

## **Trade reporting legal barriers**

### **Follow-up of 2015 peer review recommendations**

19 November 2018

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## **Glossary of defined terms used in this report**

**2015 Recommendations** means recommendations 2A – 2C and 3A – 3C of the Peer Review Report.

**ASIC** means the Australian Securities and Investments Commission.

**APRA** means the Australian Prudential Regulation Authority

**Blocking Law** means any Official Requirement that would restrict or limit a subject person's disclosure of information relating to a subject transaction or to the counterparty of such transaction.

**CBIRC** means China Banking and Insurance Regulatory Commission.

**CFTC** means Commodity Futures Trading Commission (US).

**CNBV** means the Comisión Nacional Bancaria y de Valores (Mexico).

**CSRC** means China Securities Regulatory Commission.

**Client Confidentiality** means any Official Requirement related to confidentiality that would restrict or limit a market participant from sharing information about an identifiable entity with a TR or other entity or authority.

**Consent** means all governmental and other consents of any party (including any consent, approval, agreement, authorisation, or other action) that are required to have been obtained with respect to reporting Trade Data to a TR or other entity or authority.

**Data Protection** means any statute, law, enactment, rule, order, judgement, practice, guideline, or decree related to privacy or data protection that would restrict or limit a market participant from sharing data about a counterparty with a TR, other entity, or authority.

**ESMA** means European Securities Markets Authority.

**FMIA** means Financial Market Infrastructure Act (Switzerland).

**FMIO** means Financial Market Infrastructure Ordinance (Switzerland).

**HKMA** means Hong Kong Monetary Authority.

**HKTR** means Hong Kong Trade Repository.

**IOSCO** means International Organization of Securities Commissions.

**IOSCO MMoU** means the 2012 IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

**ISDA** means International Swaps and Derivatives Association, Inc.

**JFSA** means Japan Financial Services Agency.

**Masking** means an entity subject to a Reporting Requirement not revealing full identifying information of its counterparty or other relevant entity (such as a central counterparty, trading venue, custodian, beneficiary, etc.), through redaction or by other means. Transactions reported in such a way by such an entity are referred to as **Masked** transactions.

**MAS** means Monetary Authority of Singapore.

**Masking Relief** means being allowed by a jurisdiction as an entity with a Reporting Requirement to that jurisdiction to Mask Trade Data.

**MoU** means Memorandum of Understanding.

**Official Requirement** of a jurisdiction means any statute, law, enactment, rule, order, judgement, practice, guideline, or decree.

**ODWG** means FSB OTC Derivatives Working Group.

**OTC derivative** means over-the-counter derivative.

**RBA** means Reserve Bank of Australia.

**PBC** means People's Bank of China.

**Peer Review Report** means the report titled *Thematic Review on OTC Derivatives Trade Reporting: Peer Review Report* published by the FSB in 2015.<sup>1</sup>

**PLI** means a Privacy Law Identifier.

**RBI** means Reserve Bank of India.

**Reporting Entity** means an entity under an obligation under a Reporting Requirement to report Trade Data.

**Reporting Requirement** means a domestic or foreign Official Requirement by which Trade Data is reportable to a TR.

**Standing Consent** means a Consent that can be provided once but applies to all future transactions between the same counterparties.

**SFC** means Securities and Futures Commission (Hong Kong).

**SFO** means Securities and Futures Ordinance (Hong Kong).

**SWFs** means sovereign wealth funds.

**Trade Repository (TR)** means an entity, facility, service, utility, etc. that has been authorised as a trade repository, and includes a TR-like entity.

**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.

**Trade Data** means data regarding OTC derivatives transactions.

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<sup>1</sup> Available at <http://www.fsb.org/wp-content/uploads/Peer-review-on-trade-reporting.pdf>

## Executive summary

This report details progress by the FSB member jurisdictions in implementing the 2015 Recommendations to remove or address legal barriers to full reporting of over-the-counter (OTC) derivatives data to trade repositories (TRs), and to access by authorities (both domestic non-primary authorities and foreign authorities) to Trade Data<sup>2</sup> held in TRs. Four of these recommendations included implementation dates in 2018, while the other two did not have specific implementation dates.

The 2015 Recommendations address issues in three primary aspects of trade reporting and transparency: (i) barriers to full trade reporting; (ii) masking; and (iii) regulators' access to TR data.

**Barriers to full trade reporting:** In all but three of the FSB's 25 member jurisdictions,<sup>3</sup> the recommendations on removing or addressing barriers to full trade reporting have been implemented. The other three jurisdictions have outstanding issues with implementing the recommendations. Specifically, in Mexico, there remain barriers to full trade reporting that are not curable by obtaining Consent to reporting, while in Saudi Arabia, reporting to foreign TRs requires approval by the domestic authority and the relevant authority has not publicly confirmed that approval will be given for such disclosure. For China, the relevant authority has stated that there are currently no legal barriers that prevent OTC derivatives transaction data from being reported to foreign TRs. However, some reporting entities have reported that there are barriers to reporting full information. Clarification is therefore desirable.

**Masking:** Five FSB member jurisdictions (Australia, Canada, Hong Kong, Singapore and the US (Commodity Futures Trading Commission (CFTC))) allow Masking of counterparty identifiers for some transactions. Masking Relief is set to expire by a specified date before end-2018 in Singapore and on 31 March 2019 in Australia. Canada, Hong Kong and US (CFTC) have not indicated a specific expiration date, but have indicated that under their rules, once legal barriers are removed, Masking would be discontinued without any need for further rule change. As reported by jurisdictions and by TRs, the percentage of Masked trades by transaction count is relatively low, typically 5% or under, with several under 1%.<sup>4</sup> The updated list of countries with barriers to full trade reporting should be considered by relevant authorities in connection with granting Masking Relief. This can be expected to result in a decrease in counterparty Masking in FSB member jurisdictions.

**Regulators' access to TR data:** In twelve jurisdictions, changes have been made or are underway to address or remove barriers to access to TR data by foreign authorities and/or non-

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<sup>2</sup> Capitalised terms not defined on first use are defined in the Glossary.

<sup>3</sup> Twenty-four national jurisdictions plus the EU.

<sup>4</sup> Masked transactions tend to be smaller in notional amount than unmasked transactions: The percentage of Masked transactions expressed by number of transactions is uniformly higher than by gross notional outstanding for all jurisdictions allowing Masking and all TRs. In all such jurisdictions except the US (CFTC) and Canada, the rate at which new transactions are Masked is lower than the rate prevailing for the stock of open transactions. Reporting Entities report Masking of Trade Data in reports to FSB member jurisdictions in relation to countries where masking has not been extended. Notably, the prevalence of Masking in reported equity derivatives transactions is higher than that of other asset classes; the rate is particularly high (at 11%) in one TR.

primary domestic authorities, including legal barriers which have only very recently been removed. Numerous Memoranda of Understanding (MoUs) and other arrangements have been entered into that allow access to TR data (directly from TRs or indirectly on request from the primary authority). In China, no legal framework is in place to permit access to data held in a domestic TR by foreign authorities; however, as an MoU with the Hong Kong Monetary Authority (HKMA) was signed, in practice it appears there may be no legal barriers for such an MoU. Clarification on this issue is desirable.

**Supplementary recommendations:** A number of supplementary recommendations have been agreed to by the FSB, as described further in this document. It is intended that the FSB will continue to monitor implementation of these Recommendations, as well as the 2015 Recommendations.

## 1 Introduction

In 2015, the FSB undertook a thematic peer review of OTC derivatives trade reporting and published the results in a report (the Peer Review Report), which identified a number of remaining legal barriers in FSB jurisdictions that prevent or hinder **reporting of complete transaction information** to TRs or that **limit authorities' access to data** held in TRs.<sup>5</sup> The Peer Review Report contained six recommendations relating to trade reporting legal barriers, which are set out in this report. Four of the six recommendations are due for implementation in 2018.

