



**Study on exemptions for third-country  
central banks and other entities  
under  
the Market Abuse Regulation and  
the Markets in Financial Instruments Regulation**

*MARKT/2014/069/G3/ST/OP*

## **Disclaimer**

The information and views set out in this study are those of the authors and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

DOI: 10.2780/73005

ISBN: 978-92-79-43372-6

© European Union, 2015.

Reproduction is authorised provided the source is acknowledged.

This study was carried out for the European Commission, Directorate General Financial Stability, Financial Services and Capital Markets Union, by

**LEAD Institute**

**Centre for European Policy Studies (CEPS)**



**Authors:**

Dr. Diego Valiante (coordinator)

Mr. Karel Lannoo

Ms. Cosmina Amariei

Prof. Dr. David Ramos Muñoz (University of Madrid – Carlos III)

Ms. Marta Garcia De Vicuña Unda (University of Madrid – Carlos III)

AND

**PARTNER Institute University of Bologna**



ALMA MATER STUDIORUM  
UNIVERSITÀ DI BOLOGNA

**Authors:**

Prof. Dr. Marco Lamandini

Prof. Dr. Alessandro Pomelli

Ms. Francesca Pellegrini

## About Centre for European Policy Studies

Founded in Brussels in 1983, CEPS is a leading think tank and forum for debate on EU affairs, with an exceptionally strong in-house research capacity and an extensive network of partner institutes throughout the world. CEPS' funding comes from a variety of sources, including membership fees, project research, tenders, foundation grants, conferences fees, and publication sales.



[www.ceps.eu](http://www.ceps.eu)

Place du Congrès 1 | 1000 Brussels | Belgium

## About University of Bologna

Founded in 1088, the University of Bologna sustains research in various areas in order to contribute to the development of people and society, promotes and supports training and education through a broad programme catalogue and high quality teaching within multi-campus structure and attracts international researchers and students.



ALMA MATER STUDIORUM  
UNIVERSITÀ DI BOLOGNA  
[www.unibo.it/en](http://www.unibo.it/en)

Via Zamboni 33 | 40126 Bologna | Italy

# Table of Contents

|                                                                                                                  |           |
|------------------------------------------------------------------------------------------------------------------|-----------|
| <b>EXECUTIVE SUMMARY .....</b>                                                                                   | <b>1</b>  |
| <b>ABSTRACT .....</b>                                                                                            | <b>10</b> |
| <b>RÉSUMÉ.....</b>                                                                                               | <b>10</b> |
| <b>1 A THEORETICAL BACKGROUND ON THE ELIGIBILITY OF CENTRAL BANKS AND DMOS' MARKET OPERATIONS .....</b>          | <b>11</b> |
| 1.1 CENTRAL BANKS' OBJECTIVES.....                                                                               | 11        |
| 1.1.1 <i>Monetary stability</i> .....                                                                            | 11        |
| 1.1.2 <i>Foreign exchange stability</i> .....                                                                    | 13        |
| 1.1.3 <i>Financial stability</i> .....                                                                           | 14        |
| 1.1 PUBLIC DEBT MANAGEMENT OFFICES' (DMOs) OBJECTIVES AND OPERATIONAL FRAMEWORK.....                             | 15        |
| 1.1.1 <i>Functions and objectives of PDM</i> .....                                                               | 15        |
| 1.1.2 <i>Market operations and risk</i> .....                                                                    | 16        |
| 1.1.3 <i>Dynamic management strategies</i> .....                                                                 | 17        |
| 1.2 DISCLOSURE OF CENTRAL BANK OPERATIONS: A BALANCE SHEET SNAPSHOT.....                                         | 18        |
| 1.2.1 <i>Eurosystem (ECB and NCBs)</i> .....                                                                     | 19        |
| 1.2.2 <i>Reserve Bank of Australia (RBA)</i> .....                                                               | 21        |
| 1.2.3 <i>Banco Central do Brasil (BCB)</i> .....                                                                 | 22        |
| 1.2.4 <i>Bank of Canada (BoC)</i> .....                                                                          | 24        |
| 1.2.5 <i>People's Bank of China (PBoC)</i> .....                                                                 | 26        |
| 1.2.6 <i>Hong Kong Monetary Authority (HKMA)</i> .....                                                           | 27        |
| 1.2.7 <i>Reserve Bank of India (RBI)</i> .....                                                                   | 28        |
| 1.2.8 <i>Bank of Japan (BoJ)</i> .....                                                                           | 30        |
| 1.2.9 <i>Bank of Mexico (Banxico)</i> .....                                                                      | 31        |
| 1.2.10 <i>Monetary Authority of Singapore (MAS)</i> .....                                                        | 33        |
| 1.2.11 <i>Bank of Korea (BoK)</i> .....                                                                          | 34        |
| 1.2.12 <i>Swiss National Bank (SNB)</i> .....                                                                    | 35        |
| 1.2.13 <i>Central Bank of the Republic of Turkey (CBRT)</i> .....                                                | 36        |
| 1.2.14 <i>Federal Reserve System (US Fed)</i> .....                                                              | 38        |
| 1.2.15 <i>Bank of International Settlements (BIS)</i> .....                                                      | 39        |
| 1.3 EMPIRICAL ANALYSIS: THIRD-COUNTRY CENTRAL BANKS' TRADING ACTIVITY .....                                      | 41        |
| 1.3.1 <i>The datasets</i> .....                                                                                  | 41        |
| 1.3.2 <i>Key results</i> .....                                                                                   | 43        |
| <b>2 ANALYSIS UNDER ARTICLE 1 PARAS. 6 AND 9 OF THE MARKETS IN FINANCIAL INSTRUMENTS REGULATION (MIFIR).....</b> | <b>48</b> |
| 2.1 POLICIES AND ASSESSMENT: AN OVERVIEW .....                                                                   | 49        |
| 2.1.1 <i>Central banks' mandates</i> .....                                                                       | 50        |
| 2.1.2 <i>Operational framework</i> .....                                                                         | 51        |
| 2.1.3 <i>Execution of transactions: relevance of EU counterparts</i> .....                                       | 51        |
| 2.1.4 <i>Transparency of transactions</i> .....                                                                  | 52        |
| 2.1.5 <i>Methodology</i> .....                                                                                   | 53        |
| 2.1.6 <i>The appropriateness and necessity assessment</i> .....                                                  | 55        |
| 2.2 EU BENCHMARK: TRANSPARENCY FOR NON-EQUITY INSTRUMENTS UNDER MiFIR.....                                       | 58        |
| 2.2.1 <i>Scope: venues and instruments</i> .....                                                                 | 58        |
| 2.2.2 <i>Pre-trade transparency</i> .....                                                                        | 60        |
| 2.2.3 <i>Post-trade transparency</i> .....                                                                       | 61        |
| 2.2.4 <i>Transparency waivers</i> .....                                                                          | 62        |
| 2.2.5 <i>Provisions for Systematic Internalisers (SIs)</i> .....                                                 | 65        |
| 2.3 COUNTRY ANALYSIS .....                                                                                       | 68        |
| 2.3.1 <i>The Reserve Bank of Australia (RBA)</i> .....                                                           | 69        |
| 2.3.2 <i>The Central Bank of Brazil (BCB)</i> .....                                                              | 76        |
| 2.3.3 <i>The Bank of Canada (BoC)</i> .....                                                                      | 84        |

|          |                                                                                                                                                            |            |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 2.3.4    | <i>The People's Bank of China (PBoC)</i> .....                                                                                                             | 93         |
| 2.3.5    | <i>The Hong Kong Monetary Authority (HKMA)</i> .....                                                                                                       | 100        |
| 2.3.6    | <i>The Reserve Bank of India (RBI)</i> .....                                                                                                               | 109        |
| 2.3.7    | <i>The Bank of Japan (BoJ)</i> .....                                                                                                                       | 116        |
| 2.3.8    | <i>The Bank of Mexico (Banxico)</i> .....                                                                                                                  | 124        |
| 2.3.9    | <i>The Monetary Authority of Singapore (MAS)</i> .....                                                                                                     | 130        |
| 2.3.10   | <i>The Bank of Korea (BoK)</i> .....                                                                                                                       | 138        |
| 2.3.11   | <i>The Swiss National Bank (SNB)</i> .....                                                                                                                 | 144        |
| 2.3.12   | <i>The Central Bank of the Republic of Turkey (CBRT)</i> .....                                                                                             | 150        |
| 2.3.13   | <i>The United States Federal Reserve System (US Fed)</i> .....                                                                                             | 157        |
| 2.3.14   | <i>The Bank of International Settlements (BIS)</i> .....                                                                                                   | 168        |
| <b>3</b> | <b>ANALYSIS UNDER ARTICLE 6(1) AND 6(5) OF THE MARKET ABUSE<br/>REGULATION (MAR) FOR THIRD-COUNTRY CENTRAL BANKS AND DEBT<br/>MANAGEMENT OFFICES .....</b> | <b>173</b> |
| 3.1      | APPROPRIATENESS AND NECESSITY ASSESSMENT .....                                                                                                             | 173        |
| 3.1.1    | <i>Criteria for the assessment</i> .....                                                                                                                   | 173        |
| 3.1.2    | <i>Comparative overview</i> .....                                                                                                                          | 174        |
| 3.2      | EUROPEAN BENCHMARK.....                                                                                                                                    | 181        |
| 3.2.1    | <i>Insider dealing and unlawful disclosure of information rules</i> .....                                                                                  | 181        |
| 3.2.2    | <i>Market manipulation rules</i> .....                                                                                                                     | 184        |
| 3.2.3    | <i>Exemption from market abuse rules</i> .....                                                                                                             | 187        |
| 3.2.4    | <i>Risk management standards</i> .....                                                                                                                     | 187        |
| 3.2.5    | <i>Central bank and debt management office framework</i> .....                                                                                             | 188        |
| 3.3      | EU CENTRAL BANK AND DEBT MANAGEMENT OFFICE STANDARDS .....                                                                                                 | 192        |
| 3.3.1    | <i>European Central Bank</i> .....                                                                                                                         | 192        |
| 3.3.2    | <i>Belgium</i> .....                                                                                                                                       | 200        |
| 3.3.3    | <i>Czech Republic</i> .....                                                                                                                                | 203        |
| 3.3.4    | <i>Denmark</i> .....                                                                                                                                       | 206        |
| 3.3.5    | <i>France</i> .....                                                                                                                                        | 209        |
| 3.3.6    | <i>Germany</i> .....                                                                                                                                       | 211        |
| 3.3.7    | <i>Italy</i> .....                                                                                                                                         | 215        |
| 3.3.8    | <i>Poland</i> .....                                                                                                                                        | 217        |
| 3.3.9    | <i>Spain</i> .....                                                                                                                                         | 220        |
| 3.3.10   | <i>Sweden</i> .....                                                                                                                                        | 222        |
| 3.3.11   | <i>The Netherlands</i> .....                                                                                                                               | 228        |
| 3.3.12   | <i>The United Kingdom</i> .....                                                                                                                            | 229        |
| 3.4      | THIRD-COUNTRY ANALYSIS.....                                                                                                                                | 238        |
| 3.4.1    | <i>Australia</i> .....                                                                                                                                     | 238        |
| 3.4.2    | <i>Brazil</i> .....                                                                                                                                        | 251        |
| 3.4.3    | <i>Canada</i> .....                                                                                                                                        | 266        |
| 3.4.4    | <i>People's Republic of China</i> .....                                                                                                                    | 282        |
| 3.4.5    | <i>Hong Kong SAR</i> .....                                                                                                                                 | 290        |
| 3.4.6    | <i>India</i> .....                                                                                                                                         | 303        |
| 3.4.7    | <i>Japan</i> .....                                                                                                                                         | 310        |
| 3.4.8    | <i>Mexico</i> .....                                                                                                                                        | 319        |
| 3.4.9    | <i>Singapore</i> .....                                                                                                                                     | 331        |
| 3.4.10   | <i>South Korea</i> .....                                                                                                                                   | 338        |
| 3.4.11   | <i>Switzerland</i> .....                                                                                                                                   | 347        |
| 3.4.12   | <i>Turkey</i> .....                                                                                                                                        | 357        |
| 3.4.13   | <i>The United States</i> .....                                                                                                                             | 367        |
| <b>4</b> | <b>GLOSSARY .....</b>                                                                                                                                      | <b>389</b> |
| <b>5</b> | <b>ANNEXES .....</b>                                                                                                                                       | <b>392</b> |
| 5.1      | QUESTIONNAIRE-BASED SURVEY .....                                                                                                                           | 392        |
| 5.1.1    | <i>Data gathering</i> .....                                                                                                                                | 396        |

|              |                                                                         |     |
|--------------|-------------------------------------------------------------------------|-----|
| <b>5.1.2</b> | <b><i>Sample questionnaires</i></b> .....                               | 397 |
| <b>5.2</b>   | <b>ADDITIONAL LEGAL PROVISIONS</b> .....                                | 414 |
| 5.2.1        | <i>BCB</i> .....                                                        | 414 |
| 5.2.2        | <i>HKMA</i> .....                                                       | 415 |
| 5.2.3        | <i>BoJ</i> .....                                                        | 416 |
| 5.2.4        | <i>Banxico</i> .....                                                    | 416 |
| 5.2.5        | <i>MAS</i> .....                                                        | 417 |
| 5.2.6        | <i>BoK</i> .....                                                        | 417 |
| 5.2.7        | <i>SNB</i> .....                                                        | 418 |
| 5.2.8        | <i>CBRT</i> .....                                                       | 419 |
| 5.2.9        | <i>FED</i> .....                                                        | 421 |
| 5.2.10       | <i>BIS</i> .....                                                        | 427 |
| 5.3          | SELECTED LIST OF REFERENCES (THEORETICAL BACKGROUND) .....              | 428 |
| <b>5.4</b>   | <b>SELECTED LIST OF REFERENCES (COMPARATIVE ANALYSIS FOR MAR)</b> ..... | 430 |

## List of Figures

|                                                                                                                           |    |
|---------------------------------------------------------------------------------------------------------------------------|----|
| FIGURE 1. RBA ASSETS (END JUNE 2013, \$AUS MN) .....                                                                      | 21 |
| FIGURE 2. BCB ASSETS (END DECEMBER 2013, THOUSANDS OF REALS) .....                                                        | 23 |
| FIGURE 3. BoC ASSETS (END DECEMBER 2013, \$CAD MN) .....                                                                  | 25 |
| FIGURE 4. PBoC ASSETS (END DECEMBER 2013, 100 MN YUAN) .....                                                              | 26 |
| FIGURE 5. HKMA ASSETS (END DECEMBER 2012, \$HK MN) .....                                                                  | 27 |
| FIGURE 6. RBI BALANCE SHEET – ASSETS/LIABILITIES (END JUNE 2014 AND 2013, THOUSANDS OF RUPEES) .....                      | 29 |
| FIGURE 7. BOJ ASSETS (END MARCH 2014, YEN) .....                                                                          | 30 |
| FIGURE 8. BANXICO ASSETS (END DECEMBER, 2013, MXN MN) .....                                                               | 32 |
| FIGURE 9. MAS ASSETS (END MARCH 2014, \$SGD MN) .....                                                                     | 33 |
| FIGURE 10. BoK ASSETS (END DECEMBER 2013, KRW) .....                                                                      | 34 |
| FIGURE 11. SNB ASSETS (END DECEMBER 2013, CHF MN) .....                                                                   | 35 |
| FIGURE 12. CRBT ASSETS (END DECEMBER 2013, TURKISH LIRA) .....                                                            | 37 |
| FIGURE 13. FED ASSETS (END DECEMBER 2013, USD MN) .....                                                                   | 38 |
| FIGURE 14. BIS ASSETS (END MARCH 2014 AND 2013) .....                                                                     | 40 |
| FIGURE 15. TOTAL NUMBER AND VALUE OF TRANSACTIONS (€MN) IN EU FINANCIAL INSTRUMENTS .....                                 | 43 |
| FIGURE 16. VALUE OF TRANSACTIONS IN EU INSTRUMENTS (BY CENTRAL BANK) .....                                                | 44 |
| FIGURE 17. TOTAL NUMBER AND VALUE OF TRANSACTIONS (€MN) WITH EU COUNTERPARTIES .....                                      | 45 |
| FIGURE 18. VALUE OF TRANSACTIONS WITH EU COUNTERPARTIES (BY CENTRAL BANK, €MN) .....                                      | 45 |
| FIGURE 19. EU COUNTERPARTIES VS EU INSTRUMENTS (BY TOTAL VALUE) .....                                                     | 46 |
| FIGURE 20. EU COUNTERPARTIES VS EU INSTRUMENTS, 2009-13 AVERAGE SIZE (€MN) .....                                          | 47 |
| FIGURE 21. AVERAGE VALUE OF TRANSACTIONS IN EU FINANCIAL INSTRUMENTS AND WITH EU COUNTERPARTIES, 2009 VS 2013 (€MN) ..... | 47 |

## List of Tables

|                                                                                                     |     |
|-----------------------------------------------------------------------------------------------------|-----|
| TABLE 1. BALANCE SHEET – ASSETS (END DECEMBER 2014) .....                                           | 19  |
| TABLE 2. DATASET SUBMISSIONS .....                                                                  | 42  |
| TABLE 3. AVERAGE SIZE OF TRANSACTION, 2009-13 (€MN) .....                                           | 46  |
| TABLE 4. SUMMARY TABLE AND ASSESSMENT .....                                                         | 57  |
| TABLE 5. WAIVERS' THRESHOLDS .....                                                                  | 65  |
| TABLE 6. OPERATIONS AND INSTRUMENTS .....                                                           | 70  |
| TABLE 7. OPERATIONS AND INSTRUMENTS .....                                                           | 78  |
| TABLE 8. OPERATIONS AND INSTRUMENTS .....                                                           | 87  |
| TABLE 9. PRIMARY DEALERS .....                                                                      | 89  |
| TABLE 10. RELEVANCE OF EXECUTION SYSTEMS .....                                                      | 89  |
| TABLE 11. OPERATIONS AND INSTRUMENTS .....                                                          | 95  |
| TABLE 12. ELIGIBLE COUNTERPARTIES .....                                                             | 96  |
| TABLE 13. OPERATIONS AND INSTRUMENTS .....                                                          | 102 |
| TABLE 14. PRIMARY DEALERS AND MARKET MAKERS .....                                                   | 103 |
| TABLE 15. OPERATIONS AND INSTRUMENTS .....                                                          | 111 |
| TABLE 16. OPERATIONS AND INSTRUMENTS .....                                                          | 118 |
| TABLE 17. OPERATIONS AND INSTRUMENTS .....                                                          | 126 |
| TABLE 18. RELEVANCE OF EXECUTION TYPES .....                                                        | 127 |
| TABLE 19. OPERATIONS AND INSTRUMENTS .....                                                          | 132 |
| TABLE 20. RELEVANCE OF EXECUTION TYPES .....                                                        | 134 |
| TABLE 21. OPERATIONS AND INSTRUMENTS .....                                                          | 139 |
| TABLE 22. OPERATIONS AND INSTRUMENTS .....                                                          | 146 |
| TABLE 23. OPERATIONS AND INSTRUMENTS .....                                                          | 151 |
| TABLE 24. OPERATIONS AND INSTRUMENTS .....                                                          | 159 |
| TABLE 25. COMPARATIVE TABLE .....                                                                   | 175 |
| TABLE 26. MiFIR QUESTIONNAIRE (SITUATION AS OF APRIL 28 <sup>TH</sup> , 2015) .....                 | 393 |
| TABLE 27. MAR QUESTIONNAIRE (SITUATION AS OF APRIL 28 <sup>TH</sup> , 2015) .....                   | 394 |
| TABLE 28. MAR QUESTIONNAIRE – EU CBS AND DMOs (SITUATION AS OF APRIL 28 <sup>TH</sup> , 2015) ..... | 395 |
| TABLE 29. GENERAL GOVERNMENT GROSS DEBT – ANNUAL DATA (EUR MN) .....                                | 396 |



## Executive Summary

The main purpose of this study is to provide a basis for the European Commission's assessment on whether granting exemptions in accordance with Article 1.9 of the Markets in Financial Instruments Regulation (hereinafter MiFIR)<sup>1</sup> to non-EU central banks and under Article 6.5 of the Market Abuse Regulation (hereinafter MAR)<sup>2</sup> to non-EU central banks and other public bodies in charge of public debt management, are appropriate and necessary. In the case of MiFIR, the exemption covers transparency requirements with regard to non-equity financial instruments, i.e. transparency requirements under Articles 8, 10, 18 and 21 (see Article 1.6 of MiFIR). This study will be the basis for the reports that the European Commission is required to submit to the European Parliament and the Council.

This study is built around two main assessments: i) an economic analysis of central banks and DMOs' mandates and operational procedures; and ii) a legal analysis of the market context and the operational and transparency frameworks applicable to third-country central banks (under the scope of MiFIR and MAR) and DMOs (only under the scope of MAR). The report covers the following non-EU countries: Australia, Brazil, Canada, China, Hong Kong SAR, India, Japan, Mexico, Singapore, South Korea, Switzerland, Turkey and the United States – and the Bank for International Settlements (hereinafter BIS) under the MiFIR scope. The report also reviews the main framework for market transparency and market abuse applied in the European Union to build the relevant benchmark used for the assessment of the third-country frameworks.

The study contains three sections.

The first section presents the objectives of central banks and public bodies entrusted with or intervening in public debt management, and describes under which circumstances market operations in pursuit of those objectives may promote a public interest and thereby qualify for an exemption. Furthermore, this section provides a snapshot of the main asset components in the balance sheets of non-EU central banks and some European central banks. Data on the number and volume of transactions with EU counterparties or in EU-listed financial instruments for the non-EU central banks, which have been collected via a survey, are also discussed in this section.

The second and third sections provide a legal analysis of the market and operational transparency, as well as the market abuse rules, in the third-country jurisdictions identified above. In particular, the second section reviews the current operational and transparency framework for central banks in non-EU jurisdictions. The analysis in the third section covers the market abuse rules applicable to these Central banks and DMOs. Both sections also assess the existence in those jurisdictions of similar exemptions to the ones in Article 1 paras. 6 and 9 of MiFIR and Article 6 paras. 1 and 5 of MAR. Finally, via the creation of a European benchmark, each section defines the key criteria for market and operations transparency and market abuse regimes to verify the overall consistency between the European and the third-country framework and reach a conclusion about the appropriateness and necessity of the exemption from MiFIR and MAR.

---

<sup>1</sup> Regulation (EU) 600 /2014 of the European Parliament and of the Council of 15 May on markets in financial instruments.

<sup>2</sup> Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.

## **Central banks' and DMOs' objectives**

Central banks and DMOs manage different activities to promote a public interest. DMOs' key objective aims at minimising the cost of capital for the government that ultimately uses taxpayers' money and ensuring the smooth functioning of the public services for all citizens. Monetary and currency stability, under Article 1.6 of MiFIR and Recital 13 of MAR, and financial stability, under Article 1.6 of MiFIR, are consistent with the mandate of central banks around the world and the vast academic literature on the topic.

Price and currency stability were the two most common objectives among third-country central banks. The latter is a prominent concern particularly for central banks operating under a currency peg or frequently reviewing their currency targets. Financial stability plays a crucial role in times of crisis. Other objectives, such as growth or investments, usually play only a limited role in central banks' mandates.

## **Empirical analysis: balance sheets and transaction data**

The balance sheet analysis has identified some common characteristics in the strategy and execution of policy objectives by central banks. First, most central banks have a domestic portfolio that they use for monetary policy purposes. It mostly aims at ensuring control over the transmission channels of monetary policy to the domestic economy. A second element is the different portfolio for FX market operations, which mostly involves the management of currency reserves. This portfolio is typically larger for central banks in emerging markets, which often have to deal with less-liquid FX markets and therefore operate under less flexible targets. For those central banks, the size of domestic portfolio is small, as the domestic activity is proportionally smaller. However, transaction data show that central banks with currency targets, even with a small portfolio, execute a relatively high volume of transactions (both in terms of value and number) compared to central banks with larger portfolios and more stable currencies. There is thus great diversity among central banks, which means that an increase in transaction costs, due to market impact caused by greater disclosure, may have potentially significant effects also for some small but active central banks, with potential repercussions on the effectiveness of monetary policies.

The responses to the survey and the empirical analysis suggest that transactions for 'pure' investment purposes, i.e. outside the scope of the MiFIR exemption, entered into by non-EU central banks and BIS are marginal. Moreover, the average size per transaction is very high, which increases the chances that disclosure requirements can impact the cost of those transactions. The average size of individual transactions between 2009 and 2013 was around €71 million for transactions in EU-listed financial instruments and €51 million for transactions with EU counterparties, which is consistent with wholesale trading activity.

## **General overview**

The analysis shed some light on the various operational and transparency frameworks of central banks and DMOs across the world. Concerning the scope of MiFIR, the operational and disclosure frameworks for the selected third country central banks are broadly comparable to those adopted by central banks belonging to the European System of Central Banks (ESCB). The operations are mostly bilateral with specialised intermediaries. There is no voluntary disclosure of individual transaction data (only aggregates and only by some of the entities under review), except for the Federal Reserve, which publishes individual transaction data with a two-year time lag.

A comparative assessment of market abuse rules applicable to central banks and DMOs involves both legal and judicial systems (i.e. enforcement mechanisms). It also combines statutory law with self-regulatory actions, such as ethics codes and internal procedures. Risk management standards are widely applied, but none of the

respondents was able to share information even under assurances of complete confidentiality.

Exemptions for third-country central banks and DMOs from transparency and market abuse rules is not widespread and only occasionally available in the jurisdictions under review and mostly restricted to a specific asset class (e.g. government bonds).

### **Appropriateness and necessity assessment: MiFIR exemption**

The analysis of the appropriateness and necessity of granting third-country central banks an exemption from market transparency requirements under MiFIR (article 1, paras. 6 and 9) was based on three key criteria and a handful of additional requirements, in cases where the central bank would not meet two of the three key criteria. The key criteria focused on: the market transparency regime applicable to central bank transactions; the transparency of the operational framework of the central bank; and the volume of transactions that the central bank executed with EU counterparties or in EU-listed financial instruments. If the central bank did not meet two out of the three key criteria, the assessment also looked at: i) the presence of a notification procedure to notify the exemption to the counterparty (as required by level 2 legislation); ii) the ability of the central bank to distinguish between transactions for the key policy purposes identified by MiFIR and transactions executed only for 'pure' investment purposes; and iii) the existence of a similar exemption available to foreign central banks in the jurisdiction under review.

In line with the above listed requirements, an exemption from Articles 8, 10, 18 and 21 of MiFIR would be appropriate and necessary for all the central banks in the countries under review, which provided sufficient information for a final assessment.<sup>3</sup> See the table below for more details.

### **Appropriateness and necessity assessment: MAR exemption**

In all the jurisdictions, both insider dealing and market manipulation are punished by means of administrative sanctions and/or criminal penalties. The overall goal of preventing and punishing conduct that would be considered market abuse under MAR is broadly achieved, despite divergences emerge as to the level of enforcement and the level of detail of internal rules of conduct and/or ethics applicable to central banks and DMOs. In particular, rules restricting personal use of confidential information, trading of assets by staff members on their own account, measures promoting staff independence and neutralizing the risk of staff conflicts of interest are available in all the jurisdictions under review. Risk management standards and rules of conduct and/or ethics made applicable to staff members and subject to effective enforcement by internal compliance functions are to a large extent available for both third-country central banks and national central banks CBs belonging to the European System of Central Banks (ESCB), as well as for DMOs, although little details were disclosed about risk-management standards due to confidentiality reasons. In particular, while in a few jurisdictions central banks are exempt from the application of the market abuse regulation<sup>4</sup>, their staff members always remain subject to such rules when carrying out transactions or orders, or acting, directly or indirectly, on their own account.

---

<sup>3</sup> Insufficient information and transaction data from People's Bank of China (PBoC) and the Bank for International Settlements (BIS) does not allow a complete analysis of the appropriateness and necessity of the exemption.

<sup>4</sup> With regard to transactions, orders or behaviour in pursuit of monetary, exchange rate and public debt management policy.

The final assessment concludes that the exemption under Article 6, paras. 1 and 5 of MAR would be appropriate and necessary for all the central banks and DMOs, which provided sufficient information.<sup>5</sup> See the following table for more details.

---

<sup>5</sup> The information provided by the Chinese DMO or publicly available is insufficient to make a thorough assessment of the market abuse and operational framework under which the DMO operates. Therefore, no assessment of appropriateness and necessity of the exemption could be made.

## MiFIR exemption: overview

| Key criteria       |                     |                          |           | Other criteria                  |                               |                                             |                                        | Exemption |
|--------------------|---------------------|--------------------------|-----------|---------------------------------|-------------------------------|---------------------------------------------|----------------------------------------|-----------|
| Central bank       | Market transparency | Operational transparency | Necessity | Distinction transaction purpose | Notification procedure        | Foreign CBs exemption                       | Execution type                         |           |
| <b>Australia</b>   | Low                 | Medium                   | Yes       | Yes                             | No, but ready to implement it | Yes                                         | Bilateral                              | Yes       |
| <b>Brazil</b>      | Medium              | Medium                   | Yes       | Yes                             | Yes                           | No                                          | Bilateral (10-50%)<br>Venues (10-50%)  | Yes       |
| <b>Canada</b>      | Medium              | Medium                   | Yes       | Yes                             | No, but ready to implement it | Yes (if local govies or foreign securities) | Bilateral                              | Yes       |
| <b>China</b>       | Low                 | Medium                   | n/a       | Yes                             | No, but ready to implement it | No                                          | Bilateral                              | n/a       |
| <b>Hong Kong</b>   | Low                 | Medium                   | Yes       | Yes                             | Yes                           | No                                          | Bilateral                              | Yes       |
| <b>India</b>       | Medium              | Medium                   | No        | Yes                             | No, but ready to implement it | Yes (no reporting)                          | Bilateral                              | Yes       |
| <b>Japan</b>       | Medium              | Medium                   | No        | Yes                             | No, but ready to implement it | Implicit                                    | Bilateral                              | Yes       |
| <b>Mexico</b>      | Medium              | Medium                   | No        | Yes                             | Yes                           | No                                          | Bilateral (10-50%)<br>Venues (10-50%)  | Yes       |
| <b>Singapore</b>   | Medium              | Medium                   | Yes       | Yes                             | No, but ready to implement it | No                                          | Bilateral (50-100%)<br>Venues (10-50%) | Yes       |
| <b>Korea</b>       | Medium              | Low                      | Yes       | Yes                             | No, but ready to implement it | No                                          | Bilateral<br>Venues                    | Yes       |
| <b>Switzerland</b> | High                | Medium                   | Yes       | Yes                             | No, but ready to implement it | No                                          | Venue (SIX)                            | Yes       |
| <b>Turkey</b>      | High                | Medium                   | Yes       | Yes                             | No, but ready to implement it | No                                          | Bilateral<br>Venue                     | Yes       |
| <b>USA</b>         | High                | High                     | No        | Yes                             | No                            | Yes (if local govies)                       | Bilateral                              | Yes       |
| <b>BIS</b>         | Not applicable      | Low                      | n/a       | Yes                             | n/a                           | Not applicable                              | Bilateral<br>Venue                     | n/a       |

Note: Please, see sections 2.1.5 and 2.1.6 for more details about the methodology applied for the final scoring.

## MAR exemption: comparative overview

| Insider dealing | Inside information disclosure | Market manipulation | CB/DMO | Risk-management | Confidential information | Private transactions | Independence and conflicts of | Enforcement | Exemption |
|-----------------|-------------------------------|---------------------|--------|-----------------|--------------------------|----------------------|-------------------------------|-------------|-----------|
|-----------------|-------------------------------|---------------------|--------|-----------------|--------------------------|----------------------|-------------------------------|-------------|-----------|

|                  |            | rules | rules | rules | exemption              | standards                 |                                         | in assets                                     | interest                                                       |                                 |     |
|------------------|------------|-------|-------|-------|------------------------|---------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|---------------------------------|-----|
| <b>Australia</b> | <b>CB</b>  | Yes   | Yes   | Yes   | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interest              | Internal unit enforcing actions | Yes |
|                  | <b>DMO</b> | Yes   | Yes   | Yes   | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |
| <b>Brazil</b>    | <b>CB</b>  | Yes   | Yes   | Yes   | No                     | Applied and disclosed     | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |
|                  | <b>DMO</b> | Yes   | Yes   | Yes   | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interest              | Internal unit enforcing actions | Yes |
| <b>Canada</b>    | <b>CB</b>  | Yes   | Yes   | Yes   | Yes (only domestic CB) | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |
|                  | <b>DMO</b> | Yes   | Yes   | Yes   | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Internal unit enforcing actions | Yes |
| <b>China</b>     | <b>CB</b>  | Yes   | Yes   | Yes   | Yes (only domestic CB) | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |

|                      |                    |     |     |     |                                      |                                      |                                         |                                               |                                                                |                                      |     |
|----------------------|--------------------|-----|-----|-----|--------------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|--------------------------------------|-----|
|                      | <b>DMO</b>         | Yes | Yes | Yes | Not publicly available/<br>disclosed | Not publicly available/<br>disclosed | Professional secrecy                    | Not publicly available/disclosed              | Independence duty                                              | Disciplinary actions up to dismissal | n/a |
| <b>Hong Kong SAR</b> | <b>CB</b>          | Yes | Yes | Yes | Yes (only domestic CB)               | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions      | Yes |
|                      | <b>DMO</b>         | Yes | Yes | Yes | Yes (only domestic DMO)              | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Internal unit enforcing actions      | Yes |
| <b>India</b>         | <b>CB/<br/>DMO</b> | Yes | Yes | Yes | Yes (only domestic CB)               | Applied but not disclosed            | Professional secrecy                    | Restrictions in trading and holding of assets | Independence duty                                              | Internal unit enforcing actions      | Yes |
| <b>Japan</b>         | <b>CB</b>          | Yes | Yes | Yes | No                                   | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty                                              | Disciplinary actions up to dismissal | Yes |
|                      | <b>DMO</b>         | Yes | Yes | Yes | Not publicly available/<br>disclosed | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Disciplinary actions up to dismissal | Yes |
| <b>Mexico</b>        | <b>CB</b>          | Yes | Yes | Yes | Yes (only domestic CB)               | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions      | Yes |
|                      | <b>DMO</b>         | Yes | Yes | Yes | No                                   | Applied but                          | Professional secrecy and                | Keep record and report                        | Independence duty and                                          | Internal unit enforcing              | Yes |

|                    |                |     |     |     |                         | not disclosed                        | no private use                          | assets holdings/ transactions                 | disqualification if unavoidable conflict                       | actions                                        |     |
|--------------------|----------------|-----|-----|-----|-------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|------------------------------------------------|-----|
| <b>Singapore</b>   | <b>CB/ DMO</b> | Yes | Yes | Yes | Yes (only domestic CB)  | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Internal unit enforcing actions                | Yes |
| <b>South Korea</b> | <b>CB</b>      | Yes | Yes | Yes | No                      | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions                | Yes |
|                    | <b>DMO</b>     | Yes | Yes | Yes | No                      | Not publicly available nor disclosed | Not publicly available nor disclosed    | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions (no dismissal) | Yes |
| <b>Switzerland</b> | <b>CB</b>      | Yes | Yes | Yes | Yes (only domestic CB)  | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions                | Yes |
|                    | <b>DMO</b>     | Yes | Yes | Yes | Yes (only domestic DMO) | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Disciplinary actions up to dismissal           | Yes |
| <b>Turkey</b>      | <b>CB</b>      | Yes | Yes | Yes | Yes (only domestic CB)  | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions (no dismissal) | Yes |
|                    | <b>DMO</b>     | Yes | Yes | Yes | No                      | Applied but                          | Professional secrecy and                | Restrictions in trading and                   | Independence duty and                                          | Internal unit enforcing                        | Yes |



|            |            |     |     |     |                                   | not disclosed                        | no private use                          | holding of assets                             | disqualification if unavoidable conflict                       | actions (no dismissal)          |     |
|------------|------------|-----|-----|-----|-----------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|---------------------------------|-----|
| <b>USA</b> | <b>CB</b>  | Yes | Yes | Yes | Yes (only domestic CB)            | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |
|            | <b>DMO</b> | Yes | Yes | Yes | Not publicly available/ disclosed | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |

*Note: 'CB' stands for 'central bank' and 'DMO' stands for 'debt management office'. Please, see section 3.1 for more details about the methodology applied for the final scoring.*

## **Abstract**

*In accordance with Article 1.9 of the Markets in Financial Instruments Regulation (MiFIR) and Article 6.5 of the Market Abuse Regulation (MAR), this study reviews central banks' and Debt Management Offices' (DMOs) mandates and operational procedures for a selected group of non-EU countries. It describes the main legal framework for market abuse and for the transparency of operations and markets applicable to third-country (non-EU) central banks. The study also offers a snapshot of the current transparency of central banks' balance sheets and trading activities with EU counterparts or in EU-listed financial instruments. For DMOs, the study only covers the market abuse regime, as DMOs are outside the scope of the MiFIR exemption. Market transparency and market abuse frameworks applicable in the EU are also discussed in this study, as a benchmark for the assessment of third-country regimes. The countries covered include Australia, Brazil, Canada, China, Hong Kong SAR, India, Japan, Mexico, Singapore, South Korea, Switzerland, Turkey and the United States (as well as the BIS under MiFIR). The report concludes that the extension of the exemptions under MiFIR and MAR is appropriate and necessary for all central banks and DMOs, with the exception of two institutions under the MiFIR regime and one institution under the MAR regime due to insufficient information and/or transaction data.*

## **Résumé**

*En accord avec l'Article 1.9 du Règlement concernant les marchés d'instruments financiers (MiFIR) et l'Article 6.5 du Règlement sur l'abus de marché (MAR), cette étude examine les mandats et procédures opérationnelles des banques centrales et des agences de gestion de la dette publique pour un certain nombre de pays hors de l'Union européenne. L'étude décrit les principaux cadres juridiques pour l'abus de marché et pour la transparence des opérations et marchés applicables aux banques centrales de pays tiers (non inclus dans l'Union européenne). L'étude offre également un aperçu de la transparence actuelle des bilans des banques centrales et de leurs activités de « trading » avec des contreparties de l'Union européenne ou des instruments financiers cotés dans l'Union européenne. Pour les agences de gestion de la dette, l'étude couvre uniquement le régime des abus de marché, puisque ces bureaux ne sont pas inclus dans le champ d'application de l'exemption du MiFIR. Les cadres de transparence de marché et d'abus de marché applicables au sein de l'Union européenne sont également traités dans cette étude, en tant que référence pour l'évaluation des régimes de pays tiers. Les pays couverts incluent l'Australie, le Brésil, le Canada, la Chine, la région administrative spéciale de Hong Kong, l'Inde, le Japon, le Mexique, Singapour, la Corée du Sud, la Suisse, la Turquie et les États-Unis (ainsi que la BRI sous le MiFIR). Le rapport conclut que l'extension des exemptions sous le MiFIR et le MAR est appropriée et nécessaire pour toutes les banques centrales et organismes de gestion de la dette, à l'exception de deux institutions sous le MiFIR régime et une institution sous le MAR régime pour lesquelles des informations et/ou des données de transaction ont été insuffisantes.*

# **1 A theoretical background on the eligibility of central banks and DMOs' market operations**

This section illustrates the objectives of central banks and public bodies charged with or intervening in public debt management and describes under which circumstances market operations may protect a public interest and so shall receive a different treatment. This section also includes an empirical analysis, which reviews a dataset of transaction data. The analysis sets the scene for the cross-country analysis and the 'appropriateness and necessity' of the exemption.

## **1.1 Central banks' objectives**

Central banks operate according to the mandate that they receive at their foundation. Central banks' mandates may differ according to the country-specific legal and economic framework in which the financial system operates. Central banks often align their objectives and operational strategy with the economic policy of the domestic government. As a result, during the recent financial crisis, central banks have come to the attention as crucial actors in preserving financial stability and ensuring the proper functioning of the financial system by shielding major financial institutions from bankruptcy and knock-on effects (the so-called 'lender of last resort' function).

Central banks can thus act in the market in pursuit of different objectives (BIS, 2009b). Under Article 1.6 and 1.7 of MiFIR and Article 6.1 of MAR, four potential objectives have been identified:

1. Monetary stability
2. Foreign exchange (currency) stability
3. Financial stability
4. Investment

The first three objectives are consistent with the empirical observation of how central banking evolved, in particular after the end of the gold exchange standard in 1971. In addition, central banks may also have oversight and regulatory roles (e.g. payment systems and market infrastructure). The evolution of their role in the financial system over the years can also create overlaps between the different functions.

Market operations for investment purposes do not typically have a public good dimension, especially if the central bank also operates as a commercial entity. In those cases, the central bank simply acts to maximise profits or minimise risk exposure, like other private actors in the market.

The following sections illustrate the characteristics of the three sets of policy objectives that shall provide the theoretical background to an exemption for central banks.

### **1.1.1 Monetary stability**

Monetary stability policies are those central bank policies designed to support the public interest that is ultimately embedded in economic policies targeting aggregate demand and supply. Supporting the aggregate demand and supply takes place by acting on:

1. Prices (price stability policies); and/or
2. Quantities (output growth and/or employment).

Price stability, which central banks can pursue in conjunction with other macroeconomic objectives, is the monetary policy objective of most central banks around the world (BISb, 2009). In the last decade, in particular, many central banks adopted inflation targeting strategies. A systematic and sustained rise or decrease in the general price level above or below the target set by the central bank itself or its founding statute can create severe economic and financial instability. Over time, a high inflation rate, for instance, can reduce the economic agents' ability to make accurate financial decisions or to save enough for their intertemporal consumption. A very low inflation rate, on the other hand, could be associated with a fall in prices and wages for a prolonged period, thus exerting downward pressure on both aggregate demand and supply as it rations investment and consumption. Central banks typically associate low inflation (or deflation) with very weak economic conditions (Orphanides, 2014). The conventional approach to defining "price stability" is to look at the evolution of an aggregate measure of price for currently produced goods and services over the medium to long term. Depending on the chosen sectors, this could be either the CPI (consumer price index) or the GDP deflator, with or without a sectorial exemption (White, 2006).

Monetary policy actions may also target quantity indicators, such as output growth and employment, as an alternative way to stabilise aggregate demand and supply around what would be considered an optimal level (given macroeconomic conditions). Since the inception of the recent financial and economic crisis, as inflation continues to fall close to zero with weak or no economic growth, central banks are directly targeting output growth and employment with more aggressive monetary policies (also called 'unconventional' policies) to revive asset prices and ultimately investments (e.g. quantitative easing). Central banks also closely monitor financial markets to assess whether asset prices remain generally in line with historical trends and current market circumstances for the purpose of financial stability.

Taking into account macroeconomic conditions, central banks carry out open market operations that can involve buying and selling of eligible securities from an eligible set of counterparties under repo and reverse repo agreements or on an outright basis (see BIS, 2009a). In the past seven years, central banks in developed economies have found themselves reaching the zero lower bound policy rate and thus aggressively deploying their balance sheet in a variety of 'unconventional' monetary policies to stimulate economic recovery, improve financial conditions and ensure a proper transmission of monetary policy in disrupted financial markets (Hannounm, 2012; Eichegreen, 2011). Major central banks (Federal Reserve, Bank of England, European Central Bank and Bank of Japan) expanded their portfolio/holdings of securities either directly, through asset purchases programmes (quantitative easing, securities markets programme, covered bond purchase programmes, etc.), or indirectly, through the collateral provided in the framework of the refinancing operations (Bayoumi, 2014; White, 2013; Fawley, 2013). Most of these operations, nonetheless, can also be classified as operations for financial stability purposes. To draw a line between the two might be rather complicated in some instances.

## **Box 1. The Eurosystem and the US Federal Reserve**

The Treaty on the Functioning of the European Union (TFEU) establishes a clear hierarchy of objectives for the Eurosystem and assigns overriding importance to price stability. In the actual implementation of monetary policy decisions aimed at maintaining price stability, the Eurosystem should also take into account broader economic goals for the EU. These include, *inter alia*, full employment and balanced economic growth. The ECB Governing Council defines price stability as a year-on-year increase of below 2% in the Harmonised Index of Consumer Prices (HICP) of the euro area. The Governing Council has also clarified that, in the pursuit of price stability, it aims to maintain inflation rates below, but close to, 2% over the medium term.<sup>6</sup> The definition also clarifies that both inflation above 2% and negative inflation are inconsistent with price stability. In addition, the central bank system uses a two-pillar approach, including an economic and monetary analysis, to assess risks to price stability.

The Federal Open Market Committee (FOMC) implements monetary policy to help maintain an inflation rate of 2% over the medium term. The Committee judges that an inflation rate of 2%, as measured by the annual change in the price index for personal consumption expenditures or PCE, is most consistent over the longer run with the US Federal Reserve's dual mandate for price stability and maximum employment.<sup>7</sup> Non-monetary factors largely determine the maximum level of employment that affect the structure and dynamics of the labour market. In the most recent projections, FOMC participants' estimates of the longer-run normal rate of unemployment had a central tendency of 5.2% to 5.8%.

### **1.1.2 Foreign exchange stability**

Another way to look at price stability is the domestic price levels (purchasing power) compared to other countries' purchasing power via the level of real exchange rates. Not all countries, in effect, distinguish between price stability and currency stability (e.g. China; BIS, 2009b). Several objectives are often sought by central banks when implementing their foreign exchange policy, such as: contain currency volatility, prevent exchange rate misalignment, reverse exchange rate trends (appreciation versus depreciation), set a path/target for the exchange rate level, counter disorderly FX markets, manage FX reserves (Moreno, 2005; Shogo et al., 2006).

Most advanced economies have adopted free or controlled floating rate regimes and focus more on foreign reserve management rather than actively pursuing exchange rate management. In many emerging market economies, the objectives of foreign exchange policy have evolved along with a gradual change in their exchange rate regimes and frameworks for monetary policy, moving away from pegged or tightly managed exchange rate regimes (exchange rate crawls or bands) to flexible exchange rates (Gosh et al., 2014). In particular, over the past three decades, emerging market economies have also been accumulating large amounts of international reserves: precautionary demand against both current and capital account shocks as well as intentional or unintentional undervaluation of the exchange rate (Ostry et al., 2012).

---

<sup>6</sup> ECB's Governing Council, *The definition of price stability*, available at: [www.ecb.europa.eu/mopo/strategy/pricestab/html/index.en.html](http://www.ecb.europa.eu/mopo/strategy/pricestab/html/index.en.html)

<sup>7</sup> Federal Reserve's Federal Open Market Committee (FOMC), *Statement of longer-run goals and policy strategy*, available at: [www.federalreserve.gov/newsevents/press/monetary/20120125c.htm](http://www.federalreserve.gov/newsevents/press/monetary/20120125c.htm)

Central banks of advanced economies that manage major reserve currencies (Fed or ECB) generally do not intervene in the FX market (Basu & Aristomen, 2013). For example, the main purpose of the Eurosystem's foreign reserves is to ensure that, whenever needed, the Eurosystem has a sufficient amount of liquid resources for its foreign exchange policy operations involving non-EU currencies. Amongst the third-country jurisdictions under consideration, Hong Kong SAR is the only one characterised by a currency board arrangement, requiring the HKD monetary base to be at least 100% backed – and changes in it to be 100% matched – by corresponding changes in USD reserves held in the Exchange Fund at the fixed exchange rate of HKD 7.80 to USD 1.

Central banks typically exercise discretion in the timing and amount of their FX interventions. They typically seek coordination with the governmental body charged with economic policy coordination, because of the direct impact on the economy. Apart from directly purchasing/selling spot or forward foreign currency on the FX markets, indirect interventions can be performed through investments in foreign currency denominated assets, especially fixed income (Mohanty, 2014; Neely, 2008). During the financial crisis, major central banks (ECB, in coordination with the Federal Reserve, the Bank of Canada, the Bank of England, the Bank of Japan and the Swiss National Bank, People's Bank of China) have established bilateral currency swap agreements in order to provide the needed liquidity in foreign currency to their counterparties.

### **1.1.3 Financial stability**

There are many definitions of financial stability in economic literature.

Roger Ferguson of the Board of Governors of the US Federal Reserve System in 2002 gave a negative definition by stating what financial stability is not. *"Thus, I'll define financial instability as a situation characterized by these three basic criteria: (i) some important set of financial asset prices seem to have diverged sharply from fundamentals; and/or (ii) market functioning and credit availability, domestically and perhaps internationally, have been significantly distorted; with the result that (iii) aggregate spending deviates (or is likely to deviate)."*<sup>8</sup>

In its Financial Stability Review, the ECB offers a positive definition: *"Financial stability can be defined as a condition in which the financial system – intermediaries, markets and market infrastructures – can withstand shocks without major disruption in financial intermediation and in the effective allocation of savings to productive investment. The financial system can be said to be stable if it displays the following three key characteristics: i) the financial system should be able to efficiently and smoothly transfer resources from savers to investors; ii) financial risks should be assessed and priced reasonably accurately and should also be relatively well managed; iii) the financial system should be in such a condition that it can comfortably absorb financial and real economic surprises and shocks."*<sup>9</sup>

Central banks have long had a keen interest in financial stability. Most of them have some form of implicit/explicit mandate for preserving financial stability. Central banks are also increasingly monitoring markets via financial indicators published in sophisticated financial stability reviews. As part of its mandate, the ECB regularly

---

<sup>8</sup> Ferguson, Roger W (2002). "Should Financial Stability Be an Explicit Central Bank Objective?", Paper presented to an International Monetary Fund conference on Challenges to Central Banking from Globalized Financial Markets, Washington, D.C., page 2, available at: [www.imf.org/external/pubs/ft/seminar/2002/gfs/eng/ferguson.pdf](http://www.imf.org/external/pubs/ft/seminar/2002/gfs/eng/ferguson.pdf).

<sup>9</sup> ECB, 2014 Financial Stability Review, page 5, available at: [www.ecb.europa.eu/pub/pdf/other/financialstabilityreview201411.en.pdf?c3d9f6523b7445117fad0ef0ca4bfa5f](http://www.ecb.europa.eu/pub/pdf/other/financialstabilityreview201411.en.pdf?c3d9f6523b7445117fad0ef0ca4bfa5f)

monitors risks to financial stability and assesses the shock-absorbing capacity of the euro area financial system, in close collaboration with the ESCB's Financial Stability Committee. The ECB has published its Financial Stability Review, a semi-annual report on the stability of the euro area financial system, since 2004.

Financial instability poses a severe threat to macroeconomic objectives such as price stability and sustainable output growth. Moreover, the transmission of monetary policy to the real economy depends crucially on the smooth functioning of the financial system. Pre-crisis, the task of central banks was seen as a quite straightforward one: to maintain low and stable inflation through the control of the short-term interest rate, via money markets. Post-crisis, price stability has proven to be no guarantee against major financial and macroeconomic instability (Borio, 2011). Financial stability is not the sole responsibility of central banks and international organisations (e.g. Financial Stability Board); it is rather a shared responsibility between these organisations and national governments. In the aftermath of the financial crisis, new institutional arrangements for macro and micro prudential policies that also involve the central banks have been created. The actions of the central bank, in coordination with these new bodies, aim at increasing the foreseeability and the absorption capacity of the financial system against spillover effects of systemic risk.<sup>10</sup>

With regard to operations in the pursuit of financial stability, the financial crisis led to an immediate response from central banks, i.e. liquidity support for financial institutions via an emergency lending facility (e.g. fixed rate and full allotment or long-term refinancing operations), covered bonds purchases, involvement in rescue and restructuring plans. It could include temporary operations aimed at providing an immediate answer to single or multiple events destabilising the financial system. The temporary programmes aimed at curbing tensions in many segments of financial markets beyond short-term money markets may constitute a relevant part of this set of operations (see Nier, 2010).

## **1.1 Public Debt Management Offices' (DMOs) objectives and operational framework**

Public debt management (PDM) involves a complex set of risk management activities related to the borrowing needs of the sovereign institutions of a country. Well-functioning public debt management minimises the cost of capital to a government, given the country's underlying economic fundamentals, which ultimately minimises costs to taxpayers and ensures a regular cash flow for the smooth functioning of public services available to all citizens. Among the most important regular activities, public debt management involves: the measurement of sovereign risk, the containment of the costs of government borrowing operations, the use of market-based operational systems, sovereign assets and liabilities management, cash flow management, liquidity in government debt markets, risk management procedures, management of links between PDM and central banking operations, pricing and managing contingent liabilities, debt sustainability and restructuring analyses, PDM in the budgetary context, and multilateral financial and technical assistance.

### **1.1.1 Functions and objectives of PDM**

Institutional arrangements for PDM can take several forms across developed and emerging public debt markets, in line with domestic economic and financial

---

<sup>10</sup> Where "systemic risk" is defined as "the propagation of an agent's economic distress to other agent linked to the agent through financial transactions" (Rochet & Tirole, 1996).

conditions. Central banks, treasuries and separate debt management offices (DMOs) are involved to various degrees. During the last decade, an increasing number of OECD countries transferred the responsibility for the execution of public debt management to a unit within the Ministry of Finance or to a separate debt management office/agency. Economies with deep sovereign debt markets have formally separated PDM from other policy functions, due to potential conflicts of interest. In less developed sovereign debt markets, policy coordination or shared responsibility in PDM among institutions is more common. Typically, the central bank is responsible for some PDM functions or involved in PDM oversight. Functions related to PDM are usually organised in the back, middle and front office (World Bank, 2014). The back office is dealing with record keeping (including registry), management of inventories, securities settlement, payments and more administrative operations (e.g. debt registration or administration of loan documentation). The front office interacts with market participants and executes market operations (via different portfolio strategies). The more market-based funding, the more advanced front office activities are, which may involve hedging transactions (e.g. with currency swaps) or exchange. Front office also includes activities such as investment of excess liquidity, investors' relations or supporting the design of portfolio strategies by the middle office. The middle office defines risk management and public debt strategies, taking into account the needs of front and back office with the support of micro (risk/cost modelling) and macroeconomic modelling. The middle office may also monitor compliance and performance.

The general objective of PDM is to ensure that the government's financing needs and payment obligations are met at the lowest possible cost. An associated objective is to develop and maintain an efficient, well-functioning market for government securities (IMF, 2014).<sup>11</sup> PDM objectives are pursued through a range of means (CGFS, 2011),<sup>12</sup> including:

- Contract design (maturity, currency denomination, indexation to inflation or interest rates, other forms of conditionality);
- Issuance and placement (frequency and type of auctions, on- or offshore placement, investors base); and
- Use of derivatives that can move the cost and risk profile of the debt portfolio closer to the preferred portfolio composition and duration.

### **1.1.2 Market operations and risk**

A government debt portfolio is often the largest asset class available in the country and its management can have systemic implications via the government balance sheet and spillover effects on financial markets and institutions. In effect, PDM bodies operate systematically and with large amounts on both primary and secondary markets. The primary market is the market where government securities are first issued and placed to investors. The choice of primary market procedures is a dynamic process that depends on each country's initial and ongoing market conditions. The government securities are distributed to primary dealers/intermediaries or retail investors, if direct access is allowed, through the organisation of competitive auctions and syndications based on published calendars. Buyback or exchange programmes can also be implemented. In secondary markets, government securities are traded after they have been issued or sold on primary market. Those markets are mostly used to manage current

---

<sup>11</sup> IMF (2014). Revised Guidelines for Public Debt Management, prepared by IMF and World Bank staff, 26 March 2014.

<sup>12</sup> CGFS (2011). Interactions of sovereign debt management with monetary conditions and financial stability, Committee on the Global Financial System, CGFS Papers, No 42, May 2011.



exposures, which are created on the primary market or via over-the-counter operations.

