to domestic requirements (Argentina, Brazil, China, Hong Kong, India, Indonesia, Russia, Saudi Arabia, South Africa and Turkey). A number of these updates were to the effect that while the trade reporting regime did not

¹¹ Recommendations 1, 2 and 3 in this box were numbered 2A, 2B and 2C in the Peer Review Report.

contemplate reporting to foreign trade repositories to fulfil domestic reporting requirements, there was no barrier to reporting to domestic trade repositories to fulfil those requirements.

(b) Responses of Particular Jurisdictions

Action underway

Singapore stated that legislative amendments have been proposed that will remove the need for client consent to be obtained for the purposes of complying with domestic and foreign reporting obligations. The amendments are targeted to be tabled in Parliament in the second half of 2016 and to take effect in 2017.

Action under consideration

Korea stated that it is planning to remove all legal barriers to information reporting into either domestic or foreign TRs pursuant to domestic requirements. This would extend to authorised domestic TRs and foreign TRs that have been approved pursuant to a “regulatory equivalence” standard. The Financial Services Commission is reviewing whether amendments to the relevant legal and regulatory framework are needed. Korea also stated that it is planning to eliminate the counterparty consent requirement when providing trade data to domestic and foreign TRs, and is currently reviewing whether amendment of the relevant legal and regulatory framework is needed to accomplish this.

Mexico reported that financial authorities are currently analysing the most appropriate regulatory framework to allow domestic reporting entities to report to foreign TRs pursuant to domestic requirements under conditions that may not represent a breach of secrecy provisions. This analysis is expected to be concluded by the first half of 2017.

Explanatory update provided

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.

Brazil reported 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 TR or TR-like entities.

China reported that the Chinese derivatives market is relatively small and dominated by domestic investors, and that there are no barriers to reporting to a domestic TR pursuant to domestic requirements. China also reported 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.

Hong Kong explained that while domestic reporting requirements must be complied with by submission of reports to the domestic TR, foreign domiciled counterparties are not normally subject to domestic requirements except in circumstances where an overseas incorporated institution books a transaction in a domestic branch or uses its domestic office to conduct a transaction for a group affiliate. Hong Kong further explained that a TR in a foreign location can be used as agent by a foreign reporting entity in the event that reports are required under domestic rules.

India noted that reporting to a foreign TR to fulfil domestic requirements is not permitted, adding that it may be recommended that “as long as a domestic or foreign trade participant reports trade data to any recognised TR, there should not be any additional requirement of reporting the same data to any other TR”.

Indonesia stated 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.

Russia stated 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.

Saudi Arabia stated 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.

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 by at least early 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.

Turkey has drafted and communicated to major related institutions and market participants for consultation a Reporting Communique that would regulate trade reporting. The draft Reporting Communique, which is expected to be finalised before end-2016, would not permit reporting by a domestic trade participant to a foreign TR pursuant to domestic requirements. Turkey also reports that first reporting under its Reporting Communique is expected at the beginning of 2017, and that it will take at least two years after first operation of reporting to have adequate facts to evaluate the necessary steps to be taken for the removal of legal barriers.

2.1.2 Removal of barriers to reporting pursuant to foreign requirements (Recommendation 1) (Table 2 in Appendix A)

(a) Summary of Peer Review Report Findings and Jurisdictions’ Planned Actions

The Peer Review Report identified 16 jurisdictions that had potential barriers to reporting pursuant to foreign requirements (Australia, Brazil, China, France, Netherlands, Spain, India, Indonesia, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland and Turkey). Fourteen of these jurisdictions were identified as permitting reporting in some cases/subject to certain conditions (e.g. client consent) in at least some circumstances (Australia, Brazil, France, Netherlands, Spain, India, Japan, Korea, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland and Turkey). In three jurisdictions, the situation was not clear/information not provided in at least some circumstances (China, Indonesia and Turkey).

Four of the 16 jurisdictions (France, Saudi Arabia, Singapore and Turkey) reported action taken or action underway to address barriers to reporting pursuant to foreign requirements, while responses addressing four of the 16 jurisdictions (EU, addressing the three jurisdictions of France, Netherlands and Spain;¹² and Mexico) reported that action was under consideration. Explanatory updates were received from 12 jurisdictions (Australia, Brazil, China, India, Indonesia, Japan, Korea, Netherlands, South Africa, Spain, Switzerland and Turkey), including three (Netherlands, Spain and Turkey) with regards to which action is also under consideration.

(b) Responses of Particular Jurisdictions

Action taken or action underway

France proposed on 30 March 2016 to amend the relevant law so as to allow financial institutions to report information covered by secrecy law to TRs pursuant to foreign requirements, without requesting client consent. The amendment was adopted on 9 June 2016 by the National Assembly and is expected to be adopted in coming weeks by the Senate. It will then directly enter into force.

Saudi Arabia reported 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.

Singapore stated that legislative amendments have been proposed that will remove the need for client consent to be obtained for the purposes of complying with domestic and foreign reporting obligations. The amendments are targeted to be tabled in Parliament in the second half of 2016 and to take effect in 2017.

Turkey reported that its draft Reporting Communique does not limit reporting to a foreign TR pursuant to foreign requirements, but states that it must be in accordance with data protection law, which contains consent and authorisation requirements. 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.

Action under consideration

The European Union's (EU) response stated that any national barriers to reporting pursuant to foreign requirements (e.g. counterparty consent) would be superseded as soon as the European Commission has adopted an equivalence decision for the jurisdiction in question. The EU further noted that the Commission is currently assessing several jurisdictions with a view to establishing whether such equivalence can be granted.

¹² Three of the EU jurisdictions (Germany, Italy and the UK) were not identified in the Peer Review Report as having potential barriers to reporting pursuant to foreign requirements.

The EU also noted that its legislation permits reporting to a foreign TR pursuant to foreign requirements if the foreign TR has been recognised by ESMA, and this recognition de facto requires the conclusion of an international agreement and a cooperation arrangement with the relevant foreign authority. The EC is currently undertaking an in-depth review of the relevant regulation, including the requirement for an international agreement.

Mexico does not permit direct reporting by a domestic entity to foreign TRs with respect to transactions traded in Mexico due to secrecy obligations. The financial authorities are currently analysing the most appropriate regulatory framework they may implement to permit such reporting, and the analysis is expected to be concluded by the first half of 2017. Mexico also stated that its central bank is preparing a regulation to permit domestic or foreign entities to report trading information to the TR maintained by the central bank on a voluntary basis. It is expected that the regulation will be released in draft format for discussion with the industry during the second half of 2016 so that it may be issued during the first half of 2017.

Explanatory update provided

Australia stated 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 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.

Brazil stated 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.

China reported 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.