In August 2016 and June 2017, the FSB published reports on progress made by jurisdictions in implementing these recommendations of the Peer Review Report, and also published individual FSB member jurisdictions' plans to address legal barriers.<sup>6</sup> These progress reports were compiled by the FSB Secretariat based on jurisdictions' published plans and surveys of progress administered by the FSB Secretariat. There was no element of peer review with respect to jurisdictions' plans and survey responses for these progress reports, other than through the FSB Plenary process for publication.

The FSB committed<sup>7</sup> to continue to monitor members' progress in addressing legal barriers relating to trade reporting and to publish, ahead of the Argentine G20 Leaders' Summit, a report on the extent to which member jurisdictions have taken action to implement the six recommendations relating to the removal of legal barriers to trade reporting. This report aims to fulfil that commitment.

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<sup>5</sup> FSB (2015), *Thematic Review on OTC Derivatives Trade Reporting: Peer Review Report*, available at <http://www.fsb.org/wp-content/uploads/Peer-review-on-trade-reporting.pdf>.

<sup>6</sup> See FSB (2016), *Report on FSB Members' Plans to Address Legal Barriers to Reporting and Accessing OTC Derivatives Transaction Data*, available at <http://www.fsb.org/2016/08/fsb-publishes-progress-reports-on-implementation-of-reformsto-the-otc-derivatives-market-and-on-removal-of-barriers-to-trade-reporting> and FSB (2017), *FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data: Progress report*, available at <http://www.fsb.org/2017/06/fsb-members-plans-to-address-legal-barriers-to-reporting-and-accessing-otc-derivatives-trade-data-progress-report/>.

<sup>7</sup> See Next Steps section of the June 2017 progress report on FSB members' plans to address legal barriers to reporting and accessing OTC derivatives trade data.



This report has been drafted by a Workstream of the FSB's OTC Derivatives Working Group (ODWG), and approved by the ODWG and the FSB Plenary members.<sup>8</sup> Data sources for the report are: separate surveys of FSB member jurisdictions, of Reporting Entities and of TRs administered in March-April 2018;<sup>9</sup> proceedings of a round table of the Workstream with Reporting Entities and TRs held in Hong Kong on 23 May 2018; subsequent follow-up correspondence with official sector representatives, TRs, and Reporting Entities; and one comment letter received from the International Swaps and Derivatives Association, Inc. (ISDA).<sup>10</sup>

The FSB considers that the 2015 Recommendations should stand, and moreover that the due dates for implementation should not be further extended. In addition, the FSB recommends that member jurisdictions undertake certain other actions in order to give full effect to the 2015 Recommendations, as further set out below.

The FSB, through the ODWG, will keep the issue of legal barriers and Masking Relief under review, including by collecting statistics about Masking from FSB member jurisdictions and/or TRs on a periodic basis. Depending on trends seen, particularly if the incidence or rates of Masking are seen to be increasing, the FSB could consider further work, including possible recommendations.

The position stated in this report is as at end-September 2018.

## **2 Removal or addressing of legal barriers to full reporting of Trade Data and Masking Relief**

### **2.1 Removal or addressing of legal barriers to full reporting of Trade Data**

#### **2.1.1 Introduction**

This section addresses the actions taken by FSB member jurisdictions to address the following recommendations of the Peer Review Report:

- **Recommendation 2A:** 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.
- **Recommendation 2B:** 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

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<sup>8</sup> Workstream members are listed in Appendix E.

<sup>9</sup> On 26 March 2018, a survey was administered to the member jurisdictions of the FSB, including the EU, asking what actions have been taken to implement the 2015 Recommendations and a number of subsidiary questions. The survey was returnable 25 April 2018. In addition, the FSB published a voluntary survey of Reporting Entities on its website (at <http://www.fsb.org/2018/03/fsb-survey-of-reporting-entities-on-legal-barriers-to-otc-derivatives-trade-reporting/>) and distributed it via the International Swaps and Derivatives Association (ISDA) (a trade association). An additional survey of TRs was administered by email. Survey responses were received from all FSB member jurisdictions; from 36 Reporting Entities; and from 15 TRs.

<sup>10</sup> Available at <https://www.isda.org/2018/07/13/isda-submission-to-the-fsb-on-barriers-to-reporting/>

counterparties to provide standing consent to the reporting of such data to any domestic or foreign TR.

The survey of official sector respondents contained questions that asked official sector respondents whether such legal barriers to full trade reporting have been addressed or still exist. They were asked to update tables contained in the Peer Review Report to reflect the situation in their respective jurisdictions.<sup>11</sup>

In addition, the survey of Reporting Entities contained questions designed to elicit the private sector's view of which countries (FSB and non-FSB member jurisdictions) have legal barriers that could prevent full reporting of Trade Data, and, where such legal barriers exist, whether Standing Consent or trade-by-trade Consent could cure or address the barrier.

### ***2.1.2 Findings on FSB member jurisdictions' progress to address/remove barriers***

On the basis of the results of the surveys and the round table referred to above, the Workstream has classified FSB member jurisdictions into two categories: (i) no further action to implement recommendations 2A and 2B, and (ii) further action to implement or provide clarity.

**No further action to implement Recommendations 2A and 2B:** Jurisdictions have been classified as not requiring further action to be taken either because there are no legal barriers to full reporting of trade data under domestic or foreign requirements, or because any such barriers can be overcome with the Standing Consent of the counterparty concerned.<sup>12, 13</sup>

**Further action to implement or provide clarity:** There are three jurisdictions where further action is required to address or remove barriers to full trade reporting, or to provide clarity to market participants regarding issues on full trade reporting. The findings of the Workstream are based on official sector and Reporting Entity survey responses and further follow-up inquiries with regards to barriers to full trade reporting.

For Mexico, the Workstream has found that a barrier exists and is not curable by Consent. The barriers result from legal provisions related to secrecy obligations in respect of transactions traded in Mexico. Analysis is in progress in Mexico for potential regulatory changes to remove barriers.

For Saudi Arabia, the Workstream has found that a barrier exists but is curable by Consent of the local authority. Reporting to a foreign TR requires approval by the domestic authority and

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<sup>11</sup> See Tables 1 – 3 of Appendix E of the Peer Review Report.

<sup>12</sup> Many jurisdictions have obligations of banker-client confidentiality arising either from statutory, pre-constitutional, or common law. So long as full reporting of Trade Data can be made pursuant to domestic or foreign trade reporting obligations with the Standing Consent of the client or counterparty concerned, the FSB considers that should not be categorised as a legal barrier that should be removed. Additionally, the FSB considers that, so long as an internal client identifier can be reported to a TR pursuant to domestic or foreign requirements with the Standing Consent of the client concerned, the fact that the name of the client may not be so reported without the Consent of the client should not be considered a legal barrier in the case of individuals. This is due to the existence of privacy legislation affecting individuals in a number of jurisdictions.

<sup>13</sup> In the case of a requirement for Consent of an authority, the FSB considers that this constitutes a barrier to full trade reporting, even if Standing Consent is possible, unless a public official statement or guidance indicates that such Consent will be given.

the relevant authority has not publicly confirmed that approval will be given for such disclosure.<sup>14</sup>

For China, the authorities have stated that there are currently no legal barriers to prevent OTC derivatives transaction data from being reported to foreign TRs. However, some reporting entities have reported that there are barriers to reporting full information. Clarification is therefore desirable so as to provide clarity to market participants and other actors (such as TRs).

***As the deadline for action is now past, China, Mexico and Saudi Arabia are urged to redouble efforts to implement the 2015 Recommendations or to provide clarification as a matter of priority.***

Appendix A, Table 3 contain an updated table, in the same format as Appendix E, Table 7 in the Peer Review Report, showing the current state of affairs with regards to legal barriers to full reporting of Trade Data pursuant to domestic and foreign requirements.

### ***2.1.3 Should client Consent requirements be considered a legal barrier?***

Reporting Entities generally obtain legal advice to determine in which jurisdictions Blocking Laws, Client Confidentiality, Data Protection, or other Official Requirements present a legal barrier to reporting complete Trade Data. These legal opinions tend to be updated on an as needed basis rather than with regularity.

