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Information provision to a repository

Concerning the request of International Swaps and Derivatives Association (ISDA) and Russian National Association of Securities Market Participants (NAUFOR), relating to information provision to a repository, dated 26 February 2014, the Financial Market Development Department of the Bank of Russia advises as follows.

During 2014 the Bank of Russia has been working on regulation improving towards repository activities. With the purpose to make this process more effective and to involve the professional community into this process, in summer 2014, the Bank of Russia held several meetings with the representatives of financial market associations. Those meetings were also held at the Working Group on Repository Activities, established within the National Securities Market Association.

For our side, we express gratitude to the representatives of International Swaps and Derivatives Association (ISDA) and Russian National Association of Securities Market Participants (NAUFOR) for the active participation in the discussion, which allowed to carry out the analysis of the current practice of regulatory measures in respect of repository activities and to determine the approach for its further progressive development.

The first step of the strategy implementation was the issue of Ordinance No. 3253-U, dated 30 April 2014, "On the Procedure for Maintaining the Register of Agreements Concluded on Terms of a Master Agreement (Single Agreement), Timeframes for Providing Information Necessary for Maintaining the Said Register and Information from the Said Register, and Submitting the Register of Agreements Concluded on Terms of a Master Agreement (Single Agreement) to the Central Bank of the Russian Federation (Bank of Russia)"

(hereinafter – Ordinance No. 3253-U), which came to force 15 June 2014. It replaced the previously effective Order of FFMS of Russia № 11-68/pz-n, dated 28 December 2011, “On Rules for Maintaining a Register of Transactions Concluded on the Terms and Conditions of a Master Agreement (Single Agreement), for Reporting Data to be Entered in the Register and Providing Data from the Register, and for Providing the Register to the Federal Executive Body for Securities Market”.

Ordinance No. 3253-U stipulated timeframes for mandatory reporting to a repository on other contracts, excluding repo contracts and FX swap, to be postponed from 25 June 2014 to 1 January 2015. That was due to the fact, that the list of contracts, information on which should be provided to a repository, was determined at the level of federal legislation, and included too wide array of contracts with foreign currencies and securities, concluded on the basis of a Master Agreement (Single Agreement). That was paralleled by making amendments in the federal legislation with the purpose to allow the Bank of Russia to determine the list of contracts, information on which should be provided to a repository, and entities, responsible for its provision. The said authority of the Bank of Russia came to force on 1 October 2014 (Federal Law No. 218-FZ “On Amending Individual Legislative Acts of the Russian Federation”, dated 21 July 2014).

It was legitimate to make amendments in Ordinance No. 3253-U for the purpose to allow the Bank of Russia to realize its authority. The amendments became effective on 1 October 2014 and they stipulate:

1. In respect of determined entities, which have to provide data to a repository the liability of providing information to a repository is set up for credit institutions, brokers, dealers, asset managers, depositories, registrars, non-governmental pension funds, management companies of investment funds, unit investment funds and non-governmental pension funds, joint-stock investment funds, trade organizers, clearing companies, insurance companies. Reporting obligation for other legal entities (including foreign participants) and for individuals is not determined. However, the responsibility of a broker on providing information to a repository includes providing information on client trades.

2. In respect of contracts, information on which should be provided to a repository, the liability of providing information on the financial derivative contracts, concluded on the basis of a Master Agreement, to a repository is determined from 1 April 2015. According to Clause 2 of Article 44 of the Federal Law No. 39-FZ “On Securities Market”, dated 22 April 1996, (hereinafter – Federal Law “On Securities Market”), the Bank of Russia is responsible for determining the types of derivatives. It must be noted, that, currently, Ordinance draft “On Derivative Types” has been worked out by the Bank of Russia, in order to replace the

Regulations on types of derivatives, stated by Order of FFMS of Russia No. 10-13/pz-n "On Approval of the Regulations of Derivative Types", dated 4 March 2013 (hereinafter – Regulations on Derivative Types). At the same time an obligation to provide information on repo contracts and on FX swap contracts remains intact. Obligation for providing information on other kinds of contracts to a depository has not been stipulated.