India stated that the reporting of transactions to foreign TRs is subject to concurrence of the counterparty and that such client consent can be taken at the on-boarding stage itself.

Indonesia reported that Bank Indonesia only regulates mandatory derivatives transaction reporting (for foreign exchange and interest rate derivatives) to Bank Indonesia and currently has not issued any regulation on bank reporting to offshore TRs. Hence, banks may report their derivatives transactions with offshore counterparts to offshore TRs 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.

Japan stated that although under the Japanese legislation consent is required where personally identifiable information of a natural person is to be provided to a third party including a TR, standing consent is permitted. Thus, their response states that in practice there is no legal barrier that prevents full reporting to a TR pursuant to foreign requirements.

Korea stated that reporting information into domestic TRs pursuant to foreign requirements would be permitted once equivalence of the domestic TR is approved in accordance with extraterritorial application of the respective jurisdiction's laws and regulations. Korea stated that there is no barrier because this reporting is not banned in the domestic framework, and it is not appropriate that this matter be stipulated in domestic legal and regulatory regimes.

Netherlands stated that the Dutch data protection act does not hinder reporting of derivatives transactions of a natural person, where either consent (which may be standing consent) has been obtained, or where the reporting entity is under a legal obligation to report the transaction, such as under EMIR (including in a case where the EC deemed the reporting requirements in the relevant third country jurisdictions to be equivalent to EMIR).

South Africa stated 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 (PoPI Act), 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. 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.

Spain noted that credit entities are forbidden under Spanish law 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. Spain also noted that Article 13 of EMIR allows credit entities to provide TRs with information on OTC derivatives transactions following foreign reporting requirements in case the EC 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.

Switzerland stated that the Swiss legal framework currently in place generally does not require client consent for OTC derivatives trade reporting, but that 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.

Turkey's explanatory update is summarised above under the heading "Action undertaken or action underway".

2.1.3 Permitting transaction counterparties to provide standing consent in order to satisfy consent requirements (Recommendation 2) (Table 3 in Appendix A)

The Peer Review Report identified 12 FSB member jurisdictions where full reporting of OTC derivatives transactions to domestic and/or foreign requirements was subject to data protection or client confidentiality requirements that could be overcome with counterparty consent (Australia, Brazil, France, India, Japan, Korea, Netherlands, Singapore, South Africa, Spain, Switzerland and Turkey). The Peer Review Report noted that the peer review team did not collect comprehensive information on what particular kind of consent was required, e.g. trade-by-trade versus “standing consent” to cover a string of transactions.

In their recent reports, 11 of the 12 jurisdictions with requirements that can be overcome by counterparty consent reported that standing consent is permitted (Australia, Brazil, India, Japan, Korea, Netherlands, Singapore, Spain, South Africa, Switzerland and Turkey).¹³ Three of these jurisdictions (Australia, Japan and Netherlands) also noted that consent requirements apply only with respect to natural persons. One jurisdiction (Australia) noted that consent is typically provided as part of product execution.

The jurisdiction that did not report that standing consent is permitted has taken steps to eliminate its client consent requirements (France).¹⁴

2.1.4 Discontinuing ‘masking’ once barriers to reporting are removed (Recommendation 3) (Table 4 in Appendix A)

In the Peer Review Report, five jurisdictions were identified as permitting or accommodating masking of counterparty identifying information in trade reports (Australia, Canada, Hong Kong, Singapore and US¹⁵). A sixth jurisdiction, South Africa, was reported as having the matter under consideration.

In their recent reports, four of these jurisdictions (Australia, Canada, Singapore and US¹⁶) stated that their current masking relief would, by its terms, expire by a specified date, before end-2018 and one of those (Canada) stated that it expects that this relief will not be extended beyond 2018. The US stated that the CFTC’s relief to permit masking ends by its terms when the reporting party no longer holds the requisite reasonable belief that non-US law prohibits reporting. The US also noted that even if all relevant FSB member jurisdictions remove reporting restrictions by the end of 2018, certain jurisdictions that are not represented in the FSB are the subject of the CFTC’s existing masking relief.

¹³ In the case of South Africa, standing consent would be permissible, provided that the consent was appropriately worded to cater for all of the applicable requirements in the Protection of Personal Information Act, 2013. Turkey confirmed that standing client consent can overcome barriers to reporting pursuant to foreign trade reporting obligations when the barriers arise from business secrets, banking secrets or customer information laws which apply to both natural and legal persons.

¹⁴ See section 2.1.2.

¹⁵ See footnote 3.

¹⁶ See footnote 3.

A fifth jurisdiction (Hong Kong) stated that to meet the June 2018 timeline, it plans to (i) review regularly and remove jurisdictions from the ‘list of jurisdictions for the purposes of the masking relief’ once changes in the jurisdictions’ domestic law which had prevented 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.

The sixth jurisdiction, South Africa, stated that while the relevant rules were still being finalised, it was unlikely that masking of data would be permitted.

2.2 Legal Barriers to Authorities’ Access to TR-Held Data

Recommendations of the Peer Review Report¹⁷

Recommendation 1. By June 2018 at the latest all jurisdictions should have a legal framework in place to permit access to data held in a domestic TR by domestic authorities and by foreign authorities, on the basis of these authorities’ mandates and in accordance with the domestic regulatory regime.¹

- The legal framework should include eliminating the conditions that, in practice, prevent this access.²
- In general, consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities’ access to TR-held data, it is preferable that access to relevant data held in TRs be direct rather than indirect access, to enable authorities to have continuous and un-intermediated access to relevant TR-held data.³

Recommendation 2. All relevant authorities should coordinate in establishing cooperative arrangements that facilitate authorities’ access to TR-held data (whether it be through direct or indirect access).²

Recommendation 3. Authorities and TRs should work together, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data, whether direct or indirect.

¹ For more details on the level of data access in the relation to the authorities’ functional mandates, please refer to CPMI–IOSCO (2013), *Authorities’ access to trade repository data*, August; available at: <http://www.bis.org/cpmi/publ/d110.htm> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD417.pdf>.

² Legal frameworks, processes and procedures, and any TR-related cooperative arrangements for authorities’ access should be consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities’ access to TR-held data, and consistent with Responsibility E of the CPMI–IOSCO Principles for Financial Market Infrastructures which states: “Central banks, market regulators, and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMIs.” Within this Responsibility, key consideration 8 states: “Relevant authorities should coordinate to ensure timely access to trade data recorded in a TR.” See CPMI–IOSCO (2012), *Principles for financial market infrastructures*, April, pp.133–137; available at: <http://www.bis.org/cpmi/publ/d101a.pdf> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377-PFMI.pdf>.