Responses by Reporting Entities indicated that they obtain Consent from clients through client documentation and ad-hoc requests (e.g., bilateral consent forms, master documentation with the relevant disclosure provisions, standard terms and conditions, a regulatory compliance statement, and adherence to a relevant ISDA reporting protocol).

Some of the comments provided by Reporting Entities on the relative difficulty of obtaining client Consent suggested that where the client is not interested in new business, or where the client does not have significant trading activity, it may be difficult to obtain Consent; on the other hand, it may be easier to obtain Consent prior to a new trade with an existing client, and it is generally easy to obtain Consent for new clients, particularly through client documentation used in the on-boarding process.

In its comment letter dated 13 July 2018, ISDA has argued that due to a number of reasons, including, operational burden and challenges, Consent requirements form a barrier in their own right and should be removed for reporting of Trade Data pursuant to both domestic and foreign trade reporting.<sup>15</sup> Taking into consideration the concerns expressed, the FSB is of the view that these concerns are outside the scope of the ODWG's current work and therefore for purposes of this report as long as reporting pursuant to such requirements is permissible with counterparty Consent, and Standing Consent is available, this is considered sufficient to address the relevant barrier.

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<sup>14</sup> As noted in footnote 13 above, the FSB considers that a requirement for Consent of an authority constitutes a barrier to full trade reporting, even if Standing Consent is possible, unless a public official statement or guidance indicates that such Consent will be given. The Saudi Arabian Monetary Authority has indicated to the Workstream that it anticipates its Consent will be forthcoming.

<sup>15</sup> See footnote 10 above.

#### **2.1.4 Should requirements to obtain Consent from authorities be considered a barrier?**

There is at least one jurisdiction (namely Saudi Arabia) where Consent requirements extend beyond obtaining client Consent and, in some cases, Consent also needs to be obtained from the local authority. Consent of the Saudi Arabian Monetary Authority is required where it is proposed to report a transaction to a foreign TR pursuant to foreign trade reporting requirements. Consent is not given on a standing basis, but may apply to a group of transactions identified in advance. In addition, as for China, a few Reporting Entities indicated that consent by the China Banking and Insurance Regulatory Commission (CBIRC) may also be required in certain instances; however, the Chinese authorities have stated that there are no legal barriers and their consent has not been sought.

The FSB considers that such requirements constitute a legal barrier to full trade reporting, unless a public official statement or guidance indicates that such Consent will be given, and that such barriers should be removed in order to fully meet recommendation 2A of the Peer Review Report. This is because, while counterparties to derivatives transactions could provide Consent to trade reporting, an authority could have a policy of not permitting disclosure in all cases or in some cases, thereby rendering this Consent requirement a true barrier to reporting even when all parties Consent to the disclosure of derivatives data to TRs and even when Standing Consent of those parties is available.

#### **2.1.5 Supplementary recommendations**

**Supplementary recommendation 1:** Jurisdictions that remove legal barriers to full reporting of new trades are also encouraged to consider applying such changes to transactions that are open at the time the legal changes take effect, to enable unmasking of open transactions.

**Supplementary recommendation 2:** Noting that Reporting Entities have indicated a large number of non-FSB member jurisdictions which have legal barriers to reporting, FSB member jurisdictions should, where necessary and appropriate, raise this issue with relevant jurisdictions in bilateral or multilateral fora including the FSB's Regional Consultative Groups or relevant Standard-Setting Bodies, with a view to reducing over time the incidence of such Masking.

## **2.2 Masking Relief**

The Peer Review Report contained the following recommendation on the topic of Masking Relief:

**Recommendation 2C:** Masking of newly reported transactions should be discontinued by end-2018 once barriers to reporting are removed, since Masking prevents comprehensive reporting. Only some FSB Member jurisdictions report allowing firms to Mask Trade Data. Typically, Masking Relief is provided, at least in part, on the basis of assurances or representations from Reporting Entities or from trade associations that there exist legal barriers in other jurisdictions (FSB or non-FSB members). In several cases, Masking Relief is conditional on a requisite state of belief about the continued existence of the reporting barrier.

### **2.2.1 Findings on Masking**

Five FSB member jurisdictions (Australia, Canada, Hong Kong, Singapore and the US (CFTC)) give official Masking Relief, and three of those jurisdictions (Australia, Hong Kong and

Singapore) list the countries in respect of whose legal barriers Masking Relief is provided, while Canada and the US (CFTC) list requirements in generic terms without listing specific jurisdictions. See Table 4 in Appendix A, and Appendix B for further details of Masking Relief given by these five jurisdictions.

Masking Relief is set to expire by a specified date before end-2018 in Singapore and on 31 March 2019 in Australia. Canada, Hong Kong and US (CFTC) have not indicated a specific expiration date, but have indicated that under their rules, once legal barriers are removed, Masking would be discontinued without any need for further rule change.

The FSB has found discrepancies between the jurisdictions in respect of which Masking Relief is given by individual FSB member jurisdictions, and the jurisdictions (both FSB and non-FSB members) that Reporting Entities report as having legal barriers. Specifically, reporting Entities reported Masking Trade Data relating to trades with clients in a large number of FSB and non-FSB jurisdictions, including a large number of jurisdictions in respect of which FSB member jurisdictions have not granted any Masking Relief.<sup>16</sup> Attempts to explore this issue with Reporting Entities, at the round table and through follow-up correspondence, met with limited success.

In addition, Reporting Entities indicated they Masked Trade Data reportable under official requirements of the European Union (in respect of legal barriers of 54 jurisdictions) and India (in respect of legal barriers in Namibia), even though these jurisdictions do not extend Masking Relief.

In addition, TRs surveyed reported that their clients Mask Trade Data relating to at least some new and existing transactions that are reportable under the Official Requirements of Australia, Brazil, Canada, Hong Kong, Japan, Korea, Singapore, and the US (CFTC). Of these, Brazil and Korea have not extended formal Masking Relief.

Generally, FSB member jurisdictions surveyed which have indicated they are “No Barrier” or “Standing Consent” jurisdictions also report that Masking Relief is not justified with respect to their own jurisdiction. However, there may be situations (for example, the client has not given Standing Consent, a Reporting Entity other than a counterparty is required to report, or a report is required to be made in respect of a historical trade) where removal of a legal barrier or availability of Standing Consent are not sufficient to permit a Reporting Entity that wishes to comply with all applicable obligations to un-Mask Trade Data.<sup>17</sup>

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<sup>16</sup> The complete list of jurisdictions in respect of whose legal barriers at least one Reporting Entity reports Masking Trade Data reportable under Official Requirements of FSB member jurisdictions is: Algeria, American Samoa, Argentina, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Bouvet Island, Brazil, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Croatia, Curaçao, Cyprus, Ecuador, Egypt, European Union, Finland, France, French Polynesia, Guernsey, Honduras, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Japan, Jersey, Kazakhstan, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Monaco, Morocco, Namibia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Puerto Rico, Qatar, Rep. of Korea, Romania, Russian Federation, Samoa, Saudi Arabia, Singapore, Slovenia, South Africa, Suriname, Swaziland, Switzerland, Taiwan, Province of China, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Uruguay, Virgin Islands, British, Virgin Islands, US. This list only captures survey responses by Reporting Entities and does not reflect any conclusions or determinations by the FSB. Compare the lists of individual jurisdictions in respect of which relief is given in Appendix B.

<sup>17</sup> In addition, two TRs provided an example where the identity of counterparties from a certain jurisdiction is masked for one authority (due to a lack of safe-harboring of data protection rules of that jurisdiction), but not masked under another

As noted above, the FSB through the ODWG will continue to monitor these issues.