The main risks faced by public debt portfolio managers are: market risk (interest rate risk and exchange rate risk), refinancing (rollover) risk, liquidity risk, credit risk and operational risk. The risk exposures of a public debt portfolio are determined by the composition of the debt portfolio, including the share of short-term versus longer-term debt in the portfolio (maturity structure and redemption profile of the debt), the variable interest rate relative to fixed rate debt, and domestic currency versus foreign currency denominated debt. The first categories of risks is relatively well known. Operational risk is, however, less well known (Magnusson et al., 2010).<sup>13</sup> Operational risk is usually defined as “the risk of loss (financial or non-financial) resulting from inadequate or failed internal processes, people and systems” (Basel II, 2004). Government debt managers from many jurisdictions started paying much more attention to this area in order to develop appropriate risk management frameworks (Tokac & Williams, 2013).<sup>14</sup>

### **1.1.3 Dynamic management strategies**

The public debt strategy relates in particular to the specific choice of debt instruments selected by the government to refinance existing obligations and meet any new borrowing requirements. These strategies are dynamic and need to be adapted to market conditions, as well as internal funding needs. In recent years, a significant amount of effort has gone towards gaining a better understanding of the debt-strategy problem (Melecky, 2012; 2007).<sup>15</sup> A well-designed public debt management strategy can help countries reduce their borrowing cost, contain financial risks and develop domestic markets. In well-developed debt markets, debt managers periodically determine a desired debt structure to guide new debt issuance for the subsequent period and monitor key risk indicators of the portfolio to guide the day-to-day management of the government’s debt portfolio (Wolswijk & de Haan, 2005).<sup>16</sup> Market participants are usually consulted periodically as part of the process to develop and manage the debt strategy. The institutions in charge of PDM are interested in obtaining feedback on a broad range of topics, such as the functioning of government bonds market, the terms of participation governing the auctions, investors’ demand, etc. A debt management strategy is considered to be more successful when a consistent macroeconomic policy framework involving fiscal, monetary, exchange rate and capital account policies is in place.

Developing a government securities market is a complex undertaking that depends on the financial and market system development of each individual country. Vulnerability is often greater for smaller and emerging market countries than for countries with larger and more developed domestic bond markets. Vulnerability is then exacerbated by high fiscal deficits, underdeveloped domestic bond markets, and large currency or maturity mismatches, which are also indicators of a less developed financial system. In the past decade, emerging market economies have become more resilient to individual shocks, fiscal deficits and public debt levels have declined, domestic financing has increased, and the share of foreign currency

---

<sup>13</sup> Magnusson, Tomas, Prasad, Abha, Storkey, Ian (2010). “Guidance for Operational Risk Management in Government Debt Management”, *World Bank Policy Papers*, Economic and Debt Policy Department.

<sup>14</sup> Tokaç, Hakan, Williams, Mike (2013). “Government Debt Management and Operational Risk”, *SIGMA Papers*, No. 50, OECD Publishing.

<sup>15</sup> Melecky, Martin (2012). “Formulation of Public Debt Management Strategies: An Empirical Study of Possible Drivers”, *Economic Systems*, Vol. 36, No. 2; Melecky, Martin (2007). “A Cross-Country Analysis of Public Debt Management Strategies”, *World Bank, Policy Research Working Paper*, no. 4287.

<sup>16</sup> Guido Wolswijk & Jakob de Haan (2005). “Government debt management in the euro area - recent theoretical developments and changes in practices”, *ECB Occasional Paper Series* 25.

debt has fallen (Mohanty, 2012).<sup>17</sup> They have substantially reduced their currency, interest rate and rollover risks by increasing the proportion of domestic currency, fixed rate and long maturity debt. (Anderson et al., 2010).<sup>18</sup> Many emerging market economies are now concerned about strong capital inflows as a result of a “search for yield” behaviour and depreciation of major currencies, as the main spillover effect of expansionary (unconventional) monetary policies in the major advanced economies. The consequences for financial stability are high in the case of an abrupt reversal of capital flows (Mohanty, 2014).<sup>19</sup>

Prior to the crisis, PDM had generally been considered a narrow technical activity whose impact on other policy areas was either limited or fairly easy to accommodate. The crisis dramatically altered the environment in which debt managers and monetary, fiscal and financial regulatory authorities operate (Chadha et al., 2013).<sup>20</sup> The interaction between different policy areas has intensified, with more calls for the debt management to properly take into account implications for both monetary and financial stability.<sup>21</sup>

As suggested above, the interdependence between fiscal and monetary policies puts PDM at a comparable level in terms of the overall impact of PDM strategies on objectives of public interest, such as financial stability and debt sustainability.

## **1.2 Disclosure of central bank operations: a balance sheet snapshot**

Open market operations of a central bank are typically subject to disclosure and reporting in a consolidated balance sheet. However, disclosure is limited to current holdings (not transactions).<sup>22</sup> This section reviews the key balance sheet disclosure (asset side) of the identified non-EU central banks and of the top five European central banks by size of balance sheet. As a result, the following analysis covers: the Eurosystem, Australia, Brazil, Canada, Turkey, the People’s Bank of China, the Hong Kong Monetary Authority, the Reserve Bank of India, the Bank of Japan, the Bank of Mexico, the Monetary Authority of Singapore, the Bank of Korea, the Swiss National Bank, and the United States Federal Reserve System.<sup>23</sup>

For a more detailed overview of the operational and disclosure framework for third-country central banks, please read sections 2 and 3 of this report.

---

<sup>17</sup> Mohanty, Madhusudan (2012). “Fiscal policy, public debt and monetary policy in emerging market economies”, *BIS Papers* No 67.

<sup>18</sup> Anderson, P., Caputo Silva, A., Velandia-Rubiano, A. (2010). “Public debt management in emerging market economies: has this time been different?”, *World Bank Policy Research Working Papers*, no. 5399.

<sup>19</sup> Mohanty, Madhusudan (2014). “The transmission of unconventional monetary policy to the emerging markets”, *BIS Papers* No 78.

<sup>20</sup> Chadha, Jagjit S., Turner, Philip, Zampolli, Philip (2013). “The ties that bind: monetary policy and government debt management”, *Oxford Review of Economic Policy*, 29 (3): 548-581.

<sup>21</sup> At an IMF Forum (2010), debt managers and central bankers from 33 advanced and emerging market countries agreed upon the “Stockholm Principles”. Particularly noteworthy is Principle 6: “Communication among debt managers and monetary, fiscal, and financial regulatory authorities should be promoted, given greater interlinkages across objectives, yet with each agency maintaining independence and accountability for its respective role”.

<sup>22</sup> The Federal Reserve System now also discloses detailed information on individual transactions with a two-year time lag.

<sup>23</sup> In the progress report submitted to the Commission, the balance sheets of Bank of England, the central banks of Sweden, Denmark, and Poland were also analysed. These were largely in line with balance sheet of the Eurosystem.

### 1.2.1 Eurosystem (ECB and NCBs)

The current operational framework of the Eurosystem envisages, alongside the liquidity providing credit operations, the possibility to conduct structural operations in the form of outright purchases/sales of eligible marketable assets from/to eligible counterparties for monetary policy purposes by the ECB itself or in a decentralised manner by the national central bank (NCBs). Outright transactions are those market operations that might have a direct market impact and may be the main beneficial of the exemptions included in MiFIR and MAR. One eligibility criterion for marketable assets is that the instrument must be admitted to trading on a regulated market or traded on certain non-regulated markets specified by the ECB. No restrictions are placed *a priori* on the range of counterparties to outright transactions. Outright transactions can be executed through direct contact with one or few counterparties or through stock exchanges and market agents. The Eurosystem also buys or sells assets under (reverse) repurchase agreements. The resulting securities are not included in the ECB's security holdings. For foreign exchange swaps conducted for monetary policy purposes, active players in the foreign exchange market are used. The set of counterparties for these operations is limited to those institutions selected for Eurosystem foreign exchange intervention operations, which are established in the euro area.<sup>24</sup>

**Table 1. Balance sheet – Assets (end December 2014)**

| <b>Assets (EUR millions)</b>                                                                                | <b>Balance</b>   |
|-------------------------------------------------------------------------------------------------------------|------------------|
| <b>1 Gold and gold receivables</b>                                                                          | 334,529          |
| <b>2 Claims on non-euro area residents denominated in foreign currency</b>                                  | 266,084          |
| 2.1 Receivables from the IMF                                                                                | 80,311           |
| 2.2 Balances with banks and security investments, external loans and other external assets                  | 185,773          |
| <b>3 Claims on euro area residents denominated in foreign currency</b>                                      | 28,654           |
| <b>4 Claims on non-euro area residents denominated in euro</b>                                              | 19,434           |
| 4.1 Balances with banks, security investments and loans                                                     | 19,434           |
| 4.2 Claims arising from the credit facility under ERM II                                                    | 0                |
| <b>5 Lending to euro area credit institutions related to monetary policy operations denominated in euro</b> | 592,486          |
| 5.1 Main refinancing operations                                                                             | 119,162          |
| 5.2 Longer-term refinancing operations                                                                      | 473,285          |
| 5.3 Fine-tuning reverse operations                                                                          | 0                |
| 5.4 Structural reverse operations                                                                           | 0                |
| 5.5 Marginal lending facility                                                                               | 39               |
| 5.6 Credits related to margin calls                                                                         | 0                |
| <b>6 Other claims on euro area credit institutions denominated in euro</b>                                  | 58,687           |
| <b>7 Securities of euro area residents denominated in euro</b>                                              | 587,519          |
| 7.1 Securities held for monetary policy purposes                                                            | 216,901          |
| 7.2 Other securities                                                                                        | 370,618          |
| <b>8 General government debt denominated in euro</b>                                                        | 26,726           |
| <b>9 Other assets</b>                                                                                       | 236,128          |
| <b>Total assets</b>                                                                                         | <b>2,150,247</b> |

Source: ECB<sup>25</sup>

<sup>24</sup> For detailed description of the operational framework, please refer to the dedicated section of the study.

<sup>25</sup> Consolidated financial statement of the Eurosystem as of 26 December 2014, available at: [www.ecb.europa.eu/press/pr/wfs/2014/html/fs141230.en.html](http://www.ecb.europa.eu/press/pr/wfs/2014/html/fs141230.en.html).

At present, the Eurosystem has a portfolio of securities held for monetary policy purposes, acquired in the context of the Securities Markets Programme (SMP) and the Covered Bond Purchase Programmes (CBPP) I, II and III, Asset-backed securities purchase programme (ABSPP), and two types of investment portfolio, namely the foreign reserves and an own funds investment portfolio. This portfolio of securities held for monetary policy purposes is going to increase significantly with the implementation of the expanded asset purchase programme (EAPP), which will buy around 1.1 trillion securities by September 2016. The main purpose of the ECB's foreign reserves is to ensure that, whenever needed, the Eurosystem has a sufficient amount of liquid resources for its foreign exchange policy operations involving non-EU currencies. The objectives for the management of the ECB's foreign reserves are, in order of importance, liquidity, security and return. The own funds portfolio is managed in a largely passive way in order to ensure that no inside information about central bank policy actions can have an impact on investment decisions. The 2013 ECB Annual Report illustrates that investment activities, which are separate from monetary policy programmes, are organised in such a way as to ensure that no inside information about central bank policy actions is used when making investment decisions.<sup>26</sup>

The Eurosystem purchased securities in the context of these programmes with counterparties that were eligible monetary policy counterparties or eligible investment counterparties, i.e. a number of market participants who were active in dealing with these securities. All eligible counterparties had an opportunity to contact the ECB or Eurosystem NCBs proactively with their trade requests. In practice, for each transaction, the ECB, or NCBs under the coordination of the ECB, selected some counterparties and asked them, over the phone or through trading platforms, to indicate price offers for selling a security; the ECB/NCBs selected the best offer for the transaction. In this sense, the approach was of the same nature as the approach taken for making transactions in the context of the ECB's foreign reserve and own funds' portfolios.

In the consolidated weekly financial statements of the Eurosystem, the monetary policy and investment portfolio are reported under different accounts. In effect, the ECB invests the funds related to its foreign reserve portfolio as well as its own funds. These activities, which are separate from monetary or financial stability policy programmes such as the Securities Markets Programme (SMP), Covered bond purchase programme (CBPP) I, II, III, Asset-backed securities purchase programme (ABSPP), Public Sector Purchase Programme (PSPP) are organised in such a way as to ensure that no inside information about central bank policy actions may be used when making investment decisions.<sup>27</sup> The funds relating to the ECB's pension plans are invested in an externally managed portfolio.

For illustrative purposes, the portfolios that the ECB manages can be identified as follows:

1. *Monetary policy portfolio* (containing securities classified as held-to-maturity, in particular, Asset item 7.1 – Securities held for monetary policy purposes (SMP, CBPP I, II, III, ABSPP, EAPP);<sup>28</sup>
2. *Foreign reserve portfolio* (containing securities denominated in US dollars and Japanese yen; in particular, Asset item 2.2 – Balances with banks and security investments, external loans and other external assets, Asset item

---

<sup>26</sup> ECB, 2013 Annual Report, page 94, April 2014, available at:

[www.ecb.europa.eu/pub/pdf/annrep/ar2013en.pdf?de252275e457e4ec60ac3016a8c532e5](http://www.ecb.europa.eu/pub/pdf/annrep/ar2013en.pdf?de252275e457e4ec60ac3016a8c532e5)

<sup>27</sup> *Ibidem*, page 95.

<sup>28</sup> This section most likely bundles market operations for monetary and financial stability purposes (as described above).

3. Claims on euro area residents denominated in foreign currency, other than those under Asset item 9.3 –Other financial assets);<sup>29</sup>
3. *Investment portfolio* (containing euro-denominated securities; in particular, Asset item 7.2 – Other securities than those held for monetary policy purpose, Asset item 4.2 – Balances with banks, security investments and loans,<sup>30</sup> Asset item 9.3 – Other financial assets).<sup>31</sup>

For the exemption from pre- and post-trade transparency obligations to be effective, the ECB and the NCBs should make the counterparties aware of the purpose of each transaction, even though they are not currently obliged to do so. The distinction can be made visible in electronic trading platforms (e.g. by using a different login) or by phone it can be mentioned whether the transaction was for one or the other portfolio.

### 1.2.2 Reserve Bank of Australia (RBA)

The RBA carries out domestic and international market operations by entering in transactions of a broad range of financial assets for the implementation of monetary policy, interventions in the FX markets or management of foreign reserve assets. The RBA enters regularly into (reverse) repurchase agreements in both domestic and foreign securities. This results in two portfolios of almost equal amounts.<sup>32</sup>

**Figure 1. RBA Assets (end June 2013, \$AUS mn)**

|                                                  |               |
|--------------------------------------------------|---------------|
| <b>Assets</b>                                    |               |
| Cash and cash equivalents                        | 137           |
| <b>Australian dollar securities</b>              |               |
| Securities sold under repurchase agreements      | 77            |
| Securities purchased under repurchase agreements | 35,130        |
| Other securities                                 | 7,968         |
| Accrued interest                                 | 74            |
|                                                  | <u>43,249</u> |
| <b>Foreign exchange</b>                          |               |
| Balances with central banks                      | 636           |
| Securities sold under repurchase agreements      | 2,294         |
| Securities purchased under repurchase agreements | 7,777         |
| Other securities                                 | 39,339        |
| Deposits                                         | 542           |
| Cash collateral pledged                          | 253           |
| Accrued interest                                 | 89            |
|                                                  | <u>50,930</u> |
| <b>Gold</b>                                      |               |
| Gold loans                                       | 42            |
| Gold holdings                                    | 3,257         |
|                                                  | <u>3,299</u>  |
| Property, plant & equipment                      | 491           |
| Loans and advances                               | 4             |
| Other assets                                     | 417           |
| <b>Total assets</b>                              | <u>98,527</u> |

Source: 2014 Annual Report, p.142.<sup>33</sup>

<sup>29</sup> Note that transactions involving interest rate future and swaps and FX swaps and forwards are reported off-balance sheet.

<sup>30</sup> Claims on non-euro area residents denominated in euro.

<sup>31</sup> Own funds investment portfolio, denominated in euro.

<sup>32</sup> For detailed information about the operational framework, please see the dedicated section of the study.

<sup>33</sup> 2014 Annual Report, available at: [www.rba.gov.au/publications/annual-reports/rba/2014/pdf/2014-report.pdf](http://www.rba.gov.au/publications/annual-reports/rba/2014/pdf/2014-report.pdf).

The domestic portfolio is composed of Australian dollar securities held as a result of the monetary policy implementation and domestic liquidity management operations. These holdings include fixed coupon, inflation indexed and discount government securities. It also holds under repurchase agreements: bank bills, certificates of deposit and debt securities of authorised deposit-taking institutions licensed in Australia; Australian dollar-denominated securities issued by foreign governments, foreign government agencies that have an explicit government guarantee (or equivalent support) and by certain highly rated supranational organisations; and eligible Australian dollar domestic residential and commercial mortgage backed securities, asset-backed commercial paper and corporate securities.

The RBA holds foreign reserves in five currencies. The US dollar and the euro account for roughly 90%, but the RBA also holds Canadian dollars, Japanese yen and Chinese renminbi, because the markets for these currencies are fairly liquid and suitable for investing foreign exchange reserves. Foreign exchange holdings are invested through outright purchases of securities issued by the governments of the United States, Germany, France, the Netherlands, Canada, Japan and China. In addition, the RBA invests in a number of non-Japanese Asian debt markets through participation in the Executives' Meeting of East Asia-Pacific Central Bank EMEAP Asia Bond Fund Initiative and some deposits with the BIS and other central banks.

The foreign investment process is guided by an internal benchmark, which represents the RBA's best estimate of the combination of foreign currencies and foreign currency assets that maximises return over the long run, subject to an acceptable level of risk and the overarching requirements for security and liquidity. Assets denominated in foreign currencies expose the RBA's balance sheet to foreign currency risk in addition to the interest rate, credit and liquidity risks faced on the RBA's portfolio of domestic securities. The optimal level of reserves represents a trade-off between these risk exposures and what is considered necessary to meet policy objectives. The RBA uses foreign currency swaps and interest rate futures with market participants for risk management purposes.<sup>34</sup> In particular, the market for foreign exchange swaps is larger and more liquid than the market for domestic repos and provides the RBA with a valuable additional tool for managing liquidity in its domestic operations.

The RBA has two superannuation funds: the Reserve Bank of Australia Officers' Superannuation Fund (OSF) and the Reserve Bank of Australia UK Pension Scheme. Current and future benefits of these schemes are funded by members and RBA contributions and the existing assets of these schemes.<sup>35</sup>

### **1.2.3 Banco Central do Brasil (BCB)**

The monetary policy is performed mainly through purchasing or selling operations for financial assets in the secondary market on a definitive basis (uncommitted securities) or through a resale or repurchase commitment (committed securities under repo and reverse repo agreements). The BCB holds two large portfolios of financial instruments in local and foreign currency, each with different risk policies and characteristics: financial instruments intended for executing the monetary policy and the management of international reserves, respectively.

---

<sup>34</sup> For a detailed description, see Note 15 – Financial Instruments and Risk, available at: [www.rba.gov.au/publications/annual-reports/rba/2014/html/fin-statements/note-15.html](http://www.rba.gov.au/publications/annual-reports/rba/2014/html/fin-statements/note-15.html).

<sup>35</sup> For a detailed description of the administration, see Note 14 – Superannuation Funds, available at: [www.rba.gov.au/publications/annual-reports/rba/2014/html/fin-statements/note-14.html](http://www.rba.gov.au/publications/annual-reports/rba/2014/html/fin-statements/note-14.html).

**Figure 2. BCB Assets (end December 2013, thousands of reais)**

| ASSETS                                              | Notes    | Dec 31, 2013                |
|-----------------------------------------------------|----------|-----------------------------|
| <b>ASSETS IN FOREIGN CURRENCIES</b>                 | <b>4</b> | <b><u>900,658,954</u></b>   |
| Cash and Cash Equivalents                           | 5        | 23,284,414                  |
| Time Deposits Placed with Financial Institutions    | 6.1      | 32,094,222                  |
| Funds Under External Management                     | 7        | 15,296,770                  |
| Financial Assets Purchased Under Resale Agreements  | 8.1      | 40,632,086                  |
| Derivatives                                         | 9.1      | -                           |
| Securities                                          | 10.1     | 763,304,951                 |
| Receivables                                         | 12.1     | 4,552,553                   |
| Gold                                                | 13       | 6,072,028                   |
| Investment in International Financial Organizations | 14       | 15,421,930                  |
| <b>ASSETS IN LOCAL CURRENCY</b>                     |          | <b><u>1,007,026,968</u></b> |
| Cash and Cash Equivalents                           | 5        | 471,600                     |
| Deposits                                            | 6.2      | 1,513,042                   |
| Financial Assets Purchased Under Resale Agreements  | 8.2      | 5,403                       |
| Derivatives                                         | 9.2      | 27,855                      |
| Federal Government Securities                       | 10.2     | 953,068,070                 |
| Receivables from the Federal Government             | 11       | 10,971,117                  |
| Receivables                                         | 12.2     | 38,863,245                  |
| Property and Equipment                              | 15       | 787,272                     |
| Other                                               | 16       | 1,319,364                   |

Source: 2014 Financial Statements, p.1.<sup>36</sup>

The breakdown of the domestic portfolio tends to accompany the profile of the federal government debt securities held by the markets. As the securities in its portfolio, i.e. National Treasury Bills (LTN), Financial Treasury Bills (LFT), National Treasury Notes Series B (NTN-B), Series F (NTN-F), Series P (NTN-P), fall due, the BCB recomposes its portfolio through purchases in public offerings by the National Treasury, where these operations are always made at the average price paid by the other market players. Due to the excess liquidity in the banking system, BCB conducts significantly larger reverse repos compared to repos whereby it sells on a temporary basis government securities held in custody at Selic (Special System for Settlement and Custody).

The BCB holds international reserves in the US dollar (77.7%), Canadian dollar (5.8%), euro (5.7%), pound sterling, Australian dollar, Japanese yen and other currencies, such as the Swedish crown and Danish crown. The main purpose of Brazil's international reserves is to contribute towards reducing the economy's vulnerability to external shocks and the perception of risk by foreign investors. International reserves management functions within a sound governance framework based on three pillars: i) benchmark portfolio; ii) operational limits; and iii) performance evaluation. The international reserves are primarily invested in fixed rate securities and securities remunerated by the variation in price indexes plus interest, especially foreign sovereign bonds (a significant part of this portfolio, over 85%, is denominated in US dollars), agency bonds from several countries, bonds issued by supranational organisations and fixed-term bank deposits.<sup>37</sup>

<sup>36</sup> 2014 Financial Statements, available at:  
[www.bcb.gov.br/ingles/inffina/Financial%20Statements%20122013.pdf](http://www.bcb.gov.br/ingles/inffina/Financial%20Statements%20122013.pdf)

<sup>37</sup> For detailed asset allocation, see 2014 International Reserves Management Report, available at  
[www.bcb.gov.br/pom/gepom/relgestri-i/2015/01/international\\_reserves\\_2014.pdf](http://www.bcb.gov.br/pom/gepom/relgestri-i/2015/01/international_reserves_2014.pdf).

A portion of the international reserves is managed externally under the Program for External Management of International Reserves (PGER). These external managers receive a management fee, established in the contract, and are evaluated based on the benchmark portfolio defined by the BCB, which also defines guidelines for the investment of the funds. The assets of the PGER are held on behalf of the BCB, under the responsibility of a global custodian selected for this specific purpose, therefore without the credit risk of the manager. In addition to the PGER, with regard to the assets in foreign currency externally managed, the BCB invests in a fund of the BIS, the BISIP-ILF1, which corresponds to a portfolio of US government securities linked to inflation (TIPS). This portfolio is managed by three external managers, selected by the BIS, each with a specific investment strategy, namely: active management enhanced indexing and passive management. The BCB's interest in international financial organisations consists of quotas of the IMF (1.79% of the Fund's equity) and shares of the BIS (0.55% of the capital).

Due to legal provisions, the BCB has a financial relationship with the National Treasury. The receivables from the federal government basically correspond to the result receivable obtained in the exchange equalisation operations, while the payables represent the balance of the National Treasury Operating Account and the result of the second half of 2013, including the exchange equalisation, to be transferred to the National Treasury. The BCB also entered into an agreement with the National Treasury for the purpose of investing Brazilian Sovereign Wealth Fund (FSB) resources in the purchase and sale of foreign currencies or in the carrying out of other foreign exchange operations, including derivative contracts. No operation has been carried out yet under this agreement.

The BCB uses derivatives in its routine operations to implement the investment strategy or to manage exposure to market risk. The transactions in currency forwards are carried out on the over-the-counter market, directly with financial institutions, and follow the risk management standards, while the transactions in future contracts on interest rate, securities, indexes and commodities are carried out in a stock exchange, with standardised contracts and collaterals in cash, and the changes in the prices of the contracts are adjusted daily. In the execution of the monetary and foreign exchange policy, the BCB may perform swaps, referenced in interest rates and in foreign exchange variation, for the purpose of providing foreign exchange hedges for financial institutions and other economic agents and correcting eventual distortions observed in the foreign exchange coupon curve. These operations are contracted through holding auctions in the BCB's electronic system.

#### **1.2.4 Bank of Canada (BoC)**

The BoC has a number of permanent facilities used to conduct market operations, such as Special Purchase and Resale Agreements (SPRAs) and Sale and Repurchase Agreements (SRAs), Overnight Standing Purchase and Resale Agreement, Term Repo for Balance Sheet Management Purposes, Securities Lending Program and Standing Liquidity Facility.<sup>38</sup> The balance sheet reflects only the portfolio held for the purpose of monetary/financial stability that is largely composed of domestic government securities.

---

<sup>38</sup> For detailed information about the operational framework, see the dedicated section of the study.



**Figure 3. BoC Assets (end December 2013, \$CAD mn)**

|                                                                    |                        |
|--------------------------------------------------------------------|------------------------|
| <b>ASSETS</b>                                                      |                        |
| Cash and foreign deposits (note 4)                                 | 5.0                    |
| Loans and receivables                                              |                        |
| Securities purchased under resale agreements (note 5a)             | 2,205.9                |
| Advances to members of the Canadian Payments Association (note 5b) | -                      |
| Other receivables                                                  | 9.0                    |
|                                                                    | <u>2,214.9</u>         |
| Investments (notes 6, 7)                                           |                        |
| Government of Canada treasury bills                                | 21,586.4               |
| Government of Canada bonds                                         | 66,653.6               |
| Other investments                                                  | 337.1                  |
|                                                                    | <u>88,577.1</u>        |
| Property and equipment (note 8)                                    | 232.4                  |
| Intangible assets (note 9)                                         | 52.2                   |
| Other assets (note 10)                                             | 224.1                  |
| <b>Total assets</b>                                                | <b><u>91,305.7</u></b> |
| <b>LIABILITIES AND EQUITY</b>                                      |                        |
| Bank notes in circulation (notes 7, 11)                            | 66,615.9               |
| Deposits (notes 7, 12)                                             |                        |
| Government of Canada                                               | 22,329.9               |
| Members of the Canadian Payments Association                       | 186.7                  |
| Other deposits                                                     | 1,306.9                |
|                                                                    | <u>23,823.5</u>        |
| Other liabilities (note 13)                                        | 431.1                  |
|                                                                    | <u>90,870.5</u>        |
| Equity (note 15)                                                   | 435.2                  |
| <b>Total liabilities and equity</b>                                | <b><u>91,305.7</u></b> |

Source: 2014 Annual Report, p.52.<sup>39</sup>

The BoC financial assets consist of cash and foreign deposits, loans and receivables securities, investments (Government of Canada treasury bills, bonds and shares in the BIS). Loans and receivables are composed primarily of securities purchased under resale agreements and, if any, advances to members of the CPA. Advances to members of the CPA are typically composed of liquidity loans made under the Bank's standing liquidity facility, which mature the next business day. BoC operates a Securities Lending Program to support the liquidity of Government of Canada securities by providing the market with a secondary and temporary source of these securities. When specific Government of Canada treasury bills or bonds are in short supply in the secondary market, the Bank will lend up to 50% of its holdings in these securities on an overnight basis in exchange for other securities. BoC holds only minimal foreign cash balances. Given the small size of the Bank's net foreign currency exposure relative to its total assets, currency risk is not considered significant. Bilateral liquidity swap facilities with other central banks were established.

Canada's official international reserves are held in the Exchange Fund Account (EFA), which the Bank manages on behalf of the Government of Canada. Unlike many other central banks, the Bank does not hold a foreign exchange reserves portfolio on its balance sheet. The Department of Finance and the Bank of Canada jointly develop and implement the investment policy and funding programme of the EFA. As the fiscal agent of the government, the Bank of Canada executes investment and funding transactions and manages EFA cash flows.

The foreign currency reserve assets held in the EFA and the foreign currency liabilities financing these assets are managed on a portfolio basis and are matched

<sup>39</sup> Annual Report available at: <http://www.bankofcanada.ca/wp-content/uploads/2014/03/Annual-Report-2013.pdf>.

closely in currency and duration, in order to limit the government's exposure to currency and interest rate risk. EFA assets are composed primarily of the debt securities of highly rated sovereigns (US dollar, euro, yen, GBP holdings), their agencies that borrow on public markets and are supported by a comprehensive government guarantee and supranational organisations. EFA funding requirements are partially met through an ongoing programme of cross-currency swaps of domestic obligations or direct foreign currency issuance.<sup>40</sup>

The Bank sponsors a funded defined-benefit pension plan (the Bank of Canada Registered Pension Plan) and a funded defined-benefit supplementary pension arrangement (the Bank of Canada Supplementary Pension Arrangement), which are designed to provide retirement income benefits to eligible employees. The Pension Fund's assets are held by a third-party trustee that executes transactions on behalf of the Fund as agent for the Bank.

### 1.2.5 People's Bank of China (PBoC)

The PBoC employs a combination of monetary policy and credit policy instruments in order to keep liquidity in the banking system at a reasonable level and stimulate the financing of the real economy.<sup>41</sup> Almost 85% of the total assets are made of foreign assets while 75% of total liabilities are made of regulatory deposits of the financial institutions.

**Figure 4. PBoC Assets (end December 2013, 100 mn yuan)**

|                                         | Q1         | Q2         | Q3         | Q4         |
|-----------------------------------------|------------|------------|------------|------------|
| Foreign Assets                          | 254 127.19 | 257 853.95 | 261 561.48 | 272 233.53 |
| Foreign Exchange                        | 246 103.34 | 249 868.78 | 253 548.68 | 264 270.04 |
| Monetary Gold                           | 669.84     | 669.84     | 669.84     | 669.84     |
| Other Foreign Assets                    | 7 354.02   | 7 315.33   | 7 342.96   | 7 293.66   |
| Claims on Government                    | 15 313.69  | 15 312.73  | 15 312.73  | 15 312.73  |
| Of which: Central Government            | 15 313.69  | 15 312.73  | 15 312.73  | 15 312.73  |
| Claims on Other Depository Corporations | 11 374.77  | 16 182.04  | 16 680.77  | 13 147.90  |
| Claims on Other Financial Corporations  | 10 025.94  | 10 218.54  | 10 242.23  | 8 907.36   |
| Claims on Non-financial Sectors         | 24.99      | 24.99      | 24.99      | 24.99      |
| Other Assets                            | 8 073.84   | 7 148.84   | 7 369.00   | 7 652.04   |
| Total Assets                            | 298 940.43 | 306 741.10 | 311 191.20 | 317 278.55 |

Source: 2013 Annual Report, p.156.<sup>42</sup>

Open market operations are based on: (i) government bonds; (ii) central bank bills; and (iii) financial bonds from other financial institutions, the so-called 'policy banks' (state-owned commercial banks). They are traded under repo and reserve repo agreements or on an outright basis. The PBoC withdraws monetary base by issuance of central bank bills and injects monetary base with their redemption. In

<sup>40</sup> For detailed information on the EFA, see the *Report on the Management of Canada's Official International Reserves*, available at: [www.fin.gc.ca/activty/oirrep/oir-rol-14-eng.asp#toc393799126](http://www.fin.gc.ca/activty/oirrep/oir-rol-14-eng.asp#toc393799126).

<sup>41</sup> For detailed information about the operational framework, see the dedicated section of the study.

<sup>42</sup> Annual report available at: [www.pbc.gov.cn/publish/english/4235/2014/20140825111008453731654/20140825111008453731654\\_.html](http://www.pbc.gov.cn/publish/english/4235/2014/20140825111008453731654/20140825111008453731654_.html).

recent years “pre-emptive adjustments and fine-tunings”, such as Short-term Liquidity Operations (SLO), were carried out in order to control the overall liquidity.

Through credit policy tools, PBoC is actively engaged in bank lending and other tasks that affect the structure of bank loans. The credit activity is reported in under claims on government, on other depository corporations, on other financial corporations, on non-financial sector. Quite often, the PBC launches specific central bank lending schemes (e.g. Medium-term Lending Facility (MLF), and Standing Lending Facility (SLF)), under which it provides special funds at a lower cost for a particular group of industries or regions (e.g. credit support to small and micro enterprises, the agricultural sector, rural areas, farmers, and the central and western regions) and holds regular meetings with commercial banks in a form of “moral suasion” or “indirect pressure”.

The State Administration of Foreign Exchange (SAFE) functions as a bureau under the PBOC. Most foreign reserves are invested in US government bonds. China is the world’s largest foreign holder of US debt. In recent years, breakthroughs were made in bilateral currency swaps concluded with other central banks.

### 1.2.6 Hong Kong Monetary Authority (HKMA)

The HKMA Currency Board arrangements require the monetary base to be at least 100% backed by US dollar reserves held in the Exchange Fund, and changes in the Monetary Base to be 100% matched by corresponding changes in US dollar reserves.<sup>43</sup> The Monetary Base (liabilities side) comprises: certificates of indebtedness, which provide full backing to the banknotes issued by the three note-issuing banks; government-issued notes and coins in circulation; the aggregate balance, which is the sum of clearing account balances of banks kept with the HKMA; and Exchange Fund Bills and Notes (EFBN). The assets of the Fund are managed as four portfolios: the Backing Portfolio, the Investment Portfolio, the Long-Term Growth Portfolio and the Strategic Portfolio.

**Figure 5. HKMA Assets (end December 2012, \$HK mn)**

| <b>ASSETS</b>                                          |       |                  |
|--------------------------------------------------------|-------|------------------|
| Cash and money at call                                 | 7     | 128,692          |
| Placements with banks and other financial institutions | 8     | 176,632          |
| Assets held for sale                                   | 9     | 130              |
| Financial assets designated at fair value              | 10    | 2,616,788        |
| Available-for-sale securities                          | 11    | 66,172           |
| Derivative financial instruments                       | 12(a) | 5,000            |
| Held-to-maturity securities                            | 13    | 8,624            |
| Loan portfolio                                         | 14    | 22,268           |
| Gold                                                   | 15    | 622              |
| Other assets                                           | 16    | 61,168           |
| Interests in subsidiaries                              | 17    | –                |
| Interests in associates and joint ventures             | 18    | 9,431            |
| Investment properties                                  | 19    | 17,695           |
| Property, plant and equipment                          | 20(a) | 3,332            |
| <b>TOTAL ASSETS</b>                                    |       | <b>3,116,554</b> |

Source: 2013 Annual Report, p.126.<sup>44</sup> Note: Group data.

The financial assets and financial liabilities are classified into: trading financial instruments, financial assets and financial liabilities designated at fair value, loans

<sup>43</sup> For detailed information about the operational framework, see the dedicated section of the study.

<sup>44</sup> 2013 Annual Report available at: [www.hkma.gov.hk/media/eng/publication-and-research/annual-report/2013/ar2013.pdf](http://www.hkma.gov.hk/media/eng/publication-and-research/annual-report/2013/ar2013.pdf).

and receivables, held-to-maturity securities, available-for-sale securities and other financial liabilities.<sup>45</sup> In terms of target currency mix, 77% of Exchange Fund assets are allocated to the US dollar and the Hong Kong dollar, and the remaining 23% to other currencies (Australian dollar, Canadian dollar, euro, renminbi, sterling and yen). In terms of target asset mix, 74% of the assets are debt securities while 26% are equity and related investments.

The assets of the Backing Portfolio fully match the monetary base (liabilities side) under the HKMA Currency Board system. The Backing Portfolio contains highly liquid US dollar-denominated assets. The Investment Portfolio is invested primarily in the bond and equity markets of the member countries of the OECD to preserve the value and long-term purchasing power of the assets.

Starting from 2013, all emerging market and mainland bonds and equities were transferred to the Investment Portfolio from the Long-Term Growth Portfolio (LTGP). The LTGP now holds only private equity and real estate investments. The Strategic Portfolio, established in 2007 to hold shares in Hong Kong Exchanges and Clearing Limited that were acquired by the government for the account of the Exchange Fund for strategic purposes, is not included in the assessment of the Fund's investment performance because of the unique nature of this Portfolio.

HKMA staff directly manages the investment of about 75% of the Exchange Fund, which includes the entire Backing Portfolio and part of the Investment Portfolio. This part of the Investment Portfolio includes a set of portfolios invested in major fixed-income markets and various derivative overlay portfolios implementing macro risk management strategies for the Fund. In addition to managing assets internally, the HKMA employs external fund managers based in over a dozen international financial centres to manage about 25% of the Exchange Fund's assets, including all of its listed equity portfolios and other specialised assets. The main derivative financial instruments used are interest rate and currency swap contracts, forward foreign exchange contracts, currency and bond options contracts, and equity contracts, which are primarily over-the-counter derivatives, as well as exchange-traded futures contracts.

### **1.2.7 Reserve Bank of India (RBI)**

The RBI conducts open market operations through liquidity injecting/absorbing repo/reverse short-term repo operations as well as through outright sale/purchase operations.<sup>46</sup> As per the current practice, the RBI prepares two balance sheets, one for the Issue Department relating exclusively to its currency management responsibility and the other for the Banking Department reflecting the impact of all other functions of the RBI, namely monetary, foreign exchange and reserve management policies. The asset side of the Issue Department's balance sheet is largely composed of foreign securities (95%) while that of the Banking Department's is composed of domestic securities (52%) and foreign securities (38%) alongside sector specific refinance through loans and advances.

---

<sup>45</sup> For a detailed description of the categories financial assets and liabilities, see Notes 6 to 36 of the 2013 Annual Report.

<sup>46</sup> Liquidity management is enhanced by other programmes/facilities: Liquidity Adjustment Facility (LAF), Marginal Standing Facility (MSF), Market Stabilisation Scheme (MSS), etc.

**Figure 6. RBI Balance sheet – Assets/Liabilities (end June 2014 and 2013, thousands of rupees)**

| ISSUE DEPARTMENT |                                      |               |               |                                                       |               |
|------------------|--------------------------------------|---------------|---------------|-------------------------------------------------------|---------------|
| (₹ thousands)    |                                      |               |               |                                                       |               |
| 2012-13          | LIABILITIES                          | 2013-14       | 2012-13       | ASSETS                                                | 2013-14       |
| 80,169           | Notes held in the Banking Department | 110,271       | 674,316,432   | Gold Coin and Bullion:                                | 649,775,377   |
| 12016,157,427    | Notes in Circulation                 | 13445,160,518 | —             | (a) Held in India                                     | —             |
|                  |                                      |               | 11329,100,584 | (b) Held outside India                                | —             |
| 12016,237,596    | Total Notes Issued                   | 13445,270,789 | 12003,417,016 | Foreign Securities                                    | 12783,310,039 |
|                  |                                      |               | 2,356,280     | Total                                                 | 13433,085,416 |
|                  |                                      |               | 10,464,300    | Rupee Coin                                            | 1,721,073     |
|                  |                                      |               | —             | Government of India Rupee Securities                  | 10,464,300    |
|                  |                                      |               | —             | Internal Bills of Exchange and other Commercial Paper | —             |
| 12016,237,596    | Total Liabilities                    | 13445,270,789 | 12016,237,596 | Total Assets                                          | 13445,270,789 |

| BANKING DEPARTMENT |                                                        |               |               |                                                                                              |               |
|--------------------|--------------------------------------------------------|---------------|---------------|----------------------------------------------------------------------------------------------|---------------|
| (₹ thousands)      |                                                        |               |               |                                                                                              |               |
| 2012-13            | LIABILITIES                                            | 2013-14       | 2012-13       | ASSETS                                                                                       | 2013-14       |
| 50,000             | Capital paid-up                                        | 50,000        | 80,169        | Notes                                                                                        | 110,271       |
| 65,000,000         | Reserve Fund                                           | 65,000,000    | 296           | Rupee Coin                                                                                   | 209           |
| 220,000            | National Industrial Credit (Long Term Operations) Fund | 230,000       | 63            | Small Coin                                                                                   | 73            |
| 1,960,000          | National Housing Credit (Long Term Operations) Fund    | 1,970,000     | —             | Bills Purchased and Discounted :                                                             | —             |
|                    |                                                        |               | —             | (a) Internal                                                                                 | —             |
|                    |                                                        |               | —             | (b) External                                                                                 | —             |
|                    |                                                        |               | —             | (c) Government Treasury Bills                                                                | —             |
|                    | Deposits                                               |               | 3395,014,738  | Balances Held Abroad                                                                         | 3726,756,685  |
| 1,002,895          | (a) Government                                         | 1,000,207     |               |                                                                                              |               |
| 424,847            | (i) Central Government                                 | 424,661       | 7276,101,007  | Investments                                                                                  | 7767,331,027  |
|                    | (ii) State Governments                                 |               |               |                                                                                              |               |
| 3391,427,816       | (b) Banks                                              | 3469,155,998  |               | Loans and Advances to :                                                                      |               |
| 32,038,844         | (i) Scheduled Commercial Banks                         | 37,292,739    | 146,610,000   | (i) Central Government                                                                       | —             |
| 55,210,206         | (ii) Scheduled State Co-operative Banks                | 63,307,042    | 21,449,487    | (ii) State Governments                                                                       | 6,656,600     |
| 2,241,459          | (iii) Other Scheduled Co-operative Banks               | 4,807,554     | 187,170,300   | Loans and Advances to:                                                                       |               |
| 90,595,353         | (iv) Non-Scheduled State Co-operative Banks            | 102,670,889   | —             | (i) Scheduled Commercial Banks                                                               | 294,173,000   |
| 165,973,592        | (v) Other Banks                                        | 213,885,518   | 1,650,000     | (ii) Scheduled State Co-operative Banks                                                      | —             |
|                    | (c) Others                                             |               | 8,236,648     | (iii) Other Scheduled Co-operative Banks                                                     | 1,337,500     |
|                    |                                                        |               |               | (iv) Non-Scheduled State Co-operative Banks                                                  | —             |
| 1,873,179          | Bills Payable                                          | 373,489       |               | (v) NABARD                                                                                   | —             |
|                    |                                                        |               |               | (vi) Others                                                                                  | 68,662,500    |
|                    |                                                        |               |               | Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund: |               |
|                    |                                                        |               |               | (a) Loans and Advances to:                                                                   |               |
|                    |                                                        |               |               | (i) Industrial Development Bank of India                                                     | —             |
|                    |                                                        |               |               | (ii) Export Import Bank of India                                                             | —             |
| 8082,855,793       | Other Liabilities                                      | 8838,232,625  |               | (iii) Industrial Investment Bank of India Ltd.                                               | —             |
|                    |                                                        |               |               | (iv) Others                                                                                  | —             |
|                    |                                                        |               |               | (b) Investments in bonds/ debentures issued by:                                              |               |
|                    |                                                        |               |               | (i) Industrial Development Bank of India                                                     | —             |
|                    |                                                        |               |               | (ii) Export Import Bank of India                                                             | —             |
|                    |                                                        |               |               | (iii) Industrial Investment Bank of India Ltd.                                               | —             |
|                    |                                                        |               |               | (iv) Others                                                                                  | —             |
|                    |                                                        |               |               | Loans, Advances and Investments from National Housing Credit (Long Term Operations) Fund:    |               |
|                    |                                                        |               |               | (a) Loans and Advances to National Housing Bank                                              | —             |
|                    |                                                        |               |               | (b) Investments in bonds/debentures issued by National Housing Bank                          | —             |
|                    |                                                        |               | 854,561,276   | Other Assets                                                                                 | 933,372,857   |
| 11890,873,984      | Total Liabilities                                      | 12798,400,722 | 11890,873,984 | Total Assets                                                                                 | 12798,400,722 |

Source: 2014 Annual Report, p.140.<sup>47</sup>

The RBI's holdings of domestic securities are reported under different headings: the Government of India securities, internal bills of exchange and other commercial paper (Issue Department) and Bills Purchased and Discounted, Investments (Banking Department).

Both the US dollar and the euro are intervention currencies and the foreign currency assets of the RBI are maintained in major currencies like the US dollar, euro, pound sterling, Japanese yen, etc. The foreign currency assets consist of: foreign treasury bills and securities (mainly US government securities), deposits with other central banks and international financial institutions, deposits with foreign branches of commercial banks and funds placed with the External Asset Managers (EAMs).<sup>48</sup>

In particular, the foreign currency assets of the RBI are reflected under the following headings in the balance sheet: (a) Balances held abroad in foreign

<sup>47</sup> Annual report available at: [www.rbi.org.in/scripts/AnnualReportPublications.aspx?year=2014](http://www.rbi.org.in/scripts/AnnualReportPublications.aspx?year=2014).

<sup>48</sup> For a detailed description of the foreign exchange reserves and the risk management framework, see the Report on Foreign Exchange Reserves, available at: [www.rbi.org.in/scripts/PublicationsView.aspx?id=16203](http://www.rbi.org.in/scripts/PublicationsView.aspx?id=16203).

currency, shown as a distinct item under Banking Department assets; (b) foreign securities (consisting of deposits, T- bills, dated securities and BIS/SWIFT shares) held as part of Banking Department investments; and (c) foreign securities (consisting of deposits, T-bills and dated securities) held as Issue Department assets.

The major components of “other liabilities” are internal reserves and provisions, such as the Contingency Reserve (CR), Asset Development Reserve (ADR), Currency and Gold Revaluation Account (CGRA), Investment Revaluation Account (IRA), Foreign Exchange Forward Contracts Valuation Account (FCVA), while “other assets” are the Swap Amortisation Account (SAA) and the Revaluation of Forward Contracts Account (RFCA).

### 1.2.8 Bank of Japan (BoJ)

The Bank of Japan’s operational framework allows for the following three types of open market operations: sales and purchases of bills, government and other types of bonds, lending and borrowing of government and other types of bonds with cash collateral, and lending of funds against eligible collateral.<sup>49</sup> The monetary policy portfolio dominates the asset side (around 82%) compared to the very few holdings of foreign currency securities.

**Figure 7. BoJ Assets (end March 2014, yen)**

| ASSETS                                                                                                                                |                     |
|---------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Gold                                                                                                                                  | 441,253,409,037     |
| Cash                                                                                                                                  | 289,848,532,257     |
| Japanese government securities                                                                                                        | 198,337,031,240,604 |
| Commercial paper                                                                                                                      | 1,874,901,616,064   |
| Corporate bonds                                                                                                                       | 3,204,134,652,692   |
| Pecuniary trusts (stocks held as trust property)                                                                                      | 1,372,809,053,507   |
| Pecuniary trusts (index-linked exchange-traded funds held as trust property)                                                          | 2,851,175,926,577   |
| Pecuniary trusts (Japan real estate investment trusts held as trust property)                                                         | 148,828,559,477     |
| Loans and bills discounted                                                                                                            | 26,313,833,000,000  |
| Electronic loans                                                                                                                      | 26,313,833,000,000  |
| Foreign currency assets                                                                                                               | 6,158,293,721,818   |
| Foreign currency deposits                                                                                                             | 775,121,686,196     |
| Foreign currency securities                                                                                                           | 4,426,572,243,822   |
| Foreign currency mutual funds                                                                                                         | 50,506,196,800      |
| Foreign currency loans                                                                                                                | 906,093,595,000     |
| Deposits with agents                                                                                                                  | 25,384,176,928      |
| Other assets                                                                                                                          | 358,968,074,467     |
| Bills and checks in process of collection                                                                                             | 1,626,442,156       |
| Capital subscription to the Deposit Insurance Corporation, and the Agricultural and Fishery Cooperative Savings Insurance Corporation | 225,000,000         |
| Capital subscription to an international financial institution                                                                        | 15,278,374,364      |
| Withdrawn cash to be returned to the government                                                                                       | 65,898,388,030      |
| Accrued interest receivable                                                                                                           | 245,667,044,542     |
| Others                                                                                                                                | 30,272,825,375      |
| Tangible fixed assets                                                                                                                 | 203,257,330,049     |
| Buildings                                                                                                                             | 100,767,249,031     |
| Land                                                                                                                                  | 82,830,507,504      |
| Lease assets                                                                                                                          | 7,108,497,193       |
| Construction in progress                                                                                                              | 1,398,166,350       |
| Other tangible fixed assets                                                                                                           | 11,152,909,971      |
| Intangible fixed assets                                                                                                               | 126,522,433         |
| Utility rights                                                                                                                        | 126,522,433         |
| Total assets                                                                                                                          | 241,579,845,815,910 |

Source: 2014 Annual Review, p.67.<sup>50</sup>

The BOJ’s monetary policy portfolio consists of Japanese government securities (treasury discount bills, Japanese government bonds, floating-rate Japanese government bonds, inflation-indexed bonds), commercial paper (CP issued by

<sup>49</sup> For detailed information about the operational framework, see the dedicated section of the study.

<sup>50</sup> Annual Report available at: [www.boj.or.jp/en/about/activities/act/data/ar2014.pdf](http://www.boj.or.jp/en/about/activities/act/data/ar2014.pdf).

domestic corporations, foreign corporations with guarantees, real estate investment corporations, asset-backed CP), corporate bonds (issued by real estate investment corporations) and securities held as trust property in pecuniary trusts (stocks purchased from financial institutions, beneficiary interests in index-linked exchange-traded funds, investment equities issued by real estate investment corporations purchased through a trust bank). This portfolio has increased in the past five years as a result of the implementation of the Asset Purchase Programme (ended April 2013) and the more recent Quantitative and Qualitative Monetary Easing (QQE) Programme aiming at overcoming deflation.

The BoJ conducts operations in the field of international finance, such as foreign exchange transactions, including those executed as part of the Bank's management of its foreign currency assets, as well as business related to assisting foreign central banks and international organisations in their investment in yen. Foreign currency assets are composed of the following financial assets denominated in US dollars, euros, and pounds sterling: deposits held at foreign central banks, securities issued by foreign governments, foreign currency mutual funds and loans. The currency composition is adjusted so that it tracks the benchmark currency composition. The BoJ also entered in bilateral swap agreements with other central banks. The BoJ manages only a small portion of Japan's foreign reserves for very specific purposes, the remaining being managed by the Ministry of Finance.<sup>51</sup> Japan's reserve assets totalled \$1.2 trillion as of 31 December 2013.

### **1.2.9 Bank of Mexico (Banxico)**

Through its daily open market operations, the central bank provides liquidity to its financial intermediaries. There are two ways in which the liquidity is provided: auctions of credits (collateralised with securities or with banks' compulsory deposits at the central bank) and repo operations (the securities accepted in repo are only those issued by the federal government, the deposit insurance agency known as Institute for the Protection of Banking Savings – IPAB – and the central bank – BREMS). By the same token, the central bank withdraws liquidity from the system through auctions of deposits. Sporadically, the central bank has imposed compulsory deposits on banks, as a complement to the sterilisation from debt securities placements, in order to drain a fixed amount of liquidity from the money market on a once-and-for-all basis. The assets side of the balance sheet is largely made up of a portfolio of international assets (90% of total assets).

---

<sup>51</sup> Details on the level and composition of Japan's international reserves/foreign currency liquidity are available at: [www.mof.go.jp/english/international\\_policy/reference/official\\_reserve\\_assets/e2701.htm](http://www.mof.go.jp/english/international_policy/reference/official_reserve_assets/e2701.htm).

**Figure 8. Banxico Assets (end December, 2013, MXN mn)**

| <u>ASSETS</u>                                                                  |              |
|--------------------------------------------------------------------------------|--------------|
| INTERNATIONAL RESERVES                                                         | \$ 2,309,662 |
| INTERNATIONAL ASSETS                                                           | 2,357,794    |
| LIABILITIES TO BE DEDUCTED                                                     | (48,132)     |
| CREDIT GRANTED TO THE FEDERAL GOVERNMENT                                       | 0            |
| SECURITIES                                                                     | 30,788       |
| GOVERNMENT SECURITIES                                                          | 0            |
| IPAB SECURITIES                                                                | 30,788       |
| CREDIT GRANTED TO FINANCIAL INTERMEDIARIES<br>AND DEBTORS FROM REPO OPERATIONS | 192,716      |
| CREDIT GRANTED TO TRUST FUNDS                                                  | 0            |
| PARTICIPATION IN INTERNATIONAL FINANCIAL<br>INSTITUTIONS                       | 9,618        |
| FIXED ASSETS, FURNISHINGS AND EQUIPMENT                                        | 3,561        |
| OTHER ASSETS                                                                   | 11,044       |
| TOTAL ASSETS                                                                   | \$ 2,557,389 |

Source: 2013 Compilation of Quarterly Reports, p. 327.<sup>52</sup>

The Bank of Mexico publishes a very generic breakdown with regard to the investment of the international reserves. This portfolio is largely composed of foreign currency denominated securities.<sup>53</sup> Under category securities, Banxico includes all the securities that have been purchased by the central bank on an outright basis. As reflected on the balance sheet, the only securities purchased by the central bank were those securities issued by IPAB. The collateralised credits/loans granted to financial intermediaries are based on domestic government bonds and bills. On the liabilities side, the government securities sold under repurchase agreement are collateralised deposits.

The accumulation of international reserves has implications for the implementation of open market operations aimed at regulating money market liquidity. As the central bank's international reserves have been steadily increasing, so has the amount of liquidity that has had to be sterilised as way of nullifying the monetary impact of its acquisition of foreign currencies. The main sources for international reserves have been US dollar sales by Pemex, the Mexican state-owned petroleum company, and by the federal government to Banco de México.

In recent years, Bank of Mexico has made a series of rules-based interventions in the peso/dollar foreign exchange market. Typically, the aim has been to attenuate the volatility of the foreign exchange market. Except for extraordinary situations, Banco de México carries out dollar sales via auctions in which only domestic banks may participate. The specific characteristics of these auctions (time, amounts, type of auction, allotments, etc.) have changed depending on the type of mechanism used, e.g. US dollar credit auctions, daily auctions with/without a minimum price, extraordinary auctions, put option auctions.<sup>54</sup> The Foreign Exchange Commission can also give Banco de México the authority to carry out direct dollar sales if it

<sup>52</sup> Annual report available at: [www.banxico.org.mx/publicaciones-y-discursos/publicaciones/informes-periodicos/anual/](http://www.banxico.org.mx/publicaciones-y-discursos/publicaciones/informes-periodicos/anual/).

<sup>53</sup> This information is reported by the IMF with information provided by Banco de Mexico. [www.imf.org/external/np/sta/ir/IRProcessWeb/data/mex/eng/curmex.htm](http://www.imf.org/external/np/sta/ir/IRProcessWeb/data/mex/eng/curmex.htm).

<sup>54</sup> The different kinds of mechanisms are described at: [www.banxico.org.mx/portal-mercado-cambiario/foreign-exchange-markets--exc.html](http://www.banxico.org.mx/portal-mercado-cambiario/foreign-exchange-markets--exc.html).



considers this necessary. Banco de México's activity in the foreign exchange market is always carried out on terms that are congruent with wholesale market conditions.