³ See pp.23–24 of the CPMI–IOSCO 2013 report on authorities’ access to trade repository data: “In instances where direct access by an authority is blocked because of legal constraints on direct access, the legal framework may provide for indirect access via another authority, which will typically be a TR supervisor or another authority having direct access to the data. In such circumstances, indirect access may be a second best solution to address these situations, but it should be viewed as the exception, not the norm.”

¹⁷ Recommendations 1, 2 and 3 in this box were numbered 3A, 3B and 3C in the Peer Review Report.

2.2.1 Removal of Barriers to Non-Primary Domestic Authorities' Access to TR-Held Data (Recommendation 1) (Table 5 in Appendix A)

(a) Summary of Peer Review Report Findings and Jurisdictions' Planned Actions

The Peer Review Report identified 3 jurisdictions where access to TR-held data by domestic authorities other than the primary authority was not permitted or permitted with very significant/challenging conditions (Canada, India, US). The Peer Review Report identified an additional 5 jurisdictions where such access was permitted but with material conditions (China, Japan, Korea, Mexico and Saudi Arabia). Finally, the Peer Review Report identified two jurisdictions where access by non-primary domestic authorities was under consideration (South Africa and Turkey).

In its recent report, one of the three jurisdictions where access to TR-held data by non-primary domestic authorities was not permitted or permitted with very significant/challenging conditions reported action taken and additional action under consideration to address these conditions (US). A second jurisdiction (Canada) noted that all TRs designated to receive Canadian trade data are located in the US and subject to US access rules, and that Canadian authorities are awaiting the incorporation of recent US legislative changes¹⁸ into the CFTC's rules before taking further action. The third jurisdiction provided an explanatory update (India).

Of the five jurisdictions where such access to domestic TR-held data was permitted but with material conditions, two reported that action is under consideration to address the barriers to access (Korea and Saudi Arabia). Four jurisdictions provided explanatory updates (China, Japan, Mexico and Saudi Arabia).

The two jurisdictions where the Peer Review Report found that access by non-primary domestic authorities was under consideration both recently reported that action was underway to address barriers to access by non-primary domestic regulators (South Africa and Turkey).

(b) Responses of Particular Jurisdictions

Action taken or action underway

South Africa indicated that it has no domestic TR, but it is envisaged that there would be no barriers to domestic authorities' access to data in such a TR. The Financial Markets Act and the draft Regulations under that Act, would, if adopted in their current form, 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.

Turkey indicated that it has drafted and communicated to major related institutions and market participants for consultation an Implementing Regulation on Procedures Concerning TR Activities (Implementing Regulation). The draft Implementing Regulation, which is expected to be finalised before end-2016, would provide access to non-primary domestic authorities without material conditions.

In the US, the Peer Review Report noted that non-primary authorities' access to data held in TRs was permitted only with very significant or challenging conditions. This conclusion reflected the impact of statutory restrictions that at the time of publication of the Peer Review Report required a requesting authority to indemnify the relevant TR and the CFTC or the

¹⁸ See footnote 5.

Securities and Exchange Commission (SEC) (as applicable). In December 2015, these statutory indemnification requirements were repealed. At the time of this repeal, the CFTC had already adopted rules reflecting these statutory indemnification requirements, and the CFTC reports that it intends to work to further address barriers to access by non-primary domestic authorities. In addition, the SEC reports that, following the repeal of the statutory indemnification requirement, it has sought additional public comment on proposed rules to govern both domestic and foreign authorities' direct access to TR-held data. Since all of Canada's TRs are domiciled in the US, the US rule changes will also facilitate access to Canadian TR data by non-primary Canadian authorities, which had previously been subject to the Dodd-Frank indemnity provision.

Action under consideration

Korea reported that it is reviewing the adoption of a legal basis to give non-primary authorities access to information held by TRs.

Saudi Arabia reported that the authorities are planning a complete review of access to, and processing and interpretation of, TR-held data.

Explanatory update provided

China stated that non-primary domestic authorities can access TR data indirectly within their respective mandates.

India states that only the Reserve Bank of India is legally allowed to access data held in the domestic TR; 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.

Japan stated that cooperative arrangements with other domestic or foreign authorities could be established under the supervisory cooperation framework. The JFSA could coordinate such arrangements as necessary, for instance when other authorities' needs would be revealed.

Mexico and Saudi Arabia (in the latter case, in addition to describing actions under consideration) explained 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.

2.2.2 Removal of Barriers to Indirect Access by Foreign Authorities to TR-Held Data (Recommendation 1) (Table 5 in Appendix A)

(a) Summary of Peer Review Report Findings and Jurisdictions' Planned Actions¹⁹

The Peer Review Report identified 3 jurisdictions where foreign authorities' indirect access to TR-held data was not permitted or was permitted with very significant or challenging conditions (Canada (where the result was noted as uncertain), China and India). The Peer Review Report also identified 2 jurisdictions where indirect access by foreign authorities was under consideration (South Africa and Turkey).

¹⁹ See Table 9 in Appendix E to Peer Review Report; Table 5 in Appendix A to this report.

In its recent response, one jurisdiction (Canada) where foreign authorities' access was not permitted or permitted with very significant or challenging conditions noted that all TRs designated to receive Canadian trade data are located in the US and subject to US access rules, and that Canadian authorities are awaiting the incorporation of recent US legislative changes²⁰ into the CFTC's rules before taking further action. The other two jurisdictions provided explanatory updates (China and India). Both jurisdictions where indirect access by foreign authorities to TR-held data had been under consideration reported that action is now underway (South Africa and Turkey).

(b) Responses of particular jurisdictions

Action underway

Turkey stated that an Implementing Regulation on procedures concerning TRs' activities (Draft Implementing Regulation) has been drafted and communicated to major related institutions and market participants for consultation. The Draft Implementing Regulation, which is expected to be finalised before end-2016, would provide foreign authorities with indirect access to TR-held data, on the conditions set out in that legislation.

South Africa indicated that it has no domestic TR, but that indirect access by foreign regulators to such a TR can be facilitated by entering into appropriate information sharing and cooperation arrangements. 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. Draft regulations and draft legislation also address this and the draft legislation extends the sharing of information provisions of the Financial Service Board Act to additional South African authorities. 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.

Explanatory updates provided

China stated 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.

India stated that only the Reserve Bank of India is legally allowed to access domestic TR-held data; 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 larger public interest.

²⁰ See footnote 5.

2.2.3 Removal of Barriers to Direct Access by Foreign Authorities to TR-Held Data (Recommendation 1) (Table 5 of Appendix A)

(a) Summary of Peer Review Report Findings and Jurisdictions' Planned Actions

The Peer Review Report identified 12 jurisdictions where direct access by foreign authorities to TR-held data was not permitted or permitted with very significant/challenging conditions (Brazil, Canada, China, India, Indonesia, Japan, Korea, Mexico, Russia, Saudi Arabia, Turkey and US). The Peer Review Report also identified that for the 6 EU jurisdictions (France, Germany, Italy, Netherlands, Spain and UK) such access was not permitted or permitted with very significant or challenging conditions in some cases. In addition, the Peer Review Report identified one jurisdiction where foreign authorities' direct access to TR-held data was under consideration (South Africa).