Entities which are not legally obliged to provide information to a repository may provide it voluntarily. Foreign participants of the financial market, which have concluded a Master Agreement (Single Agreement) with a Russian counterparty, may also voluntarily provide information to a Russian repository for the purposes to exclude the risk of not providing the reliable information to a repository by a Russian counterparty and to use the procedure of close-out netting in a case of bankruptcy (hereinafter - close-out netting).

It is also possible for the parties of contracts concluded on terms of a Master Agreement (Single Agreement) to provide information on such contracts to a repository for the purpose to use close-out netting, even if these kinds of contracts are not stipulated in Ordinance No. 3253-U.

Besides, the following amendments are included into Ordinance No. 3253-U:

- with regard to counterparties of a Master Agreement (Single Agreement) and to an informing person, the legal entity identifier (LEI) should exist from 1 July 2015. And for newly concluded contracts on rendering repository services – from 1 January 2015;

- with regard to entities, liable to provide information to a repository, to provide such information without conducting all necessary approval procedures with the informing person of the other party of the contract, if the other party is not liable to provide information to a repository;

- with regard to quarterly statements, the timeframe for their provision has been extended from 3 business days up to 10 business days;

- with regard to information on termination of all liabilities under the contracts on the basis of a Master Agreement (Single Agreement) is allowed to be provided by one or several messages;

- with regard to provision to a repository objections against data placed in the register of contracts, the timeframe for provision has been extended from 1 business day up to 3 business days;

- with regard to reducing the risk not to include the provided data into the register of agreements. It is specified that the condition of inadmissibility of providing incomplete data applies only to information subject to be provided; it is also stipulated with regard to the provision by a repository of an excerpt not only from the register of agreements but also from the

log of messages to confirm the fact of providing information to a repository in case a counterparty does not carry out its duties (in case of rejection to register information in the Register of Contracts if matching is breached).

Besides, currently, the reformation on regulation of repository activities has been working out:

- some amendments to Ordinance No. 3253-U has been being discussed with the associations' participation. These amendments are proposed to optimize information provided to a repository, and also to reduce the number of fields for matching;

- the draft of Federal Law "On Amendments in Federal Law "On Securities Market" and in a Number of Legislative Acts of the Russian Federation" has been prepared (in the paragraph concerning repositories) (hereinafter – draft law). The aim of the draft law is to determine repository activity as a separate type of accredited activity, to set out requirements towards this activity and to a repository risk management system, and, also, to specify the list of trades, information on which should be provided to a repository.

Within this draft law it is supposed to provide information on all OTC contracts to a repository (which are concluded on terms of a Master Agreement (Single Agreement) or not). The list of such contracts will be determined by the Bank of Russia. However, it has not planned to enlarge the list of contracts, information on which should be provided to a repository.

The aim of the said amendments is to prevent negative tendency with regard to market participants to refuse concluding Master Agreements (Single Agreements), what may cause reducing of representativeness of the information provided to a repository, and also may exclude the ability to use a close-out netting mechanism, increasing the level of acceptable risks.

The main purpose of the amendments in the regulation of repository activity is to provide conditions for creation of effective and reliable service, to avoid high costs for participants of the financial market, to increase financial stability, competitiveness of Russian entities and attraction for foreign counterparties for cross-border trades.

We also inform, that the Bank of Russia has initiated the procedure of acceptance of Russian Central Counterparty by European Securities and Markets Authority (ESMA). The on-going reforms should harmonize requirements of the Russian legislation in respect to a repository activity with ESMA requirements for subsequent recognition of Russian repositories.

The actual information in respect to repository activity is posted on the website of the Bank of Russia in paragraph "Repositories" (www.cbr.ru/eng/sbrfr/?PrtId=repository).

Referring to the questions, contained in the request, it should be noted the following.

1. Regarding providing information on a contract, which is a mandatory condition for “close-out netting” application.

According to Sub-clause 2, Clause 3, Article 4.1 of the Russian Federal Law No. 127-FZ “On Insolvency (Bankruptcy)” (hereinafter - the Russian Federal Law “On Insolvency (Bankruptcy)”), dated 26 October 2002, if financial contracts are concluded on terms of a Master Agreement (Single Agreement), it is obligatory for the record, concerning the conclusion of a financial contract, to be entered into the register, maintaining of which is made by a self-regulatory organization of professional participants of the securities market, a clearing organization or an exchange (hereinafter – repository), in accordance with the rules set out in Article 51.5 of the Russian Federal Law “On Securities Market”, for application of the rules of Clauses 1 and 2, Article 4.1 of the Russian Federal Law “On Insolvency (Bankruptcy)”, including the procedure of close-out netting. Within the existing legislation it is not required to provide other information to a repository for the purpose to apply Clause 1, Article 4.1 of the Russian Federal Law “On Insolvency (Bankruptcy)”.

