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Eurosystem

THE DIRECTOR

Mr. Richard Shilts
Director Division of Market Oversight
COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
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date 14 August 2013
our reference PM_PMI0033 TP/OV/2013/L. 89
your reference
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CFTC No-Action Relief on reporting of certain swap data and Belgian law

Dear Mr. Shilts,

On July 11 and 12, 2013, the National Bank of Belgium (NBB) and the Financial Services and Markets Authority (FSMA) received an email from the International Swaps and Derivatives Association Inc. (ISDA) indicating its need to obtain a formal response by August 27, 2013 regarding the applicable restrictions, as derived from the application of the Belgian privacy law statutes and regulations, with respect to the reporting of personal data relating to derivative transactions to a Swap Data Repository (SDR) or to the U.S. Commodity Futures Trading Commission (CFTC) in accordance with US regulations. This ISDA request was to support a request for a time-limited and conditional relief by the CFTC until 30 June 2014 (the "CFTC No-Action Letter") to reporting entities.

We are of the view that regulators that are expected to provide interpretations of their domestic laws should preferably communicate directly between them, which leads us to address this response letter to you.

Where the derivatives trade data that have to be reported include information relating to an identified or identifiable natural person, the data collection and handling is regulated by the Belgian Act of December 8, 1992 on Privacy Protection in relation to the Processing of Personal Data (Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel /Wet van 8 december 1992 tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens), available at

- http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1992120832&table_name=loi (French version) and at
- http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1992120832 (Dutch version).

This Act is enforced in Belgium by the Commission for the Protection of Privacy (<http://www.privacycommission.be/en>) that is thus the sole competent authority for the interpretation thereof in this context.



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Mr. Richard Shilts
Director Division of Market Oversight

We would like however to draw your attention on the fact that the new Regulation (EU) N°648/2012 of the European Parliament and of the Council of July 4, 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) in its Article 9 establishes that a counterparty that reports the details of a derivative contract to a registered (EU) or recognised (non-EU) trade repository or to ESMA shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision. This provision will become applicable in the coming months and will have direct effect in Belgium.

Should you have any further questions, please do not hesitate to contact, at the FSMA, Didier Niclaes (didier.niclaes@fsma.be) or, at the NBB, Steven Van Cauwenberge (steven.vancauwenberge@nbb.be).

Yours sincerely,

for the FSMA

Thierry Lhoest
Director

for the National Bank of Belgium

Marcia De Wachter
Executive Director

Cc: - Mr Willem Debeuckelaere, President of the Commission for the Protection of Privacy
- Ms. Sarah E. Josephson, Director, Office of International Affairs, CFTC
- Mr. Roger Cogan, Senior European Policy Director, European Regulatory Policy Team ISDA
- Mr. Patrick Pearson, Head of Financial Markets Infrastructure, European Commission