Action has been taken in one jurisdiction (US) to address an existing barrier to direct access by foreign authorities to TR-held data and additional action is under consideration in that jurisdiction. Furthermore, action is under consideration in the EU to remove existing barriers to direct access by foreign authorities to TR-held data, which would affect a total of six jurisdictions (France, Germany, Italy, Netherlands, Spain and UK). Nine jurisdictions (Brazil, Canada, China, Japan, Korea, Mexico, Russia, Saudi Arabia, and Turkey) provided explanatory updates, in many, but not all, cases suggesting that direct access is not contemplated in the near future, while the situation in Indonesia is not clear.²¹

(b) Responses of Particular Jurisdictions

Action taken and action under consideration

One jurisdiction (US) indicated that, in December 2015, it had repealed statutory restrictions that required a requesting authority to indemnify the relevant TR and the CFTC or the SEC (as applicable). The CFTC intends to work to incorporate these changes in CFTC rules so as to facilitate swap data access. In September 2015, the SEC proposed rules to govern direct access to TR data.²² The SEC reopened the public comment period on the proposal after repeal of the statutory indemnification requirement, and the reopened comment period closed in February 2016. The SEC is considering its proposal in light of comments received and the repeal of the statutory indemnification provision.

The EU noted that, where a trade repository is established in the jurisdiction of a foreign authority, direct access to TR-held data is granted only after the execution of both an international agreement and a cooperation arrangement with the relevant foreign authority. The EU is currently reviewing the requirement for an international agreement, and reports that the outcome of the review should, in principle, be known in the second half of 2017. Options are being considered which would allow for the elimination of any legal barriers to access to data held by EU trade repositories and the reduction of burdens for authorities requesting such

²¹ 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.

²² The US SEC has proposed rules that would allow authorities to access directly security-based swap data held by security-based swap data repositories, subject to cooperative arrangements between the SEC and the recipient authority. The SEC proposed that such arrangements would address the confidentiality of the security-based swap information made available to the recipient entity and could be in the form of a memorandum of understanding or otherwise.

access, while at the same time continuing to ensure that EU authorities' access to data held in foreign trade repositories is guaranteed by law.

Explanatory update provided

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 theoretically allow for data to be shared on an ongoing basis, but the determination would be made on a participant-by-participant basis.

Canada noted that all TRs designated to receive Canadian trade data are located in the US and subject to US access rules, and that Canadian authorities are awaiting the incorporation of recent US legislative changes²³ into the CFTC's rules before taking further action.

China stated that, in the future, if foreign authorities require access to TR-held data, indirect access may be considered.

India stated 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.

Japan indicated, consistent with the Peer Review Report, that access is indirect, and explained the reasons for this.

Korea indicated that foreign authorities will be able to access data based on a MoU, and that it is currently reviewing the legal basis for this type of cooperation.

Mexico explained 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.

Russia mentioned the existing multilateral MoU of the International Organization of Securities Commissions (IOSCO) as a potential avenue, through amendment or otherwise, for sharing TR-held data.

Saudi Arabia indicated that the authorities are planning a complete review of access to, and processing and interpretation of, TR-held data.

Turkey indicated that it will take at least two years after first operation of reporting requirements pursuant to the Reporting Communique to have adequate facts to evaluate the steps to be taken to give direct access to foreign authorities.

²³ See footnote 5.

2.2.4 Establishing cooperative arrangements and operational frameworks that facilitate authorities' access to TR-held data (Recommendations 2 and 3)

Those jurisdictions that had reported barriers to authorities' access to data also in some cases reported on progress in addressing recommendations 2 and 3 relating to establishing cooperative arrangements and operational frameworks that facilitate authorities' access to TR-held data.²⁴

Three jurisdictions (Canada, Japan and US) reported having taken action to establish cooperative arrangements that facilitate access to TR-held data. Eight jurisdictions (the EU, with six FSB member jurisdictions, India and Mexico), reported actions underway in that regard; while Brazil and Korea reported action was under consideration.

Action taken, underway or under consideration

Brazil stated that, upon request, it would work with foreign authorities to establish cooperative arrangements facilitating access to TR-held data. Brazil also indicated that it intends to map financial institutions' cross-border derivatives exposures in order to prepare a priority list of jurisdictions for potential bilateral agreements, and that it follows other jurisdictions' approaches to cross-border regulatory issues in order to evaluate possible improvements in its regulatory framework. Lastly, Brazil indicated that it will work with foreign authorities or TRs to establish necessary parameters in response to concrete demand and, meanwhile, will continue to follow other jurisdictions' approaches to evaluate possible improvements.

Canadian securities regulators and the US CFTC have entered into an MoU regarding cooperation and the exchange of information in the supervision of entities such as TRs, intermediaries and dealers. The MoU would permit the indirect sharing of data and acknowledges the benefits of cooperation with respect to direct access to data.

The EU (with six FSB member jurisdictions) indicated that the EC is currently in the process of adopting revised technical standards on trade reporting, which include direct references to several international standards as well as a number of other steps to simplify the reporting, aggregation and access to TR-held data. In addition, an ongoing review is looking at ways to minimise operational and technical challenges with regard to authorities' access to TR-held data, and more clarity is expected in this respect in the second half of 2017.

India stated that it is in dialogue with ESMA and the US CFTC for MoUs relating to central counterparty (CCP)/derivatives clearing organization (DCO) recognition/exemption which include information sharing related to the supervision of CCPs/DCOs. The MoUs would permit the indirect sharing of data.

Japan stated that a supervisory cooperation framework was established with the CFTC. The Memorandum of Cooperation with the CFTC would permit the indirect sharing of data and acknowledges the benefits of cooperation with respect to direct access to data.

²⁴ Some of the reported arrangements pre-date the publication of the Peer Review Report.

Korea indicated that it is planning to enable data access and sharing with other authorities and/or TRs²⁵ based on an MoU on Sharing of TR-held Data.

Mexico reported that the Banco de Mexico is preparing new regulations to enhance the legal and operational framework of the TR operated by the central bank. Among other issues that such new regulations may include are technical terms and security conditions under which the information of the TR will be shared with local and foreign financial authorities. Mexico also reported that under amendments to the banking and securities law in 2014, Mexican Financial Authorities (MFAs) are currently revising the terms of their information sharing agreement to enhance the efficiency of the procedures imposed by such agreement to ensure that the information possessed by the authorities is duly kept in confidentiality, and to strengthen the oversight and cooperation by the MFAs. Banco de México and CNBV are also finalising an MoU with the CFTC regarding cooperation and the exchange of information for the purpose of the supervision and oversight of CCPs and TRs established in the United States or Mexico.