### 1.2.10 Monetary Authority of Singapore (MAS)

MAS is responsible for monetary policy implementation, which includes keeping the exchange rate within the policy band through frequent intervention in foreign exchange markets and managing liquidity in the banking system through money market operations and liquidity facilities.<sup>55</sup>

**Figure 9. MAS Assets (end March 2014, \$SGD mn)**

| ASSETS                          |    |         |
|---------------------------------|----|---------|
| Cash and Bank Balances          |    | 882     |
| Singapore Dollar Securities     | 13 | 7,007   |
| Foreign Financial Assets        | 14 | 360,026 |
| Gold                            |    | 266     |
| Other Assets                    | 15 | 12,093  |
| Property and Other Fixed Assets | 16 | 176     |
|                                 |    | 380,450 |

Source: Annual Report 2013-14, p. 73.<sup>56</sup>

In the liquidity management framework, MAS does not target any level of interest rate. Instead, it aims only at ensuring that there is an appropriate amount of liquidity in the banking system: sufficient to meet banks' demand for precautionary and settlement balances. Four instruments are used for money market operations: direct borrowing or lending, foreign exchange swaps (Singapore dollar against the US dollar and vice versa), repurchase and reverse repurchase agreements (repos) against Singapore Government Securities (SGS), and issuance of MAS Bills.

MAS holds a small portfolio of domestic securities (Singapore Government T-bills and bonds and SGD denominated corporate bonds). The foreign financial assets represent more than 90% of the assets of MAS's balance sheet. This item includes mainly a foreign currency denominated portfolio (including treasury bills, bonds, equities), but also bank balances and deposits. Investment grade government bonds comprise the largest allocation of this portfolio. With regard to currency composition, about three-quarters of the portfolio is denominated in the major G4 currencies, i.e. US dollar, euro, pound sterling and yen, with no single currency allocation making up more than one-third of the composition. Other assets refer to loans, deposits and other receivables, receivable from MAS Bills and repurchase agreements with the Singapore government.

On the liabilities side, most notable are the MAS Bills for the purpose of withdrawing liquidity from the banking system. Deposits pertain to banks, finance companies, securities companies, international financial Institutions, foreign central banks and others. MAS is also entering into financial derivatives contracts, such as forwards, swaps, futures and options. These are included in foreign financial assets or foreign financial liabilities depending on their positive/negative replacement value.

<sup>55</sup> For detailed information on the operational framework, see the dedicated section of the report.

<sup>56</sup> Annual Report available at: [www.mas.gov.sg/annual\\_reports/annual20132014/Annual%20Report.pdf](http://www.mas.gov.sg/annual_reports/annual20132014/Annual%20Report.pdf).

### 1.2.11 Bank of Korea (BoK)

As part of monetary policy, the Bank of Korea engages in operations involving domestic and foreign securities, including the issuance of Monetary Stabilization Bonds (MSBs) in the open market for liquidity absorption purposes, repo and reverse repo agreements or lending involving government and public bonds, and foreign reserve investments.<sup>57</sup>

**Figure 10. BoK Assets (end December 2013, KRW)**

|                                                         |                     |
|---------------------------------------------------------|---------------------|
| Assets                                                  |                     |
| I. Current assets                                       | 448,615,377,885,269 |
| 1. Cash                                                 | 143,375,608         |
| 2. Gold and silver bullions                             | 5,059,621,379,577   |
| 3. Holdings of special drawing rights                   | 3,682,904,190,086   |
| 4. Securities(note 2)                                   | 341,121,784,211,441 |
| a. National bonds                                       | 15,260,444,682,914  |
| b. Government guaranteed securities and others          | -                   |
| c. Foreign securities                                   | 325,861,339,528,527 |
| 5. Due from Banks(note 3)                               | 18,681,702,217,556  |
| a. Due from banks current                               | 6,996,141,219,464   |
| b. Due from banks on time                               | 11,685,560,998,092  |
| 6. Overdraft                                            | -                   |
| 7. Liquidity adjustment loans                           | -                   |
| 8. Bills discounted                                     | -                   |
| 9. Loans on bills(note 4)                               | 9,183,692,000,000   |
| 10. Loans on securities                                 | 1,066,997,610       |
| 11. Securities bought under resale agreement(note 5)    | -                   |
| 12. Loans on Government(note 4)                         | 3,117,200,000,000   |
| 13. Loans on international finance organization(note 4) | 1,407,000,146,760   |
| 14. Foreign exchange                                    | 335,938,441,330     |
| 15. Agencies                                            | 1,615,909,401,460   |
| 16. Inter-office account                                | -                   |
| 17. Other assets                                        | 64,408,415,523,841  |
| II. Non-current assets                                  | 9,865,542,045,930   |
| 1. Investment assets                                    | 9,344,747,088,840   |
| a. Investments(note 6)                                  | 8,089,567,351,091   |
| b. Securities on investment                             | 1,247,850,448,379   |
| c. Telecommunication usage rights                       | 74,869,987          |
| d. Miscellaneous subscription rights                    | 7,254,419,383       |
| 2. Tangible assets                                      | 512,444,002,389     |
| 3. Intangible assets                                    | 8,350,954,701       |
| Total assets                                            | 458,480,919,931,199 |

Source: 2013 Annual Report, pp. 143-144.<sup>58</sup>

The assets side of the balance sheet is largely made up of foreign-currency assets including foreign currency securities (70% of total assets, considerably larger than the Korean Treasury Bonds) and due from foreign commercial banks. The liabilities side, in contrast, is mostly composed of MSBs, securities sold repurchase agreement, foreign-currency denominated deposits and commercial banks' deposits made in the Monetary Stabilization Account (MSA).

Foreign reserve investment is classified into three tranches, by purpose of holding: a liquidity tranche composed of short-term financial instruments, such as U.S. Treasury Bills and deposits (5%), an investment tranche composed of bonds

<sup>57</sup> For detailed information about the operational framework, please see the dedicated section of the study.

<sup>58</sup> Annual Report available at: [www.bok.or.kr/broadcast.action?menuNaviId=740#filelist](http://www.bok.or.kr/broadcast.action?menuNaviId=740#filelist).

denominated in major developed countries' currencies (US dollar, euro, yen, pound sterling), such as government bonds, agency bonds, corporate bonds, and asset-backed securities (80%), and an external management tranche composed of a diversified portfolio of stocks as well as bonds managed by designated external management companies (15%).

In recent years, BoK also expanded its Chinese-yuan denominated investments by increasing the Bank's investment quota in the Chinese interbank bond market and being granted an additional quota as a Qualified Foreign Institutional Investor (QFII) for investment in Chinese stocks. The BoK also has in place Local Currency Swap Agreements with major emerging markets.

### 1.2.12 Swiss National Bank (SNB)

Open market operations cover repo transactions in the form of auctions or bilaterally with individual counterparties, the issuance of SNB Bills, as well as the purchase and sale of SNB Bills in the secondary market. In addition to regular instruments, the SNB has a number of other instruments at its disposal, including foreign exchange spot and forward transactions, foreign exchange swaps and the purchase or sale of securities in Swiss francs. The SNB can also create, purchase or sell derivatives. The assets of the SNB fulfil important monetary policy functions. They consist largely of foreign currency assets (88% of total assets) and, to a lesser extent, financial assets in Swiss francs.

**Figure 11. SNB Assets (end December 2013, CHF mn)**

|                                           | Item in<br>Notes | 31.12.2013       |
|-------------------------------------------|------------------|------------------|
| Gold holdings                             | 01               | 35 565.0         |
| Foreign currency investments              | 02, 30           | 443 274.5        |
| Reserve position in the IMF               | 03, 28           | 2 295.4          |
| International payment instruments         | 04, 28           | 4 293.9          |
| Monetary assistance loans                 | 05, 28           | 244.2            |
| Claims from Swiss franc repo transactions | 27               | –                |
| Swiss franc securities                    | 06               | 3 689.9          |
| Loan to stabilisation fund                | 07, 29           | –                |
| Banknote stocks                           | 08               | 156.7            |
| Tangible assets                           | 09               | 433.1            |
| Participations                            | 10, 29           | 134.4            |
| Other assets                              | 11, 31           | 294.9            |
| <b>Total assets</b>                       |                  | <b>490 382.0</b> |

Source: 2013 Annual Review, pp. 146-147.<sup>59</sup>

The passively managed Swiss franc bond portfolio primarily consists of bonds issued by the Confederation, the cantons and foreign borrowers, as well as Swiss Pfandbriefe.<sup>60</sup> In 2013, no SNB Bills were issued and there were no outstanding claims from repo/reverse repo transactions.

<sup>59</sup> Annual Report available at:

[www.snb.ch/en/mmr/reference/annrep\\_2013\\_komplett/source/annrep\\_2013\\_komplett.en.pdf](http://www.snb.ch/en/mmr/reference/annrep_2013_komplett/source/annrep_2013_komplett.en.pdf).

<sup>60</sup> Covered bonds issued by Swiss specialised credit institutions. More information available at: [www.ecbc.eu/framework/82/Swiss\\_Pfandbriefe](http://www.ecbc.eu/framework/82/Swiss_Pfandbriefe)

In recent years, the level of the currency reserves was dictated by and the monetary policy instruments have been geared towards the enforcement of the minimum exchange rate, introduced in September 2011 and lifted in January 2015. A substantial portion of the foreign currency reserves is invested in highly liquid foreign government bonds issued by core euro area countries and the US. As a result, around half of foreign currency investments is denominated in euro and almost a quarter in US dollars. Other important investment currencies are the pound sterling, yen and Canadian dollar.

The SNB seeks to attain an appropriate diversification of its currency reserves in order to preserve the real value of the currency reserves over time. To this end, additional currencies (Australian and Singapore dollars, Swedish krona, Danish krone and South Korean won) and asset classes (equities, corporate bonds and inflation-linked bonds) are also included in foreign currency investments. In addition, the SNB uses a wide range of FX, interest rate, equity and credit derivatives for risk management purposes.

The SNB manages a globally well-diversified equity portfolio (amounting to 16% of the reserves) of roughly 5,600 individual stocks (approximately 1,400 mid- and large caps and around 4,200 small caps from advanced economies). The SNB does not invest in equities of mid-cap or large-cap banks, in order to preclude potential conflicts of interest. Equities are managed passively and according to a set of rules based on a combination of equity indices in various currencies. Replicating indices ensures that there is no underweighting or overweighting at operational level in individual sectors or companies.

Assets are selected and managed according to generally accepted asset management principles (criteria of security, liquidity and return), while taking into account the specific requirements of the SNB. The majority of investments are managed internally, managers being assigned individual portfolios depending on the asset class. External asset managers are used for benchmarking the internal portfolio management. To avoid conflicts of interest, at operational level the responsibilities for monetary policy and investment policy are largely kept separate, even though the latter serves the former.

### **1.2.13 Central Bank of the Republic of Turkey (CBRT)**

In order to effectively regulate the money supply and liquidity in the banking system within the framework of monetary policy targets, the CBTR conducts open market operations such as outright purchase and sale of securities against Turkish lira, repurchase and reverse repurchase, lending and borrowing of securities and lending and borrowing of Turkish lira deposits.<sup>61</sup> Marketable security portfolios are reported under "FX Securities" and "Securities Portfolio" as separate fields in the balance sheet. The domestic securities portfolio held for monetary policy purposes is much smaller than the FX securities portfolio (50% of total assets).

---

<sup>61</sup> For detailed information about the operational framework, see the dedicated section of the study.

**Figure 12. CRBT Assets (end December 2013, Turkish lira)**

| ASSETS                                                  | Explanation No. | Turkish Lira          | Foreign Currency       | Total                  |
|---------------------------------------------------------|-----------------|-----------------------|------------------------|------------------------|
| <b>1. Gold</b>                                          | 34.2.1          | -                     | 42,850,276,179         | 42,850,276,179         |
| 1.1 International Standard (Net Gram)                   |                 |                       |                        |                        |
| 519,737,014.91                                          |                 | -                     | 42,850,276,179         | 42,850,276,179         |
| <b>2. Foreign Banknotes</b>                             | 34.2.2          | -                     | 3,754,572,450          | 3,754,572,450          |
| <b>3. Foreign Correspondents</b>                        | 34.2.3          | -                     | 232,627,024,034        | 232,627,024,034        |
| 3.1 FX Securities                                       |                 | -                     | 211,123,802,766        | 211,123,802,766        |
| 3.2 Deposit                                             |                 | -                     | 17,107,759,058         | 17,107,759,058         |
| 3.3 Other                                               |                 | -                     | 4,395,462,210          | 4,395,462,210          |
| <b>4. Reserve Tranche Position</b>                      | 34.2.4          | -                     | 370,973,363            | 370,973,363            |
| <b>5. Securities Portfolio</b>                          | 34.2.5          | 8,931,100,770         | -                      | 8,931,100,770          |
| 5.1 Government Securities                               |                 | 8,931,100,770         | -                      | 8,931,100,770          |
| 5.2 Other                                               |                 | -                     | -                      | -                      |
| <b>6. Lending Related to Monetary Policy Operations</b> | 34.2.6          | 39,081,965,985        | -                      | 39,081,965,985         |
| 6.1 Open Market Operations                              |                 | 39,007,449,947        | -                      | 39,007,449,947         |
| 6.2 Interbank Operations                                |                 | 74,516,038            | -                      | 74,516,038             |
| <b>7. Domestic Banks</b>                                | 34.2.7          | -                     | -                      | -                      |
| <b>8. Credits</b>                                       | 34.2.8          | -                     | 13,329,215,092         | 13,329,215,092         |
| 8.1 Domestic Credits                                    |                 | -                     | 13,307,133,918         | 13,307,133,918         |
| 8.1.1 Rediscount Credits                                |                 | -                     | 13,307,133,918         | 13,307,133,918         |
| 8.1.2 Other Credits                                     |                 | -                     | -                      | -                      |
| 8.2 Foreign Credits                                     |                 | -                     | 22,081,174             | 22,081,174             |
| <b>9. Share Participations</b>                          | 34.2.9          | -                     | 587,726,743            | 587,726,743            |
| <b>10. Treasury Liabilities Due to SDR Allocation</b>   | 34.2.4          | -                     | 3,524,139,144          | 3,524,139,144          |
| <b>11. Fixed Assets (Net)</b>                           | 34.2.10         | 641,032,223           | -                      | 641,032,223            |
| <b>12. Claims under Legal Proceedings (Net)</b>         | 34.2.8          | -3,262,625,715        | 3,262,625,715          | -                      |
| 12.1 Claims under Legal Proceedings                     |                 | -                     | 3,262,625,715          | 3,262,625,715          |
| 12.2 Provisions for Claims under Legal Proceedings (-)  |                 | -3,262,625,715        | -                      | -3,262,625,715         |
| <b>13. Deferred Tax Assets</b>                          | 34.2.14         | 7,523,890             | -                      | 7,523,890              |
| <b>14. Revaluation Account</b>                          | 34.2.17         | -                     | -                      | -                      |
| <b>15. Other Assets</b>                                 | 34.2.11         | 1,089,829,912         | 3,912,170              | 1,093,742,082          |
| 15.1 Gold Non-International Standard (Net Gram)         |                 |                       |                        |                        |
| 3,177,797.62                                            | 34.2.1          | 261,996,936           | -                      | 261,996,936            |
| 15.2 Coins                                              |                 | 68,020,952            | -                      | 68,020,952             |
| 15.3 Income Accruals                                    |                 | 29,054,803            | -                      | 29,054,803             |
| 15.4 Other                                              |                 | 730,757,221           | 3,912,170              | 734,669,391            |
| <b>TOTAL</b>                                            |                 | <b>46,488,827,065</b> | <b>300,310,464,890</b> | <b>346,799,291,955</b> |

Source: Annual Report 2013, pp. 63-64.<sup>62</sup>

The securities portfolio and the receivables due to monetary policy operations consists of outright purchased treasury bills and government bonds (including those indexed to inflation, indexed to foreign currency and floating rate) or purchased under agreements to resell in order to regulate the money supply and liquidity in the economy in line with the monetary policy targets.

The Foreign Correspondents account consists of foreign currency securities held as foreign currency reserves and the current accounts of the Bank held on its foreign correspondents. Foreign currency securities consist of government bonds and treasury bills issued by foreign governments and kept in custody at foreign banks. The CBTR has a fairly conservative foreign exchange management policy. Under the current framework, the CBTR executes spot and forward purchase and sale of foreign exchange and banknotes, foreign exchange swaps and other derivatives transactions in order to determine the value of the Turkish lira against foreign currencies.

<sup>62</sup> Annual Report available at: [www3.tcmb.gov.tr/yillikrapor/2013/files/en-full.pdf](http://www3.tcmb.gov.tr/yillikrapor/2013/files/en-full.pdf).

The CBRT holds foreign exchange reserves in support of a range of objectives which include assisting the Turkish government in meeting its foreign exchange denominated domestic and foreign debt obligations, maintaining foreign exchange liquidity against external shocks, supporting the monetary and exchange rate policies and giving confidence to the markets.<sup>63</sup> Reserve management operations are carried out through spot, time deposit and forward purchases and sales of foreign exchange in international markets, other derivative instruments transactions, purchase and sale of securities, repo and reverse repo transactions, securities lending transactions, export and import of foreign exchange banknotes.

### 1.2.14 Federal Reserve System (US Fed)

Permanent open market operations (OMOs) involve outright purchases or sales of securities for the System Open Market Account (SOMA), the Federal Reserve's portfolio. Temporary OMOs (repurchase agreements (repos) or reverse repurchase agreements (reverse repos or RRP)) are typically used to address reserve needs that are deemed to be transitory in nature.<sup>64</sup>

**Figure 13. FED Assets (end December 2013, USD mn)**

|                                                                                                                                                                     |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| <b>Assets</b>                                                                                                                                                       |                    |
| Gold certificates                                                                                                                                                   | \$ 11,037          |
| Special drawing rights certificates                                                                                                                                 | 5,200              |
| Coin                                                                                                                                                                | 1,955              |
| <b>Loans:</b>                                                                                                                                                       |                    |
| Depository institutions                                                                                                                                             | 74                 |
| Term Asset-Backed Securities Loan Facility (measured at fair value)                                                                                                 | 98                 |
| <b>System Open Market Account:</b>                                                                                                                                  |                    |
| Treasury securities, net (of which \$17,153 and \$9,139 is lent as of December 31, 2013 and 2012, respectively)                                                     | 2,359,434          |
| Government-sponsored enterprise debt securities, net (of which \$1,099 and \$697 is lent as of December 31, 2013 and 2012, respectively)                            | 59,122             |
| Federal agency and government-sponsored enterprise mortgage-backed securities, net                                                                                  | 1,533,860          |
| Foreign currency denominated assets, net                                                                                                                            | 23,724             |
| Central bank liquidity swaps                                                                                                                                        | 272                |
| Accrued interest receivable                                                                                                                                         | 23,493             |
| Other investments                                                                                                                                                   | 2                  |
| Investments held by consolidated variable interest entities (of which \$1,774 and \$2,266 is measured at fair value as of December 31, 2013 and 2012, respectively) | 1,926              |
| Bank premises and equipment, net                                                                                                                                    | 2,653              |
| Items in process of collection                                                                                                                                      | 165                |
| Other assets                                                                                                                                                        | 1,134              |
| <b>Total assets</b>                                                                                                                                                 | <b>\$4,024,149</b> |

Source: 2013 Annual Report Federal Reserve System, p. 334.<sup>65</sup>

The FRBNY conducts domestic market operations and, on behalf of the Federal Reserve System, holds the resulting securities in the SOMA. The domestic component of the SOMA portfolio includes the total of U.S. Treasury Securities (T-Bills, Notes and Bonds, Floating Rate Notes, Inflation-Protected Securities), Government-Sponsored Enterprise (GSE) Debt Securities, Federal Agency and GSE Mortgage-Backed Securities, as a result of outright purchases or sales of securities and repo and reverse repo agreements. Since the financial crisis, the size and

<sup>63</sup> A generic breakdown of foreign assets is available at: [www.imf.org/external/np/sta/ir/IRProcessWeb/data/tur/eng/curtur.htm](http://www.imf.org/external/np/sta/ir/IRProcessWeb/data/tur/eng/curtur.htm).

<sup>64</sup> For detailed information about the operational framework, see the dedicated section of the study.

<sup>65</sup> Annual Report available at: [www.newyorkfed.org/aboutthefed/annual/annual13/annual.pdf](http://www.newyorkfed.org/aboutthefed/annual/annual13/annual.pdf).

composition of the SOMA portfolio have become important tools of monetary policy.<sup>66</sup>

The FRBNY also conducts foreign currency operations and, on behalf of the Federal Reserve System, holds the resulting foreign currency denominated assets in the SOMA. FX intervention transactions are rare and are conducted in close consultation and cooperation with the Treasury. The FRBNY holds foreign currency deposits with foreign central banks and the BIS and invests a significant portion of the foreign currency reserves on an outright basis in German, French and Japanese government securities. These foreign government debt instruments are guaranteed as to principal and interest by the issuing foreign governments. In addition, the FRBNY enters into transactions to purchase euro-denominated government debt securities under agreements to resell for which the accepted collateral is the debt instruments issued by the governments of Belgium, France, Germany, Italy, the Netherlands and Spain.<sup>67</sup> Central bank liquidity swaps, which are transacted between the Bank and a foreign central bank, can be structured as either US dollar or foreign currency liquidity swap.

The consolidated balance sheet also includes investments in several variable interest entities (VIEs): Maiden Lane LLC (ML), Maiden Lane II LLC (ML II), Maiden Lane III LLC (ML III), and TALF LLC, such as short-term investments, commercial mortgage loans, swap contracts, non-agency RMBS, other investments. The Federal Reserve System's Committee on Investment Performance is responsible for establishing investment policies, selecting investment managers, and monitoring the investment managers' compliance with its policies for the System's Pension Plan. On 31 December 2013, the Pension Plan's assets were held in nine investment vehicles: three actively managed long duration fixed-income portfolios, a passively managed long-duration fixed-income portfolio, an indexed US equity fund, an indexed non-US developed markets equity fund, an indexed emerging markets equity fund, a private equity limited partnership, and a money market fund.

### **1.2.15 Bank of International Settlements (BIS)**

BIS engages in financial operations that are customer-related, namely supporting central banks, monetary authorities and international financial institutions, in the management of their foreign reserves and other services, as well as operations that are related to the investment of its equity, through two linked trading rooms: one in Basel, at the Bank's head office; and one in Hong Kong SAR, at its Representative Office for Asia and the Pacific. As an international financial institution that is overseen by a Board composed of Governors of major central banks, BIS has no national supervisor. Nonetheless, BIS is committed to maintaining its superior credit quality and financial strength and discloses detailed risk-related information on its exposure to credit, market, operational and liquidity risks and its own assessment of capital adequacy, based on its risk management framework defined by the Board of Directors.<sup>68</sup>

For central banks that decided to diversify part of their foreign exchange reserves, BIS offers tradable instruments in maturities ranging from one week to five years, such as fixed rate investments (FIXBIS), medium-term instruments (MTIs) and products with embedded optionality (callable MTIs). These products are an

---

<sup>66</sup> For more detailed information about the large-scale asset purchase programmes, see System Open Market Account Holdings, available at: [www.newyorkfed.org/markets/soma/sysopen\\_accholdings.html](http://www.newyorkfed.org/markets/soma/sysopen_accholdings.html)

<sup>67</sup> For more detailed information, see Treasury and Federal Reserve Foreign Exchange Operations: Quarterly Reports, available at: [www.newyorkfed.org/markets/quar\\_reports.html](http://www.newyorkfed.org/markets/quar_reports.html).

<sup>68</sup> For detailed information about the Risk Management Framework, see BIS 84th Annual Report, pages 218 to 243.

important part of the “customer placements”. The BIS also provides asset management products and services. The products, which predominantly consist of sovereign securities and other high-grade fixed income instruments in major reserve currencies, are available in two forms: dedicated portfolio mandates tailored to the preferences of a single central bank customer and open-end fund structures that allow customers to invest in a common pool of assets, e.g. BIS Investment Pools (BISIPs). In addition, BIS provides short-term liquidity facilities and extends credit to central banks, usually on a collateralised basis.<sup>69</sup>

At end-March 2014, “most of the assets held by the BIS consisted of government and quasi-government securities plus investments (including reverse repurchase agreements) with commercial banks of international standing”.<sup>70</sup>

**Figure 14. BIS Assets (end March 2014 and 2013)**

| SDR millions                                 | Notes | 2014             | 2013<br>restated |
|----------------------------------------------|-------|------------------|------------------|
| <b>Assets</b>                                |       |                  |                  |
| Cash and sight accounts with banks           | 4     | 11,211.5         | 6,884.1          |
| Gold and gold loans                          | 5     | 20,596.4         | 35,367.1         |
| Treasury bills                               | 6     | 44,530.8         | 46,694.1         |
| Securities purchased under resale agreements | 6     | 50,554.4         | 28,469.5         |
| Loans and advances                           | 7     | 19,600.3         | 19,676.8         |
| Government and other securities              | 6     | 70,041.1         | 62,643.3         |
| Derivative financial instruments             | 8     | 3,002.2          | 5,855.7          |
| Accounts receivable                          | 9     | 2,777.4          | 6,171.2          |
| Land, buildings and equipment                | 10    | 196.2            | 190.6            |
| <b>Total assets</b>                          |       | <b>222,510.3</b> | <b>211,952.4</b> |

Source: BIS 84<sup>th</sup> Annual Report, p. 173.<sup>71</sup>

BIS distinguishes between assets held in the banking portfolio and the investment portfolio, respectively. The banking portfolio consists of assets related to the banking services provided to customers, such as treasury bills (short-term debt securities issued by governments on a discount basis), securities purchased under resale agreements, loans and advances (investments made with central banks, international institutions and other public sector organisations and advances made as part of committed and uncommitted stand-by facilities), and government and other securities (debt securities issued by governments, international institutions, other public sector institutions, commercial banks and corporate, e.g. commercial paper, certificates of deposit, fixed and floating rate bonds, covered bonds and asset-backed securities). The investment portfolio relates principally to the investment of its equity. BIS holds most of its equity in financial instruments denominated in the constituent currencies of the SDR, which are managed by comparison to a fixed duration benchmark of bonds. All assets, unless they are part of an actively traded portfolio, are designated as available for sale.

BIS uses the following types of derivative instruments for hedging against market risk and trading purposes: bond futures, cross-currency interest rate swaps, currency and gold forwards, currency and gold options, currency and gold swaps,

<sup>69</sup> For more detailed information about the operational framework, see the dedicated section of the study.

<sup>70</sup> BIS 84th Annual Report, page. 162.

<sup>71</sup> BIS 84th Annual Report available at: [www.bis.org/publ/arpdf/ar2014e7.pdf#page=44](http://www.bis.org/publ/arpdf/ar2014e7.pdf#page=44)



forward rate agreements, interest rate futures, interest rate swaps, swaptions. The derivatives with a positive contract value are reported on the assets side.

The asset management business is reported off-balance sheet. This concerns the two different portfolio management mandates: the BISIPs<sup>72</sup>, which are collective investment arrangements for central banks, and dedicated mandates,<sup>73</sup> where assets are managed for a single central bank customer. For both the BISIPs and the dedicated mandates, the BIS is remunerated by a management fee. Finally, the BIS also manages three post-employment arrangements for its own staff.

### **1.3 Empirical analysis: third-country central banks' trading activity**

This section reviews two datasets of aggregated data on individual transactions in non-equity financial instruments (split in fixed income, derivatives and other non-equity instruments) done by a group of non-EU central banks: transactions in EU-listed financial instruments<sup>74</sup> and transactions with EU counterparties. The data analysis will provide details about what type and in what terms central banks enter into transactions that may fall under the scope of the EU transparency regime (MiFIR).

#### **1.3.1 The datasets**

Transactions in equity instruments are not exempted under MiFIR, thus are not part of the assessment. The first dataset includes the yearly aggregate, for the period 2009-13, of transactions in financial instruments listed in the European Union, whereby 'financial instrument' is defined according to Annex 1 Section C of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (so-called 'Markets in Financial Instruments Directive', or 'MiFID 2'). To facilitate and standardise the data gathering process (notably to cater for lack of information about the nature of the trading activities of the counterparties) an approximation built on transactions involving instruments listed in the EU and with EU counterparties was used as a basis. For this purpose:

'Listed in the EU' means:

1. Any instrument that has been admitted to trading on any EU trading venue (regulated market or multilateral trading facilities, MTF); or
2. Any instrument subject to bilateral trading by an EU domiciled internaliser; or
3. Any instrument subject to trading organised by an EU domiciled firm matching multiple buying and selling interests without being registered as a trading venues.<sup>75</sup>

---

<sup>72</sup> The BISIPs are a range of open-ended investment funds created by the BIS and managed using entities that do not have a separate legal personality from the BIS. The assets of the BISIPs are held in the name of the BIS, but the economic benefit lies with central bank customers. The Bank is considered as having an agency relationship with the BISIPs; the related assets are not included in the Bank's financial statements. BIS does not invest for its own account in the BISIPs.

<sup>73</sup> Dedicated mandates are portfolios which are managed by the BIS in accordance with investment guidelines set by the customer. BIS is not exposed to the risks or rewards from these assets, as they are held for the sole benefit of the central bank customer. The assets are not included in the Bank's financial statements.

<sup>74</sup> 'EU-listed financial instruments' and 'EU instruments' or 'EU financial instruments' will be used interchangeably from now onwards.

<sup>75</sup> Under MiFID 2, such platforms will have to be authorised and subject to the same transparency rules as regulated markets and MTFs, with the so-called name of 'organised trading facilities' (OTFs). Since this platform is not yet in place, no data has been collected under this item. Where central banks were

The second dataset collects data about transactions with an 'EU counterparty', which is defined as a firm domiciled in the European Union or a European branch of a non-EU domiciled firm or a non-EU branch of an EU domiciled firm. A 'branch' is an entity that operates in a 'host' country but is guaranteed by and not legally separated from the parent company in the country of origin ('home' country).

**Table 2. Dataset submissions**

| Country              | Central Bank                       | Transaction data |             |
|----------------------|------------------------------------|------------------|-------------|
|                      |                                    | 1st dataset      | 2nd dataset |
| <b>Australia</b>     | Reserve Bank of Australia          | ✓                | ✓           |
| <b>Brazil</b>        | Central Bank of Brazil             | ✓                | ✓           |
| <b>Canada</b>        | Bank of Canada                     | ✓                | ✓           |
| <b>China</b>         | People's Bank of China             | X                | X           |
| <b>Hong Kong SAR</b> | Hong Kong Monetary Authority       | ✓                | ✓           |
| <b>India</b>         | Reserve Bank of India              | ✓                | ✓           |
| <b>Japan</b>         | Bank of Japan                      | X                | ✓           |
| <b>Mexico</b>        | Central Bank of Mexico             | ✓                | ✓           |
| <b>Singapore</b>     | Monetary Authority of Singapore    | ✓                | ✓           |
| <b>South Korea</b>   | Bank of Korea                      | ✓                | ✓           |
| <b>Switzerland</b>   | Swiss National Bank                | X                | ✓           |
| <b>Turkey</b>        | Central Bank of Republic of Turkey | ✓                | ✓           |
| <b>USA</b>           | Federal Reserve Bank of New York   | ✓                | ✓           |
| <b>International</b> | Bank for International Settlements | X                | X           |

Table 2 above illustrates the central banks in our sample that have submitted data on transactions. Data are split into three categories: fixed income, derivatives, and other non-equity instruments. In addition, central banks had to distinguish between transactions conducted for monetary, currency and financial stability versus transactions conducted for investment purposes, i.e. acting as other private investors (see definition in section 1.1). Central banks also reported both number of transactions and total value (in local currency).<sup>76</sup>

The data provided are estimates received from central banks that may be subject to revisions and may also include transactions that are not captured by the new transparency framework in MiFIR/MiFID II.

---

uncertain about whether their EU counterparties internalised their orders, those trades have been reported and included in the dataset. Central banks typically operate with financial intermediaries that are also investment firms or that may internalise or fall under the upcoming definition of OTF.

<sup>76</sup> The total value of derivative contracts corresponds to the gross notional value, while fixed-income instruments were reported at their nominal value.

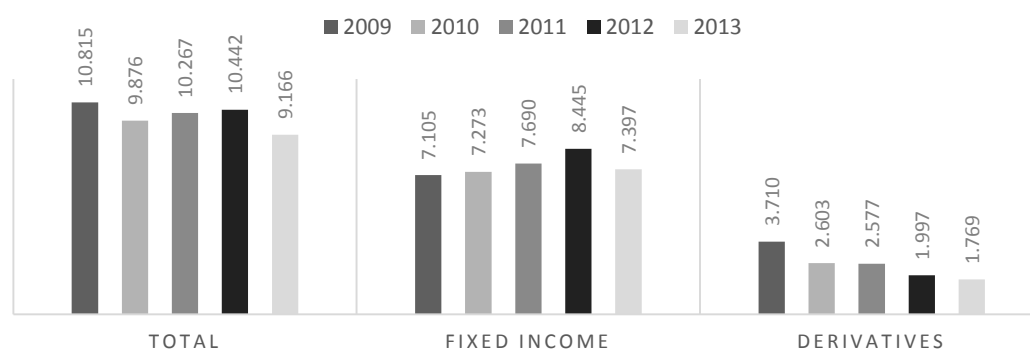
### 1.3.2 Key results

There are two initial findings. First, none of the central banks involved in the data gathering has concluded transactions for 'pure' investment purposes, which would not be covered by the potential exemption under Article 1.7 of MiFIR. Foreign exchange reserve management has been considered as part of the operations in execution of one of the three key objectives identified above (foreign exchange policy). Hence, all transactions have been executed in line with one of the three overarching policy objectives. The second initial finding is that central banks enter into transactions in fixed-income instruments (including structured finance) and derivatives (mostly currency swaps), with fixed-income being the biggest class of instruments that central banks buy or sell in outright market operations (both for EU-listed instruments and EU counterparties).

The third-country CBs submitted data and/or provided additional explanation with regard their transactions undertaken for both monetary and foreign exchange (including reserve management) policy purposes (RBA, BCB, HKMA, MAS, BoJ<sup>77</sup>, SNB) or solely for the purpose of foreign reserve management operations (BoC, PBoC/SAFE<sup>78</sup>, RBI, Banxico, BoK, CBRT, Fed). BIS undertakes transactions on behalf of the customer central banks, which may have monetary, foreign exchange (including reserve management) or financial stability policy purposes.<sup>79</sup> Repo and reverse repo transactions were excluded from the analysis.

**Error! Reference source not found.** shows the evolution of number and value of transactions in EU-listed financial instruments since 2009. The trend is negative, both in number and transaction value (above €650 billion).

**Figure 15. Total number and value of transactions (€mn) in EU financial instruments**



<sup>77</sup> Includes only data submitted by the Financial Markes Department. Data on transactions related to foreign reserve management were not disclosed by the BoJ.

<sup>78</sup> Disclosure of data on transactions is prohibited due to the strict confidentiality internal rules.

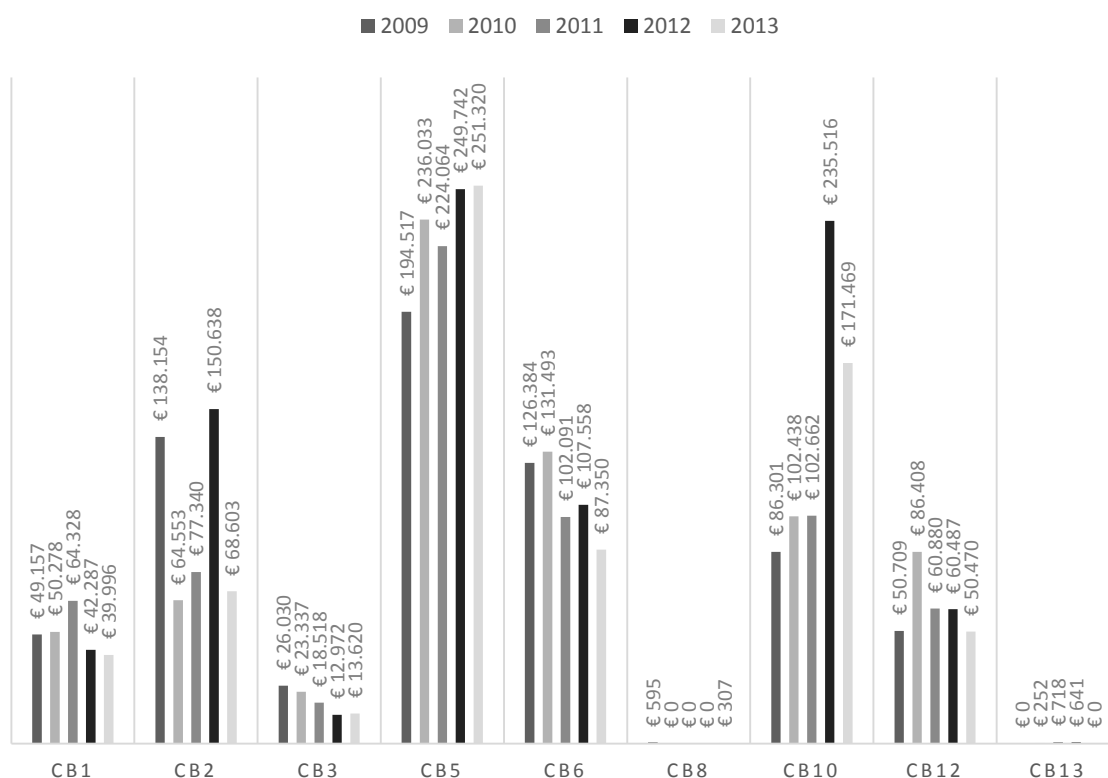
<sup>79</sup> Most of the transactions were undertaken for the purpose of assisting the central banks in the management of their foreign reserves. Disclosure of data on transactions is prohibited due to the strict confidentiality agreements with the central banks.



Source: All 3<sup>rd</sup> country CBs, except for PBoC, BoJ, MAS, SNB, and BIS. Note: Data for the FED (United States) is from July 2010 to end 2012.

There is also high dispersion across central banks, with those exposed to floating currencies managing and executing more transactions in foreign assets (see Figure 16), such as European instruments, and therefore they are more vulnerable to an increase in transaction costs (via more regulatory costs on counterparties).

**Figure 16. Value of transactions in EU instruments (by central bank)**



Source: All 3<sup>rd</sup> country CBs, except for PBoC, BoJ, MAS, SNB, and BIS. Note: Data for the FED (United States) is from July 2010 to end 2012.

Figure 17 then shows the evolution of number and value of transactions with EU counterparties since 2009 for a slightly different sample. In this case, while the value has gone down, the number of transactions on average has increased. The absolute value is above €1.1 trillion.

**Figure 17. Total number and value of transactions (€mn) with EU counterparties**

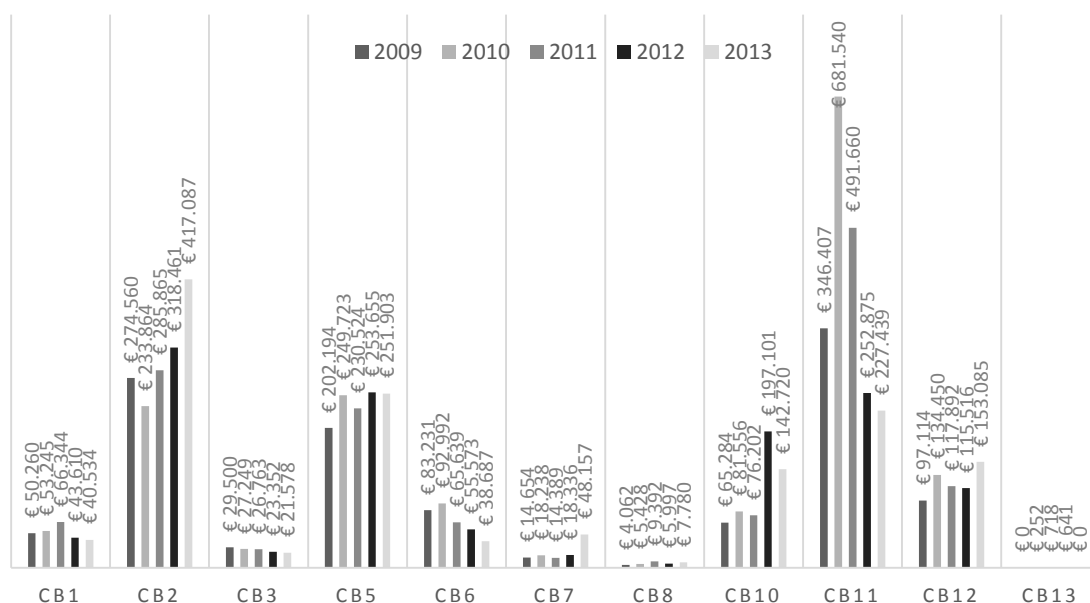


Source: All 3<sup>rd</sup> country CBs, except for PBoC, MAS, and BIS.

Note: Data for the FED (United States) is from July 2010 to end 2012.

Even for the transactions with EU counterparties, there is a high dispersion. Countries where currencies are more volatile exhibit a higher volume of transactions (see Figure 18).

**Figure 18. Value of transactions with EU counterparties (by central bank, €mn)**

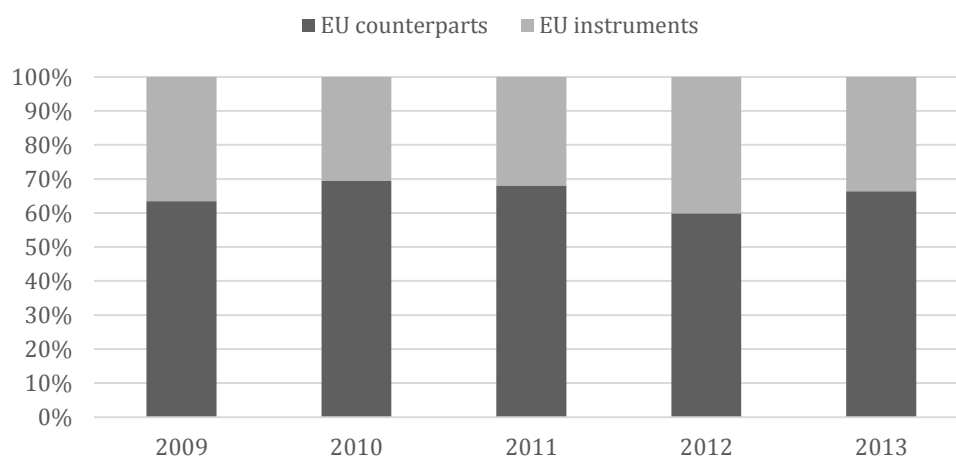


Source: All 3<sup>rd</sup> country CBs, except for PBoC, MAS, and BIS.

Note: Data for the FED (United States) is from July 2010 to end 2012.

Value of transactions in EU counterparties is always above the value of transactions in EU financial instruments (see Figure 19), except for one case where the central bank trades a modest amount of EU instruments and mostly with non-EU counterparties.

**Figure 19. EU counterparties vs EU instruments (by total value)**



Source: All 3<sup>rd</sup> country CBs, except for PBoC, MAS, and BIS.

Note: Data for the FED (United States) is from July 2010 to end 2012.

Furthermore, the average size of transaction is around €71 million for transaction in EU financial instruments and €51 million for transaction with EU counterparties. There is, however, high dispersion across central banks, except for transactions in EU-listed fixed-income instruments. Overall, the size of transaction is, on average, consistent with trading between wholesale-specialised counterparties.

**Table 3. Average size of transaction, 2009-13 (€mn)**

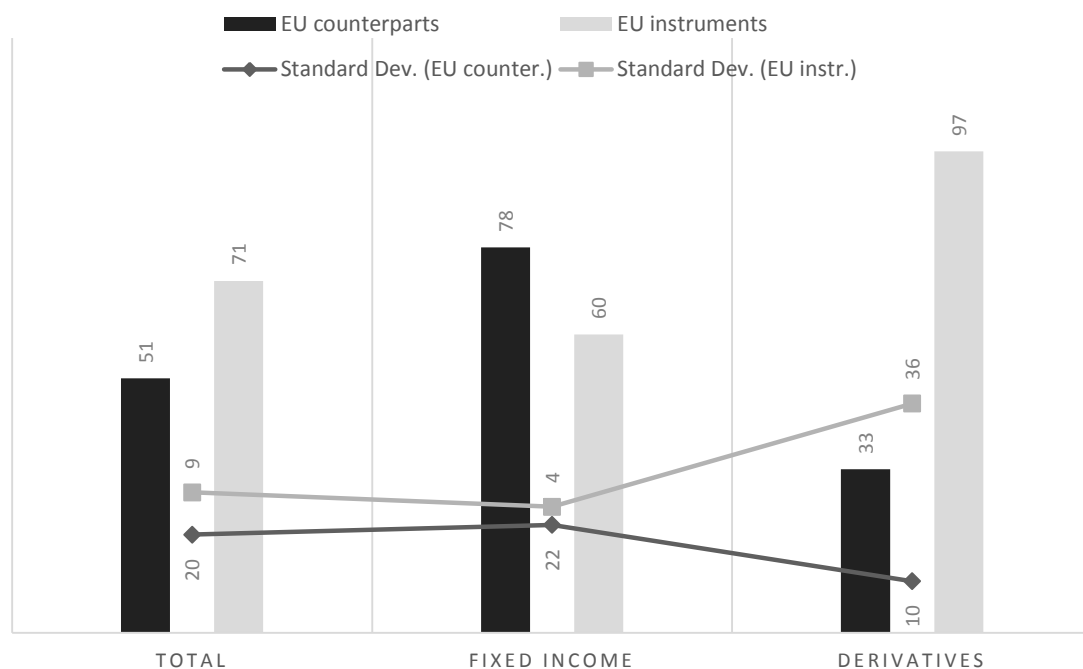
|                             | EU financial instruments |              |             | EU counterparties |              |             |
|-----------------------------|--------------------------|--------------|-------------|-------------------|--------------|-------------|
|                             | Total                    | Fixed-income | Derivatives | Total             | Fixed-income | Derivatives |
| <b>Average</b>              | 71                       | 60           | 97          | 51                | 78           | 33          |
| <b>Dispersion (std dev)</b> | 8.537                    | 3.623        | 35.849      | 19.769            | 21.765       | 10.374      |
| <b>Low</b>                  | 62                       | 56           | 74          | 39                | 58           | 25          |
| <b>High</b>                 | 82                       | 63           | 165         | 86                | 113          | 51          |
| <b>Median</b>               | 70                       | 62           | 93          | 49                | 74           | 35          |

Source: All 3<sup>rd</sup> country CBs, except for PBoC, and BIS.

Note: Data for the FED (United States) is from July 2010 to end 2012. Data for MAS (Singapore) is only for 2013.

Finally, Figure 20 and Figure 21 illustrate the higher dispersion in the average size of transactions in EU instruments, with a spike in derivative transactions, while since 2009 the average size of transactions in EU-listed financial instruments has increased, especially for fixed-income, due perhaps to more active intervention in exchange rates caused by currency volatility.

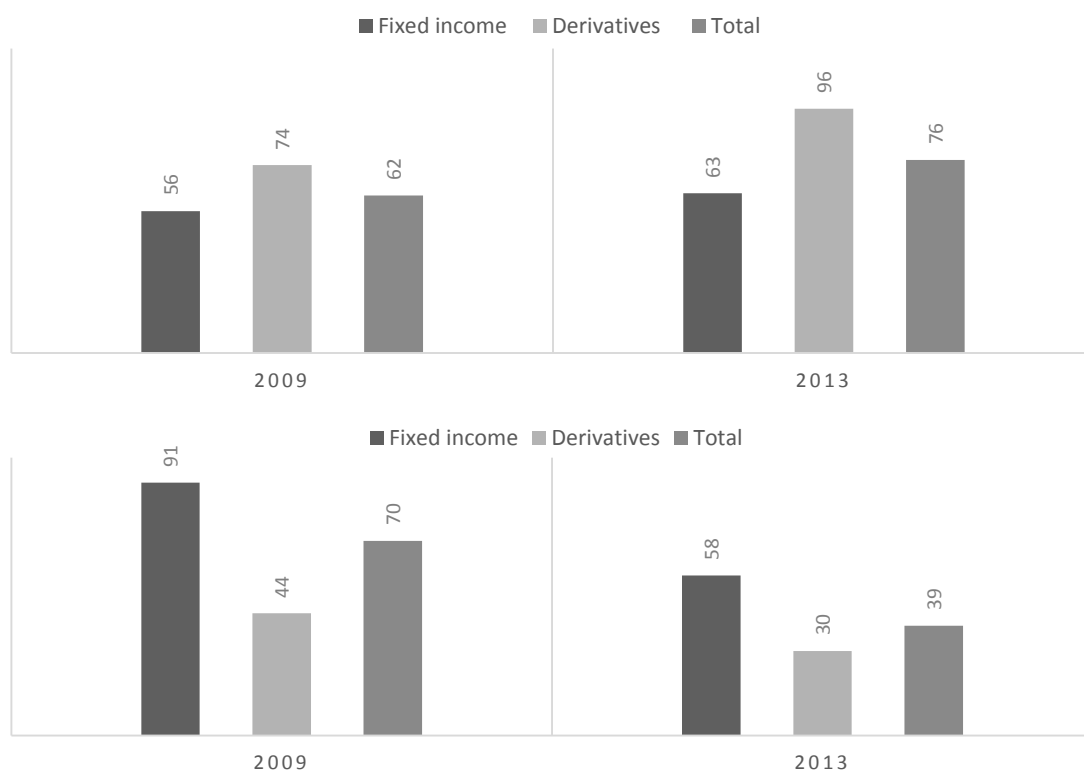
**Figure 20. EU counterparties vs EU instruments, 2009-13 average size (€mn)**



Source: All 3<sup>rd</sup> country CBs, except for PBoC, and BIS.

Note: Data for the FED (United States) is from July 2010 to end 2012. Data for MAS (Singapore) is only for 2013.

**Figure 21. Average value of transactions in EU financial instruments and with EU counterparties, 2009 vs 2013 (€mn)**



Source: All 3<sup>rd</sup> country CBs, except for PBoC, and BIS.

Note: Data for the FED (United States) is from July 2010 to end 2012. Data for MAS (Singapore) is only for 2013.

## **2 Analysis under article 1 paras. 6 and 9 of the Markets in Financial Instruments Regulation (MiFIR)**

Article 1 (6) MiFIR provides the framework for the pre- and post-trade transparency exemptions relevant for this report. It states that:

*"Articles 8, 10, 18 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of the European System of Central Banks (ESCB) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt."*

Article 1 (9) MiFIR states that the Commission shall be empowered to adopt delegated acts, in accordance with Article 50, in order to extend the scope of paragraph 6 to non-ESCB central banks, according to a report, to be submitted to the European Parliament and the Council, assessing the treatment of transactions by third-country central banks. Article 1 (9) states that:

*"The report shall include an analysis of their statutory tasks and their trading volumes in the Union. The report shall:*

*(a) identify provisions applicable in the relevant third countries regarding the regulatory disclosure of central bank transactions, including transactions undertaken by members of the ESCB in those third countries, and*

*(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions."*

The Draft regulatory Technical Standard 9 also introduces some criteria that define the scope of the exemption for transactions by a member of the ESCB,<sup>80</sup> and therefore of the exemption for non-ESCB central banks. Article 12 of the Draft RTS 9, which further develops Article 1 (6) of MiFIR, provides that:

*"A transaction is considered to be entered into by a member of the ESCB in performance of monetary, foreign exchange and financial stability policy if it is:*

*(a) carried out for the purposes of monetary policy, including an operation carried out in accordance with Articles 18 and 20 of the Statute of the ESCB and the ECB or an operation carried out under equivalent national provisions for members of the ESCB in Member States whose currency is not the euro;*

*(b) a foreign-exchange operation, including operations carried out to hold or manage official foreign reserves of the Member States or the reserve management service provided by a member of the ESCB to central banks in other countries to which the exemption has been extended in accordance with Article 1(9) of Regulation (EU) No 600/2014; or*

*(c) carried out for the purposes of financial stability policy."*

Article 13 of the Draft RTS 9 refers to the transactions that are outside the scope of the exemption:

---

<sup>80</sup> Draft RTS 9, ESMA 19 December 2014 Paper.



*"The exemption in Article 1(6) of Regulation (EU) No 600/2014 shall not apply in respect of a transaction entered into with a member of the ESCB where that member has entered into the transaction for the performance of an operation that is unconnected with that member's performance of one of the tasks referred to in Article 12, including a transaction entered into by that member of the ESCB:*

*(a) for the management of its own funds;*

*(b) conducted for administrative purposes or for the staff of the member of the ESCB which include transactions conducted in the capacity as administrator of a pension scheme for its staff; or*

*(c) for its investment portfolio pursuant to obligations under national law."*

These provisions identify four conditions to be met in order to grant the exemption:

- i. The transaction must be entered into with a central bank;
- ii. The transaction must be entered into for certain policy purposes;
- iii. Those policy purposes must be identified in the mandate of the central bank; and
- iv. The central bank must have notified the counterparty about the exemption.

ESMA's high-level cost-benefit analysis indicated that the wording of the RTS reflects the types of transactions *typically carried* by ESCB members in pursuit of their statutory functions.<sup>81</sup> The costs arising from the exemption result from the need that counterparties and trading venues separate exempted from non-exempted transactions, and the need that regulators supervise transactions for other purposes than statutory functions are properly included by market operators and investment firms' transparency requirements.<sup>82</sup>

All the institutions surveyed for this report, except for the People's Bank of China (PBOC), submitted their responses. The depth and level of detail in the responses to the questionnaires, however, was uneven. In some cases, the information provided by the respondents went beyond what could be extracted from publicly available information. In many cases, however, the information provided simply confirmed the conclusions that could be drawn from publicly available information, or completed the picture by clarifying some points. In some cases, the information from the questionnaire was less detailed than what could be obtained from publicly available documents and had to be supplemented further clarifications requested to central banks.

## **2.1 Policies and assessment: an overview**

The following section gives an overview of central banks' mandates and policies, as well as the methodology used to assess whether or not an exemption for third-country central bank transactions under Article 1(6) and 1(9) of MiFIR is appropriate and necessary. Finally, the section presents an overview of the results of the assessment.

---

<sup>81</sup> ESMA Consultation Paper – Annex, "A High level cost-benefit-analysis of the draft technical standards (MiFID/MiFIR)", 22 December 2014, p. 129.

<sup>82</sup> In both cases, however, ESMA specifies that the costs do not stem from the Draft RTS, but from MiFIR itself, which provides exemption. See ESMA Consultation Paper – Annex A High level cost-benefit-analysis draft technical standards (MiFID/MiFIR), 22 December 2014, pp. 129-130.

### 2.1.1 Central banks' mandates

The mandates and policies of the surveyed institutions varied within a common range of options (see Section 1.1) defined by their founding documentation, which can have statutory or even constitutional status. As discussed above, there are three sets of policies: price stability, foreign exchange management and financial stability.

Price stability is the most common mandate among the central banks surveyed in this study and this is usually included in statutory law. Foreign exchange (FX) policy is present as part of the mandate of all institutions. In two cases of institutions operating under currency board arrangements or currency pegs (HKMA and MAS), foreign-exchange policy had a preponderant role, and, in the case of HKMA, price stability is an indirect consequence of FX policy, rather than part of the institution's mandate. FX policy is also a priority in the case of Banxico, which is responsible for the floating exchange-rate regime.

In other countries FX policy is simply part of the institution's mandate, or could be inferred from it (RBI, BCB, PBoC, RBI, BoJ, SNB or CBRT). In some cases, FX policy is not part of the statutory mandate, but the institution is entrusted with its implementation by the Treasury or Ministry of Finance (e.g. BoC, BoK and the Fed).

"Financial stability" is also commonly included among the institutions' mandates. In some cases, there is an explicit reference (BoJ, Banxico, BoK, MAS, SNB) while in others it could be deduced from the institution's broader mandate of economic/employment policy or support to that policy (RBA, BoC, CBRT, Board of Governors of the US Fed (and, to the extent it is entrusted by the Board, the NY Federal Reserve)) or as part of monetary policy (RBI).