The relevant clarifications were announced in Letter of the Bank of Russia No. 50-13-CCS-01/6636 “On the Procedure for Maintaining the Register of Agreements Concluded on Terms of a Master Agreement (Single Agreement), for Providing Information Necessary for Maintaining the Said Register and Information from the Said Register, and Also Providing the Register of Agreements Concluded on Terms of a Master Agreement (Single Agreement) to the Federal Financial Markets Service”, dated 30 October 2013.

2. Regarding using self-produced information when there is a lack of necessary information in the register of contracts of a repository / the right to provide additional information to a repository / admissibility of the records from the register of contracts, provided by a repository, as evidence in court.

According to Clause 34 of Ordinance No. 3253-U in case of non-compliance of the data on the contract, contained in the register of contracts, with the data, contained in the parties’ contract and (or) documents related to a such contract, determination of close-out netting obligations, when the obligations on the contracts are terminated, which is caused by the procedure of bankruptcy, should be executed regarding to the data, contained in the register of contracts. Thus, within the existing legislation, the data, contained in the register of contracts is of a priority over the data, contained in the contract and (or) the documents, related to the contract, which parties have available.

According to Clause 32 of Ordinance No. 3253-U, the data relevant to Annexes 1, 2 and 8 of the said Ordinance is included into the register of contracts. Besides, according to Annexes 3 - 7 of the said Ordinance, the register of contracts includes data, relevant to the appropriate type of a contract, and data, which is additionally provided to be entered into the register of contracts. Thus, parties are not limited in their rights to provide additional information to a repository to register it in the register of contracts.

According to Clause 38 of Ordinance No. 3253-U, a repository should provide an extract from the register of contracts (from the log of messages) to the parties of a contract, an informing person, the Bank of Russia and to others upon a written request.

Thus, according to Sub-clause 2, Clause 3, Article 4.1 of the Russian Federal Law “On Insolvency (Bankruptcy)”, and according to Clauses 34 and 38 of Ordinance No. 3253-U, an extract from the register of contracts is a relevant evidence for confirmation of correctness of determination of liabilities on a net basis, when the event of termination of obligations occurs. However, according to Article 71 of the Arbitration Procedure Code of the Russian Federation No. 95-FZ, dated 24 July 2002, the assessment of evidence, including its relevance, admissibility and sufficiency is Arbitration Court’s prerogative.

Currently, within the preparation of a draft law, the opportunity to exclude the priority of data, contained in the register of contracts, over data, contained in a contract and (or) the documents, related to a contract, which parties have available, has been under discussion.

3. Types of contracts, information on which should be provided to a repository.

According to Clauses 2 – 4 of Ordinance No. 3253-U, including the amendments, introduced by Ordinance No. 3382-U, issued by the Bank of Russia, dated 17 September 2014, information on the following types of contracts concluded on terms of a Master Agreement (Single Agreement) should be provided to a repository:

- Repo contract;
- FX swap contract, which is an agreements between two parties to purchase and sale a cash flow simultaneously. Besides, other liabilities of the parties to pay or transmit currency (cash) are not stipulated in such an agreement.

Starting from 1 April 2015, information on financial derivatives’ contracts concluded on terms of a Master Agreement (Single Agreement), the types of which are stipulated by the Bank of Russia in accordance with Clause 2, Article 44 of the Russian Federal Law “On Securities Market”, will be provided to a repository. Besides, information on such contracts, which were concluded after 11 August 2011, and before the conclusion of a contract with a repository (an annex to a contract with a repository on providing information on all types of contracts), if

the obligations on such contracts are not executed on the date when the information should be provided, should be provided to a repository not later than on 1 April 2015.