In the US, the CFTC has entered into cooperative arrangements that would permit indirect access by certain other authorities to swap data in the possession of the CFTC. In addition, certain supervisory arrangements that include TRs within their scope acknowledge the benefits of cooperation with respect to direct access to data. Further, the SEC has proposed rules that would allow authorities to access directly security-based swap data held by security-based swap data repositories, subject to cooperative arrangements between the SEC and the recipient authority.

3. Next Steps

The FSB will continue to monitor progress by member jurisdictions in removing legal barriers to full reporting of OTC derivatives transaction data and authorities' access to TR-held data. Member jurisdictions should implement the recommendations of the Peer Review Report on the agreed timeframes and, where they have not already done so, put in place concrete action plans and take concrete steps that will enable those timelines to be met. Members will be asked to provide an update report on their progress in 2017, together with their final plans for meeting the agreed 2018 timelines. The FSB will publish these update reports together with a summary report of progress across the FSB membership.

Addressing the legal barriers discussed in this report will assist not only in the reporting of comprehensive data to individual TRs and in facilitating individual authorities' access to data, but will also be important steps towards addressing the legal and regulatory changes that would be needed to implement any future FSB decision on the potential development of a global aggregation mechanism for trade repository data that would meet the range of authorities' data access needs.²⁶ If the FSB decides to move forward with the development of such a global

²⁵ The Peer Review Report concerned access to transaction-level information (as well as aggregated information) by regulators (not TRs), in line with regulators' mandates, as set out in existing international guidance about authorities' access to TR-held data. See CPMI-IOSCO, (2013), *Authorities' Access to Trade Repository Data* (2013 August), available at <http://www.bis.org/cpmi/publ/d110.pdf>.

²⁶ See FSB (2013), *Feasibility study on approaches to aggregated OTC derivatives data* (September), available at http://www.fsb.org/wp-content/uploads/r_140919.pdf.

aggregation mechanism, authorities would also need to study in more detail and address the specific legal and regulatory changes needed, and the appropriate governance structure, for such a mechanism, as well as consider the modalities for participation.

Appendix A: Legal barriers to reporting and authorities' access to data²⁷

Note: in the tables to this Appendix, 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 (Appendix B).

Table 1

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

Status per Peer Review Report ²⁸								Status update (where required)
Jurisdiction	Location of reporting entity							
	Domestic		Foreign					
	Location of TR							
Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic		
Location of counterparty								
Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic		
Argentina								Explanatory update provided ²⁹
Australia								
Brazil								Explanatory update provided ³⁰
Canada								
China								Explanatory update provided ³¹
EU France								
Germany								
Italy								

²⁷ Note that barriers reported in the tables in this appendix may only exist in relation to some, but not all, of the indicated scenarios.

²⁸ 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).

²⁹ 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.

³⁰ 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.

³¹ 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 ²⁸								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		
The Netherlands								
Spain								
UK								
Hong Kong								Explanatory update provided ³²
India								Explanatory update provided ³³
Indonesia								Explanatory update provided ³⁴
Japan								
Korea								Action under consideration ³⁵
Mexico								Action under consideration ³⁶
Russia								Explanatory update provided ³⁷

³² 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.

³³ The Indian response states that reporting to a foreign TR to fulfil domestic requirements is not permitted.

³⁴ 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.

³⁵ The Korean response states that Korean authorities are planning to remove all legal barriers to information reporting into either domestic or foreign TRs pursuant to domestic requirements. Korean authorities are planning to exempt counterparty consent requirement when providing trade data pursuant to domestic law requirements to domestic and foreign TRs, and are currently reviewing whether amendment to the relevant legal and regulatory framework is needed towards this end.

³⁶ 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.

³⁷ 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.

Status per Peer Review Report ²⁸								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		
Saudi Arabia								Explanatory update provided ³⁸
Singapore								Action underway ³⁹
South Africa								Explanatory update provided ⁴⁰
Switzerland								
Turkey								Explanatory update provided ⁴¹
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 remove barrier); or action taken (*i.e.* action has been taken to remove barrier since the Peer Review Report)

■ = Action under consideration to remove barrier

■ = Explanatory update provided

■ = situation not clear / information not provided

³⁸ 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.

³⁹ The Singaporean response states that to facilitate the reporting of counterparty information, MAS has proposed legislative amendments to the Securities and Futures Act (“SFA”) that will remove the need for client consent to be obtained, for the purposes of complying with domestic and foreign reporting obligations. The amendments are targeted to be tabled in Parliament in 2H 2016, and to take effect in 2017.

⁴⁰ 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 by at least early 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.

⁴¹ 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 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.

Table 2

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

Status per Peer Review Report ⁴²								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			
Argentina									
Australia								Standing consent available ⁴³	
Brazil								Standing consent available ⁴⁴	
Canada									
China								Explanatory update provided ⁴⁵	
EU France								Action underway ⁴⁶	Action under consideration ⁴⁷
Germany									

⁴² Status as set out in Table 6 in Appendix E of the Peer Review Report.

⁴³ 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 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.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ The French response states that in order to address the barrier to trade reporting, the French Government proposed, on 30 March 2016, to amend the relevant Articles of the Monetary and Financial Code so as to allow financial institutions to report information covered by secrecy law to TRs pursuant to the legislation or regulation of a non-EU jurisdiction, without requesting prior consent of their clients. The proposal is currently before the French Parliament.

⁴⁷ 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 ⁴²							
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
	Italy						
	The Netherlands						
	Spain						
	UK						
	Hong Kong						
	India						
	Indonesia						

Status update (where required)	
Standing consent available ⁴⁸	
Standing consent available ⁴⁹	
Standing consent available ⁵⁰	
Explanatory update provided ⁵¹	

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.

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ The Indian response states that client consent can be taken at the on-boarding stage itself to address consent requirements.

⁵¹ 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.

Status per Peer Review Report ⁴²							
Jurisdiction	Location of reporting entity						
	Domestic		Foreign				
	Location of TR						
	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic
Location of counterparty							
	Domestic	Foreign	Domestic	Foreign	Domestic	Foreign	Domestic
Japan							
Korea							
Mexico							
Russia							
Saudi Arabia							
Singapore							
South Africa							
Switzerland							

Status update (where required)
Standing consent available ⁵²
Standing consent available ⁵³
Action under consideration ⁵⁴
Action taken ⁵⁵
Action underway ⁵⁶
Standing consent available ⁵⁷
Standing consent available ⁵⁸

⁵² 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.

⁵³ The Korean response states that the Korean legal framework currently in place does not prohibit reporting to a foreign TR pursuant to foreign law requirements and in addition that standing consent is permitted, in cases where client consent is required.