### 2.2.2 Extent and materiality of Masking

Seven TRs and eight jurisdictions were able to provide statistics about the incidence of Masking, as set out in Tables 1 and 2. These statistics show the extent of Masking of Trade Data for the stock of open transactions and for the flow of new transactions. In the case of jurisdictions these statistics covered one or more TRs to which that jurisdiction had access. In the case of TRs, the statistics are also broken down by asset class.

As reported by jurisdictions, the percentage of masked trades by transaction count is relatively low, typically 5% or under, with several under 1%. Notably, the extent of Masking in reported equity derivatives transactions is higher than that of other asset classes; the rate is particularly high at 11% in one TR for one asset class (equity derivatives).

Masked transactions tend to be smaller in notional amount than unmasked transactions: the percentage of masked transactions expressed by number of transactions is uniformly higher for all jurisdictions and all TRs than by gross notional outstanding.<sup>18</sup>

**Table 1 – Percentage of all trades where at least one counterparty identifier field has been Masked (as reported by jurisdictions)**

Jurisdiction <sup>19</sup>	Open transactions		New transactions	
	By transaction count	By gross notional outstanding	By transaction count	By gross notional outstanding
AU	2.50%	0.50%	0.13%	0.15%
CA	1.65%	1.54%	3.20%	1.57%
EU <sup>20</sup>	0%	0%	0%	0%
HK	0.76%	0.53%	0.73%	0.71%
KR	0.89%	0.05%	0.43%	0.01%
SG	3.40%	2.40%	2.60%	1.60%
UK	0.11%	0.00%	0.06%	0.00%
US	0.11%	0.02%	1.71%	0.57%

reporting regime (where such safe-harbouring does exist). One of the REs similarly indicated that for trades with clients domiciled in Austria, France and Luxembourg, data (primarily counterparty identity) is Masked when required to be reported under the requirements of Australia, Canada, Hong Kong, Singapore and the US (CFTC), but not Masked when reported to EU-based TRs under EMIR. For non-EU counterparties in jurisdictions with bank secrecy requirements (and where there is no exception, or if consent is not given), such trades may be masked.

<sup>18</sup> In all jurisdictions except the US (CFTC) and Canada, the rate at which new transactions are Masked is lower than the rate prevailing for the stock of open transactions.

<sup>19</sup> This table includes only those jurisdictions that provided statistics about Masking.

<sup>20</sup> The European Union authorities' response stated, "Masking relief is not possible and masking not allowed under European Market Infrastructure Regulation (EMIR), which mandates the unique identification of the counterparties to a derivative transaction. Legal entity identifier (LEI) codes shall be used to identify counterparties."

**Table 2 – Percentage of all trades where at least one counterparty identifier field has been Masked (as reported by TRs)<sup>21</sup>**

Trade Repository (anonymised)	Open transactions							New transactions
	By trade count	By gross notional outstanding						By gross notional outstanding
		CO <sup>22</sup>	CR	EQ	FX	IR	Tot.	Total
TR1	5.0%	0.0%	0.0%	0.7%	0.3%	4.1%	3.5%	3.0%
TR2	0.3%	0.8%	0.5%	0.0%	0.2%	0.4%	0.3%	
TR3	3.0%	0.0%	2.0%	0.0%	0.0%	0.0%	2.0%	
TR4	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
TR5	4.0%	0.0%	1.7%	11.0%	2.0%	2.7%	2.6%	
TR6	0.9%	0.0%	0.0%	0.3%	0.3%	0.5%	0.5%	0.8%
TR7	0.8%	N/A	0.0%	0.1%	1.2%	0.1%	0.5%	0.7%

### **2.2.3 Feasibility of un-Masking previously reported Trade Data**

A majority of FSB jurisdictions that expressed a view on whether it is feasible for reporting entities to un-mask previously reported trade data, in full or in part, once all relevant legal barriers are removed or addressed, reported that it would be at least problematic and in some cases legally impossible, except for one jurisdiction (US (CFTC)) that considers such un-Masking a necessary condition of its Masking Relief.

France reported that un-Masking would be legally possible for trades reported to foreign TRs pursuant to foreign trade reporting requirements prior to December 2016, when a French law removing a legal barrier to reporting was implemented. Singapore reported receiving industry feedback that legal changes made by jurisdictions to removed legal barriers to reporting may not always apply retrospectively. Korea stated that un-Masking would be impossible due to privacy issues.

Those jurisdictions that did not consider un-Masking legally impossible nevertheless noted a variety of constraints, such as technological issues related to the need to re-report transactions (Canada, Spain, Hong Kong, UK, Singapore, Switzerland), or inability to obtain Consent for un-masked reporting and lack of incentive for parties to provide such Consent (Australia, Canada, Spain, Hong Kong, Singapore, Switzerland).

<sup>21</sup> Answers included only from TRs that completed Annex 2 of the TR survey.

<sup>22</sup> CO = Commodity; CR = credit; EQ = equity; FX = foreign exchange; IR = interest rates.

Several jurisdictions (Argentina, Australia, Singapore, Switzerland, Turkey and US (CFTC)) voiced support for coordinating the removal of Masking Relief in situations where legal barriers to reporting are addressed in a given jurisdiction.

#### ***2.2.4 Sovereign entities and sovereign wealth funds***

A common theme among Reporting Entities that participated in the round table held in Hong Kong was not being able to obtain Consent from sovereign entities or sovereign wealth funds (SWFs). To the extent that the applicable law requires Reporting Entities to report Trades with sovereign entities or SWFs, the FSB reminds FSB member jurisdictions that they should give full effect to the 2015 Recommendations, including Recommendation 2C.

#### ***2.2.5 Supplementary recommendations on Masking Relief***

To provide additional clarity on Recommendation 2C in the Peer Review Report, the FSB recommends as follows.

***Supplementary recommendation 3:*** Jurisdictions should not provide continuing or new Masking Relief, where Standing Consent of the client and/or Authority<sup>23</sup> concerned is sufficient to cure a legal barrier to full trade reporting:

(A) from end-December 2018, with respect to transactions with **new** clients of Reporting Entities;

(B) where some delay is considered appropriate, from 1 July 2019 (instead of end-December 2018), with respect to new trades with clients who were existing clients as at end-2018.

***Supplementary recommendation 4:*** Jurisdictions should structure any Masking Relief for pre-existing transactions such that – for the purposes of any Masking Relief relating to jurisdictions where Standing Consent of the client and/or Authority concerned<sup>24</sup> is sufficient to cure a legal barrier to full trade reporting – Reporting Entities would be expected on a reasonable effort basis to seek consent to unmasking “historical” trades.<sup>25</sup>

### **3 Barriers to authorities’ access to TR data**

#### **3.1 Introduction**

Recommendations 3A – 3C of the Peer Review Report were as follows:

- **Recommendation 3A:** 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

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<sup>23</sup> In the case of standing consent of an authority, the recommendation is contingent on the authority having publicly clarified that such consent will be given in respect of OTC derivatives trade reporting to a foreign TR or TR-like entity pursuant to foreign reporting requirements.

<sup>24</sup> See footnote 13 above.

<sup>25</sup> “Historical” trades - in all cases this applies to open transactions that may have entered into prior to the time at which the issue of unmasking arises; a jurisdiction may also determine that the concept covers closed transactions, either generally or in such a way as to exclude closed transactions of former clients.



authorities and by foreign authorities, on the basis of these authorities' mandates and in accordance with the domestic regulatory regime.

- The legal framework should include eliminating the conditions that, in practice, prevent this access.
- In general, consistent with the recommendations of the Committee for Payments and Market Infrastructure (CPMI) and International Organization of Securities Commissions (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.
- **Recommendation 3B:** All relevant authorities should coordinate in establishing cooperative arrangements that facilitate authorities' access to TR data (whether it be through direct or indirect access).
- **Recommendation 3C:** 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.

## **3.2 Findings on legal framework for Trade Data sharing (recommendation 3A)**

### ***3.2.1 Key updates from the 2015 Peer Review Report***

Answers to the official sector surveys indicate that a number of jurisdictions have taken actions to remove or address barriers to access to data held in a domestic TR by domestic authorities (other than the primary domestic authority) and by foreign authorities (Appendix A, Table 5).