Information on contracts, which are financial derivatives, the types of which are determined by the Bank of Russia in accordance with Clause 2, Article 44 of the Russian Federal Law “On Securities Market”, which had been concluded on terms of a Master Agreement (Single Agreement) by 11 August 2011, if the obligations on such contracts are not executed on the date of providing information, may be provided to a repository by 1 April 2015 in accordance with the contract, concluded with a repository (an annex to an agreement with a repository on providing information on the relevant types of contracts).

According to Newsletter No. 12-SH-01/48238, issued by the Federal Financial Markets Service “On Providing Information, Necessary for Maintaining the Register of Contracts, Concluded on Terms of a Master Agreement (Single Agreement)”, dated 8 November 2012, and Articles 51.3 – 51.5 of the Russian Federal Law “On Securities Market” the Federal Financial Markets Service has clarified the regulations concerning which the parties of a repo contract, an OTC derivative contract, and also the parties of other types of contracts concluded on terms of a Master Agreement (Single Agreement) are obliged to provide information on these types of contracts to a repository, if they are OTC contracts, and concluded on terms, stipulated by a Master Agreement (Single Agreement), and which:

contain separate conditions, stipulated by the estimated terms of contracts, which are approved by self-regulatory organizations of professional participants of the securities market and endorsed by the Federal Financial Markets Service, or developed (approved) by foreign organizations, the list of which is stipulated by the Federal Financial Markets Service; or

contain the regulation concerning which contracts, concluded on terms of this Master Agreement (Single Agreement), are in aggregate a single agreement between the parties, and violation of terms even of one of the said contracts (trades) is a violation of all contracts (trades), concluded within a Master Agreement (Single Agreement) by the parties. Besides, such a Master Agreement (Single Agreement) may be made in any form.

The regulations, contained in a Master Agreement (Single Agreement), concerning termination of obligations when the procedure of bankruptcy occurs from one party of a Master Agreement (Single Agreement), and determination of liabilities on the net basis in accordance with Sub-clause 3, Clause 3, Article 4.1 of the Russian Federal Law “On Insolvency (Bankruptcy)”, are necessary for close-out netting application. However, such regulations are not a qualifying sign of a Master Agreement (Single Agreement) for the purpose of obligations’ execution in regard to providing information to a repository.

As it is pointed above, it is planning to make amendments to the Russian Federal Law “On Securities Market”, which will fix the obligations of the parties of OTC contracts, stipulated by the Bank of Russia, for providing information on them to a repository, regardless of whether or not they have been concluded on the basis of a Master Agreement (Single Agreement).

4. Matching.

According to Clause 6 of Ordinance No. 3253-U, a repository maintains the register of contracts in accordance with the Ordinance and the contract, concluded by a repository with the parties of a Master Agreement (hereinafter – a contract on rendering repository services).

According to Clause 10 of Ordinance No. 3253-U, information on the contracts, concluded on terms of a Master Agreement, should be provided by an entity (entities) (hereinafter – an informing person), stipulated by the relevant party (parties) of a Master Agreement or a third person, determined by the parties of a Master Agreement.

According to Clause 24 of Ordinance No. 3253-U, if an informing person is both of the parties of a Master Agreement, a repository may register a record in the register of contracts, if the datum, received from the parties of such an agreement, are matched.

Besides, in the pointed case, not providing information to a repository by one of the parties of a Master Agreement (Single Agreement) may cause impossibility for a repository to register the record on the conclusion of a financial contract in the register of contracts, and, also, may cause impossibility of application Clause 1, Article 4.1 of the Russian Federal Law “On Insolvency (Bankruptcy)”, and as a result, close-out netting application.

The main purpose of matching is to achieve a necessary quality of information received by a repository, if it is provided by both parties of a contract. Besides, currently, as it is said above, the opportunity of reducing the number of fields, necessary for matching, has been under discussion.

Moreover, according to Ordinance No. 3253-U, it is possible for one party of a Master Agreement (Single Agreement) to provide information to a repository without matching. Besides, if one of the parties to the contract concluded on terms of a Master Agreement, is an entity, not liable to provide information to a repository, and which has not concluded a contract on rendering repository services with a repository, and the second party is an entity, liable to provide information to a repository, the informing person should be determined by the party, liable to provide information to a repository.

If both parties to a Master Agreement (Single Agreement) are obliged to provide information to a repository, they have a right to appoint either one of the parties to a Master Agreement (Single Agreement) or a third person as an informing person.