⁵⁴ 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 2016 semester so that it may be issued during the first 2017 semester.

⁵⁵ 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.

⁵⁶ See corresponding entry in Table 1

⁵⁷ 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 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.

⁵⁸ 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 ⁴²								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			
Turkey									Action underway ⁵⁹	Standing consent available ⁶⁰
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 remove barrier); or action taken (*i.e.* action has been taken to remove barrier since the Peer Review Report)
- = Action under consideration to remove barrier
- = Standing consent available to overcome barrier; or other explanatory update provided
- = situation not clear / information not provided

⁵⁹ 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.

⁶⁰ 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 ⁶¹									Status update (where required)
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	Other	
Argentina									
Australia					cured by counterparty consent	cured by counterparty consent			Standing consent available ⁶²
Brazil						cured by counterparty consent			Standing consent available ⁶³
Canada									
China									Explanatory update provided ⁶⁴
EU	France					cured by counterparty consent			Action underway ⁶⁵
	Germany								Action under consideration ⁶⁶
	Italy								
	The Netherlands					cured by counterparty consent			
									Standing consent available ⁶⁷

⁶¹ Status as set out in Table 7 in Appendix E of the Peer Review Report.

⁶² See corresponding entry in Table 2.

⁶³ See corresponding entry in Table 2.

⁶⁴ The Chinese response states that there is no need for a trade participant to obtain a counterparty's consent to report trade data.

⁶⁵ See corresponding entry in Table 2.

⁶⁶ See corresponding entry in Table 2.

⁶⁷ See corresponding entry in Table 2.

Status per Peer Review Report ⁶¹								
Jurisdiction	Domestic participant reporting pursuant to domestic requirements				Domestic participant reporting pursuant to foreign requirements			
	Data protection	Client confidentiality	Blocking statutes	Other	Data protection	Client confidentiality	Blocking statutes	Other
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 ⁶⁸	
Standing consent available ⁶⁹	
Explanatory update provided ⁷⁰	
Standing consent available ⁷¹	
Action under consideration ⁷²	Standing consent available ⁷³
Action under consideration ⁷⁴	
Action taken ⁷⁵	

⁶⁸ See corresponding entry in Table 2.

⁶⁹ See corresponding entry in Table 2.

⁷⁰ See corresponding entry in Table 1.

⁷¹ See corresponding entry in Table 2.

⁷² See corresponding entry in Table 1.

⁷³ See corresponding entry in Table 2.

⁷⁴ See corresponding entries in Tables 1 and 2.

⁷⁵ See corresponding entry in Table 2.

Status per Peer Review Report ⁶¹								
Jurisdiction	Domestic participant reporting pursuant to domestic requirements				Domestic participant reporting pursuant to foreign requirements			
	Data protection	Client confidentiality	Blocking statutes	Other	Data protection	Client confidentiality	Blocking statutes	Other
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 ⁷⁶	
Explanatory update provided ⁷⁷	Standing consent available ⁷⁸
Standing consent available ⁷⁹	
Action underway ⁸⁰	Standing consent available ⁸¹

- = Action underway (*i.e.* action is set out in a formal proposal to remove barrier); or action taken (*i.e.* action has been taken to remove barrier since the Peer Review Report)
- = Action under consideration to remove barrier
- = Standing consent available / Explanatory update provided
- = situation not clear / information not provided

⁷⁶ See corresponding entry in Table 1.
⁷⁷ See corresponding entry in Table 1.
⁷⁸ See corresponding entry in Table 2.
⁷⁹ See corresponding entry in Table 2.
⁸⁰ See corresponding entry in Table 2.
⁸¹ See corresponding entry in Table 2.

Table 4

‘Masking’ of counterparty information

Status per Peer Review Report ⁸²		Status update (where required)
Jurisdiction	Masking permitted? ⁸³	
Argentina	No	
Australia	Yes	Transitional conditional relief permits masking in certain circumstances – a) transactions where blocked by foreign privacy restrictions or with overseas government entities (both expiring 30 September 2016) 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). Taken together, transactions with foreign privacy restrictions or with government entities would need to be reported from 1 October 2016, unless also covered by the relief for transactions with historic counterparties.
Brazil	No	
Canada	Yes	The time limited discretionary relief ends in December 2016. 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.
India	No	
Indonesia	No	
Japan	No	
Korea	No	

⁸² Status as set out in Table 8 in Appendix E of the Peer Review Report.

⁸³ Is masking of TR data permitted or accommodated for counterparties which report according to the domestic reporting regime

Status per Peer Review Report ⁸²		Status update (where required)
Jurisdiction	Masking permitted? ⁸³	
Mexico	No	
Russia	No	
Saudi Arabia	No	
Singapore	Yes	Regulation 11 of the SF(RDC)R provides relief to a specified person from reporting counterparty information if: 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 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. The deferred reporting arrangement expires on 30 June 2017.
South Africa	Under consideration	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.
Switzerland	No	
Turkey	No	
US	No for security-based swaps (SEC) Yes for swaps (CFTC) ^(a)	SEC: The SEC does not permit or accommodate masking of data. CFTC: Masking is not permitted in the US. 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) 16-03 (the most recent NAL) ends by its terms on the earlier of: (i) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting, as discussed in the prior NALs and modified in NAL 16-03; and (ii) 12:01 a.m. eastern standard time on March 1, 2017. 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. 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.

Table 5

Authorities' Access to Data

Status per Peer Review Report ⁸⁴				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		Green	Green		Green		
Australia							
Brazil		Green	Red		Green	Explanatory update provided ⁸⁵	
Canada		Red			Uncertain		
China		Yellow			Uncertain		
EU	France	Green	(a)	(b)	Green	Explanatory update provided ⁸⁶	Explanatory update provided ⁸⁷
	Germany		(a)	(b)			
	Italy		(a)	(b)			
	The Netherlands		(a)	(b)			
						Explanatory update provided ⁸⁸	Explanatory update provided ⁸⁹
							Action under consideration

⁸⁴ Status as set out in Table 9 in Appendix E of the Peer Review Report.

⁸⁵ 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).

⁸⁶ The Canadian response states that 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 these legislative changes into the CFTC's rules before taking further action.

⁸⁷ See footnote 86.

⁸⁸ The Chinese response states that non-primary domestic authorities can access TR data indirectly within their respective mandates.

⁸⁹ 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.