Other functions, which broaden the institutional mandate and are quite common among central banks, are the management of the payment systems and/or financial supervision (as it is the case for BCB, PBOC, HKMA, RBI, MAS, or the Fed). The least common mandate is the promotion of the country as a financial centre (as in the case of MAS and HKMA). These functions, since they do not involve transactions in non-equity instruments, are not part of this study. In its role of international organisation, the Bank for International Settlements (BIS) has a different mandate, which includes assistance and support to central banks and other official monetary institutions in the management of their FX reserves.

Finally, most of the institutions surveyed do not distinguish between transactions according to the policy they serve. A single transaction could even serve different purposes, as pointed out by one respondent. Among the institutions that make a distinction (RBA, BCB, BoC, RBI, BoJ, CBRT), the distinction usually pertains to monetary policy transactions and FX policy transactions, as well as transactions executed for purposes of financial stability. In other cases the extent of the ability to distinguish between the different purposes is unclear (Banxico, MAS and CBRT make a general reference to statutory distinction). A respondent can provide details about transactions for "investment" purposes, which are limited to the management of the State pension fund, while another can provide some level of detail as to the type of transactions that correspond to each policy.<sup>83</sup>

---

<sup>83</sup> According to the response, "Transactions for monetary purposes can involve Repo/Reverse Repos in local and foreign currencies, FX-Spot, FX-Forwards and Options as well as purchases of domestic bonds, Transactions for foreign exchange purposes can involve FX-Spot, FX-Forwards and Options, Transactions for investment purposes can involve FX-Spot, FX-Forwards and Options, fixed-income cash instruments, interest rate swaps and futures, repo-/reverse repo transactions in foreign currencies and credit derivatives".

Because of the comprehensive coverage of policies defined by the MiFIR exemption, transactions executed for 'pure' investment purposes, i.e. outside the official mandate of the institution, are thus very marginal for all the institutions surveyed in this report.

### **2.1.2 Operational framework**

Almost all central banks and monetary authorities subject to the present study have in place an operational framework. The BIS is the only exception, since it defines its operations as "services" rendered to other central banks and monetary authorities. For the rest of the institutions, the framework of operations<sup>84</sup> is mostly defined in statutory law (BoJ, MAS, BoK, SNB, CBRT or the NY Federal Reserve) or in the institution's guidelines (BoC, HKMA or RBI).

Moreover, Open Market Operations (OMOs) represent the core of most institutions' operational toolbox. These operations have a direct link with the implementation monetary policy. OMOs are typically different from Standing Facilities (SFs). In contrast with OMOs, operations for the implementation of FX policies are subject to less structured (and more discretionary) guidelines, and the available information is limited. Most of the surveyed institutions tended to use OMOs as the background for their responses to their questionnaires. Further clarification was sought with respect to FX reserve management frameworks. Finally, all the institutions indicated that they mainly deal in non-equity financial instruments.

### **2.1.3 Execution of transactions: relevance of EU counterparts**

All institutions executed their transactions with a list of eligible counterparts. Those counterparts have to fulfil certain requirements, as they commit to providing liquidity to the market and to participating actively in tender auctions. For the institutions that publish their list of eligible counterparts, it is possible to establish that some institutions opt for a short list of dealers (BCB, BoC, HKMA, RBI, MAS, CBRT, NY Federal Reserve) and others for a longer one, including commercial banks (RBA, PBoC). Most institutions indicated that they were not aware of whether their counterparts were systematic internalisers (SIs), or, in general, whether they internalised orders, which is a key element for the transactions to fall within the scope of MiFIR transparency rules.

The institutions generally implement their policies by executing transactions with financial counterparts and do not generally transact on trading venues (exceptions being BCB, MAS, SNB and CBRT). The term "open market" operations, thus, can be misleading, since the transactions in the context of those operations are typically executed via "closed" auction systems, available only to eligible counterparts and finalised via a bilateral transaction between the institution and its counterparts. The institutions can also transact directly with a counterpart without an auction process.

Many of the institutions surveyed provided an estimate of the relative importance of transactions undertaken through EU venues or counterparties. The institutions normally pointed to a range between 10% and 50% of volume (except for one respondent, which indicated a share between 50% to 100%, and another one,

---

<sup>84</sup> The framework to define the operational framework varied across institutions. What was referred to in some cases as "operations" could be found elsewhere as "instruments" or "transactions". To clarify this framework "transactions" are considered the purchases, sales, repos or loans concluded by the institutions; and "operations" the broader context where the specific transactions are included.

which indicated one below 10%).<sup>85</sup> In some cases, the institution did not provide estimates (PBOC, BoK, BIS).

## **2.1.4 Transparency of transactions**

Most of the respondents were less specific about the transparency rules applicable to their transactions in their jurisdiction and provided more details about the implementation of individual transactions. As to the existence of an exemption, most central bank transactions are not subject to general disclosure requirements, either because they are not subject to securities rules, or because they are not a member of the self-regulatory organisation that sets these rules. One respondent, however, is a member of the non-equity trading market which executes transactions that are then subject to disclosure. One special case is the US Fed, which, since the Dodd-Frank Act expanded disclosure requirements to Federal Reserve transactions (including the name of the counterparts), publishes individual transaction details with a two-year time lag.

In terms of implementation details, OMOs are normally scheduled in advance, open to many participants, normally using an auction system, and executed via repurchase/reverse agreements (repos) or outright purchases/sales. SFs, instead, are typically unscheduled, bilateral, and available at the request of counterparts and subject to greater discretion. The operational framework, however, varies across institutions, with a mixture of operations or liquidity facilities taking mostly the characteristics of OMOs, e.g. PBoC, CBRT, or of more flexible SFs, e.g. BoC, BoJ. Finally, FX operations are the least detailed. There is typically no framework to predetermine the procedure and conditions of these operations, which are subject to discretion and bilateral execution.

Regarding the transparency requirements about the counterparts of the institution, both desk research and responses to the questionnaire show that exemptions for transactions in non-equity financial instruments, based on the special status of one of the counterparts (such as a central bank), are rather infrequent. In addition, almost all institutions indicated that they have no discretion to waive disclosure requirements. Only one respondent explained that, in its capacity as the regulator of money market, government securities market and foreign exchange market, it is able to exercise judgment about the compliance with transparency requirements. However, the absence of exemptions or waivers does not necessarily mean that the transactions are subject to disclosure requirements. In some countries, the counterparts can rely on exemptions based on the nature of certain instruments, such as government bonds/certificates (Brazil, Canada, US) or transactions, e.g. Australia, for securities lending transactions. In some cases, the absence of an explicit exemption may be based on the fact that non-equity securities trading take place mostly over-the-counter where disclosure obligations are very limited and there is no obligation to disclose the counterparty (such as Singapore, China, Korea and Japan).

Exemptions for foreign central bank transactions are rare (BCB indicated that such an exemption is available in Brazil, whereas the SNB indicated that such an exemption is under discussion). In some countries foreign central banks could rely on general exemptions from public access to information rules, similar to those relied on by the domestic central bank (BoJ indicated that this is the case in Japan, although the institution relies also on the limited scope of transparency rules). In some cases, foreign central bank transactions may rely on the limited scope of transparency rules (Canada, Hong Kong, India, Japan, Mexico, Singapore or Korea).

---

<sup>85</sup> It is unclear whether, in making this estimate, the BoJ left out all EU counterparts unless they executed the transaction by means of an EU branch.

Specific procedures to notify counterparts about transaction details, such as the presence of an exemption, are also not available for most institutions. The Central Bank of Brazil, HKMA and Bank of Mexico have a procedure in place, in the form of a contract between the central bank/monetary authority and its counterparty, containing a confidentiality clause. Most of them, however, have indicated that this procedure can be easily set up in relation to transactions that would fall under the MiFIR exemption.

Finally, the fact that the institutions are not subject to regulatory disclosure requirements (except for the US Federal Reserve) does not mean that they do not disclose any information or that they conduct their operations or execute their transactions in an entirely opaque manner. Most of them publish information on their operations, although the level of disclosure varies. Most institutions, with the exception of the BIS, publish some level of information on their transactions.

Some institutions do not release any information about operational activities in non-equity financial instruments and release only information about general items of the balance sheet, e.g. total value of FX reserves (HKMA, except for Exchange Fund Bills and Notes, or BoK).

With regard to the institutions that disclose information to the public regarding operations/transactions, some institutions indicated that they disclose no information to the public before the operations are conducted or the transactions take place (RBA, BoJ or the SNB), whereas others do disclose (BCB, PBOC, RBI, Banxico, MAS for some transactions, SNB, for repos, and the US Federal Reserve). The gap between disclosure and execution ranges from a few days to half a day, and the website seems to be the preferred disclosure mechanism.

Once the transaction is completed, most institutions publish aggregate information. In some cases, this information includes the result of the auction, where it is conducted (RBA, BCB, BoC, PBOC, RBI, BoJ, Banxico, MAS, SNB, CBRT<sup>86</sup> (including the volumes by institution) or the NY Fed)), or only statistical information (RBA). Again, the website of the institution is the preferred mechanism, and the time gap is usually a few hours (except for the RBA, and for FX operations undertaken by the RBI).<sup>87</sup>

## **2.1.5 Methodology**

The following section reviews the methodology used to assess whether or not an exemption for third-country central bank transactions under Articles 1(6) and 1(9) of MiFIR is appropriate and necessary, together with the overview of the assessment. First, the section explains the main criteria employed for the assessment of appropriateness and necessity. Second, additional indicators complete the assessment, in line with the MiFIR mandate. Third, the section discusses the methodology used for the assessment.

### **2.1.5.1 Key criteria**

The key criteria for the assessment of appropriateness and necessity of an exemption from transparency rules for non-equity instruments that would be otherwise imposed upon third-country central banks' transactions are the following:

---

<sup>86</sup> The transactions executed through the market linked to the stock exchange are also published on the trading platform for non-equity securities.

<sup>87</sup> It is unclear whether the time gap is different for FX operations in other institutions, since the responses tended to focus on OMOs or, generally, transactions for the implementation of monetary policy.

- i. Transparency of the market
- ii. Transparency of the operations
- iii. Transaction volumes under the MiFIR scope

#### **2.1.5.1.1 Transparency of the market**

Market transparency requirements for non-equity instruments under MiFIR, including the exemption for European central banks' transactions, strike a balance between greater market transparency and the limitation of distortions in the implementation of sensitive policies. The assessment of market transparency in the jurisdiction of the non-ESCB central bank is thus a crucial aspect for the overall assessment of the appropriateness and necessity of the exemption.

Therefore, under this headline, the first part of the assessment reviews the existence of regulatory requirements for transparency of non-equity financial instruments that would apply to the transactions executed by the institution in the absence of an exemption. Regulatory requirements will include those imposed by statutory law, as well as by self-regulatory bodies (under the supervision of the domestic regulator). The assessment defines the level of market transparency as:

- i. 'low', when there are no transparency requirements for transactions in non-equity financial instruments (as defined by MiFID Annex I);
- ii. 'medium', when there are transparency requirements only for some non-equity financial instruments;
- iii. 'high', when transparency requirements apply to all non-equity financial instruments.

#### **2.1.5.1.2 Transparency of the operations**

The level of disclosure of the operations that a central bank executes in the market is important to mitigate the lack of transparency that an exemption may produce, with broader implications for proper market functioning. The assessment defines the level of transparency of the institution's operations as:

- i. 'low', if the institution does not release any information about operational activities in non-equity financial instruments or only information about general items of the balance sheet, e.g. total value of FX reserves;
- ii. 'medium', if the institution releases aggregate data about volumes (total value) of transactions, in particular outright purchases information of non-equity financial instruments;
- iii. 'high', if the institution discloses information about individual transactions in non-equity financial instruments.

#### **2.1.5.1.3 Necessity measured in terms of transaction volume**

Article 1(6), in conjunction with Article 1(9) that calls for the consideration of "*the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions*", requires the study to also make an assessment of necessity of the exemption because of a significant market distortion. The volume (total value) of transactions in non-equity financial instruments, which may fall within the MiFIR scope, is an important indicator of the necessity (or not) of an exemption. In effect, this indicator provides a quantitative assessment of the potential impact that the introduction of transparency requirements may have for transactions whose average size is very great. The 'necessity' assessment in this section only refers to the 'necessity' of the exemption from a market impact perspective. The overall 'necessity' to expand the exemption

under MiFIR to non-ESCB central banks will also take into account the other indicators described in this part of the study.

The indicator is equal to the total value of transaction in non-equity financial instruments with EU counterparts or in EU-listed financial instruments (as defined in Section 1.3.1) in 2013 over the total assets/liabilities of the central bank in that given year. To preserve the anonymity of the central banks' data in transaction volumes, the study only displays whether or not there is a necessity to introduce the exemption because of the important volume of the central bank's operations with EU counterparts or EU-listed financial instruments. A size threshold, calculated as volume of transactions over total assets, has been used to assess whether there is a 'necessity' for the exemption from a market impact perspective.

### **2.1.5.2 Additional criteria**

In line with the mandate set by MiFIR in Article 1(6) and 1(9), this section identifies additional criteria that should contribute to the overall assessment of the necessity to extend the exemption to non-ESCB central banks. The criteria are the following:

- i. Existence in the domestic market transparency rules of an exemption for foreign central banks
- ii. Ability for the central bank to distinguish between transactions for 'pure' investment purposes versus transactions for policy purposes (as described in sections 1.2. and 1.3.1.)
- iii. Existence of a procedure to notify the counterparty about details related to the transaction (in this case, about the exemption from transparency requirements)

For the exemption from market transparency rules for central bank transactions, "yes" or "no" are the potential responses that contribute to the overall assessment.

For the distinction between transactions executed for investment or policy objectives, central banks have all confirmed that they do not enter into transactions in non-equity financial instruments for other purposes than the policy objectives defined in their mandates. Nonetheless, the overview distinguishes between central banks that have a specific procedure to distinguish pure investments from operations for policy purposes.

For the notification procedure, the study assesses whether there is a procedure in place to communicate information to the counterparty about the transaction (in this case the exemption) for current operations. The indicator also distinguishes those central banks that do not have a procedure in place but are able and willing to set it up when the MiFIR regime will be in place. The answers would be as follows:

- i. 'No', when no procedure is in place
- ii. 'No, but ready to implement it'
- iii. 'Yes', when a notification procedure is already in place

An additional criteria, i.e. the type of execution method used by the central bank, is listed for illustrative purposes in the analysis, but it does not contribute to the final assessment about the appropriateness and necessity of the exemption.

### **2.1.6 The appropriateness and necessity assessment**

To assess the appropriateness and necessity of the extension of the MiFIR exemption to non-ESCB central banks, the key criteria listed above are the key benchmarks for the assessment. While market and institution transparency are

jointly sufficient and necessary conditions for the exemption, the volume of transactions is the criterion to be assessed in case the first two are not jointly met.

Therefore, there are three potential scenarios for the individual central banks:

- i. A central bank meets at least two out of the three key criteria;
- ii. A central bank may meet only one of the key criteria;
- iii. A central bank does not meet any of the three key criteria.

In the first case, the central bank would qualify right away for an assessment of appropriateness and necessity of an exemption under MiFIR. To get the assessment of appropriateness and necessity, it would be sufficient that the central bank meets two out of the three requirements, with a 'medium' score for the transparency indicators and a 'yes' score for the necessity indicator.

In the second case, i.e. when a central bank meets only one of the three key criteria, the assessment takes into account the three additional criteria listed above. In this case, the central bank shall meet all of them jointly. This means that:

- i. there is already a similar exemption for foreign central banks in the domestic jurisdiction;
- ii. the central bank can distinguish between transactions executed for investment or policy purposes (as described in section 2.3.1);<sup>88</sup> and
- iii. there is a specific procedure to notify the counterparty about the transaction details (such as the exemption) – in which case it would be sufficient to score 'No, but ready to implement it'.

The exemption shall not be granted for the countries that do not meet the requirements mentioned above.

The following table shows an overview of the criteria and the final assessment, which is then covered in detail in the country section. The column on the final assessment scores 'yes', when the exemption would be appropriate and necessary for that individual central bank, and 'no', if otherwise.

Note that the assessment focuses on the current rules and procedures applicable to the market and the central bank in the given countries. However, as countries continue to implement global standards, under the different work streams at G20, FSB and IOSCO level, the assessment for some countries may change as the framework improves and gets closer to international standards.

---

<sup>88</sup> In Section 2.3.1. it was indicated that, considering that foreign exchange management would fall within the scope of exempted transactions, non-policy transactions (especially transactions executed for investment purposes) are marginal in many cases. For those cases, the institutions are considered able to distinguish between transactions subject to the exemption and transactions not subject to the exemption.



**Table 4. Summary table and assessment**

| Key criteria       |                     |                          |           | Other criteria                  |                               |                                             |                                        |           |
|--------------------|---------------------|--------------------------|-----------|---------------------------------|-------------------------------|---------------------------------------------|----------------------------------------|-----------|
| Central bank       | Market transparency | Operational transparency | Necessity | Distinction transaction purpose | Notification procedure        | Foreign CBs exemption                       | Execution type                         | Exemption |
| <b>Australia</b>   | Low                 | Medium                   | Yes       | Yes                             | No, but ready to implement it | Yes                                         | Bilateral                              | Yes       |
| <b>Brazil</b>      | Medium              | Medium                   | Yes       | Yes                             | Yes                           | No                                          | Bilateral (10-50%)<br>Venues (10-50%)  | Yes       |
| <b>Canada</b>      | Medium              | Medium                   | Yes       | Yes                             | No, but ready to implement it | Yes (if local govies or foreign securities) | Bilateral                              | Yes       |
| <b>China</b>       | Low                 | Medium                   | n/a       | Yes                             | No, but ready to implement it | No                                          | Bilateral                              | n/a       |
| <b>Hong Kong</b>   | Low                 | Medium                   | Yes       | Yes                             | Yes                           | No                                          | Bilateral                              | Yes       |
| <b>India</b>       | Medium              | Medium                   | No        | Yes                             | No, but ready to implement it | Yes (no reporting)                          | Bilateral                              | Yes       |
| <b>Japan</b>       | Medium              | Medium                   | No        | Yes                             | No, but ready to implement it | Implicit                                    | Bilateral                              | Yes       |
| <b>Mexico</b>      | Medium              | Medium                   | No        | Yes                             | Yes                           | No                                          | Bilateral (10-50%)<br>Venues (10-50%)  | Yes       |
| <b>Singapore</b>   | Medium              | Medium                   | Yes       | Yes                             | No, but ready to implement it | No                                          | Bilateral (50-100%)<br>Venues (10-50%) | Yes       |
| <b>Korea</b>       | Medium              | Low                      | Yes       | Yes                             | No, but ready to implement it | No                                          | Bilateral<br>Venues                    | Yes       |
| <b>Switzerland</b> | High                | Medium                   | Yes       | Yes                             | No, but ready to implement it | No                                          | Venue (SIX)                            | Yes       |
| <b>Turkey</b>      | High                | Medium                   | Yes       | Yes                             | No, but ready to implement it | No                                          | Bilateral<br>Venue                     | Yes       |
| <b>USA</b>         | High                | High                     | No        | Yes                             | No                            | Yes (if local govies)                       | Bilateral                              | Yes       |
| <b>BIS</b>         | Not applicable      | Low                      | n/a       | Yes                             | n/a                           | Not applicable                              | Bilateral<br>Venue                     | n/a       |

*Note: Please, see sections 2.1.5 and 2.1.6 for more details about the methodology applied for the final scoring.*

## 2.2 EU benchmark: transparency for non-equity instruments under MiFIR

Before proceeding to the analysis of the operational framework of individual third-country central banks, this section provides an overview of market transparency rules for non-equity financial instruments within the EU. The exemption from the application of Articles 8, 10, 18 and 21 of MiFIR (pre- and post-trade market transparency) under Article 1(6) is a complement to the potential exemption for third-country central banks' operations, provided under Article 1(9).

### 2.2.1 Scope: venues and instruments

The MiFIR non-equity transparency regime mirrors its equity regime and imposes pre-trade and post-trade transparency for secondary market trading activity, subject to waivers (pre-trade transparency) and deferred publication (post-trade transparency) when specific conditions are met. The transparency obligations provided under MiFIR apply to a series of venues and intermediaries. The main distinction is between:

- 'Trading venues'<sup>89</sup> or 'multilateral trading systems',<sup>90</sup> which are divided into three categories:
  - Regulated markets, RMs<sup>91</sup>
  - Multilateral trading facilities, MTFs<sup>92</sup>
  - Organised trading facilities, OTFs<sup>93</sup>
- Systematic internalisers (SIs)<sup>94</sup>

The definition of 'non-equity financial instruments' encompasses a heterogeneous group of instruments, including bonds, structured finance products, emission allowances and derivatives.<sup>95</sup> The definition of bonds includes the depositary

---

<sup>89</sup> According to Article 4(1)(24) of Directive 2014/65/EU (hereafter MiFID II), "trading venue" means a regulated market, an MTF or an OTF."

<sup>90</sup> As defined in Article 4(1)(19) of MiFID II, a multilateral system is "any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system".

<sup>91</sup> As defined in Article 4(1)(21) of MiFID II, a regulated market is "a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive".

<sup>92</sup> As defined in Article 4(1)(22) of MiFID II, a multilateral trading facility (MTF) is "a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive".

<sup>93</sup> As defined in Article 4(1)(23) of MiFID II, an organised trading facility (OTF) is "a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive."

<sup>94</sup> A systematic internaliser is, pursuant to Article 4(1)(20) MiFID II, "an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system; the frequent and systematic basis shall be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders. The substantial basis shall be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the Union in a specific financial instrument. The definition of a systematic internaliser shall apply only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime".

<sup>95</sup> See Articles 8, 10, 18, 21 of MiFIR.

receipts *in respect of* such bonds,<sup>96</sup> convertible bonds, and covered bonds.<sup>97</sup> As defined in Article 2(1)(28) of MiFIR, “structured finance products” are “those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets”.

This definition includes asset-backed securities (ABS), such as residential mortgage-backed securities (RMBS), commercial mortgage-backed securities (CMBS), asset-backed commercial paper (ABCP)<sup>98</sup> and collateralised debt obligations (CDOs).<sup>99</sup> It would include the type of asset-backed instruments which are often transacted in money markets and/or by central banks.

The definition of ‘sovereign debt’ comprises the debt instruments issued by a sovereign issuer (Article 4(1)(61) MiFID II), and a ‘sovereign issuer’ includes: “(i) the Union; (ii) a Member State, including a government department, an agency, or a special purpose vehicle of the Member State; (iii) in the case of a federal Member State, a member of the federation; (iv) a special purpose vehicle for several Member States; (v) an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or (vi) the European Investment Bank” (Article 4(1)(69) MiFID). Non-EU sovereign bonds would be treated as generic bonds.

The definition of ‘derivatives’ comprises all the instruments included within Article 4(1)(44) MiFIR (including ‘securitised derivatives’)<sup>100</sup> and in Annex I C, Sections 4-10 (derivatives contracts), of which ESMA provided a further segmentation.<sup>101</sup>

---

<sup>96</sup> See Article 4(1)(44)(b) MiFID II. A depositary receipt refers to “those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer”.

<sup>97</sup> The closest to a definition of covered bonds can be found in Article 52(4) of Directive 2009/65/EC (UCITS IV), which raises the limit of assets and transferable securities from a single issuer a UCITS can invest in, if “bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest. Where a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph which are issued by a single issuer, the total value of these investments shall not exceed 80 % of the value of the assets of the UCITS.”

<sup>98</sup> Ibid., p. 108.

<sup>99</sup> Recital (15) MiFIR. Article 2(5) of Regulation 809/2004, to which recital (15) refers, reads, “‘Asset backed securities’ are securities which: (a) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable there under; (b) or are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable asset”.

<sup>100</sup> Article 4(1)(44) refers to “any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures”.

<sup>101</sup> ESMA distinguishes between interest rate derivatives (including bond and interest rate futures, bond and interest rate options, swaptions, FRAs, fixed to float, float to float, fixed to fixed and OIS multi-currency swaps, fixed to float, inflation, OIS, float to float and fixed to fixed single currency swaps, equity derivatives, commodity (metal, energy and agricultural derivatives), foreign exchange derivatives, credit derivatives, other derivatives, contracts for differences and emission allowances. See ESMA Consultation Paper MiFID II / MiFIR 19 December 2014 ESMA/2014/1570 Annex B, Regulatory Technical Standards on MiFID II / MiFIR, Draft RTS 9. Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives (hereafter Draft RTS 9, ESMA 19 December 2014 Paper), Annex III: Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments.

Pursuant to the EMIR framework, there is an obligation to clear certain types of derivatives through a Central Counterparty (CCP),<sup>102</sup> and, pursuant to MiFIR, there is an obligation to trade certain derivatives in trading venues,<sup>103</sup> an obligation to trade that depends upon the existence of a “sufficiently liquid” market, which, in turn, depends on the existence of sufficient third-party buying and selling interests (Article 32(2)(b) MiFIR). The existence of those interests is calculated taking into account the average frequency and size of trades, and the number and type of market participants (Article 32(3) MiFIR).<sup>104</sup> However, derivative contracts are subject to pre-trade and post-trade transparency if they are traded on a trading venue, whether or not they are subject to the trading obligation for derivatives.

Most central banks’ transactions take the form of outright purchases/sales of assets, repos and reverse repos, loans, or securities lending. Currency swaps are normally concluded between central banks. Some central banks use interest rate and foreign exchange derivatives only as part of their risk management framework in the context of their foreign reserve management operations. Emission allowances are also included within the category of non-equity instruments, but they are not relevant for purposes of central bank operations.

## 2.2.2 Pre-trade transparency

According to MiFIR the pre-trade transparency requirements have to be calibrated for different types of trading systems.<sup>105</sup> More specifically, MiFIR and the proposed Regulatory Technical Standards in ESMA’s December 2014 consultation paper distinguish between continuous auction order book trading system,<sup>106</sup> quote-driven trading system,<sup>107</sup> periodic auction trading system (algorithmic trading),<sup>108</sup>

<sup>102</sup> See Articles 4-7 of Regulation 648/2012, of 4 July, on OTC derivatives, central counterparts and trade repositories.

<sup>103</sup> MiFIR Article 28(1) establishes the obligation to trade derivatives on regulated markets, MTFs and OTFs, and Article 32(1) contemplates the procedure for determining the obligation to trade such derivatives in a trading venue.

<sup>104</sup> ESMA has provided advice on how to calculate these parameters. See ESMA 19 December 2014 Paper Draft RTS 11 Draft regulatory technical standards on criteria for determining whether derivatives should be subject to the trading obligation (Article 32(6) of MiFIR).

<sup>105</sup> According to Article 8 of MiFIR: “1. Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances and derivatives traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparts, which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group. 2. The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.”

<sup>106</sup> This is defined as “[a] system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis.” ESMA Consultation Paper MiFID II / MiFIR 19 December 2014 ESMA/2014/1570 Annex B, Regulatory Technical Standards on MiFID II / MiFIR, Draft RTS 9. Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives (hereafter Draft RTS 9, ESMA 19 December 2014 Paper) Annex I: Information to be made public in accordance with Article 2, Table 1.

<sup>107</sup> This is defined as “[a] system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself.” Draft RTS 9, ESMA 19 December 2014 Paper, Annex I: Information to be made public in accordance with Article 2, Table 1.

<sup>108</sup> This is defined as “[a] system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention.” Draft RTS 9, ESMA 19 December 2014 Paper, Annex I: Information to be made public in accordance with Article 2, Table 1.

request-for-quote trading system<sup>109</sup> and voice trading system.<sup>110</sup> For each financial instrument, the trading venue mainly publishes price and volume, with calibration *vis-à-vis* the trading system.<sup>111</sup> In particular, the calibration includes:

- i. For continuous auction order book trading systems, the aggregate number of orders and their volume at each price level, for at least the five best bid and offer price levels
- ii. For quote-driven trading systems, the best bid and offer by price and the volumes attaching to those prices for each market maker in the instrument<sup>112</sup>
- iii. For periodic auction trading systems, the price at which the system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
- iv. For request-for-quote trading systems, the bids and offers and attaching volumes submitted by each responding party
- v. For voice-trading systems, the bids and offers and attaching volumes from any member or participant, which, if accepted, would lead to a transaction in the system

If the trading system is not within the previous categories (hybrid), there is a general requirement to disclose adequate information about the level of orders or quotes and of trading interest (the five best bids and offer price levels and/or two-way quotes of each market maker).<sup>113</sup>

### 2.2.3 Post-trade transparency

According to Article 10 of MiFIR, *"Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible."*

The Draft Regulatory Technical Standards in ESMA's December 2014 paper specify such transparency requirements. Transparency requirements are common for all financial instruments, with some specificities for emission allowances. These include:

- i. Trading day
- ii. Time (date and time when the transaction was executed)
- iii. Instrument identification code type (I: ISIN, A: AII)
- iv. Code of the financial instrument (for code type I, ISO 6166 ISIN, for code type A, the 16 alphanumeric characters identifying AII venue + Exchange Product Code)

---

<sup>109</sup> This is defined as "[a] trading system where a quote or quotes are published in response to a request for a quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request." Draft RTS 9, ESMA 19 December 2014 Paper, Annex I: Information to be made public in accordance with Article 2, Table 1.

<sup>110</sup> This is defined as "[a] trading system where transactions between members are arranged through voice negotiation." Draft RTS 9, ESMA 19 December 2014 Paper, Annex I: Information to be made public in accordance with Article 2, Table 1.

<sup>111</sup> Draft RTS 9, ESMA December 2014 Paper, Annex I: Information to be made public in accordance with Article 2, Table 1.

<sup>112</sup> Public quotes shall represent binding commitments to buy and sell (and indicate the price and volume in which market makers are prepared to buy/sell). Draft RTS 9, ESMA December 2014 Paper, Annex I: Information to be made public in accordance with Article 2, Table 1.

<sup>113</sup> Provided the characteristics of the price discovery mechanism so permit. See Draft RTS 9, ESMA 19 December 2014 Paper, Annex II: Details of transaction to be made available to the public. Table 1.

- v. Price of the transaction (excluding commission and accrued interest unless the instrument is traded with a dirty price,<sup>114</sup> up to 20 digits with decimal separation)
- vi. Venue identification (with specific indications for OTC transactions concluded over instruments admitted to trading in trading venues)<sup>115</sup>
- vii. Price notation
- viii. Currency
- ix. Quantity notation (number of units, nominal value and monetary value)
- x. Quantity (up to 20 digits with decimal separation)<sup>116</sup>

ESMA has set 48 hours as the deferral period that may be authorised for transactions that are large in scale, transactions above the size specific to the instrument (see following section), if carried out on own account other than matched principal, and transactions are in illiquid instruments.<sup>117</sup>

## 2.2.4 Transparency waivers

Under the transparency framework, trades in non-equity financial instruments can be subject to waivers, which exempt them from the application of pre-trade transparency requirements. There are two main pre-trade transparency waivers for non-equity instruments: liquidity and size waivers. In case the size waiver applies, a less stringent pre-trade transparency regime will apply (the market operator or investment firm must make public at least indicative pre-trade bid and offer prices, close to the price of the trading interest advertised through their system (Article 8(4) MiFIR).

### 2.2.4.1 Liquidity waiver

The most important task is to define when a market is 'liquid'. An instrument with a liquid market would be subject to pre-trade transparency rules, whereas 'illiquid instruments' would be eligible for a waiver in relation to pre-trade transparency and for the authorisation to post-trade deferred publication. Pursuant to Article 2(1)(17)(a) of MiFIR, for purposes of the exemption for non-equity instruments a "liquid market" means:

*"a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments: (i) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument; (ii) the number and type of market participants, including the ratio of market participants to*

<sup>114</sup> In the case of option contracts, it is the premium of the derivative contract per underlying security or index. In the case of spread bets it should be the reference price of the underlying instrument. Draft RTS 9, ESMA 19 December 2014 Paper, Annex II: Details of transaction to be made available to the public. Table 1.

<sup>115</sup> For transactions executed through a Systematic Internaliser (SI), the identification of the SI. For OTC transactions, or cases where the investment firm is not aware whether the other firm is acting as an SI, the identification XOFF. For cases where the underlying is a financial instrument admitted to trading or traded on a trading venue and where the transaction on the main financial instrument is executed over-the-counter: XXXX. Draft RTS 9, ESMA 19 December 2014 Paper, Annex II: Details of transaction to be made available to the public. Table 1.

<sup>116</sup> In emission allowances it is not required to report quantity notation and quantity in some cases, and there is an additional requirement to report reference period and type (EUA, CER, ERU, EUAA) but these have less importance in the context of this report.

<sup>117</sup> Article 8 Draft RTS 9, ESMA 19 December 2014 Paper.

*traded financial instruments in a particular product; (iii) the average size of spreads, where available.”*

ESMA has interpreted these criteria in its Consultation Paper and draft Regulatory Technical Standards<sup>118</sup> as follows. The reference under (i) “average frequency” has been interpreted as a combination of the minimum of transactions plus a minimum number of active trading days. A financial instrument will be considered liquid only if both requirements are met.<sup>119</sup> The reference under (i) to “size” was interpreted as implying a calculation by dividing the total turnover or notional amount traded over the reference period by the number of trading days.<sup>120</sup>

Regarding the reference under (ii) to “the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product”, ESMA suggested to define a minimum number of (different) market participants trading in a given market and to apply the same thresholds regarding the number of market participants for all classes of financial instruments. This minimum number of market participants would be used as an auxiliary criterion when assessing liquidity. As a result, a market would not be considered liquid if only a *de minimis* number of market participants trade,<sup>121</sup> including any market participant involved in at least one transaction.

The reference to “average size of spreads” under (iii) would be calculated by using:

- i. end-of-the-day bid-ask spreads as published by the most relevant market in terms of liquidity irrespective of the type (indicative or firm) and size of the quotes; and
- ii. the spread data for the whole period or for sufficient long number of trading days and to consider the arithmetic average of this data as the ‘average spread’.<sup>122</sup>

ESMA adopted a flexible approach, concluding that frequency and size were the two most relevant criteria when assessing liquidity, and only using other criteria in relation with certain types of instruments, e.g. securitised derivatives.<sup>123</sup> To assess these liquidity criteria in relation to the instruments ESMA developed two different methods, the Classes of Financial Instruments Approach (COFIA), where, as its name indicates, compliance with the liquidity criteria would be assessed for each class of instrument; and the Instrument-By-Instrument Approach (IBIA), where compliance with the liquidity criteria would be assessed for each instrument. After consultation, ESMA has chosen the COFIA approach, since it is simpler, as the liquidity of categories would vary less than the approach for individual instruments. This will provide more certainty to market participants and facilitate the classification of newly issued instruments. The COFIA approach would require the segmentation of non-equity financial instruments into specific classes and sub-classes defined on the basis of a set of criteria, e.g. maturity, currency, underlying instrument, etc., when assessing liquidity.<sup>124</sup>

For fixed-income financial instruments, the criterion that was considered to be most relevant to determine liquidity was the size of issuance. The determination of instruments having a liquid market was made on the basis of an issuance-size

---

<sup>118</sup> ESMA 19 December 2014 Paper, p. 96.

<sup>119</sup> See ESMA Discussion Paper MiFID II / MiFIR, May 2014, p. 118.

<sup>120</sup> Ibid., p. 119.

<sup>121</sup> ESMA 19 December 2014 Paper, p. 96.

<sup>122</sup> Ibid., pp. 96-97.

<sup>123</sup> Ibid., p. 97.

<sup>124</sup> Ibid., pp. 98-100.

threshold, different for each type of instrument. Instruments above the threshold would be considered 'liquid'. The thresholds are the following:

- i. Greater than or equal to €2 billion for sovereign bonds (both European and non-European)
- ii. Greater than or equal to €1 billion for other European public bonds
- iii. Greater than or equal to €750 million for convertible bonds issued by financial issuers, covered bonds, and senior corporate bonds issued by non-financials
- iv. Greater than or equal to €500 million for senior and subordinated bonds issued by financials, and subordinated bonds issued by non-financials<sup>125</sup>

Instruments belonging to these categories but below the thresholds, plus convertible bonds issued by non-financials and structured finance products (SFP) and others, were considered non-liquid.<sup>126</sup>

## 2.2.4.2 Size waivers

Transactions that are large-in-scale (LIS), above the Size Specific To the Instrument (SSTI), or determined by factors other than the market valuation of the financial instrument can benefit from a transparency waiver. Even if the instrument concerned has a liquid market, according to Article 9(5)(c) and (d) and Article 11(4) of MiFIR, it can waive pre-trade transparency rules and be subject to deferred publication (post-trade) if the individual trade is:

- i. in excess of a size specific to the instrument (SSTI) *or*
- ii. above a size considered to be 'larger-in-scale' compared to normal market size (LIS).

The methodology used to determine the size of the instrument is the same used to determine the liquidity of the instrument under the class of financial asset (COFIA, see above). Article 11 of the Draft RTS 9 provides a determination of the thresholds.<sup>127</sup> For both the LIS and the SSTI waiver, the same thresholds apply for both pre- and post-trade transparency. In addition, when the waiver is an SSTI waiver, the market operator or investment firm operating a trading venue are required to make public at least indicative pre-trade bids and offer prices which are close to the price of the trading interest advertised through their system.<sup>128</sup>

The SSTI waiver (Article 9(1)(b) MiFIR) is only applicable to actionable indications of interest<sup>129</sup> in request-for-quote and voice trading systems and firm quotes for

---

<sup>125</sup> Draft RTS 9, ESMA 19 December 2014 Paper, Annex III, Table 1.

<sup>126</sup> Ibid., Table 2.

<sup>127</sup> Para (3) of Article 11 establishes the following thresholds:

"(a) 100,000 if the threshold value is smaller than 1 million;

(b) 500,000 if the threshold value is equal to or greater than 1 million but smaller than 10 million;

(c) 5 million if the threshold value is equal to or greater than 10 million but smaller than 100 million;

(d) 25 million if the threshold value is equal to or greater than 100 million." Draft RTS 9, ESMA 19 December 2014 Paper.

<sup>128</sup> According to Article 8(4) MiFIR, "Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with Article 9(1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis."

<sup>129</sup> According to Article 2(1)(33) of MiFIR, "'actionable indication of interest' means a message from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade..."



systematic internalisers,<sup>130</sup> which are above a certain size. The same thresholds apply for both pre-trade and post-trade transparency. Therefore, a transaction of a central bank would be subject to a waiver from transparency requirements if it were to be above the thresholds as defined above.

### 2.2.4.3 Summary table

By way of example, in the summary table for bonds, structured finance products and securitised derivatives, which are the instruments more frequently traded by central banks (especially bonds), the thresholds for both the liquidity qualifying criterion, as well as for the scale of the transaction, which determine the eligibility of the instrument/transaction for a waiver are listed.<sup>131</sup>

**Table 5. Waivers' thresholds**

| Bonds                                                          | Debt seniority | Issuer type   | Issuance size | LIS        | SSTI      |
|----------------------------------------------------------------|----------------|---------------|---------------|------------|-----------|
| <b>European sovereign bond</b>                                 |                |               | 2,000,000,000 | 10,000,000 | 5,000,000 |
| <b>Non-European sovereign bond</b>                             |                |               | 2,000,000,000 | 10,000,000 | 5,000,000 |
| <b>Other European public bond</b>                              |                |               | 1,000,000,000 | 5,000,000  | 2,500,000 |
| <b>Convertible bond</b>                                        |                | Financial     | 750,000,000   | 1,000,000  | 500,000   |
| <b>Covered bond</b>                                            |                |               | 750,000,000   | 5,500,000  | 2,750,000 |
| <b>Corporate bond</b>                                          | Senior         | Financial     | 500,000,000   | 2,500,000  | 1,250,000 |
| <b>Corporate bond</b>                                          | Senior         | Non-Financial | 750,000,000   | 1,500,000  | 750,000   |
| <b>Corporate bond</b>                                          | Subordinated   | Financial     | 500,000,000   | 2,000,000  | 1,000,000 |
| <b>Corporate bond</b>                                          | Subordinated   | Non-Financial | 500,000,000   | 5,000,000  | 2,500,000 |
| <b>Convertible bond</b>                                        |                | Non-Financial | Non-liquid    | 2,500,000  | 1,250,000 |
| <b>Other</b>                                                   |                |               | Non-liquid    | 1,000,000  | 100,000   |
| <b>Structured Finance Products and Securitised Derivatives</b> |                |               |               |            |           |
| <b>Structured Finance Products</b>                             |                | Non-liquid    |               | 5,500,000  | 2,750,000 |
| <b>Securitised Derivatives</b>                                 |                | Liquid        |               | 100,000    | 50,000    |

## 2.2.5 Provisions for Systematic Internalisers (SIs)

### 2.2.5.1 General transparency requirements

Article 18 MiFIR, which regulates the obligation to make public firm quotes, reads:

<sup>130</sup> See Article 18(10) MiFIR.

<sup>131</sup> Information compiled from Draft RTS 9, ESMA 19 December 2014 Paper, Annex III: Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments, Tables 1-4. Information on derivatives is available on Draft RTS 9, ESMA 19 December 2014 Paper, Annex III: Liquidity assessment, LIS and SSTI thresholds for non-equity financial instruments Tables 5-44, pp. 155-182.

*"Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled: (a) they are prompted for a quote by a client of the systematic internaliser; (b) they agree to provide a quote."*<sup>132</sup>

The quotes shall be made public in a manner that is easily accessible to other market participants on a reasonable commercial basis,<sup>133</sup> and the quoted price should reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue. The investment firm should also ensure that the SI complies with its best execution obligation, when applicable.<sup>134</sup>

According to Article 21 of MiFIR, which refers to post-trade disclosure:

*"1. Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.*

*2. Each individual transaction shall be made public once through a single APA.*

*3. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10, including the regulatory technical standards adopted in accordance with Article 11(4)(a) and (b)."*

### **2.2.5.2 Waivers and exclusions from the scope of transparency requirements**

Regarding the obligation to make public firm quotes (Article 18 MiFIR) if the instrument is traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote.<sup>135</sup> This obligation may be waived in case of LIS or SSTI orders.

Furthermore, systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to Article 18(1) for financial instruments that fall below the liquidity threshold (see above), nor to the transparency obligations when they deal in sizes above the SSTI.<sup>136</sup>

Regarding the obligation of post-trade disclosure, according to Article 21(4) of MiFIR, *"[C]ompetent authorities can authorise investment firms to defer publication, or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, during the time period of the*

---

<sup>132</sup> Paragraph (5) of the same provision states: "Systematic internalisers shall make the firm quotes published in accordance with paragraph 1 available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction".

<sup>133</sup> Article 18(8) of MiFIR.

<sup>134</sup> Article 18(9) of MiFIR. However, the provision adds, *"[I]n justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions"*.

<sup>135</sup> Article 18(2) of MiFIR.

<sup>136</sup> Article 18(10) of MiFIR.

*deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral.”*

More specifically, for non-equity financial instruments that are *not* sovereign debt, competent authorities may allow the publication of several transactions in an aggregated form during an extended time of deferral. In the case of sovereign debt instruments, competent authorities may allow the publication of several transactions in an aggregated form for an indefinite period of time and may temporarily suspend the post-trade transparency obligations on the same conditions contemplated for deferred publication of transactions in trading venues (as explained in previous sections). In effect, the conditions for the application of a waiver to transactions on trading venues will be the same as those applicable to transactions outside trading venues, including deferred publication, publication of limited details, details in an aggregated form, or any combination thereof, or for omission of the publication of the volume.<sup>137</sup>

Perhaps even more important than the waivers is the exclusion from the scope of transparency requirements of transactions executed by SIs where the orders are subject to conditions other than the current market price (Article 15(3) MiFIR). Thus ESMA is empowered to develop standards for the application of transparency obligations to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument (Article 21(5) MiFIR). However, ESMA agreed that this should not include securities financing transactions, which should be excluded from transparency requirements altogether, since transactions where ownership transfer occurs in the context of a repo or a securities lending *“shall not be considered as transactions providing information as to level of trading interest in a financial instrument”*.<sup>138</sup>

This last exclusion is very relevant. As it will be seen, central bank transactions are often implemented through repos or securities lending (often with counterparties which may qualify as systematic internalisers). Therefore, even in the absence of an express exemption from transparency requirements, these transactions would be nonetheless excluded from those transparency requirements.<sup>139</sup>

---

<sup>137</sup> Article 21(4) para 2.

<sup>138</sup> ESMA 19 December 2014 Paper, p. 240.

<sup>139</sup> There is currently a Proposal for a Regulation of the European Parliament and of the Council on the reporting and transparency of securities financing transactions. More information is available at: [http://europa.eu/rapid/press-release\\_MEMO-14-64\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-64_en.htm).

## 2.3 Country analysis

The non-EU country analysis of the transparency framework analyses, for each central bank and/or monetary authority, the following aspects:

- i. The mandate;
- ii. The regulatory and operational framework for the implementation of the institution's policies;
- iii. The volume of third-country central banks/monetary authorities operations in the EU;
- iv. The transparency framework of the third-country central banks' operations.

The analysis of the regulatory and operational framework involves a two-pronged effort. First, to establish the relationship between functions and operations, instruments or transactions, under MiFIR, there is a distinction between exempted and non-exempted transactions depending on their purpose, or the function they ultimately fulfil. It is thus of primary importance to determine:

- i. Whether, and to what extent, a certain type of operation/transaction is executed for a certain policy purpose (exempted or non-exempted); and
- ii. Whether, and to what extent, the central bank or monetary authority itself distinguishes between operations/instruments/transactions conducted for an "exempted" function or not and/or the financial instruments held as a result of one or another function.

In particular, according to the above criteria, foreign-exchange operations include *operations carried out to hold or manage official foreign reserves*<sup>140</sup>, or reserve management. Therefore, transactions that could be considered "investment" will be exempted if they are undertaken for purposes of foreign reserve management. It will only be considered relevant whether the institution differentiates investment transactions for purposes other than foreign reserve management (if it undertakes such transactions).

Second, to determine the procedures through which the transactions are implemented, it is important to establish:

- i. Under what circumstances, based on the framework for operations, could the central bank or monetary authority transact on EU venues or with EU counterparts that could be categorized as systematic internalisers (SIs); and
- ii. The instances in which it does so, and the volumes of those transactions.

The analysis of the transparency framework of the central bank's operations requires looking into two different aspects:

- i. Whether there are exemptions from transparency requirements for transactions executed with central banks and/or monetary authorities and whether those exemptions apply also to transactions executed by local counterparts with EU central banks;
- ii. Whether, regardless of the existence of such exemptions, there is any transparency regime for central bank operations and the nature and extent of such transparency.

Finally, foundational documents of central banks, which typically have a statutory (or even constitutional) status, define their mandate. Information about operations, i.e. the procedures through which central banks conduct operations, comes instead from several

---

<sup>140</sup> Article 12 Draft RTS 9, ESMA 19 December 2014 Paper.

sources, which includes statutory law. The goal of this section is to ascertain how central banks and monetary authorities deal with their transactions in the execution of their functions.

## **2.3.1 The Reserve Bank of Australia (RBA)**

### **2.3.1.1 Mandate and policies**

The Reserve Bank of Australia (RBA) implements monetary policy, promotes financial stability, issues banknotes, provides banking services to the government, manages Australia's foreign reserves, sets payments system policy and operates the high-value payments system.<sup>141</sup>

Pursuant to section 10(2) of the Reserve Bank Act 1959, the duty of the Reserve Bank Board regarding monetary policy is the promotion of *"the greatest advantage of the people of Australia by contributing to (i) the stability of the currency of Australia; (ii) the maintenance of full employment in the country; and (iii) the economic prosperity and welfare of Australians."*

The responses to the questionnaire confirmed that the RBA's tasks within the mandate include monetary policy with the objective of price stability, foreign exchange, financial stability, and economic and employment growth. In addition to these, the RBA also issues Australia's banknotes, and provides banking services to the Australian government and related agencies, and to some overseas central banks and official institutions. There is no reference to investment operations, which are not part of its mandate. The RBA considers its management of foreign exchange reserves within the context of "foreign exchange policies" rather than "investment".

RBA does not distinguish between transactions that have a monetary, foreign exchange, or financial stability purpose, nor does it distinguish them from transactions that have an "investment" purpose. Based on the responses, transactions are primarily undertaken for a "monetary" or "foreign exchange" purpose; and sometimes transactions could fall under both categories, i.e. foreign exchange swaps to manage domestic liquidity. However, there is no relevant investment activity outside foreign reserve management.

### **2.3.1.2 Operations, instruments and transactions**

The monetary policy strategy of the RBA is focused on the maintenance of a flexible, medium-term inflation target. This means that the main monetary policy objective is to maintain consumer price inflation between 2% and 3% over the business cycle.<sup>142</sup>

The RBA may use the following monetary policy instruments in order to meet the medium-term inflation target:

- Open market operations can be conducted on an outright basis or under repo agreements. The following operations are available:
  - Daily open market operations may be conducted on an outright basis or under repo agreements.
  - Long-dated open market operations, in which RBA acquires or sells securities with terms to maturity greater than 18 months. This type of transaction can only be executed on an outright basis, not under repo agreements.
- Standing facilities<sup>143</sup> are available to eligible counterparts under pre-established conditions. The repo agreements conducted under standing facilities are known as

---

<sup>141</sup> Reserve Bank of Australia, Annual Report 2014, p. 5.

<sup>142</sup> Reserve Bank of Australia, Statement on the Conduct of Monetary Policy.

<sup>143</sup> Reserve Bank of Australia, *Standing facilities*.

RBA Repos, and are distinguished from the repo agreements executed under open market operations. Depending on the maturity of the repo, these operations can be classified as follows:

- Intraday RBA repos, when eligible counterparts have access to funds with a maturity of one business day. These repo transactions do not carry any interest charge;
- Overnight RBA repos, when eligible counterparts may extend the maturity of the intraday repo overnight at an interest rate set 25 basis points above the cash rate target;
- Open RBA repos, when the facility enables Exchange Settlement account holders to access a certain amount of funds, under a repo agreement, and without a maturity date.

**Table 6. Operations and instruments**

|                                   | Types of transactions            |                      | Maturity                                                | Frequency             | Procedure                                        |
|-----------------------------------|----------------------------------|----------------------|---------------------------------------------------------|-----------------------|--------------------------------------------------|
|                                   | Liquidity provision              | Liquidity absorption |                                                         |                       |                                                  |
| Open market operations            |                                  |                      |                                                         |                       |                                                  |
| Daily open market operations      | Outright purchase / Reverse repo | Outright sale / Repo | <18 months for the first round of outright transactions | Every day             | Auction at RITS                                  |
| Long-dated open market operations | Outright purchase                | Outright sale        | >18 months                                              |                       | Auction at Yieldbroker Debts                     |
| Standing facilities               |                                  |                      |                                                         |                       |                                                  |
| Intraday RBA repos                |                                  |                      | 1 business day                                          | Not standardised      | Unilateral facility                              |
| Overnight RBA repos               |                                  |                      | >1 business day                                         | Rarely <sup>144</sup> |                                                  |
| Open RBA repos                    |                                  |                      | No maturity date                                        |                       | Arrangement with the RBA's Domestic Markets Desk |
| Foreign-exchange operations       |                                  |                      |                                                         |                       |                                                  |
|                                   | Purchases/sales                  |                      |                                                         | Variable              |                                                  |

### 2.3.1.3 Procedural framework

#### 2.3.1.3.1 Eligible counterparts

In general terms, the eligibility criteria for the counterparts of the RBA's domestic market operations are the following:<sup>145</sup> (i) they need to be members of RITS (Reserve Bank Information and Transfer System) and of Austraclear; (ii) they need to be subject to "an appropriate level of regulation";<sup>146</sup> and (iii) they need to be able to ensure efficient and timely settlement of the transactions within Austraclear. However, eligibility is further restricted for certain monetary policy instruments:

- Open market operations, which include:

<sup>144</sup> More information available at: [www.rba.gov.au/mkt-operations/dom-mkt-oper.html#open-market-operations](http://www.rba.gov.au/mkt-operations/dom-mkt-oper.html#open-market-operations).

<sup>145</sup> More information available at: [www.rba.gov.au/mkt-operations/resources/tech-notes/eligible-counterparties.html](http://www.rba.gov.au/mkt-operations/resources/tech-notes/eligible-counterparties.html).

<sup>146</sup> "An appropriate level of regulation is as determined by the Reserve Bank. In general, the Bank will require the counterparty to be: (i) an Authorised Deposit-Taking Institution (ADI), regulated by APRA; (ii) or the holder of an Australian financial services licence and regulated by ASIC; (iii) or subject to an exemption from the requirement to hold an Australian financial services licence, as determined by ASIC and subject to any conditions specified by ASIC in that exemption; (iv) or where established under State or Territory legislation, subject to adequate controls as deemed appropriate by the Reserve Bank", available at: [www.rba.gov.au/mkt-operations/resources/tech-notes/eligible-counterparties.html](http://www.rba.gov.au/mkt-operations/resources/tech-notes/eligible-counterparties.html).

- Daily open market operations, in which all RITS members are eligible for the first round of the daily open market operations, while, for additional rounds, only those eligible counterparts that are banks may participate;<sup>147</sup> and
- Long-dated open market operations, in which RITS members who have a “dealer” status at Yieldbroker DEBTS are eligible for long-dated open market operations;
- Standing facilities, in which all the counterparts that are eligible to participate in domestic market operations are eligible for RBA repos, as long as they settle payments on their own Exchange Settlement account; in other words, RITS members who hold an Exchange Settlement account are eligible for standing facilities.

There is also a publicly available list of RITS members, which is regularly updated, and includes the main financial institutions (primarily banks) that operate in Australia.<sup>148</sup>

The responses to the questionnaire indicated that almost all trades were subject to direct bilateral execution with a counterparty (regardless of whether it is known that it will internalise orders). The relative importance of each of the different execution systems is illustrated below:

| Execution                                                                  | %       |
|----------------------------------------------------------------------------|---------|
| Direct bilateral execution with a counterparty that may internalise orders | 50-100% |
| Direct bilateral execution with a counterparty that does not internalise   | <10%    |
| Trading venues with pre-trade & post-trade transparency                    | <10%    |
| Trading venues with no pre-trade & post-trade transparency                 | <10%    |
| Hybrid voice-brokered venue                                                | <10%    |

Based on responses to the questionnaires (Q 4 to 7), the RBA executes part of its transactions on EU trading venues and with EU-domiciled financial intermediaries that internalise orders (though it was mentioned that it is generally not known when undertaking a transaction if it will be internalised by the counterparty). The relative importance of total market operations executed with a European counterparty or on a European trading venue was indicated as between 10% and 50%.

### 2.3.1.3.2 Implementation of monetary policy instruments

Open market operations are normally executed in the form of auctions by means of RITS. Daily open market operations are conducted every business day at 9:30 am (first round) and, occasionally, at 5:10 pm (additional rounds) (AEST/AEDT). Long-dated open market operations are executed at Yieldbroker DEBTS and are usually settled three days after the date of the contract.

For standing facilities, in particular there are:

- Intraday RBA repos, in which eligible counterparts can unilaterally access intraday facilities through Austraclear;<sup>149</sup>
- Overnight RBA repos;
- Open RBA repos, which are executed by an arrangement between the eligible counterparty and the RBA’s Domestic Markets Desk.<sup>150</sup>

<sup>147</sup> More information available at: [www.rba.gov.au/mkt-operations/resources/tech-notes/open-market-operations.html#s12](http://www.rba.gov.au/mkt-operations/resources/tech-notes/open-market-operations.html#s12).

<sup>148</sup> The updated list of RITS members is available at: <http://www.rba.gov.au/payments-system/rits/membership/membership-list.html>

<sup>149</sup> More information available at: [www.rba.gov.au/mkt-operations/resources/tech-notes/standing-facilities.html#s3](http://www.rba.gov.au/mkt-operations/resources/tech-notes/standing-facilities.html#s3).