For the aims of ensuring financial stability and receiving actual information on the situation in the financial market by the Bank of Russia timely, according to amendments to Ordinance No. 3253-U, it is planning to cancel providing quarterly statements and setting out common timeframes for providing information on the concluded contracts on all types of contracts, information on which is obligatory for provision to a repository, including the contracts with the period of execution less than four business days. It is supposed, that datum on contracts should be provided to a repository within three business days from the date of concluding, termination and execution of a contract.

5. Providing information on Credit Support Annex.

Currently, the types of contracts, being financial derivatives, have been stipulated by the Ordinance on Types of Financial Derivatives. According to the pointed Ordinance Credit Support Annex and the Agreement on Payments of Floating Margin Amounts do not comply with the types of financial derivatives. The draft of the Ordinance of the Bank of Russia “On Types of Financial Derivatives”, which is going to replace the Ordinance on the Types of Financial Derivatives, also does not qualify Credit Support Annex and the Agreement on Payments of Floating Margin Amounts as financial derivatives.

Additionally, we would like to point out, that, within the implementing of regulations with regard to Credit Support Annex into Russian legislation, it has been planning to amend the existing legislation with the purpose to apply close-out netting towards collateral trades, concluded on terms of a Master Agreement (Single Agreement). Besides, we would like to highlight, that the said types of contracts will not be qualified as financial derivatives after the made amendments of the legislation.

The said amendments will entail the procedure of clarification in Ordinance No. 3253-U, in the part, concerning relevant regulations on providing information on collateral trades to a repository.

6. Parties of a Master Agreement

As it was pointed above, a comprehensive list of legal entities, set up in compliance with the Russian Federation legislation, and obliged to provide information to a repository, is determined in accordance with Clause 1.1 of Ordinance No. 3253-U, and the amendments, provided by Ordinance No. 3382-U, dated 17 September 2014, which came to force

on 1 October 2014. Individuals and foreign participants of the financial market are not obliged to provide information to a repository.

7. Master Agreements concluded with the Bank of Russia.

Currently, the Bank of Russia concludes OTC Repo contracts in the internal financial market in accordance with Master Agreements, the form of which is determined by Letter No. 55-T, dated 29 March 2013, by the Bank of Russia On Forms and Procedures of Concluding Master Agreements, Stipulated Unified Conditions for Conclusion OTC Repo Trades by the Bank of Russia and Credit Organization, Using Information System Bloomberg” (hereinafter – Master Agreement on Repo Trades).

Counterparties of the Bank of Russia for such trades are Russian credit organizations, which are liable to provide information to a repository.

Besides, according to Clause 3.10 of a Master Agreement, National Settlement Depository (NSD) is determined as an informing person.

8. Repository notification on rejection to register records in the register of contracts.

According to Clause 21 of Ordinance No. 3253-U, a repository registers every rejection of records which are subject to be registered in the register of contracts in the registration journal. Registration of rejection data which is subject to be registered in the register of contracts is made on the date, when a repository decides to reject data which is subject to be registered in the register of contracts. Besides, according to Clause 24 of Ordinance No. 3253-U, rejection of the record which is subject to be registered in the register of contracts is made by a repository not later than on a business day, following the day, on which the information is received by an informing person, and if an informing person is both parties of a Master Agreement – not later than on a business day, following the day, on which the latest message is received. If a repository rejects a record which is subject to be registered in the register of contracts, an informing person has a right to amend a message and may provide a new message on a Master Agreement or a contract to a repository not later than in three business days from the date of a repository’s rejection (Clause 26 of Ordinance No. 3253-U).

Probably, the procedure with regard to the parties of a Master Agreement and to an informing person, to be informed on the rejection to register data which is subject to be registered in the register of contracts, will be determined by relevant amendments made in Ordinance No. 3253-U. They will determine the procedure of informing on rejection to register

data which is subject to be registered, by analogy with the procedure of informing on the data registration in the register of contracts, which is according to Clause 27 of the Ordinance.

9. “Block” trades.

Information on all contracts should be provided to a repository, if such contracts are concluded and satisfy the requirements, determined by Ordinance No. 3253-U, issued by the Bank of Russia.

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