Twelve jurisdictions (Canada, the EU, representing six FSB member jurisdictions, Japan, Korea, Mexico, South Africa and the US) permit, or are in the process of permitting, direct access by domestic authorities other than the primary authority or by foreign authorities where it had been subject to very significant or challenging conditions.

For example, Japan and Mexico have taken action to provide non-primary authorities with direct access to TR data under an MoU, while South Africa and Korea mention the ongoing implementation of a new regime for direct access to data by domestic authorities (no date on the entry into application). It should be noted that in the case of South Africa, no TR data is as yet reportable.

In the EU, under EMIR, direct access to data held in EU-authorized TRs by authorities from those non-EU jurisdictions with no established TRs was already possible subject to the conclusion of an MoU between the relevant non-EU authority and ESMA. For non-EU jurisdictions where there is a TR established, direct access to EU TR data has up to now required, in addition to the MoU with ESMA, an international agreement. In practice, no jurisdictions sought direct access to TR data under those conditions. In May 2017 the European Commission proposed an amendment to EMIR that would allow authorities in third countries that have TRs to be granted direct access to the data held in EU TRs, if the European Commission has adopted an implementing act for that third country (without the need for an

international agreement). This proposal is now before the European Parliament and the European Council for adoption.<sup>26</sup>

In the US, on 4 December 2015, Congress repealed legislation imposing a requirement (the Indemnification Requirement) that domestic authorities other than the primary domestic authority and foreign authorities seeking access to trade data held in TRs must first indemnify those TRs, the CFTC and the SEC against expenses that could arise from litigation related to the trade data provided to those authorities. Following repeal of the Indemnification Requirement to access TR-held data, the SEC adopted rules to provide authorities with conditional access<sup>27</sup> to security-based swap data held by SEC-registered security-based swap data repositories. On 12 June 2018, the CFTC published final rules removing from its rules the Indemnification Requirement for domestic and foreign authorities to access swap data held at swap data repositories and establishing a process for accessing that data.<sup>28</sup>

In Canada, all relevant TRs are located in the US and were therefore subject to the US indemnification requirement with respect to those TRs releasing information to authorities for transactions that are not reportable trades in Canada. With the removal of US indemnification provisions, there are no remaining barriers to Canadian and foreign authorities accessing Canadian TR data.

In 2015, India passed legislation that permitted TRs to share data with foreign or domestic authorities, with direct access available to domestic authorities and indirect access available to foreign authorities.

In China, with respect to data sharing between domestic authorities, the People's Bank of China (PBC), CBIRC and China Securities Regulatory Commission (CSRC) jointly issued a notice on data sharing of certain TR-like entities in 2017. Also in 2017, PBC signed an MoU with HKMA to allow sharing of data from certain TR-like entities.

In assessing authorities' access to TR data in each jurisdiction, the FSB considered the conditions that jurisdictions applied to allow foreign authorities to directly access TR data (i.e. through direct electronic access to the TR, rather than via a domestic authority or ad hoc data requests). In most jurisdictions, direct electronic access to foreign regulators is permitted, subject to conditions for access such as the execution of a Memorandum of Understanding or following an assessment by the jurisdiction where the TR is located to ensure confidentiality of data being provided to a foreign authority.

The FSB surveyed TRs as part of the data gathering exercise for this Report and received responses from 13 TRs. The majority of TRs surveyed indicated that legal barriers do not cause any issues or concerns regarding the handling of authorities' requests for trade data held by the TR – this tended to be where the TR predominately serviced a home market and requests for data were from other domestic authorities. Other TRs highlighted material conditions in the

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<sup>26</sup> The European Commission's legislative proposal has been approved in the Council and in the European Parliament, where it received a confirmative vote in June 2018, and will not be amended.

<sup>27</sup> Conditional upon execution of an MoU or other arrangement with the SEC addressing confidentiality.

<sup>28</sup> See Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters, 83 Fed. Reg. 27,410 (12 June 2018), available at <https://www.gpo.gov/fdsys/pkg/FR-2018-06-12/pdf/2018-12377.pdf>.

form of requirements to have MoUs in place or barriers such as the absence of rules permitting data sharing.

### ***3.2.2 Further action to establish a legal framework for sharing of Trade Data***

Table 5 in Appendix A sets out the current state of affairs with regards to the establishment of a legal framework for the sharing of TR data with domestic and foreign authorities. It also sets out those jurisdictions where direct, rather than indirect, sharing of TR data is available.

In the case of China, no legal framework is in place to permit access to data held in a domestic TR by foreign authorities; however, as an MoU with HKMA was signed, in practice it appears there may be no legal barriers for such an MoU. Clarification on this issue is desirable.

All other FSB jurisdictions are found to be consistent with Recommendation 3A.<sup>29</sup>

### **3.3 Findings on cooperative arrangements (recommendation 3B)**

A number of FSB jurisdictions have either bilateral MoUs or other arrangements in place, both among domestic authorities and between authorities of FSB member jurisdictions, specifically to enable sharing of TR held data. In certain cases, there are other bilateral MoUs which would permit the exchange of TR data. For example, typically when a foreign central counterparty is authorised to carry on business in a jurisdiction, an MoU between the home and host supervisors is signed, under which supervisory data, including TR data, can be shared. In addition, other MoUs such as the IOSCO (2012) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU) may allow the exchange of TR data in the circumstances set out therein.

MoUs specifically providing for sharing of TR data among domestic authorities have been reached in a number of individual FSB member jurisdictions (Brazil, Canada, Indonesia, Korea, Mexico, Netherlands and Saudi Arabia). In some other jurisdictions, there are statutory powers to share data between domestic authorities which do not depend on MoUs (Australia, Hong Kong, Japan and EU). Turkey has a protocol which includes data sharing provisions among the domestic market authorities. Australia, Canada, European Union, Hong Kong, Mexico, Singapore, the US CFTC, and others have signed bilateral MoUs with at least one other foreign jurisdiction that address sharing of TR held data.

**Appendix C** sets out the MoUs and other arrangements in place that specifically concern sharing of TR data between domestic or foreign authorities in FSB member jurisdictions, or

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<sup>29</sup> In a number of other jurisdictions, only indirect access to TR data is possible, or direct access is permitted with very significant/challenging conditions. Those jurisdictions are Argentina, Brazil, China, the European Union (in respect of non-EU jurisdictions where there is a TR established), India, Indonesia, Korea, Russia, Saudi Arabia and Turkey. As stated in the Peer Review Report, 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. In May 2017, the European Commission proposed removing the requirement for an International Agreement as part of revisions to EMIR in the context of its Regulatory Fitness and Performance (REFIT) programme. Should the requirement for an International Agreement be removed as part of the final legislation, the status of the European Union jurisdictions would be expected to change to direct access to TR data permitted in some instances with conditions for access including execution of a Memorandum of Understanding or following an assessment by the jurisdiction where the TR is located to ensure confidentiality of data being provided to a foreign authority.

that would permit sharing of TR data. Appendix D summarises these arrangements in tabular form.

FSB member authorities are encouraged to consider making further use of MoUs and other bilateral arrangements to access TR data that is relevant to their mandates, in line with the TR data sharing principles agreed by CPMI and IOSCO.<sup>30</sup> It is anticipated that, given the removal or addressing of legal barriers in a number of jurisdictions, further MoUs may be entered into in the future.

### **3.4 Findings on operational frameworks (recommendation 3C)**

In general, TR responses to the FSB survey indicated that access by domestic authorities other than the primary domestic authority (that had a legal basis for requiring TR data) was permitted, with a number of responses indicating that the access was on the basis of MoUs between the domestic authorities.

The majority of TR responses did not indicate whether a clear and definitive legal framework or process was in place (or planned) that would permit data access by foreign authorities, nor did they set out related requirements or limitations. Some TRs indicated that their primary domestic authorities had indicated they were considering undertaking rule or other legal framework changes to facilitate data access by foreign authorities but had not yet done so.