Furthermore, for foreign reserve management, the RBA indicated that the investment strategy of the foreign reserves portfolio would be considered 'passive', with investments guided by an internally constructed benchmark. This benchmark is judged to be the combination of foreign currencies and assets that will maximise the RBA's returns over the long run, subject to the RBA's policy-driven need to maintain the liquidity of the portfolio and its general appetite for risk. Australia's foreign reserves portfolio consists of foreign currency assets, gold, Special Drawing Rights (SDRs – a liability of the IMF) and Australia's reserve position in the IMF. Foreign currency assets are held in US dollars, euros, Japanese yen, Canadian dollars and Chinese yuan, with investments primarily in government securities (outright holdings and held under reverse repo) and deposits at official institutions. The RBA also has small holdings in the Asian Bonds Funds. All counterparties must be approved by the (internal) Credit Committee. In determining the eligibility of a counterparty, the Credit Committee will take into account external credit ratings and internal assessments.

### **2.3.1.4 Transparency of the transactions**

#### **2.3.1.4.1 Regulatory transparency**

The Australian domestic provisions that contain the general requirements on public disclosure of information about transactions in certain financial instruments are contained in the *Competition in Exchange Markets 2011*, the *Competition Market Integrity Rules* (hereafter, the Market Integrity Rules), issued by the Australian Securities and Investments Commission (ASIC). The Market Integrity Rules are legislative instruments made by ASIC pursuant to section 798G of the Corporations Act 2001 (Cth). Pre-trade and post-trade transparency requirements are contained, respectively, in Chapters 4 and 5 of the ASIC Market Integrity Rules.

The transparency framework contains more detailed rules about reporting obligations, both pre-trade<sup>151</sup> and post-trade.<sup>152</sup> However, , pre-trade transparency requirements

---

<sup>150</sup> Ibid.

<sup>151</sup> In terms of pre-trade transparency, Rule 4.1.1. stipulates that a market participant must not enter into a transaction in a relevant product unless the order is first pre-trade transparent on an order book of a licensed market. According to Rule 4.1.2 (1) a market operator offering trading in relevant products must make available pre-trade information immediately (for all orders received during trading hours for the market) or by no later than the time trading hours resume (for all orders received outside of trading hours for the market) to all persons it has arrangements with to make the information available. Also, Rule 4.1.2 (3) states that a market operator must take reasonable steps to ensure the pre-trade information is and remains complete, accurate and up-to-date; and Rule 4.1.3 that a market operator must also make available pre-trade information on reasonable commercial terms and on a non-discriminatory basis to all users. Pre-trade information is defined in Rules 4.1.4 and 4.1.4A.

<sup>152</sup> Post-trade transparency requirements also apply only to market operators that offer trading services in, and to market participants that trade in relevant products. Post-trade transparency requirements include different duties. First, according to Rule 5.1.1(1) market participants must report post-trade information for a transaction entered into off-order book to a market operator<sup>152</sup>; while Rule 5.1.1(4) states that a market participant is required to take reasonable steps to ensure that all post-trade information it reports is and remains complete, accurate and up-to-date. Also, pursuant to Rule 5.1.4(1) a market operator must make available post-trade information for its market immediately (for all transactions executed or reported during trading hours for the market) or by no later than the time trading hours resume (for all transactions executed or reported outside of trading hours for the market) to all persons it has arrangements with to make the information available, with added requirements of completeness, accuracy and the need that the information is updated (Rule 5.1.4(2)). Finally, a market operator that receives a post-trade report from a market participant must have in place arrangements to determine whether the transaction as reported meets the criteria for the pre-trade transparency exception relied on by the market participant to enter into the transaction other than on a pre-trade transparent order book, and, where applicable, the criteria for delayed reporting (Rule 5.1.4A). Pursuant to Rule 5.1.4 A (3) if a market operator determines that a transaction reported to it does not meet any or all of the applicable criteria, the market operator must (a) not accept the report (b) notify the reporting market participant that the report has not been accepted and (c) not make publicly available the information in relation to the transaction Rule 5.1.4A(3). And pursuant to Rule 5.1.5 market operators must make available post-trade information on reasonable commercial terms and on a non-discriminatory basis to all users.



only apply to market operators that offer trading services in *equity* market products and *CGS depository* interests (*relevant products*) and to market participants that trade in such products. Equity market products are, in essence, defined so as to only include equity interests which are admitted to quotation on the Australian Securities Exchange (ASX). CGS depository interests are defined so as to, in essence, only include retail interests in debt which has been issued by the Commonwealth of Australia and which is traded on the ASX. The RBA does not presently enter into any transactions in respect of relevant products (whether outright transactions or repurchase agreements) and so, technically, the RBA does not presently need to rely on any of the exemptions to the pre-trade or post-trade transparency requirements.

In terms of exemptions, there is no explicit exemption for the RBA's transactions. The RBA does not have discretion to unilaterally waive the disclosure requirements under the 2011 ASIC Market Integrity Rules (Competition in Exchange Markets). The Competition Market Integrity Rules, however, contain different exemptions to pre-trade and post-trade transparency requirements, on which the RBA or other institutions may rely (Rules 4.1.8 and 5.2.2). Exemptions to the pre-trade transparency requirements include exemptions for any transactions arising from: the terms of a relevant product, including a redemption (Rule 4.1.8(a)); primary market actions, including an issue or allotment of, or an application or subscription for, a relevant product (Rule 4.1.8(b)); an acceptance of an offer under an off-market bid (Rule 4.1.8(c)); and, most important, the delivery of a relevant product under a securities lending arrangement, which may include a repurchase agreement (Rule 4.1.8(d)). In a similar way, exemptions to the post-trade transparency requirements include: the passing of an order (Rule 5.2.2(a)); primary market transactions including an issue or allotment of or subscription for a relevant product (Rule 5.2.2(b)); and the delivery of a relevant product under a securities lending arrangement, which may include a repurchase agreement (Rule 5.2.2(c)).

In practice, due to the exclusion of the instruments the RBA deals in from pre- and post-trade requirements, and the exemption for securities lending (including repos), none of the transactions by the RBA are subject to disclosure requirements. Given the nature of the exclusions/exemption, the same would be available for foreign central banks. There have been recent changes to the regulatory framework of OTC derivatives, with the introduction of the duties to report derivatives transactions to trade repositories,<sup>153</sup> but there are no duties to execute trades in trading platforms, and be subject to public transparency standards.<sup>154</sup>

According to the RBA's responses, at present there is not a procedure in place to notify its counterparty that the transaction is exempted from domestic transparency requirements. This applies also to transactions with foreign central banks. Under its domestic framework, the RBA is not contemplating changes to its general procedures to introduce notifications to its counterparties of whether a transaction is exempt from the transparency requirements of the 2011 ASIC Market Integrity Rules (Competition in Exchange Markets).

However, for the purpose of the exemption, given that all the RBA's transactions would be classified as in "*performance of monetary, foreign exchange (including reserve management) or financial stability policy*", the RBA would notify each EU counterparty/trading venue operator by sending them a letter detailing the nature of the exemption (if granted) around pre- and post-trade transparency requirements. At least initially, the RBA would not make any changes to existing legal agreements that are in place (such as ISDAs and GMRA's).

---

<sup>153</sup> ASIC Derivatives Transaction Rules (Reporting) 2013 (amended in 2015)

<sup>154</sup> The Council of Financial Regulators released a Report in April 2014 where it indicated that it was not yet appropriate to recommend a mandatory platform trading obligation. See Australian Prudential Regulation Authority; Australian Securities and Investments Commission; Reserve Bank of Australia *Report on the Australian OTC Derivatives Market* April 2014.

### 2.3.1.4.2 Non-regulatory transparency

According to the RBA's disclosure framework, there is no disclosure of individual transactions. There is disclosure of transactions at aggregate level via statistical tables, IMF reporting requirements and annual reporting, all of them via the RBA's website.

The RBA's open market operations, however, have a certain level of disclosure, as described below. For daily open market operations, the RBA announces every day the *first round* of daily open market operations by means of electronic news services, i.e. Reuters - RBA31 and Bloomberg - RBAO08. The announcement contains the following information:<sup>155</sup>

- The aggregate Exchange Settlement balances of the previous day, "*adjusted for ES account holders' net direct entry (DE) receipts from the last two ('late') DE exchanges on the previous day*";
- Any outstanding RBA repo agreement contracted at the cash rate target during the previous day;
- The trading purposes of the RBA, namely, whether it intends to purchase or sell securities or to conduct no transaction at all;
- In connection with the transactions that the RBA expects to conduct, the intended aggregate size thereof;
- The expected maturities of the repo agreements the RBA intends to undertake, indicating usually two or three such terms; and
- The deadline – generally 9:45 am (AEST/AEDT) – for RITS members to contact the RBA in order to conduct transactions.

At 5:10 pm, the RBA announces the additional rounds of the daily open market operations, in case such additional rounds are going to be conducted. The announcement is published by means of electronic news services, i.e. Reuters – RBA35 and Bloomberg – RBAO08. The announcement contains the following information:<sup>156</sup>

- The trading purposes of the RBA, namely, whether it intends to purchase or sell securities or to conduct no transaction at all;<sup>157</sup>
- In connection with the transactions that the RBA expects to conduct, the intended aggregate size thereof.
- The expected maturities of the repo agreements the RBA intends to undertake, which should not affect the normal functioning of the inter-bank overnight cash market.

The deadline is generally at 5:15 pm (AEST/AEDT) or five minutes after the announcement for RITS members to contact the RBA in order to conduct transactions. Once open market operations have been conducted, the RBA notifies the result of the auction to both successful and unsuccessful bidders by telephone. In addition, the RBA publishes a summary of the open market operations by means of electronic news services (i.e. Reuters – RBA32–RBA34 and Bloomberg – RBAO08 for the first round; and Reuters – RBA36 and Bloomberg – RBAO08 for additional rounds) and at Statistical Table A3 on the RBA's website.<sup>158</sup> The announcements contain the following information: "the value, weighted average and cut-off rates of repurchase agreements dealt, by term, as well as the details of any outright transactions and same-day value foreign exchange swaps". However, the identity of the counterparties remains secret.

---

<sup>155</sup> More information available at: [www.rba.gov.au/mkt-operations/resources/tech-notes/open-market-operations.html#s12](http://www.rba.gov.au/mkt-operations/resources/tech-notes/open-market-operations.html#s12).

<sup>156</sup> Ibid.

<sup>157</sup> In case any technical or operational problem arises, the RBA may announce that there is a "short delay to publication of dealing intentions".

<sup>158</sup> Ibid.

For long-dated open market operations, the RBA announces long-dated open market operations the day they are going to be executed through Yieldbroker DEBTS. This announcement contains the following information:<sup>159</sup>

- The securities that the RBA intends to purchase or sell;
- The deadline for the submission of approaches;
- The settlement date;
- In connection with the transactions the RBA intends to undertake, the expected total value thereof.

In addition, the RBA announces the long-dated open market operations by means of electronic news services, i.e. Reuters – RBA27 and Bloomberg – RBAO9. The information disclosed here is less detailed than the information disclosed through Yieldbroker DEBTS. Once the long-dated open market operation has been conducted, the RBA informs all the participants of the results of the auction via Yieldbroker DEBTS. Furthermore, aggregate results are made public via electronic news services, namely via Reuters – RBA28 and Bloomberg – RBAO9.<sup>160</sup> This public announcement contains information about the face value, the weighted average and the cut-off yields for each security acquired. However, the identity of the counterparts remains secret.

In terms of foreign exchange operations, the RBA discloses aggregate information, which is included in financial statements,<sup>161</sup> monthly reports on official reserve assets,<sup>162</sup> statistics on foreign exchange transactions and holdings of official reserve assets<sup>163</sup> and the disclosure of international reserves and foreign currency liquidity for the IMF.<sup>164</sup> A detailed section in its annual report describes also the composition of foreign assets and the internal investment benchmark.

### **2.3.1.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 of MiFIR**

In light of the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 of MiFIR is appropriate and necessary for RBA (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, non-equity instruments are excluded from the scope of rules that regulate transparency in trading. Even if the scope of such rules were expanded, securities lending transactions (including repos) are expressly excluded. Reporting in derivatives is limited to trade repositories, not the public.
- In terms of operational transparency the RBA provides information about items in its balance sheet, but also announces its daily open market operations, and it provides some aggregate information on its transactions after these transactions take place, by means of electronic news services. The RBA implements its policies primarily through bilateral transactions, with counterparties. With respect to the foreign exchange reserve management, the RBA discloses aggregate data about holdings of foreign assets in its financial statements and in dedicated monthly

---

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> More information available at: [www.rba.gov.au/publications/annual-reports/rba/2014/html/fin-statements/index.html](http://www.rba.gov.au/publications/annual-reports/rba/2014/html/fin-statements/index.html).

<sup>162</sup> More information available at [www.rba.gov.au/statistics/frequency/reserve-assets.html](http://www.rba.gov.au/statistics/frequency/reserve-assets.html).

<sup>163</sup> More information available at: [www.rba.gov.au/statistics/tables/xls/a04hist.xls?accessed=2015-04-13-16-42-59](http://www.rba.gov.au/statistics/tables/xls/a04hist.xls?accessed=2015-04-13-16-42-59).

<sup>164</sup> More information available at [www.rba.gov.au/statistics/xls/imf-monthly-survey-current.xls?accessed=2015-04-14-08-44-08](http://www.rba.gov.au/statistics/xls/imf-monthly-survey-current.xls?accessed=2015-04-14-08-44-08).

reports/statistics. The composition of foreign assets portfolio and the internal investment benchmark are included in a section of the annual report.

- In light of the institution's high trading volumes with EU counterparts or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - Foreign central banks can rely on the exemption for securities lending transactions, including repos, as well as on the limited scope of transparency rules;
  - The RBA is deemed able to distinguish between transactions for policy purposes and transactions for other purposes (especially "investment" purposes), which have a marginal role;
  - Albeit the institution has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

## **2.3.2 The Central Bank of Brazil (BCB)**

### **2.3.2.1 Mandate and policies**

Article 21. VII of the Federal Constitution of 1988 establishes the federal government's exclusive power to issue currency while Article 164 provides that such competence "*shall be exercised exclusively by the central bank*".

The functions of the BCB are further developed in Law No. 4595, dated 31 December 1964. According to Article 10 of that Law the BCB is exclusively responsible, in particular, for (i) "*issuing banknotes and coins*" under the conditions and limits set by the National Monetary Council; (ii) "*performing currency services*"; (iii) requiring compulsory deposits to financial institutions; (iv) receiving the referred "*compulsory deposits*", as well as "*voluntary demand deposits of financial institutions*"; (v) conducting "*rediscount and loan operations with banking institutions*", among others; (vi) "*controlling credit*" and "*foreign capital*"; (vii) "*being depository of government gold*", "*foreign currency*", and "*Special Drawing Rights reserves*"; (viii) providing different kind of authorisations to financial institutions and supervising them; and (ix) implementing monetary policy by purchasing and selling public bonds.

Article 11 of Law No. 4595/64 establishes further responsibilities of the BCB. For instance, the BCB is entitled to (i) "*come to understandings with foreign and international financial institutions*" on behalf of the government of the nation; (ii) purchase and sell gold, foreign currency and securities, as well as "*perform credit operations abroad*"; and (iii) "*issue securities*" under the conditions set by the National Monetary Council.

The monetary policy functions conferred to the BCB are accomplished through the Monetary Policy Committee (Copom), which is the decision-making body of the BCB on monetary policy.<sup>165</sup>

The responses to the questionnaire confirmed that the BCB mandate includes price stability, foreign exchange policies and financial stability. In addition, pursuant to Law No. 4595/64, the BCB is responsible for the supervision and regulation of the banking system, as the executive arm of the National Monetary Policy Council, which defines the policies and general guidelines applied to financial institutions.

---

<sup>165</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Copom, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%203-Copom.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%203-Copom.pdf).

The institution distinguishes between transactions that have monetary, foreign exchange, financial stability or investment purposes (no further clarification). Based on the responses, transactions in non-equity securities are primarily undertaken for “monetary” or “foreign exchange” purposes. Transactions for purposes other than policy purposes (including “investment” transactions) are marginal.

### **2.3.2.2 Operations, instruments and transactions**

In 1999, the BCB adopted the inflation-targeting regime,<sup>166</sup> with the objective of maintaining the effective inflation in line with the pre-established and publicly announced inflation target. This inflation target is defined in terms of the variation of the Broad National Consumer Price Index (IPCA).<sup>167</sup> When pursuing the inflation target, the Copom uses the Selic rate as the primary monetary policy instrument. The Selic rate is defined as “*the average interest rate charged on the daily loans with a maturity of one day (overnight) backed by government securities registered in the Special System of Clearance and Custody (Selic)*”.<sup>168</sup> The Copom establishes a Selic rate target and uses different monetary policy instruments to pursue it. In particular, the BCB may use the following monetary policy instruments in order to meet the pre-established inflation target:<sup>169</sup>

- i. Reserve requirements;
- ii. Rediscount operations; and
- iii. Open market operations.

Though reserves requirements are included within the BCB’s instruments, do not result in transactions in non-equity instruments. Rediscount operations enable the BCB to provide liquidity when it acts as a lender of last resort and when it seeks to guarantee liquidity for the payments under the Brazilian Payments System (SPB). The Department of Banking Operations and Payment Systems (Deban) implements this monetary policy instrument. The rediscount can be:

- Intraday, for repo operations with federal securities in order to meet liquidity needs during the day;
- One business day, for repo operations with federal securities in order to meet liquidity needs that arise in the short-term;
- Up to 15 days, for repo operations that may be renewed for up to 45 days in order to adjust short-term cash flow imbalances (not structural cash flow imbalances) of the requesting institution; the implementation of these repo transactions requires prior consent by the BCB (by the Deputy Governor for Monetary Policy);
- Up to 90 calendar days, for repo operations conducted in order to adjust structural imbalances of the requesting institution, which may be renewed as long as the total period does not exceed 180 calendar days; the implementation of these repo transactions requires prior approval by the Board of the BCB.

Intraday and one-business-day repo operations can only be executed with federal government securities which are registered at Selic. On the contrary, from 15-day and up to 90-day repos can be conducted either with federal securities or with other securities.

---

<sup>166</sup> Decree No. 3,088 by the President of the Republic on 21 June 1999.

<sup>167</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Inflation Targeting Regime in Brazil, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%2010Inflation%20Targeting%20Regime%20in%20Brazil.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%2010Inflation%20Targeting%20Regime%20in%20Brazil.pdf).

<sup>168</sup> Ibid.

<sup>169</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Central Bank of Brazil Functions, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%2011Central%20Bank%20of%20Brazil%20Functions.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%2011Central%20Bank%20of%20Brazil%20Functions.pdf).

Finally, open market operations are conducted in order to control the system's aggregate liquidity on a daily basis. They can be outright or repo purchases or sales of securities in the secondary market. Repo operations have tenures from 1 to 180 days.<sup>170</sup> It is important to note that the BCB can only make transactions with government securities in the secondary market because it is not authorised to issue such securities. The National Treasury Secretariat (STN) is conferred with the competence to issue government securities. The Open Market Operations Department (Demab) follows the implementation.

**Table 7. Operations and instruments**

|                                    | <b>Types of transactions</b>             |                                  | <b>Maturity</b>                                                    | <b>Frequency</b> | <b>Procedure</b> |
|------------------------------------|------------------------------------------|----------------------------------|--------------------------------------------------------------------|------------------|------------------|
|                                    | <b>Liquidity provision</b>               | <b>Liquidity absorption</b>      |                                                                    |                  |                  |
| <b>Reserve requirements</b>        | -                                        | Used to reduce liquidity         |                                                                    |                  |                  |
| <b>Rediscount operations</b>       | Repo                                     | -                                | Intraday / 1 business day / Up to 15 days / Up to 90 calendar days |                  |                  |
| <b>Open market operations</b>      | Outright purchase / Repurchase agreement | Outright sale / Resale agreement | Repos: 1-180 days tenure periods                                   | Daily            | Auction          |
| <b>Foreign-exchange operations</b> |                                          |                                  |                                                                    |                  |                  |
|                                    | Purchases/sales of foreign exchange      |                                  |                                                                    |                  |                  |

### 2.3.2.3 Procedural framework

#### 2.3.2.3.1 Eligible counterparts

As indicated in the Communiqué number 25,097 of 10 January 2014, the Brazilian Payment System (SPB) includes the following systems related to clearing, settlement, registration and centralised depositories of financial assets and securities:<sup>171</sup>

- Central Bank of Brazil's System of Reserves' Transfer (STR)
- Central Bank of Brazil's Special System for Settlement and Custody (Selic)
- BM & FBovespa's Foreign Exchange Clearing and Settlement House
- BM & FBovespa's Operations Risk Clearing, Settlement and Risk Management House – Bovespa segment and Central Assets Depository (CBLC)
- BM & FBovespa's Assets Clearing and Settlement House
- BM & FBovespa's Derivatives Clearing and Settlement House
- Cetip Clearing and Settlement House
- Interbank Payments House (CIP)'s Central of Credit Cession (C3)
- Banco do Brasil S.A.'s Centralized Clearing of Checks (Compe)
- Cielo's Financial Settlement System
- Redecard's Domestic Settlement System
- CIP's Deferred Settlement System of Transfer Credit Orders
- CIP's Funds Transfer System (Sitraf)

<sup>170</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Public Debt Management and Open Market Operations, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%206Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%206Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf).

<sup>171</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Brazilian Payments System, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%207-Brazilian%20Payments%20System.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%207-Brazilian%20Payments%20System.pdf).

The BCB runs two different settlement systems: STR and Selic. STR is a funds transfer system while Selic is a computerised system for the settlement of public securities operations, created in 1979 and reformed in 2002.<sup>172</sup> STR and Selic are interconnected. Rediscount operations and open market operations are settled through Selic.<sup>173</sup> Selic includes Ofpub and Ofdealer, which are additional modules used to conduct auctions, as well as Lastro, where the securities used as collateral in repo operations are specified.<sup>174</sup>

When implementing monetary policy instruments, the BCB can operate with dealers. The performance criteria for the selection of the dealers are pre-established and include *“trading in primary and secondary government securities markets; trading in the repo market; and the relationship with Demab and Codip”*.<sup>175</sup> Under the joint Normative Act 28 of 6 February 2013, a maximum of 12 institutions may be authorised as dealers. Furthermore, two of those dealers need to be independent brokers and distributor.<sup>176</sup>

List of dealers active from 10 August 2014 to 31 January 2015<sup>177</sup> includes:

Banco Bradesco SA  
 Banco BTG Pactual SA  
 Banco do Brasil SA  
 Banco J.P. Morgan SA  
 Banco Safra SA  
 Banco Santander (Brasil) SA  
 Caixa Econômica Federal  
 Goldman Sachs do Brasil Banco Múltiplo SA  
 HSBC Bank Brasil SA – Banco Múltiplo  
 ICAP do Brasil Corretora de Títulos e Valores Mobiliários Ltda.  
 Itaú Unibanco SA  
 Renascença Distribuidora de Títulos e Valores Mobiliários Ltda.

According to the responses to the questionnaire, the relative importance of each of the different execution systems is:

| Execution                                                                  | %      |
|----------------------------------------------------------------------------|--------|
| Direct bilateral execution with a counterparty that may internalise orders | 10-50% |
| Direct bilateral execution with a counterparty that does not internalize   | <10%   |
| Trading venues with pre-trade & post-trade transparency                    | 10-50% |
| Trading venues with no pre-trade & post-trade transparency                 | <10%   |
| Hybrid voice-brokered venue                                                | <10%   |

Based on the responses to the questionnaire (Q4 to Q7),<sup>178</sup> the BCB executes transactions on EU trading venues (sometimes through EMSX – trading router) and with EU-domiciled financial intermediaries that internalise orders (some of these transactions

<sup>172</sup> More information available at: [www4.bcb.gov.br/pom/demab/selic/introselic\\_eng.asp?idioma=I](http://www4.bcb.gov.br/pom/demab/selic/introselic_eng.asp?idioma=I).

<sup>173</sup> More information available at: [www.bcb.gov.br/Pom/Spb/Ing/SecuritiesDerivativesForeign/SelicIngles.asp?idpai=SECURITIES](http://www.bcb.gov.br/Pom/Spb/Ing/SecuritiesDerivativesForeign/SelicIngles.asp?idpai=SECURITIES).

<sup>174</sup> Ibid.

<sup>175</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Public Debt Management and Open Market Operations, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%20Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%20Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf).

<sup>176</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Public Debt Management and Open Market Operations, with information up to March 2014*, available at: [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%20Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%20Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf).

<sup>177</sup> The updated list of dealers is available at: [www4.bcb.gov.br/Pom/demab/dealers/periodo\\_100814\\_310115.asp?idpai=DEALMAB](http://www4.bcb.gov.br/Pom/demab/dealers/periodo_100814_310115.asp?idpai=DEALMAB).

<sup>178</sup> 'Q' stands for 'Question', hereafter.

are executed with previously approved EU counterparts). The relative importance of total market operations executed with a European counterparty or in securities listed on a European trading venue was indicated as between 10% and 50%.

### **2.3.2.3.2 Implementation of monetary policy instruments**

Open market operations are conducted in the form of auctions via electronic systems, namely, via Ofpub and Ofdealers. Ofpub is used when the offer is public, while Ofdealers is used when the offer is for dealers.

FX reserves are managed considering three main ideas: (i) benchmark as a portfolio of reference; (ii) operational limits for the active management and; (iii) performance evaluation. Responsibilities are clearly established and initiated by the Board of Governors that defines the composition of the benchmarks and sets the parameters for the deviations (active management). The benchmarks are segmented according to their function in terms of time horizon, thus there is a liquidity tranche, comprising money market investments, and an investment tranche, for longer-term investments. BCB reserves are invested according to benchmarks and guidelines defined by the Board of Governors.

The benchmarks for the investment tranche are constituted purely of government Bonds belonging to widely known and accepted indexes in Europe as well as in other regions. The benchmarks are defined considering three principles, in a descending order of priority: (i) safety, (ii) liquidity and (iii) return. In terms of currencies, the benchmarks are distributed taking into account the total gross external debt of Brazil. The internal guidelines establish the degree and form in which the effective portfolios can deviate from their respective benchmarks through active management. Deviations can be taken in terms of currency denomination, duration, credit quality of the issuers and counterparties, concentration, markets (there is authorisation to invest in certain countries even not included in the benchmarks), asset classes (including commodities, index of equities, and currencies) and instruments (such as cash, forwards and futures).

In order to take deviations from the benchmarks there are two levels of active management: (i) strategic, where investment decisions are taken by an investment committee considering a three-month horizon (strategic investments account for the bulk of the active management risk budget); (ii) tactical, where investment deviations are taken according to traders' views over a shorter investment horizon and subjected to deviation allowances pre-approved by the investment committee (tactical deviations account for a small part of the active management risk budget).<sup>179</sup>

The benchmarks and the effective portfolios are marked-to-market on a daily basis using an internally developed system called "Benchmark System". Besides marketing-to-market, the Benchmark System performs daily checks comparing the effective portfolios with the approved benchmarks so as to verify compliance with all existing investment guidelines as well as with the deviation parameters set up by the investment committee. Any breach of guideline or of investment parameter will automatically trigger the distribution of an alert message to all concerned in the Foreign Reserves Department (DEPIN) as well as in the Corporate Risk and Benchmarks Department (DERIS). Any such alert will be investigated by the department concerned and, on the same day, in case the breach is confirmed, a confirmation message, including an explanation of the actions taken or to be taken to remediate the situation, is sent to the Board of Governors.

---

<sup>179</sup> The investment committee is chaired by the Deputy Governor (Monetary Policy Director) who has veto power. The investment committee meets at least once each quarter in regular meetings and also, at any time, in special meetings when market conditions so require. In some institutions the tactical and strategic investment allocations may have different meanings.



There is a Counterparty Selection Committee responsible for creating and maintaining lists of approved counterparties. This committee is chaired by the Head of the Foreign Reserves Department. For the fixed-income transactions there is a list of Global Counterparties that can transact with the BCB in any market (jurisdiction), and there are lists of Local Counterparties who can only transact with the BCB in a pre-established market (jurisdiction). For foreign exchange transactions there is a list of pre-approved counterparties. Finally, for transactions conducted in approved exchanges, only pre-selected institutions (the selection process follows the basic principles of public licitation) can intermediate BCB trades.

### **2.3.2.4 Transparency of the transactions**

#### **2.3.2.4.1 Regulatory transparency**

Based on the responses to the questionnaire (Q8 to Q15), the BCB considers that Instruction 461, of 2007, issued by the Securities Commission of Brazil (which regulates organised markets and non-organised markets of securities), is equivalent to Regulation 600/2014 of the European Parliament and of the Council (MiFIR). This rule imposes transparency of transactions and an appropriate price formation in the organised markets on trading venues and trading systems (Article 50).

This Instruction is based on Article 4 (V), (VI) and (VII) of Law 6385 of 1976 (Securities Markets Act), which establishes, as general duties, that the National Monetary Council and the CVM have to “*avoid or prevent any kind of fraud or manipulation intended to create artificial conditions of supply, demand or price of the securities traded*”; “*guarantee public access to information*”; and ensure the “*observance of equitable business practice*” on the securities market.

Pursuant to Article 2 of the Securities Markets Act, the following types of financial instruments are deemed securities: (i) shares, debentures, subscription bonuses; (ii) coupons, rights, subscription receipts and split certificates relating to the securities indicated in item (i); (iii) certificates of deposit of securities; (iv) debenture certificates; (v) shares of mutual funds investing in securities and shares of investment clubs investing in any type of assets; (vi) commercial papers; (vii) futures, options and other derivatives agreements whose underlying assets are securities; (viii) other derivatives regardless of the respective underlying assets; and (ix) when publicly offered, any other collective investment instrument or agreement that creates the right of participation on profits or remuneration, including as a result of the rendering of services, and whose profits derive from the efforts of the entrepreneur or from the efforts of third parties.<sup>180</sup>

However, Paragraph 1 excludes government bonds and negotiable instruments guaranteed by a financial institution (with the exception of debentures) from the provisions of the law. In addition, Articles 62 (applicable to any managing entity of an organised market, see Annex in Section 5.2.1 of this study), 76 (related only to the stock and commodity exchange) and 105 (only applicable to the OTC market) impose disclosure obligations on the managing entities of the organised securities markets regarding price, quantity and time of each transaction carried out in their markets. In relation to federal government bonds, the BCB points out that the primary market is represented by public auctions announced through an Ordinance of the National Treasury Secretariat (STN). Most of those auctions are competitive auctions open to all institutions registered in Selic.

In the secondary market, the large majority of federal public bonds are traded in the OTC market, often through calls organised by brokers. Secondary market transactions

---

<sup>180</sup> In addition, the BCB highlights that CVM is competent to answer additional questions regarding the regulation of the securities market. Therefore, they recommend foreign investors to access the CVM website at [www.cvm.gov.br/ingl/regu/Regu.asp](http://www.cvm.gov.br/ingl/regu/Regu.asp).

are executed through three different electronic trading systems, namely SISBEX (managed by the Brazilian Stock and Exchange, BMF&Bovespa), Cetipnet (managed by Cetip) and E-Bond (managed by Bloomberg). Under Article 1 of CMN Resolution 2676 of 1999, all the electronic systems used by financial institutions to trade in the financial market need prior authorisation from the BCB. In terms of transparency, the National Treasury releases the Annual Public Offer Calendar that shows the dates and types of bonds to be offered in auctions and the Federal Public Debt Monthly Report that contains statistics and relevant information (including average cost) on these bonds. In addition, aggregated daily information on the operations registered in Selic is available on the BCB website,<sup>181</sup> and further information is disclosed on the STN website.<sup>182</sup> With regard to OTC derivatives, measures have been adopted to require central clearing and reporting to trade repositories, but no requirements of trading in organized platforms or public disclosure.<sup>183</sup>

It is important to highlight that, even though the CVM's Instruction 461 of 2007 does not provide for explicit exemptions for the BCB's operations, all the transactions conducted by the BCB in the exercise of its competences, i.e. transactions related to monetary, foreign exchange and financial stability policy, are under the confidentiality cloak established by Article 2 of the Complementary Law No. 105, 2001 (Bank Secrecy Law). Article 2 states that "*the duty of secrecy is extended to the Central Bank of Brazil in relation to operations carried out...in exercising its competences*".

In this regard, the BCB clarifies that the confidentiality obligation is applicable to the transactions conducted whenever the disclosure of such information would impair the effectiveness of the monetary, foreign exchange or financial stability policies. For example, when managing reserves, such information may refer to the strategies adopted by the BCB, thus increasing the risk of speculative attacks from other market agents. Therefore, the central bank needs to assess which data regarding its own transactions, e.g. amount, type and price, are sensitive enough to lead to ineffectiveness of its policies and thus be considered confidential.

Nevertheless, the confidentiality obligation does not prevent the BCB from fulfilling its transparency obligations (Article 37 of the Federal Constitution) and accountability to the Federal Audit Court (Article 70 of the Federal Constitution). Additionally, the BCB has its balance sheets and financial statements audited by independent auditors. In all these cases, access to certain sensitive information could occur without prejudice to the auditors and to the legal obligation to preserve confidentiality.

Furthermore, regarding the waiver of disclosure requirements imposed on managing entities, the BCB indicates that under CVM Instruction 461 of 2007, no distinction is made in advance between national and foreign investors or central banks. However, Article 105 (§1º) of the referred Instruction enables the CVM to authorise a delayed or grouped disclosure of the information in OTC markets, considering the type of investor that has access to the segment or to the market (see the Annex in Section 5.2.1 of this study).

Most notably, operations carried out by non-resident investors are subject to the requirements imposed by Article 6 of CMN Resolution 2689 of 2000 as follows: "*financial assets and securities traded, as well as other modalities of financial operations carried out by the non-resident investor as a result of investments*" shall, "*according to their nature*": (i) be registered, safekept or maintained in a deposit account in authorised institutions or entities certified to offer these services by the BCB or the CVM; or (ii) be

---

<sup>181</sup> [www.bcb.gov.br/?FEDSECTTRANS](http://www.bcb.gov.br/?FEDSECTTRANS).

<sup>182</sup> [www.tesouro.fazenda.gov.br/federal-public-debt](http://www.tesouro.fazenda.gov.br/federal-public-debt).

<sup>183</sup> Financial Stability Board *OTC Derivatives Market Reforms Eighth Progress Report on Implementation* 7 November 2014, pp.11-12 (trade reporting to trade repositories), 13-14 (central clearing) 23-24 (exchange and electronic platform trading), and 25 (market transparency).

registered in systems of registration, liquidation and custody recognised by the BCB or authorised by the CVM in their respective spheres of authority. The sole paragraph of Article 6 provides that *"operations of non-resident investors in derivatives markets or other futures markets may be carried out or registered only in stock exchanges, commodities and futures exchanges, over-the-counter markets organized by entities authorized by the CVM, or registered in systems of registration, liquidation and custody"*.

#### **2.3.2.4.2 Non-regulatory transparency**

When the BCB intends to conduct an open market operation exclusively with dealers, the offer is announced by means of an electronic message directly sent to the dealers, or by means of a formal communiqué released by the BCB (Sisbacen and Internet). When the open market operation is open to any financial institution, i.e. not only to those authorised as dealers), the announcement takes the form of a formal communiqué to the market. Such official communiqués determine the conditions of the auction: *"securities characteristics; date and time limit to presenting proposals; date and time of releasing the auction results; basis-date, dates of issuance, financial settlement and maturity of the securities; criteria for selecting proposals; electronic system to be used, etc."*<sup>184</sup> The announcements are available on Sisbacen and the BCB website.<sup>185</sup>

The responses to the questionnaire confirmed that every half day the BCB announces the details of the auctions related to foreign exchange and monetary policies on its website. In addition, the BCB discloses the results of the auctions at its website.<sup>186</sup> The responses to the questionnaire confirm that the BCB publishes the results of the auctions (price) on its website within a few hours of the transaction. The period in which the information is disclosed does not vary under normal circumstances. It may only be altered if any problem affects Sisbacen.

All transactions involving foreign reserves are monitored with the support of another internally developed system, SIM (Integrated Monitoring System). SIM verifies, operation-by-operation, whether or not market parameters have been respected. All communications between traders/portfolio managers are continuously monitored. Phone conversations are recorded. Bloomberg and Reuters trading records are kept in BCB files. Transactions for the execution of foreign reserves policy are not subject to disclosure requirements, but they are instead subject to internal and external auditing and compliance. A general annual report evaluating the foreign reserves management. Contracts executed with market participants have its general terms made available to the public through the government official journal (*diário oficial da união*).

#### **2.3.2.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the market transparency, the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for BCB (see Section 2.1.6). The assessment relies on the following findings:

---

<sup>184</sup> Banco Central Do Brasil, Economic Policy Board, Investor Relations And Special Studies Department, *Public Debt Management and Open Market Operations, with information up to March 2014*, available at [www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%20Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf](http://www4.bcb.gov.br/pec/gci/ingl/focus/FAQ%20Public%20Debt%20Management%20and%20Open%20Market%20Operations.pdf).

<sup>185</sup> More information available at: [www.bcb.gov.br/?BUSCANORMA](http://www.bcb.gov.br/?BUSCANORMA).

<sup>186</sup> More information available at: [www.bcb.gov.br/?SELICEDITAL](http://www.bcb.gov.br/?SELICEDITAL).

- In terms of market transparency, mandatory rules that regulate trading in financial instruments cover some non-equity instruments, including debentures, commercial paper and derivatives (though measures to promote organized trading and transparency for OTC derivatives are still in process). Government bonds and negotiable instruments guaranteed by a financial institution are the main exemption.
- In terms of operational transparency, the national central bank announces the details of open market operations on Sisbacen and its website. Aggregate information on the results of the auctions are also available through the same means. The BCB also publishes information about the details of the auctions related to foreign exchange. However, the regular management of reserves is not subject to disclosure, but instead to internal and external auditing, and the release of an annual report, which includes information on the internal investment benchmark, the size and the composition of the portfolio of reserve assets. The BCB implements its policies through transactions with both counterparties and venues.
- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - There is no exemption from transparency requirements for foreign central banks. Transparency rules do not distinguish between foreign investors or central banks and, although the securities commission (CVM) has the power to grant waivers (delayed or grouped disclosure), this does not amount to an exemption;
  - The national central bank can distinguish between transactions for policy purposes and transactions for other purposes (especially "investment" purposes), which have a marginal role;
  - The institution has a procedure in place to notify its counterparties of the existence of an exemption, thanks to confidentiality clauses included in the bilateral agreements.

### **2.3.3 The Bank of Canada (BoC)**

#### **2.3.3.1 Mandate and policies**

The Preamble of the Bank of Canada Act states:

"Whereas it is desirable to establish a central bank in Canada to regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of production, trade, prices and employment, so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of Canada."

Paragraph 18 of the Bank of Canada Act defines the BoC's powers and lists a number of functions that are not expressly linked to the implementation of a specific policy. The BoC is not bound by the implementation of a specific policy when it buys and sells securities issued or guaranteed "*by Canada or any province*" (letter (c)), "*issued or guaranteed by the Government of the United States of America or Japan or the government of a country in the European Union;*" (letter (d)), or when it buys and sells "*special drawing rights issued by the International Monetary Fund*" (letter (f)).

The text of the Act does not include an explicit definition of the policies the Bank of Canada (BoC) has to follow when performing the above functions. As the nation's central

bank, the BoC has four main areas of responsibility: monetary policy,<sup>187</sup> financial system, currency and funds management. This was confirmed by the BoC in its responses to the questionnaire (Q1).

The government of Canada directly owns the country's foreign exchange reserves. They are held in the Exchange Fund Account (EFA), which is an account at the BoC established under Part II of the Currency Act.<sup>188</sup> The bank executes EFA transactions as the government's fiscal agent. As to the "investment", the only commercial investment operations performed by the bank (as defined in the questionnaire) refer to the Pension Fund. The Pension Fund's assets are held by a third-party trustee that executes transactions on behalf of the fund as agent for the bank. On "other objectives/tasks", the BoC mentioned its role as sole issuer of Canadian banknotes.

The BoC indicated that it is possible to distinguish among its transactions. Monetary/financial stability transactions will typically only be executed by the bank in its own name and will involve the use of bank assets (for example, lender of last resort, securities lending or repo transactions to improve overall market liquidity, the stability of the financial system or the transmission of monetary policy through the payments system). The bank sets the terms that govern its monetary policy operations and it is solely responsible for determining when to engage in such operations (and the nature and size of the individual transactions). Foreign exchange transactions, by contrast, are almost always executed by the bank as fiscal agent for the government of Canada (using government of Canada assets). All these operations must be in accordance with the applicable terms established by the Minister of Finance (the "Minister") and must also be approved by an authorised representative of the Minister. Finally, as mentioned above, the only relevant commercial "investment" transactions are those involving the BoC Pension Fund (whose assets are held by a third-party trustee that executes transactions on behalf of the fund as agent for the bank). The fact that the government owns Canada's foreign exchange reserves, and the separation between the management of those reserves and pure "investment" operations, facilitates the distinction of operations.

### **2.3.3.2 Operations, instruments and transactions**

The BoC's operational framework includes:

- Open market operations:
  - o Term Repo for Balance Sheet Management Purposes;
  - o Securities Lending Programme;
- Special Purchase and Resale Agreements (SPRAs) and Sale and Repurchase Agreements (SRAs);
- Standing facilities:
  - o Overnight Standing Purchase and Resale Agreement;
  - o Standing Liquidity Facility;
- Foreign exchange operations.

In its capacity as "fiscal agent" for the government of Canada, the BoC is in charge of public debt management operations. Among other things, the bank sells the securities to

---

<sup>187</sup> In practice, Canada adopted inflation-targeting in 1991. Every five years the government of Canada and the BoC review and, up to this point, confirm the basic agreement, which consists of defining the target in terms of the 12-month rate of change in the total Consumer Price Index (CPI). The inflation target is the 2% mid-point of the 1% to 3% inflation-control range. The agreement runs for a five-year period. See Joint Statement of the Government of Canada and the Bank of Canada on the Renewal of the Inflation-Control Target, 8 November 2011, available at: [www.bankofcanada.ca/wp-content/uploads/2011/11/joint\\_statement\\_081111.pdf](http://www.bankofcanada.ca/wp-content/uploads/2011/11/joint_statement_081111.pdf). The Bank conducts monetary policy by setting a target for the overnight interest rate. Changes in the overnight rate influence longer-term market rates and the economy as a whole. The announcements on key interest rates are made at pre-specified dates, eight times a year.

<sup>188</sup> See Sections 17-22.

financial market distributors and dealers that participate in its auctions. The bank also supports liquidity in secondary markets through its Securities Lending Programme.

Among the BoC's transactions, Article 18 (g) of the Act states that the BoC may, for the purposes of conducting monetary policy or promoting the stability of the Canadian financial system, (i) buy from or sell to any person securities and any other financial instruments – other than instruments that evidence an ownership interest or right in or to an entity – that comply with the policy established by the governor under subsection 18.1(1), and (ii) if the governor is of the opinion that there is a severe and unusual stress on a financial market or the financial system, buy from or sell to any person any securities and any other financial instruments, to the extent determined necessary by the governor.

If the bank takes any action under subparagraph 18(g)(ii), it shall cause a notice to be published in the Canada Gazette that the governor has formed an opinion that there is severe and unusual stress on a financial market or financial system. The notice is to be published as soon as the governor is of the opinion that its publication will not materially contribute to the stress to which the notice relates (Article 19 of the Bank of Canada Act). In the 2009 Monetary Policy Report, the BoC confirmed its approach. It also acknowledged that:

*'Nominal interest rates cannot fall below zero. Therefore, when the overnight rate is close to zero, the Bank needs to consider alternative instruments that will provide additional stimulus to the economy, if required, to achieve its inflation objective. Even if the overnight rate is close to zero, longer-term market rates and the lending rates set by financial institutions are still likely to be well above zero. These interest rates directly affect the spending decisions of households and businesses. In these circumstances, the aim of monetary policy would be to continue to exert downward pressure on these rates and to improve the availability of credit more generally'.<sup>189</sup>*

To preserve the incentive of lenders and borrowers to keep transacting on the markets, and the effective functioning of the markets, the BoC set an effective lower bound (ELB) of 25 basis points for the overnight rate, and pegged the deposit rate at the target overnight rate. To control inflation in the ELB context, the BoC announced three new instruments that it would consider using: conditional statements about the future path of policy rates; quantitative easing (outright purchases of financial assets); credit easing (outright purchases of private sector assets in certain credit markets important to the functioning of the financial system that were temporarily impaired). In spite of this announcement, the BoC has not resorted yet to the last two instruments, and thus they have not been included in the summary table above, or in the explanation below.

This was validated by the responses to the questionnaire (Q3). The BoC only transacts in non-equity securities for purchases/sales or collateralised lending. These transactions are typically undertaken for all of the policies/purposes analysed above.<sup>190</sup> The BoC added that, for its own transactions, i.e. those performed for purposes of monetary/financial stability, under the Bank of Canada Act, the BoC is not permitted to buy/sell equity securities, the exception being the above situation where *"the Governor is of the opinion that there is a severe and unusual stress on a financial market or the financial system"* (see above), but that the bank has never had to rely on this exception.

Foreign exchange operations are subject to the Currency Act (Part II), and the BoC acts as an agent of the government. The Finance Minister has to publish a yearly report on

---

<sup>189</sup> Bank of Canada, *Monetary Policy Report*, April 2009, Annex, "Framework for Conducting Monetary Policy at Low Interest Rates".

<sup>190</sup> Specifically, in terms of the government of Canada transactions (foreign-exchange transactions), the government of Canada does not hold equity securities in the EFA. The EFA holdings consist of cash, government bonds and foreign exchange swap contracts (primarily cross-currency swaps).

the operation of the Exchange Fund Account (EFA) for each fiscal year, where it has to summarise the EFA's policy, the objectives of the fund for that fiscal year (and whether they have been met), the objectives for the current fiscal year, and a list of agents and mandataries.<sup>191</sup> Those objectives are, normally, to maintain a high standard of liquidity, preserve capital value and optimise return.<sup>192</sup> Also, the BoC is authorised to intervene to stabilise the conditions on the foreign exchange markets. BoC current policy is to intervene in foreign exchange markets on a discretionary basis and only in exceptional circumstances, namely when there are signs of a serious near-term market breakdown, e.g. extreme price volatility and increasing unwillingness to transact, accompanied by a severe lack of liquidity in the Canadian dollar market or when extreme currency movements seriously threaten the conditions that support sustainable long-term growth.<sup>193</sup>

**Table 8. Operations and instruments**

|                                                  | Types of transactions<br>Liquidity provision   | Liquidity absorption                            | Maturity         | Frequency                                  | Procedure      |
|--------------------------------------------------|------------------------------------------------|-------------------------------------------------|------------------|--------------------------------------------|----------------|
| Open market operations                           |                                                |                                                 |                  |                                            |                |
| Main refinancing operations                      | Special Purchase and Resale Agreements (SPRAs) | Sale and Repurchase Agreements (SRAs)           | 1 business day   | Non-regular                                | Bilateral      |
| Longer-term refinancing operations               |                                                | Term Repo for Balance Sheet Management Purposes | Non-standardised | Non-regular                                | Tender auction |
| Support liquidity of government securities       |                                                | Securities Lending Programme                    | 1 business day   | Non-regular                                | Tender auction |
| Structural operations                            | Purchases                                      | Sales                                           | Non-standardised | Non-regular (rare)                         | Bilateral      |
| Standing facilities                              |                                                |                                                 |                  |                                            |                |
| Overnight Standing Purchase and Resale Agreement | Reverse repo                                   | -                                               | Overnight        | Access at the discretion of counterparties |                |
| Standing Liquidity/Deposit Facility              | Collateralised loan                            | Deposit Facility                                | Overnight        | Access at the discretion of counterparties |                |
| Foreign exchange interventions                   |                                                |                                                 |                  |                                            |                |
| Purchases or sales                               | Purchases, repos                               | Sales, reverse repos                            |                  | Variable                                   |                |

### 2.3.3.3 Procedural framework

#### 2.3.3.3.1 Eligible counterparties

The BoC implements its monetary policy within the Large Value Transfer System (LVTS). The LVTS was designed and operated by the Canadian Payments Association (CPA) ever since it was launched in 1999. It is a real-time, electronic wire transfer system that processes large-value, time-critical payments continuously throughout the day. It has a preponderant role in the settlement of Canadian dollar payment obligations arising from

<sup>191</sup> Section 21, Currency Act. For 2013 the mandataries were the BoC and RBC Investor Services Trust and State Street Corporation. See Minister of Finance, *Report on the Management of Canada's Official International Reserves* 1 April 2013, 31 March 2014, p. 40, available at: [www.fin.gc.ca/activty/oirrep/oir-rol-14-eng.pdf](http://www.fin.gc.ca/activty/oirrep/oir-rol-14-eng.pdf)

<sup>192</sup> Ibid., p. 10.

<sup>193</sup> Bank of Canada, "Intervention in the Foreign Exchange Market", March 2011, available at: [www.bankofcanada.ca/wp-content/uploads/2010/11/intervention\\_foreign\\_exchange.pdf](http://www.bankofcanada.ca/wp-content/uploads/2010/11/intervention_foreign_exchange.pdf).

securities and foreign exchange transactions. The LVTS has been designated under the Payment Clearing and Settlement Act and thus is subject to BoC oversight.

The configuration of the LVTS ensures that the BoC's transactions take place with a relatively restricted number of counterparties. To participate in the LVTS an entity must fulfil the conditions set forth by the CPA, and thus:

- be a member of the CPA;
- use the SWIFT telecommunications network;
- have adequate backup capability for its LVTS operations;
- have a settlement account at the BoC;
- enter into agreements relating to taking loans from the central bank and to pledging the appropriate collateral.

In 2014 the participants in the LVTS were:<sup>194</sup>

Alberta Treasury Branches  
Bank of America National Association  
Bank of Canada  
Bank of Montreal  
Bank of Nova Scotia, The  
BNP Paribas (Canada)  
Caisse centrale Desjardins du Québec, La  
Canadian Imperial Bank of Commerce  
Central 1 Credit Union  
HSBC Bank Canada  
Laurentian Bank of Canada  
Manulife Bank of Canada  
National Bank of Canada  
Royal Bank of Canada  
State Street Bank and Trust Company  
Toronto-Dominion Bank

Also, the Bank of Canada implements its monetary policy by transacting with a small group of primary dealers (PD). The following table shows a list of those dealers.<sup>195</sup>

---

<sup>194</sup> More information available at: [www.cdnpay.ca/imis15/eng/Membership/LVTS\\_Participants/eng/mem/LVTS\\_Participants.aspx](http://www.cdnpay.ca/imis15/eng/Membership/LVTS_Participants/eng/mem/LVTS_Participants.aspx).

<sup>195</sup> More information available at: [www.bankofcanada.ca/markets/government-securities-auctions/](http://www.bankofcanada.ca/markets/government-securities-auctions/).



**Table 9. Primary dealers**

| Instrument     | Dealers                            |
|----------------|------------------------------------|
| Treasury bills | Bank of Montreal                   |
|                | Canadian Imperial Bank of Commerce |
|                | Desjardins Securities Inc.         |
|                | HSBC Bank Canada                   |
|                | Laurentian Bank Securities Inc.    |
|                | Merrill Lynch Canada Inc.          |
|                | National Bank Financial Inc.       |
|                | RBC Dominion Securities Inc.       |
|                | Scotia Capital Inc.                |
|                | The Toronto-Dominion Bank          |
| Bonds          | BMO Nesbitt Burns Inc.             |
|                | Casgrain & Company Limited         |
|                | CIBC World Markets Inc.            |
|                | Desjardins Securities Inc.         |
|                | HSBC Securities (Canada) Inc.      |
|                | Merrill Lynch Canada Inc.          |
|                | Laurentian Bank Securities Inc.    |
|                | National Bank Financial Inc.       |
|                | RBC Dominion Securities Inc.       |
|                | Scotia Capital Inc.                |
|                | The Toronto-Dominion Bank          |

In particular, the SPRAs and SRAs, Overnight Standing Purchase and Resale Agreements, Term Repo for Balance Sheet Management Purposes, and Securities Lending Programme are only undertaken with primary dealers in government securities, whereas the Standing Liquidity Facility is directed only at participants in the LVTs.

The BoC confirmed that the implementation of its policies is dealer-based, with an estimate of 50-100% taking place via direct bilateral execution, and 0% for the rest (Q4 to Q7). In its response to the questionnaire (Q3), the BoC explained that some transactions, though not all (the estimate given was between 10 and 50%, Q7), involve transactions with EU counterparties<sup>196</sup>. However, the BoC is not aware of whether internalization occurs. The relative importance of each of the different execution systems is illustrated in the table below.

**Table 10. Relevance of execution systems**

| Execution                                                                  | %       |
|----------------------------------------------------------------------------|---------|
| Direct bilateral execution with a counterparty that may internalise orders | 50-100% |
| Direct bilateral execution with a counterparty that does not internalise   | <0%     |
| Trading venues with pre-trade & post-trade transparency                    | <0%     |
| Trading venues with no pre-trade & post-trade transparency                 | <0%     |
| Hybrid voice-brokered venue                                                | <0%     |

### 2.3.3.3.2 Implementation of monetary policy instruments

The BoC implements its monetary policy primarily through “special purchase and resale” agreements (SPRAs) and “sale and repurchase agreements” (SRAs), leaving other types

<sup>196</sup> In terms of EU financial assets, it stated that some of the assets held in the EFA consist of euro-denominated debt issued by EU sovereigns, entities owned or guaranteed by EU sovereigns and supranational organisations closely associated with the EU. More information on the EFA holdings and the management of the EFA can be found at the Department of Finance’s website: [www.fin.gc.ca/purl/efa-eng.asp](http://www.fin.gc.ca/purl/efa-eng.asp). The only transactions involving equity securities are those involving the Bank of Canada Pension Fund.

of transactions for managing balance sheet changes or liquidity for markets and counterparties.

The BoC conducts Special Purchase and Resale Agreements (SPRAs) and Sale and Repurchase Agreements (SRAs) to implement its monetary policy framework in the LVTS environment. SPRAs and SRAs are used to reinforce the overnight rate target at the mid-point of the operating band. The BoC uses the Term Repo for Balance Sheet Management Purposes to manage short-term changes in the bank's balance sheet (due to seasonal fluctuations in the demand for bank notes) by acquiring assets temporarily in the secondary market.

Under the securities lending programme, the BoC supports the liquidity of Government of Canada Securities by making available a portion of its portfolio of Government of Canada Bonds and Bills when there is strong demand for these securities in the market. The programme offers securities held by the BoC when market pricing moves beyond a specified point,<sup>197</sup> through a tender process for a term of one business day. The BoC conducted 169 securities-lending operations in 2013-14, compared to 30 operations in 2012-13.

The BoC also uses Standing Facilities to satisfy specific liquidity needs. The BoC makes the Overnight Standing Purchase and Resale Agreement available to primary dealers on an overnight basis at the upper limit of the operating band (Bank Rate). Under the Standing Liquidity Facility (SLF), the Bank of Canada provides Large Value Transfer System (LVTS) advances, which are collateralised overnight loans to direct participants in the LVTS.

For foreign exchange transactions, where the BoC acts as the government's agent, the Annual Report (Section 21 of the Currency Act) provides a Statement of Investment Policy for the Exchange Fund Account (EFA). The purpose of the EFA is to aid in the control and protection of the external value of the Canadian dollar. Assets held in the EFA are managed to provide foreign currency liquidity. Thus the investment objectives are the need to maintain a high standard of liquidity, preserve capital value and optimise return.<sup>198</sup> The report contains a list of eligible asset classes (where fixed-income securities and commercial bank deposits are preponderant, with a lesser role for gold or repo), credit ratings, currencies (US dollars, euros, Japanese yen and IMF Special Drawing Rights).<sup>199</sup> Foreign exchange reserves management is less rule-based on an operational level than monetary policy. The Department of Finance, in collaboration with the Bank of Canada, is developing a more formal investment process, establishing an investment benchmark, and enhancing risk and performance metrics.<sup>200</sup> However, it is unclear whether this will also entail a greater pre-determination of operational methods.