Status per Peer Review Report ⁸⁴				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
	Spain		(a)	(b)			(D) ⁹⁰
	UK		(a)	(b)			
	Hong Kong				Direct access available		
	India					Explanatory update provided ⁹¹	Explanatory update provided ⁹²
	Indonesia						Situation not clear ⁹³
	Japan					Explanatory update provided ⁹⁴	Explanatory update provided ⁹⁵
	Korea					Action under consideration ⁹⁶ (D)	Action under consideration ⁹⁷

⁹⁰ The European Commission's response states that under EU law, where a trade repository is established in the jurisdiction of the foreign authority, direct access to EU trade repository data is granted only after the execution of both an international agreement and a cooperation arrangement with the relevant foreign authority. As required by Article 85(1) of EMIR, the European Commission is currently undertaking an in-depth review of this Regulation. One of the elements being looked at as part of this review is the requirement for an international agreement. Options are being considered which would allow for the elimination of any legal barriers to access to data held by EU trade repositories and the reduction of burdens for authorities requesting such access, while at the same time continuing to ensure that EU authorities' access to data held in foreign trade repositories is guaranteed by law.

⁹¹ 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.

⁹² See footnote 91.

⁹³ 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.

⁹⁴ The Japanese response states that cooperative arrangements with other domestic or foreign authorities could be established under the supervisory cooperation framework. The JFSA could coordinate such arrangements as necessary, for instance when other authorities' needs would be revealed.

⁹⁵ See footnote 94.

⁹⁶ 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.

⁹⁷ The Korean response states that the Korean authorities are currently reviewing the legal basis for foreign authorities' being able to access TR held information based on a Memorandum of Understanding (MoU) on Sharing of TR-held data between supervisory authorities.

Status per Peer Review Report ⁸⁴				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
Mexico				Explanatory update provided ⁹⁸	Explanatory update provided ⁹⁹
Russia					Action under consideration ¹⁰⁰
Saudi Arabia				Action under consideration ¹⁰¹	Action under consideration ¹⁰³
Singapore			Direct access available	Explanatory update provided ¹⁰²	
South Africa				Action underway (D) ¹⁰⁴	Action underway ¹⁰⁵
Switzerland			Direct access available		

⁹⁸ 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.

⁹⁹ 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.

¹⁰⁰ The Russian response states that the Russian authorities are considering whether the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information could be amended to cover all types of data needs.

¹⁰¹ The Saudi Arabian response states that the authorities are planning a complete review of access to, and processing and interpretation of, TR data.

¹⁰² 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.

¹⁰³ See footnote 101. 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.

¹⁰⁴ 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.

¹⁰⁵ 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 ⁸⁴						
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?	
Turkey						
US	CFTC	SEC	CFTC	SEC	CFTC	SEC

- = 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.
- (d) The SEC has proposed certain exemptive relief from the indemnification requirements that if finalised would allow direct access to SEC-registered TR data for certain domestic (and foreign) authorities if certain criteria are met.

Status update (where required)	
Barriers – domestic	Barriers – foreign
Action underway ¹⁰⁶ Action taken ¹⁰⁸ ; Action underway ¹⁰⁹ (D)	Action underway ¹⁰⁷ Action taken ¹¹⁰ ; Action under underway ¹¹¹ (D)

- = Action underway (*i.e.* action is set out in a formal proposal to remove barrier); or action taken (*i.e.* action has been taken to remove barrier since the Peer Review Report)
 - = Action under consideration to remove barrier
 - = Explanatory update provided
 - = situation not clear / information not provided
- (D) = action underway or under consideration would give direct access to TR-held data to a domestic or foreign authority (as indicated)

¹⁰⁶ 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 2016. The Draft Implementing Regulation would provide access to domestic authorities without material conditions.

¹⁰⁷ 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.

¹⁰⁸ 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.

¹⁰⁹ The US response states that following the repeal of the statutory indemnification requirement described above, the CFTC intends to work to incorporate these changes so as to facilitate swap data access. The SEC re-opened the public comment period on its rulemaking proposal with regards to permitting direct access to TR-held data subject to certain conditions, and this re-opened consultation period closed on 22 February 2016. The SEC is considering its proposal in light of comments received and the repeal of the statutory indemnification provision.

¹¹⁰ See footnote 108

¹¹¹ See footnote 109

THE CHAIRMAN

13 March 2016

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

To all FSB member jurisdictions

I am writing to remind each member jurisdiction to prepare to report by June this year on its planned actions to address legal barriers in relation to trade reporting, which FSB members committed to as a follow-up action to the FSB's thematic peer review on OTC derivatives trade reporting, published in November 2015.¹¹²

The peer review report highlighted the significant challenges to effective trade reporting resulting from legal barriers to reporting complete information to trade repositories (TRs), and to authorities' access to TR-held data. Properly addressing these barriers is crucial in ensuring that trade reporting is fully delivering on the G20 Leaders' objectives of this reform measure. To that end, the FSB agreed that jurisdictions should report by June the actions that they plan to take to address these barriers, and in particular their actions planned to implement the peer review's recommendations regarding legal barriers; these are set out in the annex.

In some cases, implementation of these recommendations may be able to be accomplished within existing legal and regulatory frameworks. In other cases, jurisdictions and authorities may need to make changes to their regimes. The Plenary agreed to timelines for implementation that take into account the fact that such changes may take some time, but it is important that jurisdictions set out now the steps they will take to ensure these timelines are met.

I am therefore asking that each member jurisdiction provide a detailed report on its proposed actions to implement these recommendations in accordance with the agreed timelines. To guide jurisdictions in structuring these reports, the relevant commitments and some specific questions that jurisdictions' reports should address are set out in the annex to this letter.

Each member jurisdiction is requested to send a consolidated written national response to me at the FSB (fsb@bis.org) by **Wednesday 15 June 2016**. The Secretariat will collate and

¹¹² Available at: <http://www.fsb.org/2015/11/thematic-review-of-otc-derivatives-trade-reporting/>.

summarise jurisdictions' responses in a draft report. After review by the Plenary, this report will be published ahead of the September G20 Leaders' Summit, along with jurisdictions' full national responses so as to provide public information on plans.

I thank you in advance for your cooperation in this important work to improve the usability of OTC derivatives trade repository data, and therefore authorities' ability to monitor systemic risks.

Yours sincerely,

Mark Carney

Annex

Recommendations on which jurisdictions are to report planned actions by June 2016

As set out in sections 2–3 of the recommendations in the thematic peer review on OTC derivatives trade reporting (see pages 8–9 of that report).

Barriers to reporting information into TRs or TR-like entities

1. 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.¹¹³
2. 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.
3. Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since masking prevents comprehensive reporting.

By June 2016 jurisdictions should report what actions are planned to address these barriers to reporting trade information.