Some TR responses indicated that access by foreign authorities was permitted, based on a request for data access in accordance with the CPMI-IOSCO report on authorities' access to TR data and/or a data sharing MoU between authorities for the related jurisdictions. However, only a minority of these TRs noted that direct data access had been provided to foreign authorities, with some TRs indicating that no foreign authority had initiated the related process to obtain access. During the round table held in Hong Kong on 23 May 2018, one TR indicated that the arrangements it had in place to on-board regulators within the EU could be extended, in principle, to non-EU regulators having the right to access TR data, within a matter of weeks after the relevant MoU or other arrangement was in place with the EU authorities.

**Differences in processes for on-going and ad-hoc access to data:** In general, TRs responded that there was no difference in the process for authorities that request ongoing access to data and authorities that request data on an ad-hoc basis. In noting a difference in processes, some TRs highlighted that the provision of ongoing access would require establishment of an MoU with the domestic primary regulator, but providing access to data in response to an ad-hoc request could be considered without an MoU being in place if the domestic regulator were comfortable to do so, subject to applicable law.

**Suggestions for reducing lead times for data access:** TRs generally highlighted that the provision of access to TR data to authorities would be aided by authorities having clear and consistent rules and other mechanisms to facilitate data access. Some TRs highlighted that access could be provided within a reasonable timeframe once the necessary mechanisms (for example, a data access MoU) were in place.

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<sup>30</sup> See CPMI and IOSCO (2013), *Authorities' access to trade repository data*, available at <https://www.bis.org/cpmi/publ/d110.pdf> and <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD417.pdf>.

### **3.5 Supplementary recommendations on access to and sharing of TR data**

*Supplementary recommendation 5:* Having regard to the fact that, once legal barriers to seeking access to Trade Data are removed, jurisdictions have the opportunity to seek access to such data as suggested by the CPMI and IOSCO principles for regulators' access to TR data<sup>31</sup>, pursuant to jurisdictions' laws and regulations, it is recommended that jurisdictions deal with requests for direct or indirect access to TR data in an efficient way, including requests to enter MoUs and/or other arrangements as a precondition to gaining access to TR data.

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<sup>31</sup> See footnote 31.


## Appendix A – Selected updated tables from Peer Review Report


Table 3 (corresponds to Table 7 in the Peer Review Report)


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


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					+	+		
Brazil						+		
Canada								
China	*	*	*	*				
EU	France					++		
	Germany							
	Italy							
	Netherlands					+		
	Spain							
	UK							
Hong Kong								
India						+		
Indonesia					*	*	*	*
Japan								
Korea	+	+			+	+		
Mexico							*	
Russia								
Saudi Arabia								
Singapore		++				+		
South Africa		+				+		
Switzerland						+		
Turkey						+		
US								

Note: The legend in this table has been modified. In the 2015 Thematic Review on OTC Derivatives Trade Reporting Peer Review Report, Appendix D, Table 7, green represented “no legal barriers”, and orange represented “barrier exists, but mitigant available to at least some degree”. Pink colour is also added in this report to represent a non-curable barrier.

 = no legal barriers / barrier exists but curable by Standing Consent of clients or with Consent of authority (where a public official statement or guidance that Consent will be forthcoming has been made).

 = barrier exists but curable by Trade-by-trade Consent of clients or Consent of authority (where a public official statement or guidance that Consent will be forthcoming has not been made).

 = barrier exists and is not curable by Consent

 = situation not clear

+ These boxes have been changed from orange as shown in the 2015 Thematic Review on OTC Derivatives Trade Reporting Peer Review Report because barrier is curable by Standing Consent of clients.

++ These boxes have been changed from orange as shown in the 2015 Thematic Review on OTC Derivatives Trade Reporting Peer Review Report because: (FR) the French authority has confirmed that a law change was adopted on 9 December 2016 removing the client consent requirement in reporting to TRs; (SG) the Singaporean authority has confirmed that a legislative amendment, which removes the client consent requirement for reporting of client identifying information pursuant to domestic reporting requirements, is effective from 8 October 2018.

\* Reclassified from the 2015 Thematic Review on OTC Derivatives Trade Reporting Peer Review Report because the relevant authorities provided further information.

Table 4 (corresponds to Table 8 in the Peer Review Report)

**‘Masking’ of counterparty information**


<b>Jurisdiction</b>	<b>Is masking of TR data permitted or accommodated for counterparties which report according to the domestic reporting regime?</b>	
Argentina	No	
Australia <sup>(a)</sup>	Yes	
Brazil	No	
Canada <sup>(b)</sup>	Yes	
China	No	
EU	France	No
	Germany	No
	Italy	No
	The Netherlands	No
	Spain	No
	UK	No
Hong Kong <sup>(c)</sup>	Yes	
India	No	
Indonesia	No	
Japan	No	
Korea	No	
Mexico	No	
Russia	No	
Saudi Arabia	No	
Singapore <sup>(d)</sup>	Yes	
South Africa	No	
Switzerland	No	
Turkey	No	
US	No for security-based swaps (SEC)      Yes for swaps (CFTC) <sup>(e)</sup>	


- (a) In Australia temporary conditional relief permits masking in certain circumstances – a) where transactions are blocked by foreign privacy restrictions of specified jurisdictions (expiring 31 March 2019) and b) transactions with ‘historic counterparties’, i.e., transactions that are executed under a historic agreement and where consent is required to disclose (has been requested and not provided) and the reporting entity has not entered into a new trade with the counterparty after 1 January 2015 (expiring 31 March 2019).
- (b) Masking is prohibited under Canadian trade reporting rules. However, discretionary relief has been granted to certain market participants, available only to accommodate foreign blocking and consent laws. This discretionary relief is provided by Canadian provincial securities regulators in their respective jurisdictions and is subject to certain terms and conditions, including identification of foreign blocking and consent jurisdictions and back-loading of previously masked transactions.
- (c) For OTC derivatives transactions entered into on or after 10 January 2016, reporting entities may mask the counterparty information only if the submission of counterparty information is prohibited under the laws of, or by an authority or regulatory organisation in a jurisdiction and that jurisdiction is in the list of designated jurisdictions.
- (d) In Singapore, newly reportable derivatives trades entered into on or after 1 January 2019 may not mask counterparty information.
- (e) Masking is not permitted in the US. Nevertheless, pursuant to the CFTC’s time-limited no-action relief, the CFTC staff will not recommend enforcement action for a failure to report certain identifying information for a jurisdiction with respect to which a reporting counterparty has formed a reasonable belief that statutory or regulatory prohibitions in the non-U.S. jurisdiction preclude the reporting counterparty from reporting the relevant data.


Table 5 (Corresponds to Table 9 in the Peer Review Report)

**Authorities' Access to Data**

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?
Argentina					
Australia					
Brazil					
Canada		+	+		+
China		+			+
EU	France		(a)	(b)	
	Germany		(a)	(b)	
	Italy		(a)	(b)	
	The Netherlands		(a)	(b)	
	Spain		(a)	(b)	
	UK		(a)	(b)	
Hong Kong					
India		+			+
Indonesia					
Japan		+	+		
Korea		*			
Mexico		*	+		
Russia					
Saudi Arabia		*			
Singapore					
South Africa		+	+		+
Switzerland					
Turkey		*			*
US		+	+		

 = Access permitted, in some instances with material conditions for access (including execution of an MoU or following an assessment by the jurisdiction where the TR is located to ensure confidentiality of data being provided to a foreign authority).

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

 = situation not clear

(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 CPMI-IOSCO 2013 recommendations 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 an MoU in accordance with the recommendations of the CPMI-IOSCO 2013 report on authorities' access to TR data. In May 2017, the European Commission proposed removing the requirement for an International Agreement as part of revisions to EMIR in the context of its Regulatory Fitness and Performance (REFIT) programme. Should the requirement for an International Agreement be removed as part of the final legislation, the status of the European Union jurisdictions would be expected to change to *access permitted, in some instances with material conditions for access*.