### **2.3.3.4 Transparency of the transactions**

#### **2.3.3.4.1 Regulatory transparency**

Pre- and post-trade transparency requirements for recognised "marketplaces" (defined as exchanges, quotation and trade reporting systems or alternative trading systems) are contained in National Instrument 21-101 *Marketplace Operation* (NI 21-101),<sup>201</sup> This instrument stipulates pre-trade and post-trade transparency requirements for

---

<sup>197</sup> For bonds, the minimum bid rate is the lower of 150 basis points or 50% of the bank's target for the overnight rate, i.e. 150 basis points for target rates of 3% or higher. For treasury bills, the minimum bid rate is the lower of 100 basis points or 50% of the bank's target for the overnight rate when the target rate is below 2%. See Bank of Canada Debt Management Report 2013-14, p. 27.

<sup>198</sup> Minister of Finance, *Report on the Management of Canada's Official International Reserves* 1 April 2013, 31 March 2014, pp. 17-18.

<sup>199</sup> Ibid., pp. 18-20.

<sup>200</sup> Ibid., p. 9.

<sup>201</sup> [www.osc.gov.on.ca/en/13537.htm](http://www.osc.gov.on.ca/en/13537.htm).

marketplaces dealing in exchange-traded securities and foreign exchange-traded securities (Part 7) and pre-and post-trade transparency requirements for marketplaces dealing in unlisted debt securities, inter-dealer bond brokers and dealers (Part 8). Transparency requirements for unlisted debt securities, inter-dealer bond brokers and dealers should apply, in principle, to government debt securities (Section 8.1). However, the BoC relies on a general exemption from such transparency requirements for government debt securities until 1 January 2018.<sup>202</sup>

The response was also based on the BoC understanding that, for the purposes of the questionnaire, reporting OTC derivatives transactions to authorised trade repositories is not considered to be public disclosure. However, the BoC clarified that some ex post information collected by derivatives trade repositories will be disseminated publically, including information about trades involving the BoC.

Thus, the operations in which the BoC engages in its own name (monetary, financial stability) are exempted from transparency requirements not on the basis of an exemption of the BoC, but an exemption of the securities in which the BoC transacts (government securities).

Securities of foreign governments are not included in the exemption. Therefore, there is no exemption of disclosure rules for the BoC or for foreign central banks, and the BoC cannot unilaterally waive disclosure requirements. However, the transparency rules for unlisted debt securities, inter-dealer bond brokers and dealers apply to "government debt securities" (Section 8.1) and "corporate debt securities" (Section 8.2). Since the former are defined as securities issued or guaranteed by the government of Canada, its provinces, territories, or municipal corporations, and the latter as "debt securities issued in Canada",<sup>203</sup> non-Canadian non-equity securities transacted by EU central banks would be covered by transparency requirements only under the provisions on "foreign exchange-traded securities", which solely apply to listed securities.<sup>204</sup>

Also, the reporting duties apply to marketplaces, not broker-dealers. The BoC confirmed that currently its operations are not subject to transparency requirements, including foreign exchange operations (which take place primarily in foreign securities). Therefore, EU central banks' operations should not be subject to transparency requirements if executed over Canadian government securities (exemption) or through broker-dealers, or over unlisted securities (outside the scope of transparency requirements).

According to its responses the BoC has no procedure in place to notify its counterparties of the exemption (given that the exemption is granted based on the type of securities), nor was it planning to alter its procedures for that purpose. However, the BoC clarified, *"After the European Commission confirms that it has exercised its authority under MiFIR Art 1(9) to extend the scope of the exemption in MiFIR Art 1(6) to the Bank of Canada, the Bank will determine how to notify the small number of EU financial institutions that are eligible counterparties for EFA transactions. Such notification will likely take the form of a brief written communication."*

---

<sup>202</sup> See Section 8.6. In 2014 the exemption was extended from its initial deadline, in 2015, to 2018. See Canadian Securities Administrators, *CSA Notice of Approval. Amendments to National Instrument 21-101 Marketplace Operation* October 23, 2014, available at [www.osc.gov.on.ca/documents/en/Securities-Category2/rule\\_20141023\\_21-101\\_amendments.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20141023_21-101_amendments.pdf).

<sup>203</sup> Part 1, section 1.1., National Instrument 21-101, *Marketplace Operation*.

<sup>204</sup> According to section 1.1. of National Instrument 21-101, "exchange-traded security" means a security that is listed on a recognised exchange or is quoted on a recognised quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognised for the purposes of this instrument and NI 23-101; "

### 2.3.3.4.2 Non-regulatory transparency

*SPRA/SRAs*<sup>205</sup> are offered to eligible participants (primary dealers) at the BoC's discretion to reinforce the target for the overnight rate. Offerings by the BoC are subject to pre-specified limits for each eligible participant. Eligible counterparties may accept an amount of each offering up to their pre-specified limit. Pre-specified limits will be communicated directly to each eligible participant.

In the case of the Term Repo for Balance Sheet Management Purposes,<sup>206</sup> the BoC announces auction date, amount, settlement date, maturity date, substitution dates (if applicable) and other information ahead of each auction. Winning bidders will be notified by telephone following the allotment of the auction. The BoC will fax each winning bidder confirmations, setting out the specific terms of the transaction, including the securities. Results will be published on the BoC website as soon as possible following the auction. The total amount of assets acquired through each term repo operation will be announced on the BoC's website on the settlement day by 4:45 pm (ET). These transactions will also be reflected on the BoC's balance sheet.

For the securities lending programme, the general terms of the programme are stipulated in their own Standard Terms.<sup>207</sup> The rules do not stipulate how the auction is announced, but it takes place within the closed Communication, Auction and Reporting System (CARS).

Specific interventions in foreign exchange markets are announced on a specific site.<sup>208</sup> There are no pre-specified conditions that must be disclosed, and interventions are quite uncommon. The BoC manages the Exchange Fund Account (EFA), a separate account on the behalf of the Department of Finance. An annual report is published (first quarter each year) with detailed information on the investment strategy, the internal benchmark, the size and composition of the foreign assets.<sup>209</sup> This annual report is submitted to the Parliament. Less detailed information, i.e. aggregated data, is published in monthly reports.

### 2.3.3.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR

In light of the market transparency, the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for BoC (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, mandatory rules for trading in financial instruments cover some non-equity instruments, such as bonds, commercial paper and derivatives. Government bonds, however, are expressly exempted (the original exemption was renewed until 2018), as well as foreign securities.

---

<sup>205</sup> Bank of Canada Terms and Conditions for SPRA/SRAs, 1 June 2010, available at: [www.bankofcanada.ca/wp-content/uploads/2010/07/term\\_conditions\\_spra-sra.pdf](http://www.bankofcanada.ca/wp-content/uploads/2010/07/term_conditions_spra-sra.pdf).

<sup>206</sup> Bank of Canada Terms and Conditions for Term Repo for Balance Sheet Management Purposes, effective 30 April 2010. Available at: [www.bankofcanada.ca/wp-content/uploads/2010/12/terms\\_repo300410.pdf](http://www.bankofcanada.ca/wp-content/uploads/2010/12/terms_repo300410.pdf).

<sup>207</sup> Bank of Canada Standard Terms for Auctions to Primary Dealers Under the Bank of Canada Securities-Lending Program (Effective 19 July 2010), available at: [www.bankofcanada.ca/wp-content/uploads/2010/07/terms\\_160710.pdf](http://www.bankofcanada.ca/wp-content/uploads/2010/07/terms_160710.pdf).

<sup>208</sup> More information available at: [www.bankofcanada.ca/rates/exchange/foreign-exchange-intervention/](http://www.bankofcanada.ca/rates/exchange/foreign-exchange-intervention/).

<sup>209</sup> For example, see [www.fin.gc.ca/activty/oirrep/oir-rol-14-eng.pdf](http://www.fin.gc.ca/activty/oirrep/oir-rol-14-eng.pdf). See also [www.fin.gc.ca/n15/15-035-eng.asp](http://www.fin.gc.ca/n15/15-035-eng.asp).

- In terms of operational transparency the BoC publishes in advance information ahead of transactions of Term Repo for Balance Sheet Management Purposes. Aggregate results of these transactions are also published in the national central bank's website. Auctions under the Securities Lending Program are not publicly announced, but done within a closed auction system, but their terms are publicly available. Interventions in foreign exchange markets are also announced (but are rare), whereas the management of foreign reserves is subject to monthly reports and a detailed annual report that includes information on the investment benchmark, the size and the composition of the portfolio of reserve assets. The BoC implements its policies primarily through bilateral transactions with counterparties.
- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - An exemption from transparency requirements can be considered available for foreign central banks. These can rely on the exemption from transparency requirements for local government bonds, and the exclusion from the scope of application of transparency rules of foreign securities;
  - The BoC can distinguish between transactions for policy purposes and transactions for other purposes (especially "investment" purposes), since the latter are restricted to the management of the BoC Pension Fund whose assets are held by a third party trustee that executes transactions on behalf of the Fund (as agent for the Bank);
  - Albeit the institution has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

### **2.3.4 The People's Bank of China (PBoC)**

#### **2.3.4.1 Mandate and policies**

The mandate and policies of the PBoC are explained in Articles 1-3 of the Law of the People's Republic of China on the People's Bank of China.<sup>210</sup> Article 1 makes reference to *"the correct formulation and implementation of the State's monetary policies"*, the establishment of a *"macro-control system through a central bank"* and the need to *"strengthen supervision and control over the banking industry."* Article 2 reiterates monetary and supervisory and control functions, and stipulates that such functions should be performed *"under the leadership of the State Council"*. Article 3 provides that: *"The aim of monetary policies shall be to maintain the stability of the value of the currency and thereby promote economic growth."* Article 4 of the Act supplements this with more specific functions, such as the formulation of monetary policies, issuance of renminbi (RMB), the licensing and supervision of banking institutions, and financial market supervision (including promulgation of orders, rules and regulations), holding and management of the State foreign exchange and gold reserves, State treasury management, operation of payment systems, or engagement in relevant international banking operations.

---

<sup>210</sup> Adopted at the Third Session of the Eighth National People's Congress on 18 March 1995, promulgated by Order No. 46 of the President of the People's Republic of China on 18 March 1995, and effective as of the date of promulgation. Available at: [www.pbc.gov.cn/publish/english/964/1952/19528/19528\\_.html](http://www.pbc.gov.cn/publish/english/964/1952/19528/19528_.html).

Although China abandoned its peg to the dollar in 2005,<sup>211</sup> its system is still based on a link to a basket of currencies. The fluctuation band against the dollar has been gradually widened in recent years. The system remains one of 'managed float', which means that, in addition to other operations, the PBOC has to intervene in the markets if the currency falls outside the band. These operations are supported by capital controls (USD 50,000 limit per citizen, Chinese or non-Chinese). Capital controls were relaxed in recent years by the Qualified Institutional Investor Programme, which gives qualified foreign institutional investors a quota in order to buy Chinese-listed A-shares.<sup>212</sup>

As for domestic controls, domestic loan rates were fully liberalised in 2013, but the PBOC's benchmark lending rate remains the policy rate, and most onshore loans are still priced against it (a gradual migration towards market-based rates can be expected). Deposit rates remain heavily regulated (the maximum renminbi deposit rate that can be paid to retail customers is 110% of the PBOC's benchmark deposit rate). Foreign currency deposit rates for large deposits (larger than USD 3 mn) were liberalised in 2000.<sup>213</sup>

The State Administration of Foreign Exchange (SAFE) undertakes the management of foreign reserves on behalf and for the benefit of the PBoC. This administrative division implies that there is, in practice, a division between transactions executed for monetary policy purposes and transactions executed for foreign exchange management purposes. The inclusion of foreign exchange management transactions as part of the policy transactions suggests that pure investment transactions are marginal. SAFE provided the only responses to the questionnaire.

### **2.3.4.2 Operations, instruments and transactions**

In the final paragraph of Article 4 of the PBoC Law, it is indicated that that: *"To implement monetary policies, the People's Bank of China may carry out financial operations in accordance with the relevant provisions of Chapter IV of this Law."* Article 22 (the opening provision of Chapter IV) establishes that: *"To implement monetary policies, The People's Bank of China may apply the following monetary policy instruments:*

- (1) to require a banking institution to place a deposit reserve at a prescribed ratio;*
- (2) to fix the base interest rates for the central bank;*
- (3) to handle rediscount for banking Institutions that have opened accounts in The People's Bank of China;*
- (4) to provide loans for commercial banks;*
- (5) to deal in State bonds and other government bonds and foreign exchange on the open market; and*
- (6) other monetary policy instrument decided by the State Council".*

In practice, there are three types of instruments available to the PBoC to implement its policies:

- Repos over bonds;
- Spot trading (outright transactions);
- Issuance of central bank bills;

In addition to these, the PBOC provides liquidity facilities:

---

<sup>211</sup> Peter S. Goodman, "China Ends Fixed-Rate Currency", *Washington Post*, 22 July 2005, available at: [www.washingtonpost.com/wp-dyn/content/article/2005/07/21/AR2005072100351.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/07/21/AR2005072100351.html).

<sup>212</sup> See e.g. Order of China Securities Regulatory Commission, People's Bank of China and State Administration of Foreign Exchange, 1 September 2006, available at: [www.csrc.gov.cn/pub/csrc\\_en/OpeningUp/RelatedPolicies/QFII/201211/W020121108567835784302.doc](http://www.csrc.gov.cn/pub/csrc_en/OpeningUp/RelatedPolicies/QFII/201211/W020121108567835784302.doc).

<sup>213</sup> Rates for smaller amounts in four currencies (USD, EUR, JPY and HKD) are capped by PBOC guidance for the overnight, 7-day, 1M, 3M, 6M and 1Y tenors. See Standard Chartered, *China onshore bond compendium 2014*, Global Research, 29 April 2014, p. 6.

- Deposit Facility
- Short-term Liquidity Facility
- Medium-term Lending Facility
- Standing Lending Facility

To this, one must add the foreign currency swap lines the PBoC has subscribed to with central banks to ensure the provision of RMB (notably, in Hong Kong, Singapore, the US or the EU<sup>214</sup>).

**Table 11. Operations and instruments**

|                                | Types of transactions |                                | Maturity                                                           | Frequency                      | Procedure |
|--------------------------------|-----------------------|--------------------------------|--------------------------------------------------------------------|--------------------------------|-----------|
|                                | Liquidity provision   | Liquidity absorption           |                                                                    |                                |           |
| Open market operations         |                       |                                |                                                                    |                                |           |
| Short-term operations          | Reverse repos         | Repos                          | 7 days, 14 days, 21 days, 28 days, 2 months, 3 months and 4 months | Tuesdays & Thursdays           | Tender    |
| Structural operations          | Purchases             | Sales                          | Determined by the fluctuations of the exchange rate                |                                | -         |
| Issuance of debt securities    | -                     | Issuance of Central Bank Bills | 3 months – 3 years                                                 | As needed to adjust liquidity  | Tender    |
| Liquidity facilities           |                       |                                |                                                                    |                                |           |
| Short-term Liquidity Facility  | Reverse repo          | Repo                           | 1-6 days                                                           | Variable                       | Tender    |
| Medium-term Liquidity Facility | Reverse repo          | Repo                           | Variable as needed                                                 |                                | Tender    |
| Standing Lending Facility      | Loans                 | -                              | 7 days<br>14 days                                                  | At the request of counterparty |           |
| Deposit Facility               | -                     | Deposit                        | -                                                                  | -                              | Auction   |
| Foreign-exchange operations    |                       |                                |                                                                    |                                |           |
| Purchases, sales, swap lines   |                       |                                |                                                                    |                                |           |

### 2.3.4.3 Procedural framework

#### 2.3.4.3.1 Eligible counterparties

The last paragraph of Article 22 of the PBoC Law (see above, previous section) establishes: *"When applying the monetary policy instruments listed in the preceding paragraph to implement monetary policies, The People's Bank of China may work out specific requirements and procedures"*.

The PBoC implements its open market operations via transactions with eligible counterparties. The counterparties are selected based on their financial soundness, and ability to participate in open market operations. The PBoC published the list of 46 entities, which includes commercial banks and securities firms, most of them Chinese (see Table 12).<sup>215</sup>

<sup>214</sup> See Press Release "ECB and the People's Bank of China establish a bilateral currency swap agreement" 10 October 2013, available at: [www.ecb.europa.eu/press/pr/date/2013/html/pr131010.en.html](http://www.ecb.europa.eu/press/pr/date/2013/html/pr131010.en.html). References to the RMB liquidity lines in other jurisdictions can be found in the respective case studies.

<sup>215</sup> The list (only in Chinese) is available at: [www.pbc.gov.cn/publish/zhengcehuobisi/618/2014/20140214180843683686484/20140214180843683686484\\_.html](http://www.pbc.gov.cn/publish/zhengcehuobisi/618/2014/20140214180843683686484/20140214180843683686484_.html).

**Table 12. Eligible counterparties**

|                                      |                                                 |
|--------------------------------------|-------------------------------------------------|
| China Industrial and Commercial Bank | China Construction Bank                         |
| Agricultural Bank of China           | Bank of China                                   |
| Bank of Communications               | China Development Bank                          |
| China Everbright Bank (CEB)          | China CITIC Bank                                |
| Postal Savings Bank of China         | Pingan Bank                                     |
| China Merchants Bank                 | Shanghai Pudong Development Bank                |
| China Minsheng Bank                  | Industrial Bank Co.                             |
| China Guangfa Bank                   | Bank of Shanghai                                |
| Bank of Nanjing                      | Bank of Ningbo                                  |
| BNP Paribas                          | Jiangsu Bank                                    |
| Bank of Beijing                      | Huishang Bank                                   |
| Fudian Bank                          | Fujian Haixia Bank                              |
| Hebei Bank                           | Bank of Tianjin                                 |
| Bank of Da Lian                      | Bank of Guiyang                                 |
| Hankou Bank                          | Bank of Hangzhou                                |
| Evergrowing Bank                     | Qishang Bank                                    |
| Bank of Gangzhou                     | Bank of Fluoyang                                |
| Xiamen Bank                          | Bank of Xi'an                                   |
| Harbin Bank                          | Beijing Rural and Commercial Bank               |
| Guangzhou Rural Commercial Bank      | HSBC (China)                                    |
| Shanghai Rural and Commercial Bank   | Standard Chartered (China)                      |
| Citibank China                       | Guotai Junan Securities                         |
| CITIC Securities                     | China International Capital Corporation Limited |
| First Capital                        |                                                 |

The counterparties are subject to an Open Market Operation and Primary Dealer Regulation (OMO&PDR).<sup>216</sup>

To be authorised the applicants must comply with regulatory requirements<sup>217</sup> (capital and prudential requirements, competence and qualification, with preference for institutions with the qualification of “public bonds underwriter”<sup>218</sup>). The primary dealers (PDs) enjoy the following rights:

- i. Trading bonds with the PBOC directly;
- ii. Having preference to receive business information on OMOs from the PBoC and other materials from its Operation Division/Room (the PBOC trading desk);
- iii. Receiving services from the PBoC and the clearing agency in opening accounts, fund clearing, bonds custody and settlement;
- iv. Participating in meetings of PDs and training and seminars hosted by the PBOC;
- v. Participating in policy discussions with the PBoC for OMOs;
- vi. Trade policy-oriented bank bonds and central bank notes.<sup>219</sup>

Conversely, PDs must perform the following duties:

- i. Actively participating in bonds trades (an explanation must be provided to the Operation Division if PDs cannot trade, bid or participate in the bid);
- ii. Completing the trading tasks specifically required by the PBoC for macro control;
- iii. Trading in good faith, providing reasonable spreads;

<sup>216</sup> More information available at: [www.pbc.gov.cn/rhwg/970402f.htm](http://www.pbc.gov.cn/rhwg/970402f.htm). An English translation can be found on the website of the China Central Clearing and Deposit Co. See [www.chinabond.cn/Info/805854](http://www.chinabond.cn/Info/805854).

<sup>217</sup> Article 13 of OMO&PDR.

<sup>218</sup> Article 14 of OMO&PDR.

<sup>219</sup> Article 17 of OMO&PDR.



- iv. Providing information on capital size, bonds position, trading reports of secondary market of bonds and other data;
- v. Frequently providing market information and market analysis to the Operation Division; and
- vi. Reporting serious market incidences in time, among others.

SAFE confirmed that, for foreign exchange management purposes, it executed transactions through EU trading venues and also engages in transactions in EU non-equity instruments (including fixed-income and derivative products) and with EU-domiciled financial intermediaries that internalise orders. It did not provide any estimates on the relative importance of execution means, or data on trading volumes, or estimates about the relative importance of transactions executed through EU venues or intermediaries due to confidentiality constraints.

### **2.3.4.3.2 Implementation of monetary policy instruments**

The OMO and PD Regulation list the type of transactions (spot trading and repo) and the assets that can be transacted in open market operations (policy-oriented bank bond, central bank notes, public bond and such bonds as recognised by the PBoC).<sup>220</sup> The types of repo include 7 days, 14 days, 21 days, 28 days, 2 months, 3 months and 4 months<sup>221</sup> and imply (as in the case of any bond trading under an OMO framework) an agreement between the PD and the PBoC.

Repo and reverse repo operations have typically been conducted on Tuesdays and Thursdays (reverse-repos typically in 7-day, 14-day and 28-day intervals; repos typically in 14- and 28-day intervals). Bond trading takes place via an auction system, where the invitation can be for bids based on size, or bids based on interest rates (or prices), with the details for successful bids being determined by the Operation Division/Operating Room of the PBOC.<sup>222</sup> The registration, custody and settlement of bond shall be processed in China Government Securities Depository Trust & Clearing Co., Ltd. (CGSDTC) and in accordance with its rules.<sup>223</sup>

In addition to OMOs executed via spot trading and repos, the PBoC issues Bills for the purpose of adjusting market liquidity. These instruments trade only in the interbank market. Maturities range from three months to three years.

Finally, the PBOC also provides liquidity facilities, which can vary in purpose and details. The Short-term Liquidity Facility (SLF) was announced in January 2013 as a supplementary tool to regular OMOs. Maturities are typically shorter than 7 days and can be exercised on any working day, but are available only to 12 commercial banks.<sup>224</sup> They have been used 11 times since their introduction, only once to withdraw liquidity.<sup>225</sup> While it is a liquidity facility, it acts more as a supplement to OMOs, and is typically considered within the OMO framework. The PBoC launched the Medium-term Liquidity Facility (MLF) in September 2014. The MLF is a policy instrument to provide medium-term base money to commercial banks and policy banks that comply with the macro-prudential requirements. The MLF is provided against eligible collateral, such as government bonds, central bank bills, policy financial bonds, high-grade debenture

---

<sup>220</sup> Articles 6-7 of OMO&PDR.

<sup>221</sup> Article 9 of OMO&PDR.

<sup>222</sup> Article 10 of OMO&PDR.

<sup>223</sup> Article 12 of OMO&PDR.

<sup>224</sup> The entities are Industrial and Commercial Bank of China (ICBC), CITIC Bank (CITIC), China Construction Bank (CCB), China Merchants Bank (CMB), Agricultural Bank of China (ABC), Everbright Bank (Everbright), Bank of China (BOC), Minsheng Bank (Minsheng), China Development Bank (CDB), Industrial Bank (Industrial), Bank of Communications (BOCOM), Shanghai Pudong Development Bank (Pufa). See Standard Chartered, *China onshore bond compendium 2014*, Global Research, 29 April 2014, p. 5.

<sup>225</sup> [www.pbc.gov.cn/publish/zhengcehuobisi/4167/index.html](http://www.pbc.gov.cn/publish/zhengcehuobisi/4167/index.html).

bonds. The Standing Lending Facility was announced in 2013 and was first used in June 2013 during a liquidity crunch. The central bank provides funding upon request (funding is usually at a higher cost than normal secondary money-market rates, and banks are required to pledge sufficient eligible collateral of high quality, such as government bonds or top-tier credits). The programme was initially restricted only to policy banks and national commercial banks. It was expanded in January 2014 to small and medium-sized banks in 10 provinces for emergency liquidity usage.<sup>226</sup>

## **2.3.4.4 Transparency of the transactions**

### **2.3.4.4.1 Regulatory transparency**

The Chinese bond market is composed of both exchange and Inter-bank Bond Markets. The overwhelming part of the transactions takes place in the Inter-bank Bond Market, which is an OTC wholesale market. Transactions take place through the trading system of the China Foreign Exchange Trade System (CFETS) & National Interbank Funding Centre (a subdivision of the PBOC).<sup>227</sup> Since 2010 foreign institutions can enter the inter-bank bond market through a pilot investment project.<sup>228</sup>

The standards applicable to the bond market are a combination of statutory,<sup>229</sup> regulatory<sup>230</sup> and self-regulatory<sup>231</sup> rules. The National Association of Financial Markets Institutional Investors (NAFMII) is the most important self-regulatory organisation.<sup>232</sup> The PBOC is the supervisory institution of the bond market.

Securities laws require for securities (including corporate bonds) that are approved for trading to be quoted,<sup>233</sup> but otherwise impose no disclosure requirement on non-traded non-equity securities. Self-regulatory rules for bond transactions in the Inter-bank market focus primarily on trading entities' internal control, risk management, and codes of conduct;<sup>234</sup> whereas standards for information disclosure and registration focus on bond issuers,<sup>235</sup> not bond trading. Market-makers are required to ensure the quality of quotations and reports, but not subject to public reporting requirements as such. They have to report business performance to the PBOC, but there is no duty to disclose to platforms or self-regulatory bodies.<sup>236</sup> If bonds are not traded through the CFETS trading

---

<sup>226</sup> Standard Chartered, *China onshore bond compendium 2014*, Global Research, 29 April 2014, p. 7.

<sup>227</sup> ASEAN +3 Bond Market Guide, Vol. 2, Part 2, People's Republic of China, pp. 1-2.

<sup>228</sup> In August 2010, the PBOC promulgated the Circular on Matters Concerning Pilot Investment in the Inter-bank Bond Market with Renminbi by Three Types of Institutions Including Overseas Renminbi Participating Banks.

<sup>229</sup> Securities Laws of the People's Republic of China, 12 December 1998 and Commercial Bank Law of the People's Republic of China, 5 May 1995. See also Regulations on Corporation Debt Management (2 August 1993) and Interim Regulations on Administration of Futures Trading (17 May 2002).

<sup>230</sup> For example, see Measures for the Administration of Bond Transactions in the National Inter-bank Bond Market (30 April 2000); Measures for the Administration of the Issuance of Financial Bonds in the National Inter-bank Bond Market (22 April 2005); Measures for the Administration of the Issuance of Subordinated Bonds by Commercial Banks (17 June 2004); and Measures for the Administration of Short-term Financing Bonds (23 May 2005).

<sup>231</sup> Self-regulatory Rules on Bond Trading in the Interbank Bond Market, and the Guidelines on Market Makers in the Inter-bank Bond Market, 2010.

<sup>232</sup> More information available at: [www.nafmii.org.cn/english/](http://www.nafmii.org.cn/english/).

<sup>233</sup> Article 32 Securities Law of the People's Republic of China.

<sup>234</sup> NAAFMI Self-regulatory Rules for Bond Transactions in Interbank Bond Market; NAAFMI Guidelines for Internal Risk Management of Financial Derivatives Transaction in the Inter-bank Market. Available at [http://www.nafmii.org.cn/english/lawsandregulations/selfregulatory\\_e/index.html](http://www.nafmii.org.cn/english/lawsandregulations/selfregulatory_e/index.html)

<sup>235</sup> NAAFMI The Rules on the Registration of Debt Financing Instruments of Nonfinancial Enterprises in the Interbank Bond Market, May 30<sup>th</sup> 2012; NAAFMI, Rules for Information Disclosure on Debt Financing Instruments of Nonfinancial Enterprises in the Interbank Bond Market, May 30<sup>th</sup>, 2012. Available at: [http://www.nafmii.org.cn/english/lawsandregulations/selfregulatory\\_e/index.html](http://www.nafmii.org.cn/english/lawsandregulations/selfregulatory_e/index.html)

<sup>236</sup> This according to the rules and regulations such as the Measures for the Administration of Bond Transactions in the National Inter-bank Bond Market and the Circular of the People's Bank of China on Issues Concerned in Application to Bond Settlement Agent Business, see ASEAN +3 Bond Market Guide, Vol. 1, Part 2, People's Republic of China, p. 12.

system, both parties should report the trade information for the record on that exact trading day.<sup>237</sup>

China has passed OTC derivatives reforms that require central clearing, reporting to trade repositories, and electronic trading, but it has no specific measures in place for the dissemination of trade information on OTC derivatives.<sup>238</sup>

For foreign exchange management transactions SAFE indicated that domestic transparency requirements were not applicable, and that they were not aware of any transparency requirements imposed on their transactions. SAFE indicated that there was no procedure in place to notify counterparties or venues that a transaction was exempted, but specified that the institution was considering the introduction of such a procedure (no further details were provided). SAFE indicated that it does not have the power to unilaterally waive disclosure requirements.

#### **2.3.4.4.2 Non-regulatory transparency**

OMO tender auctions are normally announced in advance on the PBoC website.<sup>239</sup> Results are normally announced on the day of the operation, also on the PBoC's site. The information disclosed typically includes the amount, maturity and successful interest rate.

The issuance of bank bills is also announced in advance on the PBoC website.<sup>240</sup> Information typically includes the amounts and maturity of the bills.

SLO results are typically released on a monthly basis (except under special circumstances, when the central bank wants to send a strong signal to the market).<sup>241</sup> The information typically includes the purpose of the transaction (injecting or withdrawing liquidity), the amount and maturity.

For foreign exchange management transactions SAFE indicated that, to their knowledge, there were no disclosure requirements imposed upon them. They considered all questions on transparency of the institution to not apply to them. SAFE discloses aggregate information on foreign exchange reserves, but not specific information on portfolio composition or transaction execution. The currency allocation of the foreign reserves portfolio by currency is considered confidential information.

#### **2.3.4.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

Due to the lack of disclosure about transactions executed with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, and insufficient market transparency for non-equity instruments, there is insufficient information to make a final assessment about the appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR for PBOC (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, there are no transparency requirements for trading in non-equity instruments. Market participants must report to regulatory

---

<sup>237</sup> Ibid.

<sup>238</sup> Financial Stability Board *OTC Derivatives Market Reforms Eighth Progress Report on Implementation* 7 November 2014, pp.11-12 (trade reporting to trade repositories), 13-14 (central clearing) 23-24 (exchange and electronic platform trading), and 25 (market transparency).

<sup>239</sup> More information available at: [www.pbc.gov.cn/publish/zhengcehuobisi/617/index.html](http://www.pbc.gov.cn/publish/zhengcehuobisi/617/index.html).

<sup>240</sup> More information available at: [www.pbc.gov.cn/publish/zhengcehuobisi/616/index.html](http://www.pbc.gov.cn/publish/zhengcehuobisi/616/index.html).

<sup>241</sup> More information available at: [www.pbc.gov.cn/publish/zhengcehuobisi/4167/index.html](http://www.pbc.gov.cn/publish/zhengcehuobisi/4167/index.html).

authorities but no public disclosure is foreseen. Self-regulatory rules for bond transactions focus on internal control, risk management, codes of conduct for market participants and transparency requirements for issuers. Market makers are required to ensure the quality of quotations and reports, but not subject to reporting requirements as such. China is progressing well on OTC derivatives market reforms, but these are focused on central clearing, reporting to trade repositories and electronic trading, rather than transparency and data dissemination.

- In terms of operational transparency, the PBoC provides advance information on tender auctions, as well as ex-post aggregate information on tender results. Issuance of bank bills is announced in advance, whereas information on SLO results is released on a monthly basis. The PBoC implements its policies primarily through bilateral transactions with counterparties. PBOC/SAFE China discloses aggregate data on assets in the balance sheet, but no specific information, for instance, about portfolio composition or investment benchmark.
- Information on trading volumes with EU counterparties or in EU-listed financial instruments is not available, so the economic necessity of an exemption could not be assessed. Due to confidentiality constraints, PBoC/SAFE was unable to provide the requested transaction data. PBoC/SAFE submitted instead a general statement about the necessity of an exemption given the fact that in the context of foreign reserve management it trades with EU counterparts and executes transactions in EU non-equity instruments (sovereign bonds and derivatives).
- Since the institution only fulfils one out of the three main requirements to qualify for the exemption, regard must be had to the three additional criteria:
  - An exemption from transparency requirements cannot be considered available for foreign central banks. There is no mention in regulatory or self-regulatory rules. However, foreign central banks can rely on the absence of transparency requirements for trading in non-equity instruments in regulatory and self-regulatory rules.
  - The existence of a separate government agency (State Administration of Foreign Exchange (SAFE)) suggests that transactions for 'pure' investment purposes are unimportant, but this cannot be determined in the absence of transaction data;
  - The institution has no procedure in place to notify its counterparties of the existence of an exemption, but is considering the introduction of such a procedure.

## **2.3.5 The Hong Kong Monetary Authority (HKMA)**

### **2.3.5.1 Mandate and policies**

The Hong Kong Monetary Authority (HKMA) is the government authority responsible for maintaining monetary and banking stability in Hong Kong. It was established in April 1993 by merging the Office of the Exchange Fund and the Office of the Commissioner of Banking. The competences of the HKMA can be summarised as follows:

- Maintaining currency stability within a Linked Exchange Rate system
- Promoting safety and integrity of the financial (including banking) system
- Helping to maintain Hong Kong's status as an international financial centre, including the maintenance and development of financial infrastructure
- Managing the Exchange Fund

These competences are outlined in different ordinances, such as the Exchange Fund Ordinance, the Banking Ordinance, the Deposit Protection Scheme Ordinance and the Clearing and Settlement Systems Ordinance. For the present report, the most important one is the Exchange Fund Ordinance. The most relevant sections of the referred Ordinance (namely, sections 3, 5A and 5B) are available in Annex 5.2.2 of this study.

The HKMA's activities are financed by the Exchange Fund, which ensures resource independence. The HKMA reports to the Financial Secretary, who is the Controller of the Exchange Fund. The Financial Secretary is advised by the Exchange Fund Advisory Committee (EFAC).<sup>242</sup> The HKMA has to ensure that the operation of the Currency Board arrangements is in accordance with the policies determined by the Financial Secretary in consultation with EFAC.

The Hong Kong dollar is officially linked to the US dollar at the rate of HK\$7.8 to US\$1. The Linked Exchange Rate system underpins Hong Kong's monetary system, and is operated through a Currency Board mechanism, which requires the Monetary Base to be fully backed by foreign reserves and any change in the Monetary Base to be fully matched by a corresponding change in foreign reserves. The stability of the Hong Kong dollar exchange rate is maintained through an automatic interest rate adjustment mechanism, where interest rates rather than the exchange rate adjust to the inflow or outflow of funds. The Exchange Fund, established in 1935, comprises Hong Kong's official reserves and provides the backing to safeguard the exchange value of the Hong Kong dollar.

In comparison with other monetary authorities the mandate and policies of the HKMA are formulated in broad terms. It focuses on exchange rate stability,<sup>243</sup> with price stability being only indirectly influenced, but not part of the mandate, and a broad reference to financial stability<sup>244</sup> and other policies<sup>245</sup> (assisting the Financial Secretary (FS)). The HKMA does not distinguish between the implementation of different policies when it comes to executing transactions. In its own view, it is hard to differentiate as a transaction may achieve more than one of the purposes. However, its investment management activity is restricted to the management of the Exchange Fund portfolio of foreign reserves. Transactions executed for purposes other than policy purposes (including "investment" activities) would thus be marginal.

### **2.3.5.2 Operations, instruments and transactions**

The HKMA has not approached its operations in a "rule-based" manner, by codifying the procedures. Under the LERS, interventions in the currency market are a mechanical and passive process. The currency board system imposes the mechanism to preserve the stability of the Hong Kong dollar exchange rate. This is maintained through an automatic interest rate adjustment mechanism. Part of its operations framework consists of: purchases/sales of HK\$ assets and purchases/sales of US\$ assets as part of its management of the Exchange Fund.

In addition, the HKMA provides liquidity to the market, which it does by:

- Intraday repo facility;
- Term repo;
- Foreign exchange swap;
- Renminbi Liquidity Facility;
- Discount Facility;
- Lender of Last Resort.

---

<sup>242</sup> Five specialised sub-committees report and make recommendations to EFAC: Oversight, Governance Sub-Committee, Audit Sub-Committee, Technical Currency Board Sub-Committee, Investment Sub-Committee, Financial Infrastructure Sub-Committee. HKMA, Introduction to the HKMA, p. 2.

<sup>243</sup> It referred to section 3(1) of the Exchange Fund Ordinance (EFO) (Chapter 66 of the Laws of Hong Kong).

<sup>244</sup> It referred to section 3(1A) of the EFO.

<sup>245</sup> It referred to Section 5A(2) of the EFO.

**Table 13. Operations and instruments**

|                                                                          | <b>Types of transactions</b>                   |                               | <b>Maturity</b>                                                                 | <b>Frequency</b>                                                                                                   | <b>Procedure</b> |
|--------------------------------------------------------------------------|------------------------------------------------|-------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|------------------|
|                                                                          | <b>Liquidity provision</b>                     | <b>Liquidity absorption</b>   |                                                                                 |                                                                                                                    |                  |
| <b>Currency stabilisation operations and management of Exchange Fund</b> |                                                |                               |                                                                                 |                                                                                                                    |                  |
| <b>Structural operations</b>                                             | Purchases                                      | Sales                         | As determined by the fluctuations of the exchange rate                          |                                                                                                                    |                  |
| <b>Issuance of debt securities</b>                                       |                                                | Exchange Fund Bills and Notes | Bills (28-day, 91-D, 182-D, 364-D)<br>Notes (2-year, 3-Y, 5-Y, 7-Y, 10-Y, 15-Y) | Bills. 28-D irregular 91-D, 182-D weekly, 364-D 28-day<br>Notes. 2-, 3-, 5-, 7-Y: 3 months<br>10-Y, 15-Y: 6 months | Auction          |
| <b>Liquidity provision</b>                                               |                                                |                               |                                                                                 |                                                                                                                    |                  |
| <b>Regular provision</b>                                                 | Intraday Reverse repo                          | Intraday repo                 | Overnight                                                                       | Daily                                                                                                              | Bilateral        |
| <b>Term repo/FX swap</b>                                                 | Reverse repo<br>FX swap                        |                               | At the request of counterparty, case-by-case basis                              |                                                                                                                    | Bilateral        |
| <b>Discount Facility</b>                                                 | Reverse repo                                   |                               | At the request of counterparty, case-by-case basis                              |                                                                                                                    |                  |
| <b>Renminbi Liquidity Facility</b>                                       | Reverse repo                                   |                               | 1 week<br>1 day<br>Overnight                                                    | At the request of the counterparty                                                                                 | Bilateral        |
| <b>Lender of Last Resort</b>                                             | Reverse repo<br>FX swap<br>Collateralised loan |                               | Variable                                                                        | At the request of the counterparty                                                                                 | Bilateral        |

The HKMA indicated in its responses (Q3) that transactions in non-equity securities are typically undertaken for foreign-exchange management purposes.

## 2.3.5.3 Procedural framework

### 2.3.5.3.1 Eligible counterparties

The relationship between the HKMA and its counterparties is supported by the infrastructure maintained by the HKMA. Hong Kong Interbank Clearing Limited (HKICL) is the operator of the payment systems, which can be divided into three types:

- i. Payment systems for the settlement of interbank payments (each with their own list of members):<sup>246</sup>
  - a. Hong Kong dollar Real-time Gross Settlement (RTGS) system, launched in 1996;<sup>247</sup>
  - b. US dollar RTGS system, launched in 2000;<sup>248</sup>
  - c. Euro RTGS system, launched in 2003;<sup>249</sup>
  - d. Renminbi RTGS system, launched in 2007 (upgraded from Renminbi Settlement System launched in 2006).<sup>250</sup>
- ii. The debt securities settlement system, called the Central Moneymarkets Unit (CMU), established in 1990, for the settlement and custody of debt securities.
- iii. Domestic and external system links to provide payment-versus-payment and delivery-versus-payment services, locally and cross-border.

The Hong Kong dollar RTGS system (also known as Hong Kong dollar Clearing House Automated Transfer System (CHATS)) has a single-tier membership structure. With the Exchange Fund Ordinance providing the legal basis for access to the system, licensed

<sup>246</sup> The full list of members of Hong Kong payment system can be consulted at: [www.hkicl.com.hk/clientbrowse.do?docID=7199&lang=en](http://www.hkicl.com.hk/clientbrowse.do?docID=7199&lang=en).

<sup>247</sup> List of members available at: [www.hkicl.com.hk/clientbrowse.do?docID=7195&lang=en](http://www.hkicl.com.hk/clientbrowse.do?docID=7195&lang=en).

<sup>248</sup> List of members available at: [www.hkicl.com.hk/clientbrowse.do?docID=7196&lang=en](http://www.hkicl.com.hk/clientbrowse.do?docID=7196&lang=en).

<sup>249</sup> List of members available at: [www.hkicl.com.hk/clientbrowse.do?docID=7197&lang=en](http://www.hkicl.com.hk/clientbrowse.do?docID=7197&lang=en).

<sup>250</sup> List of members available at: [www.hkicl.com.hk/clientbrowse.do?docID=7198&lang=en](http://www.hkicl.com.hk/clientbrowse.do?docID=7198&lang=en).

banks in Hong Kong are required to join the system and maintain Hong Kong dollar settlement accounts with the HKMA.<sup>251</sup> Since its launch, the Hong Kong dollar RTGS system has interfaced with the Central Moneymarkets Unit (CMU), the debt securities settlement system. Among debt securities settled in the CMU are the Exchange Fund Bills and Notes (EFBN), issued by the HKMA for the account of the Exchange Fund. For the performance of its operations, the HKMA has a list of counterparties. The list includes 10 institutions categorised as “primary dealers” (PDs) in government bonds.

Of specific importance for the HKMA operations are, however, the counterparties in the Exchange Fund Bills and Notes. These programmes adopt a two-tier dealership scheme (with Recognised Dealers (RDs) and Market Makers (MMs)) to support, with different degrees of commitment, the development of the market. RDs are financial institutions that maintain Securities Accounts with the HKMA for holding Exchange Fund papers. Market Makers, appointed from the pool of Recognised Dealers, are responsible for maintaining liquidity in the secondary market. In particular, they quote two-way prices upon request during normal trading hours of Exchange Fund paper. From 3 July 2007, only the most active Market Makers, determined based on criteria set by the HKMA, are appointed Eligible Market Makers and invited to participate in the primary market.

In addition to exchange fund bills and notes, counterparties can be RDs and/or MMs in other specified instruments. All PDs in government bonds are MMs for the other types of instruments. All other institutions have RD status. The list of PDs and MMs,<sup>252</sup> with the corresponding securities, follows:

**Table 14. Primary dealers and market makers**

|                                                              | Exch Fund<br>Bills | Exch Fund<br>Notes | Specific<br>Institution | Govt<br>Bonds |
|--------------------------------------------------------------|--------------------|--------------------|-------------------------|---------------|
| Bank of China (Hong Kong) Limited                            | MM                 | MM                 | MM                      | PD            |
| Bank of Communications Co. Ltd                               | MM                 | MM                 | RD                      | RD            |
| The Bank of East Asia Limited                                | MM                 | MM                 | MM                      | PD            |
| Barclays Bank plc                                            | MM                 | MM                 | MM                      | PD            |
| BNP Paribas, Hong Kong                                       | MM                 | MM                 | MM                      | PD            |
| Citibank N.A.                                                | MM                 | MM                 | RD                      | PD            |
| Citicorp International Limited                               | RD                 | RD                 | MM                      | RD            |
| Commonwealth Bank of Australia                               | MM                 | MM                 | MM                      | RD            |
| Crédit Agricole Corporate and<br>Investment Bank             | MM                 | MM                 | MM                      | PD            |
| DAH Sing Bank Limited                                        | MM                 | MM                 | MM                      | RD            |
| DBS Bank (Hong Kong) Limited                                 | MM                 | MM                 | MM                      | PD            |
| Deutsche Bank Aktiengesellschaft                             | MM                 | MM                 | MM                      | RD            |
| Fubon Bank (Hong Kong) Limited                               | MM                 | MM                 | MM                      | RD            |
| Hang Seng Bank Limited                                       | MM                 | MM                 | MM                      | PD            |
| Hong Kong and Shanghai Banking<br>Corporation (HSBC) Limited | MM                 | MM                 | MM                      | PD            |
| J.P. Morgan Securities (Asia Pacific)<br>Limited             | MM                 | MM                 | MM                      | RD            |
| Nanyang Commercial Bank Limited                              | MM                 | MM                 | MM                      | RD            |
| Societe Generale                                             | MM                 | MM                 | MM                      | PD            |
| Standard Chartered Bank (Hong Kong)<br>Limited               | MM                 | MM                 | MM                      | PD            |
| UBS AG, Hong Kong                                            | MM                 | MM                 | MM                      | RD            |
| Wing Lung Bank Limited                                       | MM                 | MM                 | MM                      | RD            |

<sup>251</sup> HKMA Payment Systems available at:

[www.hkma.gov.hk/eng/key-functions/international-financial-centre/infrastructure/payment-systems.shtml](http://www.hkma.gov.hk/eng/key-functions/international-financial-centre/infrastructure/payment-systems.shtml). In addition to this, the HKMA has completed a disclosure report on its payment system, subject to the methodology of the Disclosure Framework (DF) of the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO) ([www.bis.org/publ/cpss106.pdf](http://www.bis.org/publ/cpss106.pdf)) for their principles for financial market infrastructures (PFMIs) ([www.bis.org/publ/cpss101a.pdf](http://www.bis.org/publ/cpss101a.pdf)). See [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/infrastructure/HKD\\_CHATS\\_DF.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/infrastructure/HKD_CHATS_DF.pdf).

<sup>252</sup> The list is available at: [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/infrastructure/cmup8027.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/infrastructure/cmup8027.pdf).

The remaining RDs make a much longer list, which includes most of the global leading financial institutions.

The HKMA indicated that, when implementing its central bank policy operations, transactions are executed on EU trading venues, and with EU-domiciled financial intermediaries that internalise orders, though the first was restricted to certain exchange-traded futures.<sup>253</sup>

It was clarified that transactions in the nature of liquidity provision to the market are conducted in a direct, bilateral manner. The HKMA may conduct foreign exchange and money market transactions with EU bank branches in Hong Kong, but it has no information if they will internalise the orders. The relative importance assigned to transactions with EU counterparties and venues (the former being predominate) was between 10% and 50%.

### **2.3.5.3.2 Implementation of monetary policy instruments**

Under the Linked Exchange Rate System (LERS) if capital inflows (or outflows) in Hong Kong cause the exchange rate to rise (or fall) so that it goes beyond/below the boundaries of the Convertibility Zone, triggering the Convertibility Undertakings (CUs). Thus the HKMA has to sell (or buy) HKD against USD. When there is a decrease in demand for Hong Kong dollar assets and the Hong Kong dollar exchange rate weakens in comparison to the convertibility rate, the HKMA purchases Hong Kong dollars from banks, leading to a contraction of the Monetary Base. Interest rates then rise, resulting in capital inflows to maintain exchange rate stability. Conversely, if there is an increase in the demand for Hong Kong dollar assets, leading to a strengthening of the exchange rate, banks may purchase Hong Kong dollars from the HKMA. The Monetary Base correspondingly expands, exerting downward pressure on interest rates and so discouraging continued inflows.

In addition to transactions to manage the exchange rate the HKMA also transacts in Exchange Fund Bills and Notes, which are Hong Kong dollar debt securities issued by the HKMA. They constitute direct, unsecured, unconditional and general obligations of the Hong Kong Special Administrative Region Government on the account of the Exchange Fund and have the same status as all other unsecured debt of the government. The Bills and Notes are on the account of and payable from the Exchange Fund. The terms and conditions are provided in advance.<sup>254</sup> Exchange Fund Notes and Bills are issued under the Exchange Fund Ordinance (Chapter 66 of the Laws of Hong Kong) and for the account of the Exchange Fund. Tenders are open only to Eligible Market Makers. Anyone wishing to participate the competitive tender procedure for Notes can only do so through

---

<sup>253</sup> The HKMA also gave a more detailed answer on the selection of counterparties, stating: "*The HKMA selects for the Exchange Fund its counterparties in lending, placement, derivatives and trading transactions prudently and objectively. Since the HKMA conducts transactions with a counterparty for a range of financial instruments, credit limits are established to control the overall exposure to each authorized counterparty based on its credit ratings, financial strength, the size of its total assets and capital, and other relevant information. Counterparty credit exposures are measured according to the risk nature of financial products involved in the transaction. Counterparty credit exposures of derivatives include an estimate for the potential future credit exposure of the derivative contracts, in addition to their positive mark-to-market replacement value. Selection of a counterparty, the establishment and review of the credit limit for such a counterparty is conducted by the Credit Review and Compliance Committee. This Committee is chaired by the Deputy Chief Executive (Monetary) whose responsibilities are independent of the day-to-day investment activities of the Exchange Fund, and includes representatives from the Reserves Management Department, the Monetary Management Department, the Research Department and the Risk & Compliance Department of the HKMA.*"

<sup>254</sup> See Summary of the Terms of the Bills at: [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/im\\_efb\\_eng\\_9805.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/im_efb_eng_9805.pdf). Summary of the Terms of the Notes available at: [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/EFN\\_program\\_eng.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/EFN_program_eng.pdf)  
[http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/EFN\\_program\\_eng.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/EFN_program_eng.pdf)



an Eligible Market Maker. Tenders must be submitted by 10:30 am on the relevant tender day. Tender results are announced not later than 3:00 pm on the relevant tender day.

The HKMA activities also include the provision of liquidity, which includes intraday liquidity, system-wide liquidity shortages, Lender of Last Resort (LoLR) and the discount facility for Hong Kong Government bonds, and a Renminbi liquidity facility.

Regarding intraday liquidity, apart from settling interbank transactions on RTGS, to further reduce the chance of payment problems and to smooth payment flows, several other measures are in place.<sup>255</sup> These include the overnight repo facility. Participants can arrange with the HKMA to obtain intraday liquidity through interest-free intraday repo facility. Intraday repos that cannot be repurchased before the system closing will be automatically rolled into overnight repo on which HKMA charges an interest.<sup>256</sup> To prevent system-wide liquidity shortages the HKMA may provide liquidity assistance to banks via foreign exchange swaps and term repos against Hong Kong dollar or foreign currency denominated securities of acceptable credit quality. These were originally two of the five temporary measures introduced in September 2008 during the global financial crisis to help relieve tensions in the local interbank market. Upon expiry of the five temporary measures at end-March 2009, the HKMA decided to incorporate foreign exchange swaps and term repos into our ongoing market operations to offer Hong Kong dollar liquidity assistance to banks if needed, on a case-by-case basis.<sup>257</sup>

The HKMA may also decide to provide LoLR support if it is deemed that the bank's failure may pose systemic risk. Under the LoLR framework, the HKMA can employ a wide range of instruments, such as repos, foreign exchange swaps and credit facilities, to provide funding support to a bank in difficulty. The range of eligible collateral for LoLR support includes bank placements, residential mortgage loans and investment-grade securities denominated in HKD or other currencies. In light of the uncertainty about whether the HKMA would provide such facilities, the HKMA issued a specific policy statement.<sup>258</sup>

The HKMA introduced a discount facility for Hong Kong Government Bonds (HKGBs) with effect from 15 December 2014 so as to provide greater flexibility for banks to manage liquidity. The facility will provide up to a total of HK\$10 billion overnight liquidity against a sale and repurchase of HKGBs.<sup>259</sup>

The Renminbi RMB liquidity facility was introduced in 2012 to address potential short-term liquidity tightness in the offshore RMB market. It has been enhanced several times (in November 2014 the RMB repo was introduced). Authorised Institutions can obtain RMB funds overnight, intraday, one-day and one-week.<sup>260</sup>

Finally, an important part of HKMA transactions are related to the Exchange Fund Operation and Investment. The Exchange Fund is under the control of the Financial Secretary and may be invested in any securities or other assets considered appropriate, after consulting the Exchange Fund Advisory Committee (EFAC). The Exchange Fund is not primarily an investment fund, and it is predominantly invested in a wide range of

---

<sup>255</sup> HKMA, *Principles for Financial Market Infrastructures: Disclosure for HKD CHATS*, p. 7, available at: [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/infrastructure/HKD\\_CHATS\\_DF.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/infrastructure/HKD_CHATS_DF.pdf).

<sup>256</sup> Ibid., p. 8

<sup>257</sup> HKMA, "HKMA to continue the provision of liquidity assistance to banks" available at: [www.hkma.gov.hk/eng/key-information/press-releases/2009/20090326-3.shtml](http://www.hkma.gov.hk/eng/key-information/press-releases/2009/20090326-3.shtml).

<sup>258</sup> More information available at: [www.hkma.gov.hk/media/eng/doc/key-information/press-release/2009/loir.doc](http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2009/loir.doc).

<sup>259</sup> More information available at: [www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2014/20141208e1.pdf](http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2014/20141208e1.pdf).

<sup>260</sup> HKMA, "Liquidity Support for Banks", available at: [www.hkma.gov.hk/eng/key-functions/monetary-stability/liquidity-support-to-banks.shtml](http://www.hkma.gov.hk/eng/key-functions/monetary-stability/liquidity-support-to-banks.shtml).

fixed-income, equity and other assets in major international markets.<sup>261</sup> The Exchange Fund is split into a Backing Portfolio, Investment Portfolio and Strategic Portfolio:<sup>262</sup>

- The Backing Portfolio holds highly liquid US dollar-denominated assets to provide full backing to the Monetary Base as required under the Currency Board arrangements;
- The Investment Portfolio is invested primarily in the bond and equity markets of the member countries of the Organisation for Economic Co-operation and Development to preserve the value and long-term purchasing power of the assets;<sup>263</sup> and
- The Strategic Portfolio holds shares in Hong Kong Exchanges and Clearing Limited that were acquired by the government for the account of the Exchange Fund for strategic purposes and it is not included in the assessment of the Fund's investment performance because of the unique nature of this Portfolio.<sup>264</sup>

Thus the HKMA's performance of functions is closer to investment management. The investment process of the Exchange Fund depends on decisions on two types of asset allocation – the strategic asset allocation and the tactical asset allocation. The strategic asset allocation, reflected in the investment benchmark, represents the long-term optimal asset allocation given the investment objectives of the Exchange Fund. Then, assets are tactically allocated to obtain an excess return over the benchmark.<sup>265</sup>

## **2.3.5.4 Transparency of the transactions**

### **2.3.5.4.1 Regulatory transparency**

Bond trading in Hong Kong takes place mostly on OTC markets, though some bonds are traded on the Hong Kong Stock Exchanges and Clearing (HKEx), which is the holding company that operates the stock exchange. The Central Moneymarkets Unit (CMU) was set up primarily to provide computerised clearing and settlement facilities. It is linked to the Real-time Gross Settlement (RTGS) interbank payment system, and has also been linked to international clearing systems such as Euroclear. The CMU is operated by the HKMA. However, the principal regulator of Hong Kong's securities and futures market is the Securities and Futures Commission (SFC).<sup>266</sup> The Hong Kong capital market is

---

<sup>261</sup> EFAC has set the following investment objectives for the Exchange Fund: (a) to preserve capital; (b) to ensure that the entire monetary base, at all times, will be fully backed by highly liquid US dollar-denominated securities; (c) to ensure that sufficient liquidity will be available for the purposes of maintaining monetary and financial stability; and (d) subject to (a) – (c), to achieve an investment return that will help preserve the long-term purchasing power of the fund. Please see HKMA *Annual Report. Reserves Management*, 2013, p. 105, available at:

[www.hkma.gov.hk/media/eng/publication-and-research/annualreport/2013/14\\_Reserves\\_Management.pdf](http://www.hkma.gov.hk/media/eng/publication-and-research/annualreport/2013/14_Reserves_Management.pdf).