Authorities’ access to TR-held data

4. By June 2018 at the latest all jurisdictions should have a legal framework in place to permit access to data held in a domestic TR by domestic authorities and by foreign authorities, on the basis of these authorities’ mandates and in accordance with the domestic regulatory regime.¹¹⁴
 - The legal framework should include eliminating the conditions that, in practice, prevent this access.¹¹⁵

¹¹³ In some jurisdictions there are restrictions or prohibitions on the use of certain types of counterparty identifying information, particularly in relation to natural persons (for instance, national identity numbers or social security numbers), that may affect what types of information can legally be included in transaction reports. In such cases, jurisdictions should ensure other counterparty identifying information is able to be included in transaction reports made pursuant to domestic or foreign requirements so as to prevent counterparty anonymity.

¹¹⁴ For more details on the level of data access in relation to the authorities’ functional mandates, please refer to CPMI–IOSCO (2013), *Authorities’ access to trade repository data*, August; available at: <http://www.bis.org/cpmi/publ/d110.htm> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD417.pdf>.

¹¹⁵ Legal frameworks, processes and procedures, and any TR-related cooperative arrangements for authorities’ access should be consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities’ access to TR-held data, and consistent with Responsibility E of the CPMI–IOSCO Principles for Financial Market Infrastructures which states: “Central banks, market regulators, and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMIs.” Within this Responsibility, key consideration 8 states: “Relevant authorities should coordinate to ensure timely access to trade data recorded in a TR.” See CPMI–IOSCO (2012), *Principles for financial market infrastructures*, April, pp.133–137; available at: <http://www.bis.org/cpmi/publ/d101a.pdf> and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377-PFMI.pdf>.

- In general, consistent with the recommendations of the CPMI–IOSCO 2013 report on authorities’ access to TR-held data, it is preferable that access to relevant data held in TRs be direct rather than indirect access, to enable authorities to have continuous and un-intermediated access to relevant TR-held data.¹¹⁶
- 5. All relevant authorities should coordinate in establishing cooperative arrangements that facilitate authorities’ access to TR-held data (whether it be through direct or indirect access).¹¹⁵
- 6. Authorities and TRs should work together, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data, whether direct or indirect.

By June 2016 jurisdictions should report what actions are planned to permit and facilitate authorities’ access to data held in a domestic TR.

¹¹⁶ See pp.23–24 of the CPMI–IOSCO 2013 report on authorities’ access to trade repository data: “In instances where direct access by an authority is blocked because of legal constraints on direct access, the legal framework may provide for indirect access via another authority, which will typically be a TR supervisor or another authority having direct access to the data. In such circumstances, indirect access may be a second best solution to address these situations, but it should be viewed as the exception, not the norm.”

Questions to guide the preparation of reports

Barriers to reporting information into TRs¹¹⁷

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that barriers to complete reporting of trades exist in its jurisdiction or where it is uncertain whether barriers exist. Please refer to Section 3 (pages 18–23) and Tables 5, 6, 7 and 8 (pages 44–47) of the peer review report for further context.

In particular, in all cases in Tables 5, 6 or 7 where an entry for your jurisdiction is not coloured green, or in Table 8 where the entry for your jurisdiction indicates an answer other than that no masking is permitted, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier to full reporting of trade information.¹¹⁸

7. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) full reporting of transactions to a TR pursuant to domestic requirements. Please provide detail relating to the applicability of these actions to different types of transaction, types of counterparty, location of reporting entity, location of TR or location of counterparty.
8. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) full reporting of transactions to a TR pursuant to foreign requirements. Please provide detail relating to the applicability of these steps to different types of transaction, types of counterparty, location of reporting entity, location of TR or location of counterparty.
9. If your jurisdiction requires that counterparty consent be provided before a trade participant may make transaction reports (whether pursuant to domestic or foreign reporting requirements), but counterparties are not currently permitted to give ‘standing consent’, please report the actions to be taken (or that have been taken) that will permit standing consent to the reporting of transactions to any domestic or foreign TR to be given by June 2018.¹¹⁹

¹¹⁷ References to ‘TRs’ should be taken to include both TRs and TR-like entities, with these terms used in the same way as in the peer review report. As used in the report, ‘trade repository (TR)’ means an entity, facility, service, utility, etc. that has been authorised as a trade repository. ‘TR-like entity’ means an entity, facility, service, utility, government authority, etc. that is not an authorised TR but that is used by market participants to report OTC derivatives trade data, or provides TR-like services. Table 1 on page 39 of the peer review report lists all TRs and TR-like entities that were in operation in FSB member jurisdictions as at September 2015.

¹¹⁸ For instance, examples of reasons why, in cases where table entries are not coloured green, there is not in practice a barrier could be:

- although client consent is required, ‘standing consent’ can always be provided by counterparties in the indicated scenarios; or
- although reporting to a foreign TR pursuant to domestic reporting requirements is not permitted (as indicated for some jurisdictions in columns 3 and 4 of Table 5), this is because the jurisdiction requires that transaction reports made pursuant to domestic reporting requirements be submitted to a TR located in that jurisdiction, and full reporting of trade information is being made to those domestic TRs.

¹¹⁹ ‘Standing consent’ means a consent that can be provided once but applies to all future transactions between the same counterparties.

10. Where masking¹²⁰ is currently accommodated in your jurisdiction, please set out the actions that will be taken (or that have been taken) in your jurisdiction, or any pre-conditions that would need to be met, such that masking will be discontinued by end-2018.

Barriers to authorities' access to TR-held data

Each jurisdiction should report the specific actions that it plans to take to address those circumstances where the trade reporting peer review reported that legal barriers to authorities' access to TR data exist. Please refer to Section 4 (pages 23–30) and Table 9 (page 48) of the peer review report for further context.

In particular, in all cases in Table 9 where an entry for your jurisdiction is not coloured green, please report either (i) the actions to be taken to address the barriers, or (ii) the reasons why there is not in practice a barrier.

11. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) access by domestic authorities and foreign authorities to data held in a domestic TR in your jurisdiction.
12. Please report the actions to be taken (or that have been taken) to permit by June 2018 (or remove by that date any uncertainty over the permissibility of) direct access by both non-primary¹²¹ domestic authorities and foreign authorities to data held in a domestic TR. Alternatively, please describe why direct access for these authorities will not be permitted in your jurisdiction.
13. Please report the actions to be taken (or that have been taken) to coordinate with other domestic or foreign authorities in establishing cooperative arrangements that facilitate authorities' access to TR-held data (whether it be through direct or indirect access).
14. Please report the actions to be taken (or that have been taken) to work with other domestic or foreign authorities and TRs, as appropriate, to facilitate the creation of appropriate operational frameworks that facilitate access to TR-held data, whether direct or indirect.

¹²⁰ 'Masking' means allowing a counterparty subject to a reporting requirement to anonymise the identity of its counterparty, through redaction or other means.

¹²¹ 'Primary authority' means the authority with the primary responsibility for regulating a TR, where that TR is receiving data pursuant to the laws or rules of that authority's jurisdiction.