+ Positive change from 2015 Peer Review Report classification due to change in Official Requirements to address or remove legal barrier or other change. In the case of India, the change took place in 2015 but was not reflected in the 2015 Peer Review Report. In the case of China, no specific legal framework exists for signing MoUs with foreign authorities. As an MoU with HKMA was signed, in practice it appears there may be no legal barriers for such an MoU. Clarification from the Chinese authorities is desirable.

\* Reclassified from "Access permitted, subject to material conditions" due to a change in the classification scheme.



## Appendix B – List of jurisdictions mentioned in FSB member jurisdictions’ masking relief

*Note: The inclusion of a jurisdiction in columns 2 or 3 of this table records which jurisdictions are mentioned in FSB member authorities’ masking relief. It does not imply necessarily that there is a legal barrier in the jurisdiction concerned. Masking Relief is set to expire by a specified date before end-2018 in Singapore and on 31 March 2019 in Australia. Canada, Hong Kong and US (CFTC) have not indicated a specific expiration date, but have indicated that under their rules, once legal barriers are removed, Masking would be discontinued without any need for further rule change.*

<b>Jurisdiction granting relief</b>	<b>FSB member jurisdictions mentioned in masking relief</b>	<b>Other jurisdictions mentioned in relief</b>
Australia <sup>32</sup>	Argentina France India Indonesia China Saudi Arabia Singapore Korea Switzerland	Algeria Austria Bahrain Belgium Hungary Israel Luxembourg Pakistan Samoa Taiwan
Canada <sup>33</sup>	<i>The relief does not list individual jurisdictions. Relief is provided if the Canadian counterparty meets certain conditions and determines that its counterparty is subject to a Blocking Statute or a Consent Requirement (as defined) that has not been provided; or the Canadian counterparty has yet to or could not determine if its transaction counterparty is subject to a Blocking Statute or Consent Requirement. Among other requirements, the Canadian counterparty needs to provide regulators with a list of jurisdictions in which consent requirements exist, and make diligent efforts to obtain consent.</i>	
Hong Kong <sup>34</sup>	Argentina	Algeria

<sup>32</sup> ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 available at <https://www.legislation.gov.au/Series/F2015L01530>, as most recently amended by ASIC Corporations (Amendment) Instrument 2018/810, available at <https://www.legislation.gov.au/Details/F2018L01334>.

<sup>33</sup> Masking Relief is provided by provincial securities regulators in their respective jurisdictions of Canada. See, for example, “Exemption from certain derivatives reporting requirements in Multilateral Instrument 96-101 – Trade Repositories and Derivatives Data Reporting”: [https://www.bsc.bc.ca/Securities\\_Law/Policies/Policy9/PDF/96-501\\_BCI\\_December\\_15\\_2017/](https://www.bsc.bc.ca/Securities_Law/Policies/Policy9/PDF/96-501_BCI_December_15_2017/). Similar relief is given in all Canadian jurisdictions except Manitoba, Ontario and Quebec. In addition, for an example of exemptive relief that is granted to certain applicants in Manitoba, Ontario and Quebec, see: [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_ord\\_20171005\\_217\\_royal-york.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20171005_217_royal-york.htm).

<sup>34</sup> See <https://www.sfc.hk/web/EN/pdf/Gazette/G.N.%204905%20of%202015.pdf>. For OTC derivatives transactions entered into on or after 10 January 2016, reporting entities may mask the counterparty information only if the submission of counterparty information is prohibited under the laws of, or by an authority or regulatory organisation in a jurisdiction AND that jurisdiction is one of the designated jurisdictions in the second or third columns.

<b>Jurisdiction granting relief</b>	<b>FSB member jurisdictions mentioned in masking relief</b>	<b>Other jurisdictions mentioned in relief</b>
	France India Indonesia China Singapore Korea Switzerland	Austria Bahrain Belgium Hungary Israel Luxembourg Pakistan Samoa Taiwan
Singapore <sup>35</sup>	Argentina China France India Korea Singapore Switzerland	Algeria Austria Bahrain Belgium Hungary Luxembourg Pakistan Samoa Taiwan
United States CFTC <sup>36</sup>	<i>The relief no longer is conditioned on individual jurisdictions being listed in the relief letter. Instead, the relief requires that reporting counterparties form a reasonable belief that masking is required without specifying any particular basis the reporting counterparty must use to form such belief. The relief also requires that the reporting counterparty include a Privacy Law Identifier (PLI) in each instance in which it would otherwise have been required to report an LEI or other enumerated identifier. A PLI is a unique identifier, which is not an LEI, used to uniquely identify a particular swap counterparty whose swaps with the reporting counterparty are subject to a Blocking Statute or a Consent Requirement. The relief expires once a reporting counterparty no longer has a reasonable belief that masking is required (e.g., because a jurisdiction has removed a Blocking Statute as applied to particular swaps or counterparty types more generally). The relief is conditioned on the industry associations that requested the relief informing the CFTC promptly once it is not reasonable for a reporting counterparty to believe that masking is required (e.g., because a jurisdiction has repealed its Blocking Statute).</i>	

<sup>35</sup> Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013. For derivatives contracts entered into before 1 January 2019, reporting entities may rely on masking relief if the laws or requirements imposed by authorities of any of the listed jurisdictions prohibit the reporting of counterparty information. Masking relief is not available or expires where the laws or requirements imposed by authorities of any listed jurisdiction no longer prohibit the reporting of counterparty information.

<sup>36</sup> See <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-16.pdf>.

## Appendix C –MoUs and other arrangements in FSB member jurisdictions allowing access by authorities to TR data

Jurisdiction	Domestic	Foreign <sup>37</sup>
Argentina	Comisión Nacional de Valores y Banco Central de la República Argentina. Dated: 13.09.2013 <sup>38</sup>	
Australia	In undertaking their roles, the Australian Securities and Investments Commission (ASIC), Reserve Bank of Australia (RBA), and Australian Prudential Regulation Authority (APRA) provide information to other relevant supervisors and authorities subject to confidentiality, purpose and use requirements. Notwithstanding this ASIC, RBA, APRA also have in place MoUs with each other and other authorities that covers cooperation, including in relation to sharing data (which would cover data from TRs).	ASIC and Monetary Authority of Singapore (MAS) (16 September 2014) ASIC and CFTC (29 September 2014) ASIC and European Securities Markets Authority (ESMA) (26 November 2014)  RBA and ESMA (6 March 2015) RBA and MAS (27 April 2015) APRA and MAS (12 February 2016)
Brazil	Banco Central do Brasil and Comissão de Valores Mobiliários (25 April 2014)	
Canada	Ontario Securities Commission, Autorité des marchés financiers, Alberta Securities Commission, British Columbia Securities Commission, Financial and Consumer Affairs Authority of Saskatchewan, Financial and Consumer Services Commission (New Brunswick), Manitoba Securities Commission and Nova Scotia Securities Commission. (3 December 2015).	United States Commodity Futures Trading Commission, Alberta Securities Commission, British Columbia Securities Commission, Ontario Securities Commission, Autorité des marchés financiers, New Brunswick Financial and Consumer Services Commission, the Nova Scotia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, Manitoba Securities Commission, and Superintendent of Securities (of each of Yukon, Northwest Territories, Nunavut, Prince Edward Island, and Newfoundland and Labrador) (25 March 2014).
China	PBC, CBIRC and CSRC (29 December 2017)	PBC and HKMA (25 June 2017)

<sup>37</sup> In addition to the MoUs and other arrangements listed, the IOSCO (2012) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU) may allow the exchange of TR data in the circumstances set out therein.

<sup>38</sup> Available at [http://www.bcra.gov.ar/Institucional/Acuerdos\\_Nacionales.asp](http://www.bcra.gov.ar/Institucional/Acuerdos_Nacionales.asp).