<sup>262</sup> Ibid.

<sup>263</sup> The long-term target bond-to-equity mix for the two portfolios as a whole is 74:26. In terms of target currency mix, 77% of the assets are allocated to the US dollar and the Hong Kong dollar, and the remaining 23% to other currencies. To better manage risks and enhance returns in the medium and long terms, the HKMA has diversified part of the Fund's investment. Emerging market assets and Mainland bonds and equities were transferred from the Long-Term Growth Portfolio (LTGP) to the Investment Portfolio, so that the LTGP now holds only private equity and real estate investments. The cap for the net asset value of the LTGP is maintained at one-third of the Accumulated Surplus of the Exchange Fund. Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> The differences between the actual and the benchmark allocations are known as "tactical deviations". The Financial Secretary, in consultation with EFAC, determines the benchmark and the limits for tactical deviations. Then the HKMA makes tactical decisions under delegated authority, and portfolio managers may take positions to take advantage of short-term market movements (within the limits set forth by the Financial Secretary). See HKMA, *Annual Report. Reserves Management*, 2013, p. 106.

<sup>266</sup> It was established by the Securities and Futures Commission Ordinance (SFCO). The SFCO and nine other securities and futures-related ordinances were consolidated into the Securities and Futures Ordinance (SFO), which came into effect on 1 April 2003.

governed by the Securities and Futures Ordinance, the codes and guidelines of the SFC<sup>267</sup> and the trading rules of the stock exchange.<sup>268</sup>

There are no mandatory reporting duties for the market participants on bond trades.<sup>269</sup> If bonds are traded in the OTC market, any interested investors can obtain direct access to relevant information supplied by various financial information providers, e.g. Bloomberg and Reuters, or rely on intermediaries, such as distributing banks.<sup>270</sup> Currently, financial counterparties of a transaction in non-exchange traded debt securities or currencies are not under any specific regulatory requirement to report the transaction details of every single transaction to a designated entity for pre- and post-trade transparency purposes. The introduction of transparency requirements for OTC transactions made so far only affects derivatives transactions, and the actual scope and extent of disclosure duties needs to be specified in implementation standards, but parties would only be required to report trades only to a trade repository (the Hong Kong Trade Repository, or HKTR).<sup>271</sup> The HKMA anticipated that there would be a further study on the pre- and post-trade transparency regulatory requirements for the Hong Kong market, but it did not provide an estimate of the scope or dates. Although mandatory rules do not contemplate obligations of transparency for non-equity instruments, for the Exchange Fund Bills and Notes (EFBNs) Program the Market Makers<sup>272</sup> are obliged to supply quotes to the HKMA, which the latter aggregates and discloses (see below).

In relation to the existence of an exemption, the HKMA stated that, in general, the HKMA is not required under the domestic provisions to disclose to the public information about the Currency Board operations. Thus the question on waivers (Q9) is not applicable. However, the usual practice when the HKMA enters an agreement with the counterparty is to require preservation of the confidentiality of the transactions, *"unless subject to local statutory or regulatory requirement to disclose"* (the HKMA did not clarify under what circumstances such regulatory requirements could apply). It was indicated that the same procedure was followed also with EU counterparties. The possibility of an exemption to foreign central banks transactions would not be necessary, given the restricted scope of transparency requirements.

---

<sup>267</sup> More information available at: [http://enrules.sfc.hk/en/display/display\\_main.html?rbid=3527&element\\_id=1](http://enrules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=1).

<sup>268</sup> More information available at: [www.hkex.com.hk/eng/rulesreg/traderules/tradingrules.htm](http://www.hkex.com.hk/eng/rulesreg/traderules/tradingrules.htm).

<sup>269</sup> The only "Code" by the SFC on "Market infrastructure & trading" is the Code of Conduct for Share Registrars, 2003. See: [http://enrules.sfc.hk/en/display/display\\_main.html?rbid=3527&element\\_id=3671](http://enrules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=3671). On guidelines, the *Guidelines on the application of the CPSS-IOSCO Principles for Financial Market Infrastructures*, August 2013, do not contain provisions on reporting. On transparency, there are the Guidance Note on Position Limits and Large Open Position Reporting Requirements, December 2007, the Guidance Note on Short Position Reporting, June 2012, and the Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements, November 2003, which do not contain mandatory reporting obligations of general reach. See: [http://enrules.sfc.hk/en/display/display\\_main.html?rbid=3527&element\\_id=3678](http://enrules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=3678).

<sup>270</sup> ASEAN +3 *Bond Market Guide*, Vol. 2, Part 2, *Hong Kong, China* pp. 1-2.

<sup>271</sup> The Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) was amended by the Securities and Futures (Amendment) Ordinance 2014 (passed by the Legislative Council of the Hong Kong Special Administrative Region (HKSAR) in March 2014) to provide a broad regulatory framework for the OTC derivatives market. Among other things, they introduce mandatory reporting, clearing, trading and record keeping duties for OTC derivative transactions. The scope and details of these duties will be set out in rules to be made by the Securities and Futures Commission with the consent of the HKMA and after the consultation with the Financial Secretary of the HKSAR. The public consultation on reporting and record-keeping obligations was concluded in November 2014. The report with the conclusions of the consultation are available at: [www.hkma.gov.hk/media/eng/doc/key-information/press-release/2014/20141128e4a23.pdf](http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2014/20141128e4a23.pdf). See also the press release: [www.hkma.gov.hk/eng/key-information/press-releases/2014/20141128-4.shtml#3](http://www.hkma.gov.hk/eng/key-information/press-releases/2014/20141128-4.shtml#3).

<sup>272</sup> See [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/list\\_of\\_emm.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/list_of_emm.pdf)

### 2.3.5.4.2 Non-regulatory transparency

The HKMA discloses aggregate data on foreign exchange operations conducted under the Currency Board operations.<sup>273</sup> The HKMA indicated that its disclosure standards are adjusted to the Special Data Dissemination Standard of the IMF; and, absent specific reporting requirements applying to central banking institutions, the HKMA adopts disclosure requirements applicable to commercial entities as far as possible to achieve a high level of transparency. The HKMA works with the external auditor and other accounting professionals to prepare and present the group financial statement, in accordance with the Hong Kong Financial Reporting Standards applicable to central bank operations. Four press releases on Exchange Fund data are issued by the HKMA each month. These press releases, the annual financial statements of the Exchange Fund accounts, and the HKMA's Annual Report can be found on the HKMA website ([www.hkma.gov.hk](http://www.hkma.gov.hk)). The HKMA discloses detailed information on portfolios, investment strategy and currency target mix.

The answers to the disclosure questions were otherwise given in general terms (Q16-Q19). The HKMA pointed out that, once a foreign exchange operation has been completed under the Currency Board system, the HKMA would make public the forecasted changes in Aggregate Balance on a voluntary basis. Nevertheless, there is no disclosure on the details of individual transactions, such as the name of the counterparty (Q20). The information is made public on the Reuters page a few hours after the operation has been completed (Q21).

Other aggregate information on transactions is published in the HKMA monthly statistics (which are disaggregated by day).<sup>274</sup> There is not much detailed information on market operations that result in variations in the Exchange Fund, e.g. purchases or sales. The aggregate information is provided on the Discount Window and Liquidity Adjustment Window, as well as on issuance of Exchange Fund Bills and Notes, and government bonds. Tender results for government bond auctions are typically published on the HKMA's website, the Government Bond Programme's website, the Reuters screen (HKGBINDEX), and Bloomberg (GBHK <GO>).<sup>275</sup>

In the case of Exchange Fund Notes, the Monetary Authority will announce Bills four business days in advance of each tender day, the amount(s) on offer through competitive or non-competitive tender, the issue date(s), the maturity date(s) and the interest rate(s) of the Notes on offer. The announcement will be published on the Reuters screen (HKMAOOD), Bloomberg and in the press, or by any other means specified by the HKMA.<sup>276</sup> The amount of Bills/Notes allotted in the tender, the Average Accepted Yield and the highest yield at which Bills have been allotted will be announced not later than 3:00 pm on the tender day on the Reuters screen (HKMAOOE), Bloomberg or by any other means specified by the HKMA.

Retail investors may obtain the indicative bid and offer prices of Exchange Fund papers quoted by major banks in Hong Kong at the CMU Bond Price Bulletin website developed by the HKMA's Central Moneymarkets Unit.<sup>277</sup>

---

<sup>273</sup> More information available at: [www.hkma.gov.hk/eng/key-functions/monetary-stability/transparency-currency-board-operations.shtml](http://www.hkma.gov.hk/eng/key-functions/monetary-stability/transparency-currency-board-operations.shtml).

<sup>274</sup> More information available at: [www.hkma.gov.hk/eng/market-data-and-statistics/monthly-statistical-bulletin/](http://www.hkma.gov.hk/eng/market-data-and-statistics/monthly-statistical-bulletin/).

<sup>275</sup> More information available at: [www.hkma.gov.hk/eng/key-information/press-releases/2015/20150126-3.shtml](http://www.hkma.gov.hk/eng/key-information/press-releases/2015/20150126-3.shtml).

<sup>276</sup> Terms and Conditions: [www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/EFN\\_program\\_eng.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/financial-infrastructure/debt-market-development/EFN_program_eng.pdf).

<sup>277</sup> More information available at: [https://www.cmu.org.hk/cmupbb\\_ws/eng/page/wmp0100/wmp010001.aspx](https://www.cmu.org.hk/cmupbb_ws/eng/page/wmp0100/wmp010001.aspx).

### **2.3.5.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for HKMA (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, Hong Kong has no reporting requirements for trading in non-equity instruments. Information requirements on OTC derivatives are limited to reporting to trade repositories, not the public. Quote requirements for market makers on Exchange Fund Bills and Notes are centralized by the HKMA, and disclosed by it. However, they are considered part of the transparency of the institution itself.
- In terms of operational transparency, in general the national central bank discloses general items of its balance sheet, and changes in foreign reserves, rather than transactional information. However, it provides specific advance information on issuances of Exchange Fund Bills and Notes, which are used to ensure a steady supply of liquid instruments and manage market liquidity and financial stability. In addition to this, the national central bank requires the main market makers to provide quotes on these instruments, which it centralizes and publishes through the Central Money markets Unit (CMU), which it operates. With respect to foreign exchange management, the HKMA presents the group financial statement according to the Hong Kong Financial Reporting Standards applicable to central bank operations and makes four monthly press releases on Exchange Fund data. The HKMA implements its policies primarily through transactions with counterparties.
- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available for foreign central banks, even though they can rely on the low level of transparency for transactions in non-equity instruments;
  - The HKMA can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role;
  - HKMA has a procedure in place to notify its counterparties of the existence of an exemption, thanks to confidentiality clauses included in the bilateral agreements.

### **2.3.6 The Reserve Bank of India (RBI)**

#### **2.3.6.1 Mandate and policies**

According to the preamble of the 1934 Reserve Bank of India Act, the mandate of the RBI is *"to regulate the issue of Banknotes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage"*.

The formulation, framework and institutional architecture of monetary policy in India have evolved around several objectives: maintaining price stability, ensuring adequate flow of credit to the productive sectors of the economy to support economic growth and securing financial stability. The relative emphasis among the objectives varies over time, depending on evolving macroeconomic developments.

In the responses to the questionnaire, the RBI identified price stability and foreign exchange policies as part of its mandate, whereas it left out financial stability, economic/employment growth and investment. The RBI indicated that it does not have an explicit mandate for financial stability or economic and employment growth under the 1934 RBI Act. However, under the aegis of the Preamble of the RBI Act outlined above, *"the Bank has been pursuing monetary and economic policies with objectives which include price stability, financial stability and economic growth"*.

The RBI also indicated that it does distinguish between policies when executing a transaction: reserve management operations are carried out under a separate vertical operational line from monetary transactions (Q2).<sup>278</sup>

### **2.3.6.2 Operations, instruments and transactions**

When pursuing the above-mentioned monetary policy objectives, the Reserve RBI may use direct instruments and indirect instruments:

- Direct instruments include the cash reserve ratio (CRR), and statutory liquidity ratio (SLR), which do not form part of the RBI's operations, as well as refinance facilities, which are sector-specific refinance facilities provided by the RBI to banks.
- Indirect instruments include monetary, standing facilities and stabilisation mechanisms, and foreign exchange policy instruments.

Monetary policy instruments include:

- Liquidity adjustment facility (LAF), which enables the RBI to provide or absorb liquidity from the market on a daily basis via repo agreements available to scheduled commercial banks and primary dealers; and
- Open market operations (OMOs), which enable the RBI to provide to or absorb liquidity from the market by means of outright sales and purchases of government securities (implemented through auctions and OMOs in secondary markets).

Standing facilities and market stabilisation schemes include:

- Marginal Standing Facility (MSF), which enables commercial banks to borrow *"over night at their discretion up to one per cent of their respective NDTL at 100 basis points above the repo rate"* in order to control unexpected liquidity shocks;
- Bank Rate, which is the rate at which the RBI *"is ready to buy or rediscount bills of exchange or other commercial papers"* and signals the medium-term stance of monetary policy;
- Market stabilisation scheme (MSS) created in 2004, which enables the RBI to absorb liquidity of a more enduring nature that arises from capital flows by selling short-dated government securities and treasury bills.

Operations for foreign exchange policy include outright purchases/sales and foreign exchange forwards and swaps.

---

<sup>278</sup> The Bank of India added that "all monetary operations in the domestic Rupee market are conducted in a transparent manner".

**Table 15. Operations and instruments**

| Types of transactions                            |                                                     |                |           |           |
|--------------------------------------------------|-----------------------------------------------------|----------------|-----------|-----------|
| Liquidity provision                              | Liquidity absorption                                | Maturity       | Frequency | Procedure |
| Monetary operations                              |                                                     |                |           |           |
| Liquidity adjustment facility                    | Repo                                                | Reverse repo   | Daily     | Auction   |
| Open market operations                           | Outright purchases                                  | Outright sales |           | Auction   |
| Standing facilities and stabilisation mechanisms |                                                     |                |           |           |
|                                                  | Marginal standing facility                          |                | Variable  | Bilateral |
|                                                  | Market stabilisation scheme                         |                | Variable  | Bilateral |
| Foreign-exchange policy operations               |                                                     |                |           |           |
|                                                  | Outright purchases and Sales, FX forwards and swaps |                |           |           |

In its responses to the questionnaire (Q3), the RBI stated that all foreign exchange operations (including reserve management) and all monetary operations are carried out in non-equity securities.

### 2.3.6.3 Procedural framework

#### 2.3.6.3.1 Eligible counterparties

The RBI implements its monetary policy instruments through the NDS-OM platform, which was launched in August 2005. This platform is defined as “an electronic, screen based, anonymous, order driven trading system for dealing in Government securities”.<sup>279</sup> This platform is used together with the pre-existing facility of OTC and phone market.

There are two types of participants in the NDS-OM platform:

- Direct members, who have current and Subsidiary General Ledger (SGL) accounts with the RBI and are entitled to directly settle their trades on the platform;
- Indirect members, who do not have current and SGL accounts and, hence, can only trade on the platform through direct members.

Resident entities (including corporates, but excluding individuals) can be either direct or indirect members of NDS-OM. On the contrary, foreign institutional investors can only become indirect members. Currently “banks, including state cooperative banks, primary dealers (PDs), insurance companies, mutual funds and larger provident funds” are direct members of NDS-OM.

In order to become a NDS-OM member, the following conditions must be met: to hold an SGL account with the RBI, to hold a current account with RBI, to have Indian Financial Network (INFINET) connectivity, to be member of CCIL. The following is a list of Primary Dealers, both Standalone Primary Dealers and Bank Primary Dealers.<sup>280281</sup>

Standalone Primary Dealers are:

- ICICI Securities Primary Dealership Ltd;
- Morgan Stanley India Primary Dealer Pvt. Ltd;

<sup>279</sup> More information available at: [www.rbi.org.in/scripts/PublicationsView.aspx?id=12288](http://www.rbi.org.in/scripts/PublicationsView.aspx?id=12288).

<sup>280</sup> Bank PDs are those which take up PD business departmentally as part of the bank itself. Standalone PDs are Non-banking Financial Companies (NBFCs) that exclusively take up PD business. The updated list is available at: [www.rbi.org.in/commonman/English/Scripts/PrimaryDealers.aspx](http://www.rbi.org.in/commonman/English/Scripts/PrimaryDealers.aspx).

<sup>281</sup> There is also an updated list of State Cooperative Banks, available at: [www.rbi.org.in/commonman/English/Scripts/Content.aspx?id=1306](http://www.rbi.org.in/commonman/English/Scripts/Content.aspx?id=1306).

- Nomura Fixed Income Securities Pvt. Ltd;
- PNB Gilts Ltd;
- SBI DFHI Ltd;
- STCI Primary Dealer Ltd;
- Goldman Sachs (India) Capital Markets Pvt. Ltd.

Bank Primary Dealers are:

- Bank of America;
- Bank Of Baroda;
- Canara Bank;
- Citibank N.A;
- Corporation Bank;
- HDFC Bank Ltd;
- Hong Kong and Shanghai Banking Corp. Ltd (HSBC);
- JPMorgan Chase Bank N.A, Mumbai Branch;
- Kotak Mahindra Bank Ltd;
- Standard Chartered Bank;
- Axis Bank Ltd;
- IDBI Bank Ltd;
- Deutsche Bank AG.

However, “qualified entities, such as non-banking finance companies (NBFCs), smaller provident funds, pension funds, cooperative banks, regional rural banks and trusts, corporates and FIIs” can only be indirect members on NDS-OM.<sup>282</sup>

In its answers to the questionnaire, the RBI confirmed that it operates under a dealer-based system. When assessing the relative importance of execution systems (Q6), the RBI assigned a share between 50% and 100% to the direct bilateral execution with a counterparty that may internalise orders. This should be interpreted as 100% because no percentage was assigned to the other execution mechanisms. The confusion comes from the fact that the RBI answered “Yes” to the question of whether, when implementing its central bank policy operations, the institution executes transactions on EU trading venues (Q4). The confusion seems to be explained by the reference to “Reuters” in the answer, which is an information-providing service, but not a “venue”, so the answer would be “No”, and the execution of transactions would be solely with counterparties. The RBI, however, indicated that it is not aware of whether they internalise orders.

As to the relative importance of EU-domiciled financial intermediaries (Q7), they were given a relative importance between 50% and 100%. In its answer the RBI specified that:

- i. Reserve management operations (foreign exchange as well as fixed income) are carried out with EU-domiciled entities (the bank not being aware of whether they internalise orders); and
- ii. Liquidity and OMO operations are carried out with EU-domiciled bank branches located in India.

### **2.3.6.3.2 Implementation of monetary policy instruments**

The sale of government securities is conducted through an auction process while the buyback of such securities may be conducted either through an auction process or through the secondary market, namely NDS-OM. Auctions can be classified as follows:<sup>283</sup>

<sup>282</sup> More information available at: [www.rbi.org.in/scripts/PublicationsView.aspx?id=12288](http://www.rbi.org.in/scripts/PublicationsView.aspx?id=12288).

<sup>283</sup> This information is available at: <http://rbi.org.in/Scripts/FAQView.aspx?Id=79#1>.



yield-based auction or price-based auction, uniform price auction or multiple price auction, and competitive bidding or non-competitive bidding.

With respect to the FX reserve management, the investment of reserves is guided by principle of safety, liquidity and returns in this order. Investments are made in assets denominated in major fully currencies like US dollar, Euro, Pound sterling etc. The portfolio comprises of interest rate instruments like deposits, equivalent bonds etc. The currency or asset composition is not disclosed publicly. Eligible counterparties in such operations are selected based on an internal credit scoring model.

## **2.3.6.4 Transparency of the transactions**

### **2.3.6.4.1 Regulatory transparency**

Trading in corporate securities is subject to the 1956 Securities Contracts (Regulation) Act (SCA), and the supervision of the Securities and Exchange Board of India (SEBI). The Act provides an exemption from its provisions to the RBI, but also to parties entering in transactions with the RBI.<sup>284</sup> Government securities (typically used by the RBI to execute transactions to implement its policies) are outside the scope of the SCA and the supervision of the SEBI, and subject to the 2006 Government Securities Act and the 2007 Government Securities Regulation, which together with the 1934 Reserve Bank of India (RBI) Act vest the RBI with supervisory powers.<sup>285</sup> In the exercise of these powers, the RBI has contributed to the transparency of primary and secondary markets in government securities. Government securities have an active secondary market by means of OTC transactions, through the Negotiated Dealing System (NDS) or the Negotiated Dealing System-Order Matching (NDS-OM) as well as traded in facilities in stock-exchanges.<sup>286</sup>

In terms of transparency and reporting, OTC transactions (usually conducted over the phone) are reported on the secondary market module of the NDS and the NDS has its own trading system for electronic dealing and reporting of transactions in the primary and secondary markets for government securities.<sup>287</sup> Transactions in government securities generate trade reporting obligations.<sup>288</sup> Transactions between market participants in the OTC market are expected to be reported on the NDS platform within

---

<sup>284</sup> Section 28 (Act not to apply in certain cases) provides that: "(1) The provisions of this Act shall not apply to (a) the Government, the Reserve Bank of India, any local authority or any corporation set-up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause".

<sup>285</sup> Sections 45U and 45W Reserve Bank of India Act. See also Sections 7, 10-12, 18-20, 32 of the Government Securities Act 2006 with respect to vesting orders regarding the ownership of securities.

<sup>286</sup> More information available at: <http://rbi.org.in/scripts/FAQView.aspx?Id=79#10>.

<sup>287</sup> The Negotiated Dealing System (NDS) for electronic dealing and reporting of transactions in government securities was introduced in February 2002. With membership restricted to those holding SGL and/or Current Account with RBI. The NDS facilitates members to submit electronic bids for auctions on primary issuance of Government Securities. NDS also provides an interface to the Securities Settlement System (SSS) of the Public Debt Office, RBI, Mumbai, thereby facilitating settlement of transactions in Government Securities (both outright and repos) conducted in the secondary market. To enhance transparency and price discovery in 2005, the RBI introduced an anonymous screen based order matching module on NDS, called NDS-OM, an order-driven electronic system, where the participants can trade anonymously by placing their orders on the system or accepting the orders already placed by other participants. NDS-OM is operated by the Clearing Corporation of India Ltd. (CCIL) on behalf of the Reserve Bank of India, and grants access only to select financial institutions like Commercial Banks, Primary Dealers, Insurance Companies, Mutual Funds, etc. Other participants can access this system through their custodians, i.e. with whom they maintain Gilt Accounts. The custodians place the orders on behalf of their customers.

<sup>288</sup> In OTC transactions every transaction conducted by the trading desk generates a deal slip with data (nature of the deal, name of the counterparty, whether it is a direct deal or through a broker – if it is through a broker, name of the broker – details of security, amount, price, contract date and time and settlement date) and passed on to the back office (which should be separate and distinct from the front office) for recording and processing. In NDS-OM trading, since NDS-OM is an anonymous automated order matching system, this need not arise. However, in case of trades finalised in the OTC market and reported on NDS, confirmations have to be submitted by the counterparties in the system, i.e. NDS.

15 minutes after the deal is put through by phone. All OTC trades must be reported on the secondary market module of the NDS for settlement, both for proprietary trading as well as for trading on behalf of entities maintaining gilt accounts with the custodians. In NDS-OM, participants place orders (price and quantity) on the system. Repos on government securities form part of the money market, are regulated by the RBI, and should be reported on the NDS as well.

Information on traded prices of securities is available on the Reserve Bank of India website,<sup>289</sup> which includes the details of the latest trades undertaken in the market along with the prices,<sup>290</sup> and also on the website of the Clearing Corporation of India Ltd. (CCIL).<sup>291</sup> These disclosures, however, do not include the name of the parties to the trade. The RBI is clearly exempted, as reporting is done by members of NDS and the RBI is not a member,<sup>292</sup> and also because it is the market supervisor. In terms of OTC derivatives, reforms have been passed to require central clearing and reporting to trade repositories, trading platforms developed by CCIL and Reuters are available, but mandatory exchange (or electronic platform) trading is in the process of being implemented, and transparency and data dissemination measures have not yet been adopted.<sup>293</sup>

According to its response to the questionnaire (Q8), the RBI indicated that “*there are no legal requirements on public disclosure of information regarding transactions for RBI*”. Information is disclosed by the RBI with varying levels of specificity and time lags, as a matter of practice, not of regulatory requirements (see below “Non-regulatory transparency”). Moreover, there is no transparency obligation either on foreign central banks or counterparties/trading venues to report transactions of foreign central banks. In addition, the RBI clarified that currently only reserve management operations are undertaken by third-country central banks in India. These are not disclosed.

The RBI stated that there is currently no procedure in place to notify the counterparty that the transaction is exempted from transparency requirements (Q9-Q11). However, upon the granting of such an exemption, the RBI would institute a suitable notification procedure.

Finally, the RBI indicated in its answers (Q14-Q15) that it has the power to unilaterally waive transparency requirements. The RBI, in the capacity as the regulator of the money market, government securities market and foreign exchange market, is empowered to exercise policy judgment in respect of transparency requirements in these markets. The normative sources are the bank’s guidelines or administrative decisions.

#### **2.3.6.4.2 Non-regulatory transparency**

The RBI also stated (responses to Q8 and Q16) that it is not subject to public disclosure requirements in respect of its policy operations. With a view to better transparency on policy operations, however, RBI regularly discloses information about its transactions. The RBI also participates in international disclosure initiatives such as the IMF’s SDDS, specifically with respect to domestic foreign exchange reserves. Every six months, in consultation with the government of India, RBI issues an indicative auction calendar that discloses certain features of each auction to be held in the subsequent months, i.e. the

---

<sup>289</sup> More information is available at: [www.rbi.org.in/Scripts/financialmarketswatch.aspx#](http://www.rbi.org.in/Scripts/financialmarketswatch.aspx#).

<sup>290</sup> Trade information can also be seen on CCIL website: [www.ccilindia.com/OMHome.aspx](http://www.ccilindia.com/OMHome.aspx). For information on reported deals, see: <https://www.ccilindia.com/OMRPTDeals.aspx>.

<sup>291</sup> More information is available at: [www.ccilindia.com/OMHome.aspx](http://www.ccilindia.com/OMHome.aspx).

<sup>292</sup> A list of active members is available at:

[https://www.ccilindia.com/Documents/MemberDirectory/OM\\_MMBR\\_LIST.pdf](https://www.ccilindia.com/Documents/MemberDirectory/OM_MMBR_LIST.pdf).

<sup>293</sup> Financial Stability Board *OTC Derivatives Market Reforms Eighth Progress Report on Implementation* 7 November 2014 pp. 23-25, Appendix E.

amount of borrowing, the maturity of security and the likely period during which auctions will be held.

In addition, with regard to OMOs or liquidity operations, according to the information facilitated by the RBI (Q17-Q18), the institution discloses the precise characteristics of the auction. The information disclosed includes the name, amount, type of issue and procedure of auction. The announcements are published on the website of the Reserve Bank, via press releases, and in the leading English and Hindi newspapers; and are provided to select branches of public and private sector banks and to Primary Dealers. One day is the average time frame between the moment when the information is made public, and the moment when the transaction takes place (Q18).

In terms of the transparency *after* the transaction takes place, albeit not being subject to public disclosure requirements, for better transparency, RBI announces results of its operations with varying time lags. In the case of the Liquidity Adjustment Facility and OMOs – Auctions RBI issues a press release, the same means used for the transparency before the transaction takes place (Q21), disclosing a summary of operations immediately after (or within a few hours after) the transaction is concluded, which includes, *inter alia*, amount and cut off price/yield (Q20). In the case of OMOs in secondary markets, information on trades executed through Negotiated Dealing System-Order Matching (NDS-OM) platform is disclosed by RBI in its Weekly Statistical Supplement publication, with a lag of one week. In foreign exchange policy operations (outright purchase and sales, foreign exchange forwards and swaps). The RBI publishes information with a lag of one month in its Monthly Bulletin (Q21-Q22).

Aside from the RBI's own disclosure, RBI OMO transactions on the trading venue NDS-OM are reported by the operator Clearing Corporation of India Ltd. (CCIL) on its website at the end of the day under the category "others". Transactions carried out by other central banks are reported by CCIL in its end of day report under the category applicable to the custodian of the central banks (usually 'foreign banks'), but not specifically disclosed.

RBI has also adopted the Special Data Dissemination Standards (SDDS) template of the IMF for publication of the detailed data on foreign exchange reserves on monthly basis on the Reserve Bank's website.<sup>294</sup> A half yearly report on deployment of Forex reserves is also available on the website of RBI.<sup>295</sup> Disclosed information includes the internal investment benchmark, composition of the portfolio and holdings of foreign assets. Only part of this information is included in the annual report, though.

### **2.3.6.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the market transparency and the transparency of its operational framework, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for RBI (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, the national central bank has played an important role in enhancing that transparency. OTC transactions on non-equity instruments (usually conducted over the phone) are reported on the secondary market module of the Negotiated Dealer System. Information on traded prices of securities is available on the RBI and the Clearing Corporation of India Ltd. (CCIL)

---

<sup>294</sup> Available at: [www.rbi.org.in/scripts/BS\\_NSDPDisplay.aspx](http://www.rbi.org.in/scripts/BS_NSDPDisplay.aspx)

<sup>295</sup> Available at: [www.rbi.org.in/Scripts/PublicationsView.aspx?id=16203](http://www.rbi.org.in/Scripts/PublicationsView.aspx?id=16203)

websites. Transactions in government bonds, despite not being subject to general transparency requirements, generate trade reporting obligations.

- In terms of operational transparency, the RBI publishes an auction calendar, and, for OMOs and liquidity instruments, the details of operations. It discloses these details in advance, as well as the aggregate results of the operation ex post. It also discloses statistical information on OMOs on a weekly basis, and on FX policy in its monthly bulletin (transactional information on FX transactions is not disclosed). With respect to the foreign exchange management, the RBI discloses aggregate amounts on a monthly basis (IMF SDDS) and in the annual report. Detailed information on the internal investment benchmark, composition of the portfolio and holdings of foreign assets is included in the half-yearly report on deployment of FX reserves. The RBI implements its policies primarily through bilateral transactions with counterparties.
- In light of the institution's low trading volumes with EU counterparties or in EU-listed financial instruments, the economic necessity of an exemption is very limited.
- Regarding the additional criteria:
  - FX transactions by foreign central banks are not reported, and there is no obligation to report transactions with foreign central banks;
  - RBI can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role.
  - Albeit the institution has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

### **2.3.7 The Bank of Japan (BoJ)**

#### **2.3.7.1 Mandate and policies**

The general mandate of the Bank of Japan (BoJ) is described in Articles 1 and 2 of the Bank of Japan Act (the Act), as issuing banknotes, carrying out currency and monetary control, and ensuring the smooth settlement of funds among banks and other financial institutions, thereby contributing to the maintenance of stability of the financial system. Article 2 completes the mandate by stating that currency and monetary control by the BoJ shall be aimed at achieving price stability. The currency and monetary control is aimed at achieving price stability while ensuring the smooth settlement of funds among banks and other financial institutions should contribute to maintaining the stability of the financial system.

Price stability and financial stability are part of the bank's direct mandate, with no explicit reference to the foreign exchange policies, economic or employment growth, or investment, do not. The BoJ is also mandated to carry out various policy actions such as international financial cooperation and foreign exchange intervention as the agent of the Ministry of Finance. This is stipulated in Article 15(2)(iii):

*"Conducting the buying and selling of foreign exchange to facilitate international financial business which the Minister of Finance specifies as constituting cooperation in the field of international finance as prescribed in Article 40, paragraph 3, initiating transactions with a foreign central bank, etc. (a foreign central bank, etc. prescribed in Article 41) pertaining to the business prescribed in the same Article, and executing transactions pursuant to Article 42".*

The bank manages its foreign reserve for the following purposes: international financial cooperation, emergency liquidity provision (financial stability policy), fund-provisioning measure to support strengthening the foundations for economic growth (monetary policy). The foreign exchange interventions are conducted as the agent of the Ministry of Finance (MOF) in order to counter disorderly foreign exchange markets.

In our survey, the Financial Markets Department confirmed that money market operations are executed for monetary policy purposes and the other financial transactions for financial stability purposes. Foreign exchange interventions are managed separately from monetary policy and financial stability transactions. Furthermore, the management of foreign exchange reserves is entrusted to a separate department at the BoJ, and is not at risk of being confused with pure “investment” operations.

### **2.3.7.2 Operations, instruments and transactions**

Article 33 of the BoJ Act (*Regular Business*) provides that the Bank of Japan may conduct operations such as the discounting of negotiable instruments, making collateralised loans, buying/selling negotiable instruments, government securities and bonds or electronically recorded claims, lending/borrowing government securities and other bonds against cash collateral, taking deposits, making domestic fund transfers, or taking safe custody of securities.

Articles 37 and 38 of the Act add to the “regular business” of the bank the possibility of granting loans to financial institutions, due to their temporary shortage of funds (Article 37), or in order to support the stability of the financial system (Article 38). In both cases, the bank’s lending is preceded by a Cabinet Order and by a request of the Prime Minister or the Minister of Finance, respectively.

Regarding the international operations, Article 40 refers to the “*buying and selling of foreign exchange*”<sup>296</sup> while Article 41 includes a broader reference to tasks related to “*international financial business*”,<sup>297</sup> which includes deposit-taking, buying/selling of government securities, safe custody of securities, precious metals, intermediary or brokerage tasks for other central banks or specified by an ordinance of the Ministry of Finance as those deemed to contribute to the proper management of Japanese currency or assets denominated in Japanese currency or other business specified by an ordinance of the Ministry of Finance as those deemed to contribute to the proper management of Japanese currency or assets denominated in Japanese currency. Article 42 makes reference to other operations undertaken for purposes of international cooperation, including international financial assistance, conducted with the approval of the Minister of Finance.<sup>298</sup>

---

<sup>296</sup> According to Article 40 (Buying and Selling of Foreign Exchange): “(1) The Bank of Japan may, when necessary, buy and sell foreign exchange on its own account or as an agent handling national government affairs pursuant to Article 36, paragraph 1, and it may also buy and sell foreign exchange on behalf of foreign central banks, etc. (foreign central banks and those equivalent thereto; the same shall apply hereinafter) or international institutions (international institutions of which Japan has a membership, including the Bank for International Settlements; the same shall apply hereinafter) as their agent in order to cooperate with them as the central bank of Japan. (2) The Bank of Japan shall buy and sell foreign exchange as an agent handling national government affairs pursuant to Article 36, paragraph 1, when the purpose of the buying and selling is to stabilize the exchange rate of Japanese currency. (3) The Bank of Japan shall, when buying and selling foreign exchange on its own account or as an agent on behalf of foreign central banks, etc. or international institutions to cooperate with them as the central bank of Japan pursuant to paragraph 1, conduct the buying and selling for the purpose which the Minister of Finance specifies as constituting cooperation in the field of international finance, at the request, or upon approval, of the Minister of Finance.”

<sup>297</sup> According to Article 41 (International Financial Business): “The Bank of Japan may conduct the following business with foreign central banks, etc. or international institutions in order to cooperate with them as the central bank of Japan: (i) Taking deposits pertaining to deposit money denominated in Japanese currency (deposits prescribed in Article 33, paragraph 2); (ii) Buying and selling national government securities in exchange for deposits received through the business set forth in the preceding item; (iii) Taking safe custody of securities, precious metals, and other articles; (iv) Carrying out intermediary, brokerage, or agency services for sales and purchases of national government securities conducted by the said foreign central banks, etc. or international institutions; (v) Other business specified by an ordinance of the Ministry of Finance as those deemed to contribute to the proper management of Japanese currency or assets denominated in Japanese currency held by the said foreign central banks, etc. or international institutions.”

<sup>298</sup> According to Article 42: “The Bank of Japan may conduct the following transactions and other transactions necessary for cooperating, as the central bank of Japan, with foreign central banks, etc. or international

**Table 16. Operations and instruments**

|                                                            | <b>Types of transactions</b> |                             | <b>Maturity</b>                    | <b>Frequency</b> | <b>Procedure</b> |
|------------------------------------------------------------|------------------------------|-----------------------------|------------------------------------|------------------|------------------|
|                                                            | <b>Liquidity provision</b>   | <b>Liquidity absorption</b> |                                    |                  |                  |
| <b>Fund-supplying operations</b>                           |                              |                             |                                    |                  |                  |
| <b>Funds-supplying operation against pooled collateral</b> | Collateralised loans         |                             | Less than 1 year                   |                  | Auction          |
| <b>Purchase of CP &amp; JGSs under repo</b>                | Reverse repo                 |                             | Within 3 months<br>Within 1 year   |                  | Auction          |
| <b>Outright purchases of T-Bills and JGBs</b>              | Purchase                     |                             | Variable                           | Variable         |                  |
| <b>Securities lending</b> <sup>299</sup>                   | Securities lending           |                             | At counterparty request            |                  | Bilateral        |
| <b>Funds-absorbing operations</b>                          |                              |                             |                                    |                  |                  |
| <b>Bills purchase</b>                                      |                              | Sale                        | Less than 6 months                 | Variable         |                  |
| <b>Repos over T-Bills and JGBs</b>                         |                              | Repos                       | Less than 3 months                 | Variable         |                  |
| <b>Standing facilities</b>                                 |                              |                             |                                    |                  |                  |
| <b>Complementary lending and deposit facility</b>          | Collateralised Loan          | Deposit                     | At counterparty request            |                  | Bilateral        |
| <b>Foreign exchange and international operations</b>       |                              |                             |                                    |                  |                  |
| <b>Purchases/sales of foreign exchange</b>                 |                              |                             | Variable and subject to discretion |                  |                  |
| <b>Purchases/sales of government securities</b>            |                              |                             | Variable and subject to discretion |                  |                  |
| <b>Deposit-taking</b>                                      |                              |                             | Variable and subject to discretion |                  |                  |

The transactions in non-equity securities are entered into for the purposes of foreign exchange interventions and consist of cash transactions in the foreign exchange market. The BoJ also holds foreign currency assets including EU government securities. Transactions of these assets are executed in direct bilateral manner with mainly Japanese, American and European financial institutions (securities firms and investment banks).

### 2.3.7.3 Procedural framework

#### 2.3.7.3.1 Eligible counterparties

Eligible counterparties in the bank's operations are selected annually, based on each type of operation, among depository financial institutions, securities companies, and *tanshi* companies.<sup>300</sup> The criteria for selecting eligible counterparties in the bank's operations are released on the bank's website.<sup>301</sup>

---

*institutions in the field of international finance, including the provision of international financial assistance, at the request, or upon the approval, of the Minister of Finance: (i) Substituting loan claims against foreign central banks, etc. which are held by the Bank for International Settlements; (ii) Providing credit to foreign central banks, etc. or international institutions."*

<sup>299</sup> The securities lending programme of the BoJ is included here despite the bank's separating it from other liquidity-providing tools. See, for example, BoJ, *Functions and Operations of the Bank of Japan*, 2011, p. 125. However, the reason they are separated is that the bank classifies them as "fund-supplying" operations. Under a wider notion of "provision of liquidity" the securities lending programme should be included with other tools that provide liquidity.

<sup>300</sup> Eligible counterparties are normally selected from institutions of one of the following categories: financial institutions (as defined in Article 37, Paragraph 1 of the Bank of Japan Act [Act No. 89, 1997]), financial instruments firms (as defined in Article 10, Paragraph 1, Clause 2 of the Order for Enforcement of the Bank of Japan Act [Order No. 385, 1997]) that conduct the type I financial instruments business (as defined in Article 28, Paragraph 1 of the Financial Instruments and Exchange Act [Act No. 25, 1948]), securities finance companies (as defined in Article 10, Paragraph 1, Clause 3 of the Order), *tanshi* companies (as defined in Article 10, Paragraph 1, Clause 4 of the Order). The Resolution and Collection Corporation, bridge banks (as

Common requirements for eligibility as counterparty in each operation are:

- i. Holding an account at the BoJ;
- ii. Being a participant in the BoJ Financial Network System (BoJ-NET); and
- iii. Being deemed by the bank as having sufficient creditworthiness.

The financial institutions selected as eligible counterparties must:

- i. Participate in the operations actively;
- ii. Process business operations accurately and promptly; and
- iii. Provide useful market information to the BoJ.<sup>302</sup>

On the relevance of EU trading venues and counterparties (Q3-Q7), the BoJ responses were clear in indicating that when implementing its central bank policy operations, the BoJ *does not* execute transactions through EU trading venues, e.g. EU exchanges. With regard to EU-domiciled financial intermediaries that internalise orders, the response was less clear-cut. The Financial Markets Department indicated that, when implementing its central bank operations, money market operations do not involve financial intermediaries that internalise orders.

In its clarification, the BoJ indicated that the money market operations do not involve EU non-equity financial instruments. However, the Reserve Management Department indicated that when conducting transactions to manage foreign currency assets, the BoJ transacts with EU-domiciled financial intermediaries that may internalise orders (though the department does not know whether or when counterparts internalise). The Reserve Management Department also specified that, since the BoJ reshuffles counterparties periodically, EU-domiciled financial institutions may be included or not among its counterparties depending on the list of counterparties at each particular moment. The Financial Markets Department confirmed that it also transacts, albeit in reduced volumes, with EU counterparties (Q7).

According to the Reserve Management Department, the estimate for transactions executed bilaterally (Q6) is between 50% and 100%. Of the total volume of transactions, those with a European counterparty or in securities listed on a European venue (Q7) represented, according to the Financial Markets Department, less than 10% (the Reserve Management Department provided no estimate).

### **2.3.7.3.2 Implementation of monetary policy instruments**

The BoJ draws a distinction in the implementation of policy instruments between fund-supplying operations, fund-absorbing operations, standing facilities and foreign exchange operations. In fund-supplying operations the provision of funds against pooled collateral (e.g. through a collateralised loan) is normally the main method for supplying short-term funds, and its duration does not exceed one year. When actually conducting each operation, the bank mainly employs the conventional method of competitive yield auction for determining the amount of successful bids and the yield.<sup>303</sup>

For the Purchase of CPs and Japanese Government Securities (JGSs) with repurchase agreements the BoJ purchases eligible CPs with an agreement of resell on a specified

---

defined in Article 2, Paragraph 13 of the Deposit Insurance Act [Act No. 34, 1971]), and specified bridge financial institutions (as defined in Article 126-34, Paragraph 3, Clause 5 of the Act) are excluded from these institutions.

<sup>301</sup> More information available at: [www.boj.or.jp/index.html](http://www.boj.or.jp/index.html).

<sup>302</sup> BoJ, *Functions and Operations of the Bank of Japan*, 2011, p. 119.

<sup>303</sup> The loan interest is determined either by the variable-rate method, in which the interest rate on loans shall be determined by the conventional method of multiple-rate competitive auctions; or the fixed-rate method, in which the interest rate on loans shall be the bank's target rate for the uncollateralised overnight call rate on the day of disbursement of the loans. BoJ, *Functions and Operations of the Bank of Japan*, 2011, p. 119.

date within three months. For JGSs, Japanese Government Bonds (JGBs) and treasury discount bills (T-Bills) the specified date will be within one year. The Outright purchases of T-Bills and JGBs is normally used by the BoJ to permanently supply funds to the economy. Especially in the case of purchases of JGBs, the bank does so in order to keep the supply of money in line with long-term demand for notes.<sup>304</sup>

During the global financial crisis, the BoJ introduced various funds-supplying measures, primarily between 2008 and 2009, such as:

- Lowering the target for Uncollateralised Loan Rate to 0.1%;<sup>305</sup>
- Expansion of Reverse Repos over JGSs;<sup>306</sup>
- Increase in outright purchases of JGBs, and expansion in the range of bonds accepted;<sup>307</sup>
- Expansion of eligible collateral to debt instruments issued by real estate investment corporations,<sup>308</sup> government-guaranteed dematerialised CPs<sup>309</sup> bonds issued by the governments of the United States, United Kingdom, France and Germany;<sup>310</sup>
- Steps to facilitate corporate financing, increasing frequency and size of CP repo operations,<sup>311</sup> expansion in range of ABCP as eligible collateral,<sup>312</sup> introduction and expansion of special funds-supplying operations to facilitate corporate financing (expired in 2010),<sup>313</sup> expansion in range of corporate debt available as collateral (also expired in 2010),<sup>314</sup> and outright purchases of CPs and corporate bonds;<sup>315</sup>
- Stock purchase plan;<sup>316</sup>
- Provision of subordinated loans to banks (expired in 2010).<sup>317</sup>

---

<sup>304</sup> Typically the amount of JGBs held by the bank is kept within the outstanding amount of banknotes in circulation. In October 2010, however, as part of a comprehensive policy of monetary easing the bank established the Asset Purchase Programme (APP) to encourage a decline in longer-term interest rates. In this programme, the bank purchases JGBs with a remaining maturity of one to two years, and holds them apart from the assets obtained through other operations. The purpose and types of JGBs holdings are different than usual, and are treated differently from the JGBs purchased under the ceiling of the amount of banknotes in circulation. BoJ, *Functions and Operations of the Bank of Japan*, 2011, p. 123. The bank publishes this management policy in advance to clarify that the purchase of JGBs is not aimed at financing government debt.

<sup>305</sup> BoJ, "On Monetary Policy Decisions", 19 December 2008, available at: [www.boj.or.jp/en/announcements/release\\_2008/k081219.pdf](http://www.boj.or.jp/en/announcements/release_2008/k081219.pdf).

<sup>306</sup> BoJ, "Introduction of Measures regarding Money Market Operations to Ensure Stability in Financial Markets", 14 October 2008, available at: [www.boj.or.jp/en/announcements/release\\_2008/un0810d.pdf](http://www.boj.or.jp/en/announcements/release_2008/un0810d.pdf).

<sup>307</sup> BoJ, "On Monetary Policy Decisions" 19 December 2008, available at: [www.boj.or.jp/en/announcements/release\\_2008/k081219.pdf](http://www.boj.or.jp/en/announcements/release_2008/k081219.pdf); BoJ, "Outline of Outright Purchases of Japanese Government Bonds", available at: [www.boj.or.jp/en/announcements/release\\_2009/mok0901c.pdf](http://www.boj.or.jp/en/announcements/release_2009/mok0901c.pdf); BoJ, "Statement on Monetary Policy", 18 March 2009, available at: [www.boj.or.jp/en/announcements/release\\_2009/k090318.pdf](http://www.boj.or.jp/en/announcements/release_2009/k090318.pdf).

<sup>308</sup> BoJ, "Amendments to 'Guidelines on Eligible Collateral'", 22 January 2009, available at:

[www.boj.or.jp/en/announcements/release\\_2009/mok0901e.pdf](http://www.boj.or.jp/en/announcements/release_2009/mok0901e.pdf).

<sup>309</sup> BoJ, "Amendments to 'Guidelines on Eligible Collateral'", February 2009, available at:

[www.boj.or.jp/en/announcements/release\\_2009/mok0902d.pdf](http://www.boj.or.jp/en/announcements/release_2009/mok0902d.pdf).

<sup>310</sup> BoJ, "Establishment of 'Collateral Guidelines on Eligible Foreign Bonds'", 22 May 2009, available at:

[www.boj.or.jp/en/announcements/release\\_2009/mok0905a.pdf](http://www.boj.or.jp/en/announcements/release_2009/mok0905a.pdf).

<sup>311</sup> BoJ, "Introduction of Measures regarding Money Market Operations to Ensure Stability in Financial Markets", 14 October 2008, available at: [www.boj.or.jp/en/announcements/release\\_2008/un0810d.pdf](http://www.boj.or.jp/en/announcements/release_2008/un0810d.pdf).

<sup>312</sup> Ibid.

<sup>313</sup> BoJ, "Statement on Monetary Policy", 30 October 2009, available at: [www.boj.or.jp/en/announcements/release\\_2009/k091030.pdf](http://www.boj.or.jp/en/announcements/release_2009/k091030.pdf).

<sup>314</sup> BoJ, "Introduction of Money Market Operation Measures to Facilitate Corporate Financing", 2 December 2008, available at: [www.boj.or.jp/en/announcements/release\\_2008/un0812b.pdf](http://www.boj.or.jp/en/announcements/release_2008/un0812b.pdf).

<sup>315</sup> BoJ, "Statement on Monetary Policy", 30 October 2009, available at: [www.boj.or.jp/en/announcements/release\\_2009/k091030.pdf](http://www.boj.or.jp/en/announcements/release_2009/k091030.pdf).

<sup>316</sup> BoJ, "The Bank of Japan to Resume Stock Purchases Held by Financial Institutions", 3 February 2009, available at: [www.boj.or.jp/en/announcements/release\\_2009/fss0902a.pdf](http://www.boj.or.jp/en/announcements/release_2009/fss0902a.pdf).

<sup>317</sup> BoJ, "Establishment of 'Principal Terms and Conditions for Provision of Subordinated Loans", 10 April 2009, available at: [www.boj.or.jp/en/announcements/release\\_2009/fsky0904a.pdf](http://www.boj.or.jp/en/announcements/release_2009/fsky0904a.pdf).



In 2010, to further enhance monetary easing, the bank introduced the comprehensive monetary easing policy, and conducted the fixed-rate funds-supplying operation against pooled collateral through the Asset Purchase Programme (APP) established on its balance sheet, as well as outright purchases of JGSs, CPs, corporate bonds, exchange-traded funds (ETFs), and Japan real estate investment trusts (J-REITs).<sup>318</sup>

The BoJ's fund-absorbing operations include the sale of bills, the sale of JGSs under repo agreements, the outright sale of T-Bills and the securities lending facility (addressed separately).

- In a sale of bills the BoJ absorbs funds from markets by selling bills drawn by the bank with a maturity of three months or less.
- In a sale of JGSs under repurchase agreements the BoJ sells JGBs and T-Bills with an agreement to repurchase them from the counterparties on a specified date (within six months).
- In the case of outright sale of T-Bills the BoJ absorbs funds from the market by selling its T-Bills to the counterparties.

The securities lending facility is different from the aforementioned operations that adjust the fluctuations in current account balances at the bank. Its purpose is to enhance liquidity in the JGS markets. The securities lending facility enables market participants to temporarily secure JGSs from the bank as a complementary tool. For that purpose the bank sells its JGSs to the markets with repurchase agreements to provide a temporary and secondary source of JGSs (referred to as "securities lending").<sup>319</sup>

In addition to the operations described so far, the bank uses bilateral tools to prevent excessive fluctuations in the overnight interest rate. These are the complementary lending facility and the complementary deposit facility (conducted as a temporary measure). The complementary lending facility is a standing lending facility in which, based on conditions pre-specified by the bank, the bank extends loans against pooled collateral at the request of eligible counterparties (financial institutions such as banks and securities companies that request to use the facility and are deemed sufficiently creditworthy by the bank). The complementary deposit facility is a facility in which the bank pays interest on excess reserves (balances held at the accounts with the bank in excess of required reserves under the reserve requirement system). The interest rate applied is the targeted uncollateralised overnight call rate decided in the guidelines for money market operations minus a spread determined by the bank.

Finally, the management of foreign exchange reserves is guided by the three purposes of international financial cooperation, emergency liquidity provision and loans in US dollars as fund-provisioning to strengthen economic growth. Its portfolio is composed of deposits with central banks and other institutions of foreign countries, and securities issued by governments and other institutions of foreign countries with maturity not exceeding five years (the maturity of assets in preparation for immediate use cannot exceed one year).<sup>320</sup>

#### **2.3.7.4 Transparency of the transactions**

##### **2.3.7.4.1 Regulatory transparency**

The Financial Markets Department's answer focused on the Act on Access to Information Held by Independent Administrative Institutions and Other Related Institutions (Japan's

---

<sup>318</sup> BoJ, *Functions and Operations of the Bank of Japan*, 2011, p. 124.

<sup>319</sup> BoJ, "Principal Terms and Conditions for the Sale of Japanese Government Securities with Repurchase Agreements to Provide the Markets with a Secondary Source of Japanese Government Securities", available at: [https://www.boj.or.jp/en/mopo/measures/term\\_cond/yoryo30.htm/](https://www.boj.or.jp/en/mopo/measures/term_cond/yoryo30.htm/).

<sup>320</sup> Bank of Japan Revisions to the Management of Foreign Currency Assets Annex, 11 May 2012.

Freedom of Information Act, or FOIA), which stipulates the general requirements on transparency by public bodies. In a separate answer to the questions on foreign exchange interventions, the Reserve Management Department confirmed the answer from the Financial Markets Department, that the FOIA stipulates the general requirements. According to Article 5 of the Act, there are several types of information which are exempted from disclosure. This includes cases where the disclosure would cause harm to national security, cause damage to the relationship of mutual trust with another country or an international organisation, or cause a disadvantage in negotiations with another country or an international organisation. According to the Financial Markets Department, transactions with the BoJ or foreign central banks, in pursuance of monetary, foreign exchange or financial stability policies would be exempted from such disclosure

The Financial Instruments and Exchange Act regulates transparency requirements. Government bonds are excluded from disclosure requirements. Articles 156-63, 156-64, 156-65 and 156-66 provide reporting requirements and disclosure, but these are restricted to OTC derivatives, and the BoJ Reserve Department confirmed that the BoJ and its counterparties are exempted from the disclosure requirement, whatever the purpose of a transaction.

The FIEA does not regulate the transparency of securities trading, but markets have a high degree of self-regulation.<sup>321</sup> Since most bond trading takes place on an OTC basis, JSDA, the self-regulatory organisation for the securities industry in Japan, has issued a variety of rules and market practices for bond market participants.<sup>322</sup> These include the *Rules Concerning Publication of Over-The-Counter Trading Reference Prices, Etc. and Trading Prices of Bonds*,<sup>323</sup> the *Detailed Rules Relating to the Rules Concerning Publication of Over-The-Counter Trading Reference Prices, Etc. and Trading Prices of Bonds*,<sup>324</sup> and the *Rules Concerning Publication, Etc. of Over-The-Counter Quotation of Corporate Bonds, Etc. for Retail Customers*.<sup>325</sup> The most relevant is the first of them, which provides rules for the publication of Reference Statistical Prices on a daily basis, and the methods used for calculation.<sup>326</sup> Reporting includes "Designated Issues".<sup>327</sup> There is no express mention as to whether transactions with central banks are excluded (government bonds are included among those for which reporting is required).<sup>328</sup> However, the disclosures do not encompass specific transactions, and the BoJ was

---

<sup>321</sup> For example, Article 84 FIEA states: "A Financial Instruments Exchange shall properly conduct the Self-Regulation Related Services in accordance with this Act, its articles of incorporation and other rules in order to ensure fair sales and purchase of Securities and Market Transactions of Derivatives on the Financial Instruments Exchange Market, as well as to protect investors."

<sup>322</sup> Asian Development Bank (ADB), *Japan Bond Market Guide*, ASEAN+3 Bond Market Guide, Vol. 1, Part 2, Section 4, 2014, p. 30.

<sup>323</sup> 20 December 1976. More information available at: [www.jsda.or.jp/en/rules/content/140101E45.pdf](http://www.jsda.or.jp/en/rules/content/140101E45.pdf).

<sup>324</sup> 18 December 1991. More information available at: [www.jsda.or.jp/en/rules/files/46\\_131025.pdf](http://www.jsda.or.jp/en/rules/files/46_131025.pdf).