<b>Jurisdiction</b>	<b>Domestic</b>	<b>Foreign<sup>37</sup></b>
European Union (also France, Germany, Italy, Spain)	Under EMIR, the relevant authorities have direct and immediate access to the details of derivatives needed to fulfil their responsibilities and mandates.	ESMA and Securities and Futures Commission of Hong Kong (SFC) (19 November 2015) ESMA and Reserve Bank of India (RBI) (28 February 2017)
Hong Kong	The SFO provides a disclosure gateway for the disclosure of data held in the Hong Kong Trade Repository (HKTR) obtained from the mandatory reporting obligation to relevant authorities/regulators in Hong Kong. Information reported to the HKTR pursuant to the mandatory reporting obligation is available to the SFC either under the provisions of the Securities and Futures Ordinance (SFO) or subject to certain conditions. TR data are currently shared with the SFC.	ESMA and SFC (19 November 2015) The SFO provides disclosure gateway for the disclosure of data held in HKTR obtained from the mandatory reporting obligation to authorities, regulatory organisations or companies inspectors outside Hong Kong. <i>See also entry for China, above.</i>
India		ESMA and RBI (28 February 2017)
Indonesia	Indonesia Financial Services Authorities (Otoritas Jasa Keuangan atau OJK) (18 October 2013)	
Japan	Japan Financial Services Agency (JFSA) could share information as appropriate with Bank of Japan, non-primary domestic authority, based on the existing supervisory guideline for FMIs including TR.	JFSA and CFTC Memorandum of Cooperation, Supervision of Cross-Border Covered Entities (10 March 2014)
Korea	Financial Services Commission (FSC), Financial Supervisory Service (FSS), Bank of Korea (BOK) Korea Deposit Insurance Corporation (KDIC), Ministry of Strategy and Finance (15 September 2009)	
Mexico	Banco de México, the Secretaría de Hacienda y Crédito Público (SHCP), the Comisión Nacional Bancaria y de Valores (CNBV), the Institute for the Protection of Banking Savings and the National Commission for the Protection of Users of Financial Services (6 July 2000)	Banco de México, the CNBV and the CFTC (31 August 2016)
Netherlands	Dutch Central Bank (DNB) and Dutch Financial Market Authority (AFM) have a cooperation covenant that covers different kinds of information sharing, not just on EMIR or TR data. (28 January 2016)	Under EMIR in the CCP supervisory colleges information can and is shared, also in the form of TR data. The legal underpinning for this is a College agreement but not an MoU

<b>Jurisdiction</b>	<b>Domestic</b>	<b>Foreign<sup>37</sup></b>
Russia		There are no memoranda that specifically relate to TR data. However, the sharing of such data could be arranged through bilateral MoUs.
Saudi Arabia	Saudi Arabian Monetary Authority (SAMA) and Capital Markets Authority (CMA). (No date given (document not public))	
Singapore	This is not applicable as the MAS is an integrated regulator and supervisor of the financial services sector in Singapore.	CFTC and MAS (27 December 2013) ASIC and MAS (16 September 2014) RBA and MAS (27 April 2015) APRA and MAS (12 February 2016)
Switzerland	The access of domestic authorities to trade data held in domestic TRs is governed (directly) by the Financial Market Infrastructure Act (FMIA) and Ordinance (FMIO) (cf. Art. 77 FMIA; Art. 62 FMIO; Art. 64 FMIO) and therefore does not require an MoU between domestic authorities.	The FMIA provides a framework governing the access to TR-held data by foreign authorities. To date, no foreign authority has approached the competent Swiss authorities (namely FINMA) with regard to accessing data held in Swiss-domiciled TRs.
Turkey	A protocol which includes data sharing provisions was signed by Financial Stability Committee Systemic Risk Assessment Group in 2012. The Group consists of five authorities which are Central Bank of the Republic of Turkey, Saving Deposit Insurance Fund, Banking Regulation and Supervision Agency, Undersecretariat of Treasury and Capital Markets Board	
United Kingdom	No MoUs are needed as both the FCA and BoE have direct access rights to EU TR data.	The UK does not currently share or receive TR data with/from foreign authorities. There is however a provision in EMIR Article 75(2) which enables foreign authorities to access the relevant trade data in EU TRs if an international agreement is in place and if mutual access is granted to a foreign TR
United States	Cooperative arrangements between US regulatory authorities provide for coordination and information sharing, including sharing of Trade Data, in areas of common regulatory interest.	CFTC: The CFTC has entered into cooperative arrangements that would permit indirect access by certain other authorities to swap data in possession of the CFTC. In addition, certain supervisory arrangements that include TRs within their scope acknowledge

<b>Jurisdiction</b>	<b>Domestic</b>	<b>Foreign<sup>37</sup></b>
		<p>the benefits of cooperation with respect to direct access to data.  <i>See also entries for Australia, Canada, Japan, Mexico, and Singapore, above.</i></p>

**Appendix D – MoUs/other arrangements within/between FSB member jurisdictions allowing authorities’ access to TR data**

		AR	AU	BR	CA	CH	CN	EU	HK	ID	IN	JP	KR	MX	RU	SA	SG	TR	US	ZA
	<b>Tot.</b>	1	4	1	2	1	2	4	3	1	1	2	1	2	0	1	3	1	6	0
<b>AR</b>	1																			
<b>AU</b>	4																			
<b>BR</b>	1																			
<b>CA</b>	2																			
<b>CH</b>	1																			
<b>CN</b>	2																			
<b>EU</b>	4																			
<b>HK</b>	3																			
<b>ID</b>	1																			
<b>IN</b>	1																			
<b>JP</b>	2																			
<b>KR</b>	1																			
<b>MX</b>	2																			
<b>RU</b>	0																			
<b>SA</b>	1																			
<b>SG</b>	3																			
<b>TR</b>	1																			
<b>US</b>	6																			
<b>ZA</b>	0																			

Notes: Green squares indicate the presence of memoranda of understanding (MOUs) and other arrangements in place that specifically concern sharing of TR data between domestic or foreign authorities in FSB member jurisdictions. Numbers in the “Tot.” column and row indicate the total number of such arrangements in each jurisdiction.

\* Singapore has an integrated financial regulator, MAS, so no sharing arrangements among domestic agencies are applicable.

## Appendix E – Workstream on trade reporting legal barriers members<sup>39</sup>

<b>Workstream lead</b>	<b>Kevin Fine</b> Director, Derivatives Branch Ontario Securities Commission, Canada
<b>Australia</b>	<b>Benjamin Cohn-Urbach</b> Senior Specialist Australian Securities and Investments Commission
<b>France</b>	<b>Claire Guillaumot</b> Deputy Head, Markets Regulation Division Autorité des marchés financiers (AMF)
<b>Hong Kong</b>	<b>Daphne Doo</b> Senior Director, Supervision of Markets Division Securities and Futures Commission (SFC)
<b>India</b>	<b>Manoj Kumar</b> Deputy General Manager Reserve Bank of India
<b>Indonesia</b>	<b>Ndari Surjaningsih</b> Bank Indonesia
<b>Singapore</b>	<b>Ken Nagatsuka</b> Deputy Director, Markets Policy and Infrastructure Department Monetary Authority of Singapore (MAS)
<b>Switzerland</b>	<b>Arie Gerszt</b> Deputy Head of Unit, Capital Markets and Infrastructure Swiss Federal Department of Finance
<b>UK</b>	<b>Carmel Deenmamode</b> Senior Associate, Markets Policy Financial Conduct Authority (FCA)

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**US**

**Kateryna Imus**

Special Counsel, Office of Derivatives Policy  
Securities and Exchange Commission

**Daniel Bucsa**

Deputy Director, Data and Reporting, Division of Market Oversight  
Commodity Futures Trading Commission (CFTC)

**European Central  
Bank (ECB)**

**Patrick Hess**

Senior Market Infrastructure Expert, Oversight Division

**European Commission**

**Vincent Derbali**

DG Financial Stability, Financial Services and Capital Markets

**FSB Secretariat**

**Laurence White**

Member of Secretariat