<sup>325</sup> 19 February 2003. More information available at: [www.jsda.or.jp/en/rules/files/47\\_131025.pdf](http://www.jsda.or.jp/en/rules/files/47_131025.pdf).

<sup>326</sup> Articles 3 and 4, *Rules Concerning Publication of Over-The-Counter Trading Reference Prices, Etc. and Trading Prices of Bonds*. Articles 10 and 11 also provide for the publication of monthly volumes.

<sup>327</sup> Article 5 of the Rules states: "*Designated Reporting Members shall report to the Association on issues of public and corporate bonds of public offering (limited to issues with principal, interest, and redemptions denominated in Japanese yen; the same shall apply hereinafter in this Article), public and corporate bonds that are listed in a specified financial instruments exchange market prescribed in Article 2, Paragraph 32 of the FIEA (hereinafter referred to as the "Specified Financial Instruments Exchange Market"), and public and corporate bonds that are issued based on the program information that is submitted to the Specified Financial Instruments Exchange Market and disclosed (i.e., documents that can be disclosed by a person who intends to make an application for listing of public and corporate bonds in the Specified Financial Instruments Exchange Market pursuant to the rules prescribed by such Specified Financial Instruments Exchange Market, and that describes the upper limit of outstanding amount and other information of the public and corporate bonds) and that are selected as Designated Issues whose quotations is to be reported to the Association (hereinafter referred to as "Reporting Issues") within the time frame prescribed in the Detailed Rules.*"

<sup>328</sup> See Article 4 (2), *Rules Concerning Publication of Over-The-Counter Trading Reference Prices, Etc. and Trading Prices of Bonds*.

positive that its transactions, as such, were not subject to disclosure requirements. It was also clear that foreign central banks transactions are also exempted.

The BoJ stated that it had no procedure in place to notify its counterparty that the transaction was exempted from disclosure requirements, nor was the possibility of implementing one being entertained. However, the BoJ further clarified that whereas counterparties, including the EU counterparties, are not notified on each trading occasion, they are aware that transactions are executed for the policy objective through eligible counterparties' selection process, platforms used to execute the transactions, and/or regular communication.

#### **2.3.7.4.2 Non-regulatory transparency**

In its responses to the questionnaire, the BoJ stated that, although it is not legally required, the BoJ voluntarily releases information on the money market operations (Q20). Thus the BoJ discloses the auction results *after* the transaction takes place (amounts of competitive bid, amounts of successful bid, pro-rata rate, average successful bid, allocation on a pro-rata basis rate) on its website daily, with a few hours' lag (Q21-Q22). The BoJ may not cease ex post disclosure, since the market participants rely on such data release (Q23).

The operations are announced on the website<sup>329</sup> as well as the results of daily operations (on an aggregate basis).<sup>330</sup> The information on ETFs and REITs is published (ex post) on an aggregate basis.<sup>331</sup> Aggregate information on a monthly basis is also published on the website.<sup>332</sup> The information includes the date of offer, instrument, date of exercise, date of resale/repurchase (only for repos), amounts offered, amounts of competitive and successful bids, pro-rata or non-pro-rata rate (repos) and yield spread (outright transactions), and rate in case of allocation on a pro-rata basis.

For foreign exchange interventions, the BoJ stated that although it is not legally required, they voluntarily release information on foreign exchange interventions on a periodic basis. Aggregate monthly amount of foreign exchange interventions is released monthly. Daily amount of foreign exchange interventions, including information on currency pair, is released quarterly, on the website of the MOF, with an average of one week between the moment of the transaction and the information disclosure, and no variation or waiver of that time frame. Total amount and rough composition, such as deposits and securities, are disclosed semi-annually. Further detailed information regarding foreign reserve management, including individual transactions, is strictly confidential. The investment strategy of foreign reserves is published in an official document called "Principal Terms and Conditions for the Management of Foreign Currency Assets".

#### **2.3.7.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the market transparency and the transparency of its operational framework, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for BoJ (see Section 2.1.6). The assessment relies on the following findings:

---

<sup>329</sup> More information available at:

[www3.boj.or.jp/market/en/menu\\_o.htm](http://www3.boj.or.jp/market/en/menu_o.htm) and [www3.boj.or.jp/market/en/menuold\\_o.htm](http://www3.boj.or.jp/market/en/menuold_o.htm).

<sup>330</sup> Ibid.

<sup>331</sup> More information available at: [www3.boj.or.jp/market/en/menu\\_etf.htm](http://www3.boj.or.jp/market/en/menu_etf.htm).

<sup>332</sup> More information available at: [www.boj.or.jp/en/statistics/boj/fm/opec/](http://www.boj.or.jp/en/statistics/boj/fm/opec/).

- In terms of market transparency mandatory rules contain some reporting requirements for OTC derivatives, but market operators are only obliged to report to the Ministry and trade repositories, not the public. Self-regulatory organizations, however, have issued specific requirements to publish reference prices on non-equity financial instruments.
- In terms of operational transparency, in addition to periodic information on general items of its balance sheet, the BoJ does not publish information in advance, but it publishes aggregate auction results after each transaction takes place. Information on FX interventions is released on a monthly basis. Regarding foreign exchange reserve management, the BoJ discloses total amounts and a rough general allocation (e.g. deposits and securities) on a semi-annual basis. More detailed information, including individual transactions is confidential. The BoJ implements its policies primarily through bilateral transactions with counterparties.
- In light of the institution's low trading volumes with EU counterparties or in EU-listed financial instruments, the economic necessity of an exemption is very limited.
- Regarding the additional criteria:
  - Foreign central banks can rely on an exemption from transparency requirements, pursuant to a general clause of confidentiality, which applies to cases where the disclosure would cause harm to relationships with third countries;
  - The BoJ can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role;
  - Albeit the institution has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

### **2.3.8 The Bank of Mexico (Banxico)**

#### **2.3.8.1 Mandate and policies**

Article 28 of the Mexican Constitution establishes that the primary objective of the Central Bank *"will be procuring the stability of the purchase power of the national currency, thus strengthening the control in respect of the national development under of the State"*. Pursuant to Article 2 of the Bank of Mexico Law, *"The Bank of Mexico's purpose shall be to provide the country's economy with domestic currency. In pursuing this purpose, its primary objective shall be to seek the stability of the purchasing power of said currency. The Bank shall also have the purpose of promoting the sound development of the financial system and fostering the proper functioning of payment systems"*.

Article 3 of the above-mentioned law establishes that the bank shall regulate the issuance and circulation of currency, currency exchange, financial intermediation and payment systems, operate as lender of last resort, provide treasury services to the federal government, and act as financial agent, counsel the government on financial issues, and participate in the International Monetary Fund (IMF) and other international institutions, and operate with them, and with other foreign financial authorities.

Banxico's tasks mentioned in the answers to the questionnaire include monetary policy/price stability, foreign exchange policies, financial stability and investment, but does not include economic or employment growth. Banxico distinguishes between monetary, financial stability and investment purposes (Q2 and Q3) without specifying the manner.

### 2.3.8.2 Operations, instruments and transactions

Banxico undertakes operations related to monetary policy, other operations as financial agent for the federal government and the Institute for the Protection of Public Savings (IPAB) and extraordinary operations in the securities market to preserve financial stability.<sup>333</sup>

Banxico implements a medium-term inflation targeting regime,<sup>334</sup> which entails that its monetary policy operational target is the effective overnight interest rate. In order to achieve its monetary policy operational target, according to Article 7 of the Bank of Mexico Law, Banxico may deal in securities, grant credit to the government, credit institutions, make or receive deposits, carry out transactions involving foreign currency, etc. (for further detail, see Annex).

To achieve its monetary policy operational target (effective overnight rate), Banxico may use the following instruments to manage the financial system's liquidity:<sup>335</sup>

- Long-term instruments:
  - o Sales and purchases of debt securities, as Banxico issues or purchases debt securities in order to manage the money supply;
  - o Mandatory long-term deposits, which are long-term instruments maintained by financial institutions at Banxico; this monetary policy instrument is similar to the reserve requirement used by other central banks, but mandatory long-term deposits are not continuously adjusted to match the fluctuations in the banks' liabilities used for the mandatory long-term deposits calculations; and
  - o Long-term liquidity window, which is a facility that enables banks to obtain liquidity automatically under the conditions pre-established by Banxico.
- Short-term instruments:
  - o Open market operations, which are a monetary policy instruments that enable the central bank to provide or absorb liquidity from the market;
  - o Credit and deposit facilities, monetary policy instruments that enable commercial banks to expand or reduce their liquidity at their own initiative; and
  - o Short-term liquidity windows.

With specific regard to its foreign exchange operations, Article 21 of the Banxico Act provides that:

*"In foreign exchange rate matters, the Bank of Mexico shall act in accordance with the guidelines established by the Exchange Commission, which will be made up of the Secretary and Undersecretary of the Ministry of Finance and Public Credit, another Undersecretary of said Ministry appointed by the corresponding Secretary, the Governor of the Bank and two more members of the Board of Governors designated by the Governor."*

In implementing these operations, Banxico has to follow the Exchange Commission instructions.<sup>336</sup> Banxico can engage in purchases or sales of securities (Article 23), require the institutions to hold deposits (Article 33), and regulate the exchange rate and foreign exchange transactions by institutions (Articles 33-35). Since 2009, Banxico has

---

<sup>333</sup> More information available at: [www.banxico.org.mx/politica-monetaria-e-inflacion/material-de-referencia/intermedio/politica-monetaria/monetary-policy-implementation.html](http://www.banxico.org.mx/politica-monetaria-e-inflacion/material-de-referencia/intermedio/politica-monetaria/monetary-policy-implementation.html).

<sup>334</sup> Inflation targeting regime, available at: [www.banxico.org.mx/politica-monetaria-e-inflacion/indexEn.html](http://www.banxico.org.mx/politica-monetaria-e-inflacion/indexEn.html).

<sup>335</sup> Banco de Mexico, Mandatory Long-Term Deposits, available at: [www.banxico.org.mx/politica-monetaria-e-inflacion/material-de-referencia/intermedio/politica-monetaria/instrumentacion-de-la-politica-monetaria/%7B7DDDBB4E5-AF3F-C802-D4D4-80B083005F7C%7D.pdf](http://www.banxico.org.mx/politica-monetaria-e-inflacion/material-de-referencia/intermedio/politica-monetaria/instrumentacion-de-la-politica-monetaria/%7B7DDDBB4E5-AF3F-C802-D4D4-80B083005F7C%7D.pdf).

<sup>336</sup> For more information on past decisions, see [www.banxico.org.mx/dyn/informacion-para-la-prensa/comunicados/politica-cambiaria/comision-de-cambios/index.html](http://www.banxico.org.mx/dyn/informacion-para-la-prensa/comunicados/politica-cambiaria/comision-de-cambios/index.html).

been operating a foreign exchange swap line with the U.S. Federal Reserve, with the purpose of supplying dollar liquidity to the economy via auctions.<sup>337</sup>

**Table 17. Operations and instruments**

|                                                | <b>Types of transactions</b>        |                             | <b>Maturity</b>                | <b>Frequency</b> | <b>Procedure</b>      |
|------------------------------------------------|-------------------------------------|-----------------------------|--------------------------------|------------------|-----------------------|
|                                                | <b>Liquidity provision</b>          | <b>Liquidity absorption</b> |                                |                  |                       |
| <b>Long-term instruments</b>                   |                                     |                             |                                |                  |                       |
| <b>Sales and purchases of debt securities</b>  | Purchases                           | Sales                       | Variable                       | Variable         |                       |
| <b>Long-term deposits and liquidity window</b> | Loans and other liquidity provision | Deposits                    | Not defined                    | Continuously     |                       |
| <b>Short-term instruments</b>                  |                                     |                             |                                |                  |                       |
| <b>Open market operations</b>                  |                                     |                             |                                | Twice a day      |                       |
| <b>Credit and deposit facilities</b>           | Credit facility                     | Deposit facility            |                                | Daily            |                       |
| <b>Short-term liquidity windows</b>            |                                     |                             | At the request of counterparty |                  | Bilateral             |
| <b>Foreign exchange operations</b>             |                                     |                             |                                |                  |                       |
| <b>Exchange-rate stabilisation</b>             | Purchases                           | Sales                       |                                | Variable         | Auction & Bilateral   |
| <b>FX swaps with the Federal Reserve</b>       | Swaps                               |                             |                                | Rare             | Bilateral with US Fed |

### 2.3.8.3 Procedural framework

#### 2.3.8.3.1 Eligible counterparties

Banxico implements its monetary policy through DALI (a system for the central depository and settlement of securities), SPEI (*Sistema de Pagos Electrónicos Interbancarios del Banco de Mexico*) and SIAC (real-time gross settlement system introduced in Mexico in 1990).<sup>338</sup> SPEI was introduced in August 2004 and it is owned and managed by Banxico. It supports Straight Through Processing.

There is little publicly available information about the conditions under which Banxico operates with counterparties. When conducting foreign exchange operations, only banks are allowed to participate in US dollar auctions, and the information on those counterparties is protected by bank secrecy (Article 117 of Credit Institutions Law).<sup>339</sup>

According to its response to the questionnaire, the relative importance of the different execution systems is illustrated in the following table.

<sup>337</sup> See: [www.banxico.org.mx/sistema-financiero/estadisticas/mercado-cambiario/operaciones-vigentes-del-banco-de-mexico-en-el-mer/mecanismos/april-2009---february-2010--d.html](http://www.banxico.org.mx/sistema-financiero/estadisticas/mercado-cambiario/operaciones-vigentes-del-banco-de-mexico-en-el-mer/mecanismos/april-2009---february-2010--d.html).

<sup>338</sup> Detailed information about these systems can be found at *Libro Rojo*, available at: [www.banxico.org.mx/sistemas-de-pago/material-educativo/intermedio/%7BA7F8011B-7F77-F211-B48B-63DE4DE743D1%7D.pdf](http://www.banxico.org.mx/sistemas-de-pago/material-educativo/intermedio/%7BA7F8011B-7F77-F211-B48B-63DE4DE743D1%7D.pdf).

<sup>339</sup> More information available at: [www.banxico.org.mx/sistema-financiero/material-educativo/basico/financial-system-frecuently-a.html#FEM](http://www.banxico.org.mx/sistema-financiero/material-educativo/basico/financial-system-frecuently-a.html#FEM).

**Table 18. Relevance of execution types**

| Execution                                                                  | %      |
|----------------------------------------------------------------------------|--------|
| Direct bilateral execution with a counterparty that may internalise orders | 10-50% |
| Direct bilateral execution with a counterparty that does not internalise   | <10%   |
| Trading venues with pre-trade & post-trade transparency                    | <10%   |
| Trading venues with no pre-trade & post-trade transparency                 | <10%   |
| Hybrid voice-brokered venue                                                | <10%   |

In the responses to the questionnaire, Banxico also indicated that when implementing its central bank policy operations, it did not execute transactions through EU trading venues, e.g. EU exchanges, but that it did execute transactions with EU-domiciled financial intermediaries that internalise orders.

In the estimates provided for the relative importance of the different mechanisms of execution (Q6), there was one clearly preferred mechanism, direct bilateral execution with a counterparty that may internalise orders, which was assigned between 10% and 50%, whereas the other categories (trading venues with pre-trade and post-trade transparency, direct bilateral execution with a counterparty that does not internalise (private transaction), trading venues with no pre-trade & post-trade transparency, and hybrid voice-brokered venue) were all assigned less than 10%. Banxico also assigned a percentage between 10% and 50% to the total market operations that you execute with a European counterparty or in securities listed on a European venue.

### 2.3.8.3.2 Implementation of monetary policy instruments

Open market operations are implemented in the form of auctions. Banxico is entitled to provide or absorb liquidity from the market by means of two auctions conducted every day at 10 am and 5:30 pm, respectively. Each auction lasts two minutes and is interactive.

Foreign exchange policy is typically implemented with regard to US dollars, which, by far, constitute the main foreign exchange reserve of Banxico. Between 2009 and 2011, due to volatile market conditions, several changes were made in the amounts and frequency of the auctions, with daily auctions being introduced<sup>340</sup> (and then discontinued after 2013<sup>341</sup>). These auctions take place within a closed auction system (SUBCAM-BANXICO).<sup>342</sup> In some cases, Banxico may also conduct direct operations.<sup>343</sup>

Banxico has in place special arrangements to conduct foreign reserve management operations separately from monetary policy. The main objective for Banxico in the management of its international reserves is the maximisation of returns subject to liquidity and capital preservation constraints. The Board of Governors defines the strategic asset allocation embodied in a benchmark portfolio, which is structured to achieve the maximum benefits from a diversified portfolio, that is, the highest return for a given level of risk (volatility). The investment benchmark has been modified several times in recent years; currently, it is composed of gold, U.S. Treasury instruments, US agency debt, dollar-denominated Mortgage Backed Securities (MBS), dollar-denominated

<sup>340</sup> See Circular 23/2011 Banco de Mexico, available at: [www.banxico.org.mx/disposiciones/circulares/%7B4D8A67C7-89BD-7188-52C3-87C6A601B480%7D.pdf](http://www.banxico.org.mx/disposiciones/circulares/%7B4D8A67C7-89BD-7188-52C3-87C6A601B480%7D.pdf).

<sup>341</sup> More information available at: [www.banxico.org.mx/informacion-para-la-prensa/comunicados/politica-cambiaria/comision-de-cambios/%7BE4DB28B7-C1E0-9991-B2A7-BE35D4F5CD58%7D.pdf](http://www.banxico.org.mx/informacion-para-la-prensa/comunicados/politica-cambiaria/comision-de-cambios/%7BE4DB28B7-C1E0-9991-B2A7-BE35D4F5CD58%7D.pdf).

<sup>342</sup> More information available at: [www.banxico.org.mx/disposiciones/circulares/%7BBE0A08FF-1153-3163-79C9-D66FFCC8C845%7D.pdf](http://www.banxico.org.mx/disposiciones/circulares/%7BBE0A08FF-1153-3163-79C9-D66FFCC8C845%7D.pdf).

<sup>343</sup> More information available at: [www.banxico.org.mx/sistema-financiero/estadisticas/mercado-cambiario/operaciones-vigentes-del-banco-de-mexico-en-el-mer/operaciones/us-dollar-sales.html](http://www.banxico.org.mx/sistema-financiero/estadisticas/mercado-cambiario/operaciones-vigentes-del-banco-de-mexico-en-el-mer/operaciones/us-dollar-sales.html).

Asset Backed Securities (ABS), Canadian Treasury instruments, and cash deposits denominated in G-10 and some other emerging market currencies. Banxico has an internal working group which meets every six months in order to determine eligible counterparties. Among other activities, this group is responsible for evaluating and approving the addition or deletion of counterparties from a pre-defined authorised list, but always taking into account the risk management restrictions.

## **2.3.8.4 Transparency of the transactions**

### **2.3.8.4.1 Regulatory transparency**

Trading in Government bond in Mexico primarily takes place on an OTC basis (66%), while electronic trading (34%) takes place on eight platforms, five for B2B transactions (one co-owned by the stock exchange), and three for B2C; the access being restricted to Primary Dealers (PDs) in the first five.<sup>344</sup> Transparency is partly set by self-regulatory rules.<sup>345</sup> Prices for all OTC trades and volumes for block trades are reported to the supervisory authorities within two hours after the market closes, and trading information (number of operations, traded volume and yield to maturity) is disseminated to the public within two days.<sup>346</sup>

With regard to OTC derivatives measures are being implemented to require central clearing and reporting to trade repositories, as well as promote trading in exchanges or trading platforms; further measures to enhance market transparency are not yet effective.<sup>347</sup>

Banxico's indicated in its answer to Q8 that the domestic provisions that contain the general requirements on public disclosure of information about the transaction are contained in the Federal Transparency and Access to Government Public Information Law (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*), which establishes the type of information that has to be disclosed and made publicly available by the federal government and the central bank. The Federal Transparency and Access to Government Public Information Law enables public entities to classify information as non-public, under the "reserved information" category. In its answer to Q9 (exemption), Banxico specified that this includes information that, if disclosed, could affect Mexico's financial, economic or monetary stability, among other things. In this regard details of transactions with counterparties are considered "reserved information" and Banxico is not obliged to disclose it. Moreover, the aforementioned law establishes a "confidential information" category that refers to personal data and information that the owner or the provider of the information has classified as confidential. According to the response to Q10, the exemption is not extended to foreign central banks pursuing monetary, foreign exchange or financial stability.

It is not expressly established in the law to what extent the confidential nature of the information prevents counterparties from reporting information on transactions with Banxico, and whether such confidentiality affects only the identity of Banxico or the transaction itself.

Banxico does not have a procedure to notify its counterparty that the transaction is exempted from transparency requirements. Based on the responses to the questionnaire (Q11), financial agreements entered into by Banxico contain a confidentiality clause which only allows the parties to disclose confidential information when such disclosure is

---

<sup>344</sup> Electronic Trading Platforms in Government Securities Markets DRAFT Background Note, November 2013, pp. 24, 34.

<sup>345</sup> See Article 229, Ley del Mercado de Valores.

<sup>346</sup> Ibid., pp. 35-39.

<sup>347</sup> Financial Stability Board *OTC Derivatives Market Reforms Eighth Progress Report on Implementation 7* November 2014 pp. 13-14 (reporting and clearing), 23-24 (trading).



requested: (i) by a regulator of either party; (ii) within a judicial, administrative or arbitration process; (iii) pursuant to applicable laws or regulations; (iv) by an order of any competent court, regulatory or self-regulatory authority or other competent governmental body. In such cases the requested party shall notify the other party, to the extent practicable, of such request. Banxico does not have the discretion to unilaterally waive disclosure requirements (Q14).

Banxico indicated that it will be reviewing the possibility of signing a side letter with each of the applicable counterparties. Each letter might provide that pursuant to the applicable laws in the EU, a transaction with a non-EU central bank is exempted from the pre- and post-trade transparency requirements and thus no information shall be disclosed to the market by the relevant counterparty. By following this notification procedure, Banxico mentioned that it will have more flexibility to adapt to the changing regulations, as it will be simpler and faster for both parties to send and receive the notification. Also, by having written documentation, Banxico will reduce the possibility of confusion or any loss arising from the legal risk of the transparency requirements.

#### **2.3.8.4.2 Non-regulatory transparency**

Banxico, in accordance with its own regulations and regarding specific auction transactions entered into with its counterparties, may disclose some information before and after the transaction has being executed. Ex ante information usually includes details regarding the instruments for auction, such as the term, amount, type of instruments, maturity and auction schedules. Every day, Banxico publishes in the Information Bulletin<sup>348</sup> the main information regarding the auctions. Concretely, they publish the estimated amount of intervention for both daily sessions, the term, value date and the type of operation of the auction.

The results of the auctions are also published on the website.<sup>349</sup> Ex post information usually includes details of the assigned positions, including price and a possible average rate of return. The names of the participating institutions are never disclosed. With regard to foreign exchange transactions, the results of auctions are communicated to the participants via the closed auction system, but historical information is also available on the bank's website.<sup>350</sup> Banxico also publishes on a weekly basis on its website a summarised balance report regarding its international reserves. Also, Banxico publishes its assets and liabilities on a monthly basis in the data template on international reserves. Information on the investment benchmark is provided in the annual report. The holdings of foreign assets are reported in the balance sheet, but the composition of the portfolio is not included.

#### **2.3.8.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the market transparency and the transparency of its operational framework, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for Banxico (see Section 2.1.6). The assessment relies on the following findings:

---

<sup>348</sup> More information available at: [www.banxico.org.mx/portal-mercado-valores/informacion-oportuna/subasta-y-colocacion-de-valores/convocatorias/](http://www.banxico.org.mx/portal-mercado-valores/informacion-oportuna/subasta-y-colocacion-de-valores/convocatorias/).

<sup>349</sup> More information available at: [www.banxico.org.mx/portal-mercado-valores/informacion-oportuna/subasta-y-colocacion-de-valores/resultados/resultados.html](http://www.banxico.org.mx/portal-mercado-valores/informacion-oportuna/subasta-y-colocacion-de-valores/resultados/resultados.html).

<sup>350</sup> More information available at: [www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarDirectorioCuadros&sector=6&sectorDescripcion=Exchange%20rates%20and%20auctions%20historical%20information&locale=en](http://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarDirectorioCuadros&sector=6&sectorDescripcion=Exchange%20rates%20and%20auctions%20historical%20information&locale=en).

- In terms of market transparency, there are no express reporting requirements for trading in non-equity instruments contained in mandatory rules. Self-regulatory rules include quotation obligations. Also, prices for all OTC trades and volumes for block trades have to be reported to supervisory authorities within 2 hours after the market closes, and trading information is disseminated to the public with a lag. Measures are being implemented to promote OTC derivatives trading in exchanges and electronic platforms.
- In terms of operational transparency, Banxico publishes at the Information Bulletin the main information in advance of auctions, including estimated amount and type of operation. It only discloses auction results to market participants via the closed auction system, and through its website it discloses historical information. Banxico publishes on its website on a weekly basis a summarised balance sheet report regarding its international reserves and, on a monthly basis, its assets and liabilities in the data template on international reserves. Banxico implements its policies primarily through bilateral transactions with counterparties, though it also transacts on trading venues.
- In light of the institution's low trading volumes with EU counterparties or in EU-listed financial instruments, the economic necessity of an exemption is very limited.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available for transactions by foreign central banks;
  - Banxico can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role;
  - Banxico has a procedure in place to notify its counterparties of the existence of an exemption, thanks to confidentiality clauses included in the bilateral agreements.

## **2.3.9 The Monetary Authority of Singapore (MAS)**

### **2.3.9.1 Mandate and policies**

The mandate, functions and powers of the Monetary Authority of Singapore (MAS) are listed in Section 4 of the MAS Act (*principal objectives and functions of Authority*):

*"(1) The principal objectives of the Authority shall be:*  
*(a) to maintain price stability conducive to sustainable growth of the economy;*  
*(b) to foster a sound and reputable financial centre and to promote financial stability;*  
*(c) to ensure prudent and effective management of the official foreign reserves of Singapore; and (d) to grow Singapore as an internationally competitive financial centre.*

*(2) The functions of the Authority shall be*  
*(a) to act as the central bank of Singapore, conduct monetary policy, issue currency, oversee payment systems and serve as banker to and financial agent of the Government;*  
*(b) to conduct integrated supervision of the financial services sector and financial stability surveillance;*  
*(c) to manage the official foreign reserves of Singapore; and*  
*(d) to develop Singapore as an international financial centre."*

To the mandate of maintaining price stability and promoting financial stability, the Act adds two others: the prudent and effective management of foreign reserves, and the growth of Singapore as an internationally competitive financial centre (the more unusual mandate).

The mandate and functions of the MAS are explained in detail in Parts IV and V of the Act. Part IV regulates the *Powers, Duties and Functions of the Monetary Authority*; Parts IVA and IVB contain the provisions for *Control over Financial Institutions* and *Resolution*

of *Financial Institutions*, respectively; Part V regulates the *Financial Sector Development Fund*; Part VA, the *Book Entry Securities Issued by the Authority*; and Part VB the *Primary Dealers for Securities Issued by the Authority*. For the purposes of the study, the relevant parts are IV, VA and VB.

Since 1981, monetary policy in Singapore has been centred on the management of the exchange rate as a means to promote price stability in the context of a small and open economy. The exchange rate represents an ideal intermediate target of monetary policy. The features of this system are:

- i. The Singapore dollar is managed against a basket of the currencies of trading partners and competitors, which are assigned weights in accordance with the importance of the country in terms of trade relations;
- ii. The MAS operates a managed float regime for the Singapore dollar and the trade-weighted exchange rate is allowed to fluctuate within a policy band, the level and direction of which is announced semi-annually;
- iii. The exchange rate policy band is periodically (typically, six months) reviewed to ensure that it remains consistent with the fundamentals of the economy; a Monetary Policy Statement (MPS) is released after each review, providing information on the recent movements of the exchange rate and explaining the stance of exchange rate policy;
- iv. The MAS gives up control over domestic interest rates, which are largely determined by foreign interest rates and investor expectations of the future movements in the Singapore dollar.

The MAS indicated that it does distinguish between transactions that have a monetary purpose (monetary transactions), foreign exchange purpose (foreign exchange transactions), financial stability purpose (financial stability transactions), and investment purpose (investment transactions). However, no further information on the criteria of this separation was provided, i.e. how it distinguishes the transactions dedicated to one policy from another.

### **2.3.9.2 Operations, instruments and transactions**

The MAS differentiates in its monetary policy (implementation) framework between liquidity management (money market operations and liquidity facilities) and exchange rate management (intervention operations). The MAS carries out money market operations every morning at about 9:45 am. The purpose of these operations is to ensure that there is an appropriate amount of liquidity in the banking system. The instruments used are: (i) direct borrowing or lending; (ii) foreign exchange swaps; (iii) repurchase agreements (repos) on SGS; and (iv) MAS Bills.<sup>351</sup>

In addition to this, the MAS has liquidity facilities, such as the intraday liquidity facility and the standing liquidity facility.<sup>352</sup> The MAS also provides the MAS renminbi (RMB) facility and the overnight RMB facility, which are foreign currency lending facilities that allow counterparties to borrow RMB funds obtained through MAS currency swap with PBOC and try to promote trade and financial stability (to ensure financial institutions that their RMB needs will be met).<sup>353</sup>

---

<sup>351</sup> MAS Monetary Policy Operations in Singapore, March 2013, p. 12.

<sup>352</sup> Ibid., p. 17.

<sup>353</sup> More detailed information available at: [www.mas.gov.sg/Monetary-Policy-and-Economics/Central-Bank-Operations-and-Liquidity-Management.aspx](http://www.mas.gov.sg/Monetary-Policy-and-Economics/Central-Bank-Operations-and-Liquidity-Management.aspx).

**Table 19. Operations and instruments**

|                                                          | Types of transactions                                       |                      | Maturity         | Frequency                                                             | Procedure |
|----------------------------------------------------------|-------------------------------------------------------------|----------------------|------------------|-----------------------------------------------------------------------|-----------|
|                                                          | Liquidity provision                                         | Liquidity absorption |                  |                                                                       |           |
| Liquidity management. Money market operations            |                                                             |                      |                  |                                                                       |           |
| Repos                                                    | Reverse repo                                                | Repo                 |                  |                                                                       |           |
| Direct borrowing/lending                                 | Direct lending                                              | Direct borrowing     |                  |                                                                       |           |
| Foreign exchange swaps                                   |                                                             |                      |                  |                                                                       |           |
| MAS Bills                                                |                                                             | Issuance of bills    | Up to 24 weeks   | 4-week and 12-week MAS Bills: Weekly<br>24-week MAS Bill: Fortnightly | Auction   |
| Liquidity management. Liquidity facilities               |                                                             |                      |                  |                                                                       |           |
| Intraday liquidity facility                              | Reverse repo                                                |                      | Daily            | At the request of counterparty                                        |           |
| Standing liquidity facility                              | Reverse repo, foreign currency swap, or collateralised loan | Deposits             | Overnight        | At the request of counterparty                                        |           |
| Enhanced repo facility <sup>354</sup>                    | Repo                                                        |                      | Daily            | At the request of counterparty                                        |           |
| RMB liquidity (MAS RMB facility, Overnight RMB facility) | Collateralised Loans                                        |                      | Overnight        | At the request of counterparty                                        |           |
| Exchange rate management                                 |                                                             |                      |                  |                                                                       |           |
| Foreign exchange Intervention operations                 | Purchases and sales                                         |                      | Non-standardised | Non-regular                                                           |           |

According to the 2013-14 Annual Report,<sup>355</sup> as of 31 March 2014, the MAS held S\$343 billion (US\$273 billion) of official foreign reserves (OFR) on its balance sheet. The OFR constitute more than 90% of the assets on MAS's balance sheet. The same report states that the foreign reserves' portfolio includes cash, bonds and equities, with investment grade bonds representing the largest allocation in the portfolio. About three-quarters of the OFR are denominated in the major G4 currencies, i.e. US dollar, euro, British pound and Japanese yen. It is possible to access the assets and liabilities of the MAS,<sup>356</sup> the official foreign reserves,<sup>357</sup> and the international reserves and foreign currency liquidity in the IMF's Data Template.<sup>358</sup> There is no distinction in the data between assets held for policy purposes and those held for investment purposes. In its response to Q3, the MAS indicated that transactions in non-equity securities were typically undertaken for a monetary purpose, financial stability purpose or investment purpose.

### 2.3.9.3 Procedural framework

#### 2.3.9.3.1 Eligible counterparties

The MAS launched the MAS Electronic Payment System (MEPS) in 1998 for large-value Singapore dollar (SAGD) interbank fund transfers and Singapore Government Securities

<sup>354</sup> The idea is to improve access to securities that are demanded, and thus it works as a repo, and not a reverse repo.

<sup>355</sup> MAS Annual Report 2013-14, available at: [www.mas.gov.sg/annual\\_reports/annual20132014/Annual%20Report.pdf](http://www.mas.gov.sg/annual_reports/annual20132014/Annual%20Report.pdf).

<sup>356</sup> More information available at:

[www.mas.gov.sg/statistics/reserve%20statistics/monetary%20authority%20assets%20and%20liabilities](http://www.mas.gov.sg/statistics/reserve%20statistics/monetary%20authority%20assets%20and%20liabilities).

<sup>357</sup> More information available at: [www.mas.gov.sg/Statistics/Reserve-Statistics/Official-Foreign-Reserves.aspx](http://www.mas.gov.sg/Statistics/Reserve-Statistics/Official-Foreign-Reserves.aspx).

<sup>358</sup> More information available at: [www.mas.gov.sg/Statistics/Reserve-Statistics/International-Reserves-and-Foreign-Currency-Liquidity.aspx](http://www.mas.gov.sg/Statistics/Reserve-Statistics/International-Reserves-and-Foreign-Currency-Liquidity.aspx).

(SGS) settlement. In 2006 an enhanced version was introduced (MEPS+), which is currently operational. It allows participants to hold and settle Singapore Government Securities in MEPS+ on a delivery versus payment basis. The list of participants includes some of the major financial institutions.<sup>359</sup> Access to the MAS's Standing Liquidity Facility was expanded in July 2008 from Primary Dealers to MEPS+ participants which were parties to the PSA/ISMA Global Master Repurchase Agreement with MAS. Money market operations are carried out exclusively with Primary Dealers in recognition of their role as specialist intermediaries in the SGS and money markets.<sup>360</sup> They are the only ones participating in the auctions conducted by the MAS. Section 30Q (1) of the MAS Act (*Appointment as primary dealer*) describes the role of a primary dealer. The MAS Guide for Primary Dealers provides further detail as to the obligations that these undertake, including the provision of liquidity, the contribution to the market's development, market-making, active bidding, etc. (for further detail, see Annex).

The PDs have the following obligations: *"a. provide liquidity in the SGS market by quoting effective two-way prices for SGS sale and repurchase agreements (repo) and outright SGS transactions under all market conditions; b. participate actively in the SGS issuance programme and underwrite SGS issuance; c. provide market feedback and daily closing prices for all SGS issues to MAS; and d. contribute actively to the development of the Singapore dollar bond market and related interest rate markets, such as interest rate swaps (IRS) and bond futures"* and rights: *"a. exclusive dealing with MAS in money market and foreign exchange operations; b. exclusive access to the MAS Enhanced Repo Facility to borrow SGS issues to facilitate its market-making; c. exclusive right to submit applications for SGS auctions and reverse auctions; d. higher non-competitive tender limit and overall allocation limit at SGS auctions; e. tax exemption on trading income derived from SGS; and f. close consultation and dialogue with MAS on SGS auctions and market-related issues."*<sup>361</sup>

The list of PDs includes:

- Australia and New Zealand Banking Group Limited;
- Bank of America, National Association;
- Barclays Bank Plc;
- BNP Paribas;
- Citibank NA;
- Credit Suisse AG;
- DBS Bank Ltd;
- Deutsche Bank AG;
- Malayan Banking BHD;
- Oversea-Chinese Banking Corporation Ltd;
- Standard Chartered Bank;
- Hong Kong and Shanghai Banking Corporation Limited;
- United Overseas Bank Ltd.

In its responses to the questionnaire, the MAS provided estimates about execution types, as illustrated below.

---

<sup>359</sup> The lists of participants and non-participants can be accessed at: [www.mas.gov.sg/Singapore-Financial-Centre/Payment-and-Settlement-Systems/Clearing-and-Settlement-Systems/MEPS/Participants-and-NonParticipants-Lists.aspx](http://www.mas.gov.sg/Singapore-Financial-Centre/Payment-and-Settlement-Systems/Clearing-and-Settlement-Systems/MEPS/Participants-and-NonParticipants-Lists.aspx).

<sup>360</sup> MAS Monetary Policy Operations in Singapore, March 2013, p. 12.

<sup>361</sup> MAS, "A Guide to SGS Primary Dealer Operations", p. 2, available at: [www.sgs.gov.sg/publications/~/\\_media/SGS/SGSPDOperations.pdf](http://www.sgs.gov.sg/publications/~/_media/SGS/SGSPDOperations.pdf).

**Table 20. Relevance of execution types**

| Execution                                                                  | %       |
|----------------------------------------------------------------------------|---------|
| Direct bilateral execution with a counterparty that may internalise orders | 50-100% |
| Direct bilateral execution with a counterparty that does not internalise   | <10%    |
| Trading venues with pre-trade & post-trade transparency                    | 10-50%  |
| Trading venues with no pre-trade & post-trade transparency                 | <10%    |
| Hybrid voice-brokered venue                                                | 0%      |

The MAS clarified that the first category includes MAS Bills auction transactions, although information on MAS Bills auctions is publicly available (see below “Transparency of transactions”). The MAS also indicated (Q4 and Q5) that, when implementing its central bank policy operations, it does not execute transactions on EU trading venues and that it executes transactions with EU-domiciled financial intermediaries that internalise orders. Thus only EU dealers are affected. The relative importance assigned to these, in terms of the percentage of total market operations executed through them, was between 10% and 50% (Q7).

### **2.3.9.3.2 Implementation of policy instruments**

The Monetary and Domestic Markets Management Department (MDD) conducts its main money market operations every morning between 9:45 am and 10:30 am, after assessing and estimating the day’s key money market factors. The MDD monitors the monetary conditions of the banking system throughout the day and, if necessary, carries out further money market operations in the afternoon. The amount of liquidity to inject or withdraw from the banking system will depend on the net liquidity impact of: the MDD’s foreign exchange operations, if any, and its maturing money market operations, changes in banks’ liabilities base and, hence, their Minimum Cash Balance (MCB) requirements, net changes in currency demand, net issuance of SGS, net CPF Board’s fund transfers,<sup>362</sup> and net government fund transfers by the Accountant General’s Department.

Every morning, after assessing key money market factors, the MDD communicates its liquidity targets, receives bids and conducts the transactions. PDs are required to settle their money market transactions with MAS promptly and before the relevant MAS Electronic Payments System (MEPS+) cut-off times. PDs also have exclusive access to the MAS Enhanced Repo Facility to borrow SGS to facilitate their market-making activities in the SGS market. This facility makes SGS available for repo on an overnight basis only to help PDs cover any short position in SGS arising from their market-making activity on any day. Under this facility, the MAS lends Specific Securities via a reverse repo transaction, and simultaneously transacts a back-to-back general repo for an identical similar nominal amount.<sup>363</sup>

In addition to its regular money market operations MAS announced in 2010 that it would be issuing short-term MAS Bills as part of its Money Market Operations (MMO). They are

<sup>362</sup> The CPF scheme is Singapore’s mandatory defined contribution pension fund scheme. The CPF Board administers the CPF scheme, and collects contributions from members and employers. It also dispenses funds to members under the various approved CPF withdrawal schemes. The CPF Board places the net proceeds as Advance Deposits with MAS for subsequent subscription to Special Issues of Singapore Government Securities (SSGS). SSGS have original maturities of 20 years and are non-marketable. They are issued specifically to the CPF Board to meet its investment requirements under the CPF Act and pay an interest equivalent to the interest the CPF Board pays to CPF members. Given the size of the transactions between the CPF Board’s agent banks and MAS, the CPF Board is a significant participant in the banking system. See MAS Monetary Policy Operations in Singapore, March 2013, p. 11.

<sup>363</sup> MAS, “A Guide to SGS Primary Dealer Operations”, p. 5.

governed by Part VA (*Book Entry Securities Issued by Authority*), sections 30E-30P of the MAS Act, and by the Monetary Authority of Singapore (Book-Entry MAS Securities and Primary Dealers) Regulations, and by MAS Notice 762 (*Obligations of Primary Dealers*).<sup>364</sup> The timing and amount of individual MAS Bill issues is decided by the MAS, in consultation with primary dealers. The MAS takes into consideration its sterilisation requirements (which largely depend on capital flows inside and outside Singapore). The issuance calendar for MAS Bills is typically pre-announced in May and November for the following half-year. Auctions of MAS Bills are generally carried out three business days before their respective issuances. All applications must be submitted through any of the approved Primary Dealers. Primary Dealers will then apply for the book-entry MAS Bill on offer at auctions via the SGS electronic applications service (SGS eApps) available on the MAS website.

Other than money market operations and issuance of MAS Bills MAS also provides liquidity facilities. Both the Intraday Liquidity Facility and the Standing Facility are available to financial institutions that participate in MEPS+ if they have signed the PSA-ISMA Global Master Repurchase Agreement (GMRA). Under the Intraday Liquidity Facility the entities that participate obtain Singapore dollar funds on an intraday basis through repo transactions involving SGS and MAS Bills (with haircuts applied). It provides market participants with liquidity for settlement purposes to help smooth intraday funding needs. The facility is open from 9:00 am to 5:00 pm, with the automated reversal time set at 5:30 pm. The MAS also provides the Standing Facility, a two-sided discount window that allows MEPS+ participants to deposit Singapore dollar funds with or borrow Singapore dollar funds against eligible collateral from the MAS on an overnight basis.<sup>365</sup>

From an initial restriction to SGS as eligible collateral, the MAS has expanded the pool to include MAS Bills, Singapore dollar sukuk issued by the Singapore Sukuk Pte Ltd (a wholly-owned subsidiary of the MAS), Singapore dollar debt securities issued by certain AAA-rated entities, as well as foreign currency denominated securities specified in Cross Border Collateral Arrangements (CBCAs) between MAS and foreign central banks.

Finally, there are no references in the Act, or in subsidiary legislation, or in statements on the foreign exchange interventions. It is unclear whether they are conducted within the framework of money market interventions or otherwise. Regarding foreign exchange reserve management, the MAS invests foreign reserves conservatively, ensuring sufficient liquidity to support the conduct of monetary policy while preserving the international purchasing power of the reserves. The foreign reserves are invested in a well-diversified portfolio including cash, bonds and equities. Investment grade bonds comprise the largest allocation in the portfolio. With regard to currency composition, about three-quarters of the foreign reserves are denominated in the major G4 currencies, i.e. US dollar, euro, British pound and Japanese yen, with no single currency allocation making up more than one-third of the composition. The MAS transacts with well-rated entities within assigned limits, and also diversifies credit exposures across counterparties and has collateral arrangements with counterparties such as ISDA Credit Support Annex.

---

<sup>364</sup> More information available at: [www.mas.gov.sg/Monetary-Policy-and-Economics/Central-Bank-Operations-and-Liquidity-Management/MAS-Bills/Legislation.aspx](http://www.mas.gov.sg/Monetary-Policy-and-Economics/Central-Bank-Operations-and-Liquidity-Management/MAS-Bills/Legislation.aspx).

<sup>365</sup> MAS Monetary Policy Operations in Singapore, March 2013, p. 18. The borrowing and lending rates for the Standing Facility are market-determined. The reference rate is the weighted average rate of successful bids by Primary Dealers for S\$500 million of overnight deposits at the day's money market operations. The facility's lending rate is 0.5% above the reference rate, and the deposit rate is 0.5% below the reference rate (subject to a zero floor). More information available at: [www.mas.gov.sg/Monetary-Policy-and-Economics/Central-Bank-Operations-and-Liquidity-Management/MAS-Standing-Facility.aspx](http://www.mas.gov.sg/Monetary-Policy-and-Economics/Central-Bank-Operations-and-Liquidity-Management/MAS-Standing-Facility.aspx).

## **2.3.9.4 Transparency of transactions**

### **2.3.9.4.1 Regulatory transparency**

In its response to the questionnaire (Q8), the MAS stated that market operators of an exchange or trading system for securities or futures are regulated by the MAS as approved exchanges or recognised market operators. Pursuant to Sections 16 and 37 of the Securities and Futures Act, all approved exchanges and recognised market operators are required to ensure that the markets they operate are transparent. Additionally, approved exchanges are also required under Regulation 18 of the Securities and Futures (Markets) Regulations to make provisions in their business rules to ensure a fair, orderly and transparent market.

The Guidelines on the Regulation of Markets further explain that transparency may be defined as the degree to which information about trading (both pre-trade and post-trade) is made publicly available on a real time basis. The Guidelines on the Regulation of Markets also explains that the MAS considers that in a transparent market: (i) pre-trade information, such as best bids and offers, should be made available to enable investors to know the transactions they may enter into and at what prices; (ii) post-trade information on executed trades should be similarly publicised to reflect the market prices of executed trades. Reforms were passed to ensure that OTC derivatives are reported to trade repositories.<sup>366</sup> These rules apply to exchanges or recognised market operators (RMOs), not to OTC transactions. For these an electronic trading system (Bloomberg E-Bond) has been developed on behalf of MAS for Singapore government bonds, which offers a multi-dealer request-for-quote and quote-driven electronic order book for price providers to leave their bids and offers.<sup>367</sup> In OTC derivatives trading Singapore has adopted reforms on central clearing and reporting to trade repositories, but measures to ensure that execution takes place in exchanges or electronic platforms is being implemented, and subsequent rules to ensure market transparency are not yet effective.<sup>368</sup>

The MAS is exempted from domestic transparency requirements as these do not require providing the name of the counterparties or full details about the transactions. Under that same logic, the MAS considers that, even in the absence of an express waiver, foreign central banks pursuing monetary, foreign exchange or financial stability policies are, in practice, exempted from requirements (Q9 and Q10). However, the MAS does not consider that it has discretion to unilaterally waive disclosure requirements (Q14).

The MAS does not have in place a procedure to notify its counterparty that the transaction is exempted from transparency requirements (Q11 and Q13). However, the MAS is still considering the implementation of the notification procedure for the purpose of the MiFIR exemption.

### **2.3.9.4.2 Non-regulatory transparency**

For its main money market operations undertaken in the morning, the MDD will broadcast to all PDs the amount it intends to inject into or withdraw from the banking system. At the same time, the MDD will also invite PDs to provide price quotes for its desired money market instrument of a specified maturity.<sup>369</sup> Trades will be awarded based on price competitiveness, market functionality, liquidity and policy objectives,

---

<sup>366</sup> Part VIA Securities and Futures Act; and Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013. See <http://www.mas.gov.sg/regulations-and-financial-stability/>

<sup>367</sup> ASEAN *Singapore Bond Market Guide* ASEAN 3 ABMF Vol 1 Part 2 Sec 9, 2012, pp. 44-45.

<sup>368</sup> Financial Stability Board *OTC Derivatives Market Reforms Eighth Progress Report on Implementation* 7 November 2014 pp. 24-25, and Annex E.

<sup>369</sup> For the template of the information facilitated to PDs, see MAS, "A Guide to SGS Primary Dealer Operations", Annex 1, available at: [www.sgs.gov.sg/publications/~media/SGS/SGSPDoperations.pdf](http://www.sgs.gov.sg/publications/~media/SGS/SGSPDoperations.pdf).



counterparty limits and PD ranking. All trades for the purpose of MAS money market operations are valued on the same day, unless otherwise stated. The MDD will broadcast to all PDs the actual amount of money market operations transacted and the average rates dealt according to the type and tenor of transactions.<sup>370</sup> PDs are required to submit offers to the MAS on a daily basis:<sup>371</sup> the SGS closing prices for all outstanding securities, the highest and lowest yields/prices transacted for benchmark issues of SGS and the closing rates for SGS repos. The average daily SGS closing prices are on the SGS website for investor reference.

In the case of MAS Bills, an announcement will be made on the MAS website one business day before each auction, where the issuance size of each MAS Bill will be published. In its response to the questionnaire, the MAS indicated that the items made public before a transaction takes place are related to the auction of central bank-issued bills (MAS Bills), which is published on the website a few days before the transaction takes place. It also publishes information on the transactions a few hours after these take place.

In the case of liquidity facilities the intraday repo rate (for the intraday liquidity facility), based on prevailing market rates unless otherwise determined by the MAS, is published on the MAS website.

Finally, with regard to foreign reserve management the MAS discloses information on the investment of foreign reserves in its published annual reports, which are audited. The annual report includes information on the investment strategy and the composition of the portfolio.

### **2.3.9.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the market transparency, the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for MAS (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, there are general mandatory transparency requirements in the Securities and Futures Act. The Guidelines on the Regulation of Markets issued by MAS indicate the need to provide both pre-trade (best bid and offer prices) and post-trade (executed transactions) information. These rules and guidelines apply to exchanges and recognized market operators, not dealers. In addition, MAS has promoted the development of platforms for transparent electronic trading on government bonds. There are ongoing reforms for OTC derivatives, but adopted measures are limited to central clearing and reporting to trade repositories. Measures on exchange or electronic platform trading are in progress, and market transparency rules are still not effective.
- In terms of operational transparency, for monetary policy operations MAS communicates to market participants the terms of auctions, and auction results. Information on the issuance of MAS Bills is released to the public, as well as information on liquidity facilities. Information on foreign reserve management, on the other hand, is included in audited annual reports. MAS implements its policies primarily through bilateral transactions with counterparties, though it also transacts with venues.

---

<sup>370</sup> See *ibid.*

<sup>371</sup> *Ibid.*, p. 5.

- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available for domestic transactions by foreign central banks;
  - MAS can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role;
  - Albeit MAS has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

## **2.3.10 The Bank of Korea (BoK)**

### **2.3.10.1 Mandate and policies**

Article 1 (*Purpose*) of the Bank of Korea Act provides that: "(1) *The purpose of this Act shall be to establish the Bank of Korea and to contribute to the sound development of the national economy by pursuing price stability through the formulation and implementation of efficient monetary and credit policies.* (2) *The Bank of Korea shall pay attention to financial stability in carrying out its monetary and credit policies.*" In its response to the questionnaire the BoK confirmed that only monetary policy (understood as price stability) and financial stability were within the BoK's mandate.

Article 3 of the BoK Act establishes the BoK's "neutrality", understood as independence, while Article 4 indicates, "*The monetary and credit policies of the Bank of Korea shall be carried out in harmony with the economic policy of the Government insofar as this does not detract from price stability*", and, "*In implementing monetary and credit policies, the Bank of Korea shall emphasize the market mechanism*". Article 5 reads, "*The Bank of Korea shall make efforts to secure openness and transparency in the conduct of its business and management of its operations*". Article 6 enshrines the setting of a price stability target as the major policy tool.

The response by the BoK confirmed its relationship with the government through the indication that foreign exchange policies, including reserve management, is mandated by the government of Korea to the BoK. Based on its answer to Q2, the BoK does not distinguish between transactions that have a monetary, foreign exchange or financial stability purpose, nor does it distinguish them from transactions that have an "investment" purpose.

### **2.3.10.2 Operations, instruments and transactions**

The BoK distinguishes between two types of operations: open market operations and facilities whose main aim is the management of liquidity in the system.

Open market operations include:

- Securities transactions;
  - Temporary transactions;
  - Outright transactions;
- Monetary Stabilisation Bonds (MSBs);
- Monetary Stabilisation Account.

Liquidity facilities include:

- Liquidity Adjustment loans-deposits;
- Bank Intermediated Lending Support facility;

- Intraday overdrafts;
- Special loans;
  - o Emergency credit to financial institutions;
  - o Credit to for-profit enterprises.

**Table 21. Operations and instruments**

|                                                         | Types of transactions                     |                      |                                                        |                                            |                                            |
|---------------------------------------------------------|-------------------------------------------|----------------------|--------------------------------------------------------|--------------------------------------------|--------------------------------------------|
|                                                         | Liquidity provision                       | Liquidity absorption | Maturity                                               | Frequency                                  | Procedure                                  |
| Open market operations                                  |                                           |                      |                                                        |                                            |                                            |
| Temporary transactions                                  | Reverse repo                              | Repo                 | 7 days                                                 | Weekly                                     | Auction                                    |
| Outright transactions                                   | Purchases                                 | Sales                | Up to 91-day MSBs                                      | Weekly <sup>372</sup>                      |                                            |
| Long-term adjustments (Monetary Stabilisation Bonds)    | Repurchase MSBs                           | Issuance MSBs        | 364-day MSBs                                           | First week of every month                  | Auction (it is possible in an OTC fashion) |
|                                                         |                                           |                      | 2-year MSBs                                            | Second and fourth weeks of every month     |                                            |
|                                                         |                                           |                      | 182-day MSBs                                           | Third week of every month                  |                                            |
| Short-term adjustments (Monetary Stabilisation Account) |                                           | Deposit              |                                                        | Access at the discretion of counterparties |                                            |
| Liquidity facilities                                    |                                           |                      |                                                        |                                            |                                            |
| Liquidity adjustment                                    | Loans                                     | Deposits             | 1 business day                                         | Access at the discretion of counterparties |                                            |
| Bank Intermediated Lending Support facility             | Loans                                     |                      | 1 month                                                |                                            |                                            |
| Intraday overdrafts                                     | Overdrafts                                |                      | Closing hour for funds transfer during the day         |                                            |                                            |
| Special loans                                           | Loans to banks and for-profit enterprises |                      | Specific terms determined by monetary policy committee |                                            |                                            |
| Foreign-exchange operations                             |                                           |                      |                                                        |                                            |                                            |
|                                                         | Purchases and sales                       |                      |                                                        |                                            |                                            |

According to the responses to the questionnaire, transactions in non-equity securities are typically undertaken in relation with price stability, financial stability and foreign exchange policies. The BoK would implement a notification procedure if such an exemption is granted under applicable EU regulation.

### 2.3.10.3 Procedural framework

#### 2.3.10.3.1 Eligible counterparties

The operations of the BoK are regulated under Chapter IV of the BoK Act.

<sup>372</sup> The frequency here refers to the issuance of MSBs.

The BoK uses BOK-Wire, the RTGS (Real-time Gross Settlement) system to implement open market operations based on the market mechanism (tender auctions). The BOK-Wire system is also used to settle transactions (cash transfer) in the exchange listed market for bonds and OTC Bonds (bonds are transferred through the Korea Securities Depository (KSD)).<sup>373</sup> It is also used as the bidding system for Korean Treasury Bonds (KTBs).

Counterparties in the open market operations involving MSBs and securities are designated every August in compliance with selection criteria, such as the efficiency of the open market operations and the asset quality and financial soundness of potential counterparty financial institutions.

When implementing its central bank policy operations, the BoK executes transactions both on EU trading venues, e.g. EU exchanges, and with EU-domiciled financial intermediaries that internalise orders (Q4 and Q5). The BoK, however, failed to specify any further, and stated instead that due to policy and confidentiality reasons, Bank of Korea may not disclose the details and nature of its transactions.

### **2.3.10.3.2 Implementation of monetary policy instruments**

Open market operations are regulated in Section 4 of Chapter IV of the BoK Act, and more specifically in Article 68 of the BoK Act, which reads as follows:

*"(1) For the purpose of conducting monetary and credit policies, the Bank of Korea may, in accordance with the provisions of the Monetary Policy Committee, sell and buy or lend and borrow for its own account in the open market:*

- 1. Government bonds of the Republic of Korea;*
- 2. Securities whose full redemption and interest payments are guaranteed by the Government; and*
- 3. Other securities of types specified by the Monetary Policy Committee.*

*(2) The securities provided for in each Clause of Paragraph (1) shall be confined to those which are freely negotiable and whose terms of issuance are being completely fulfilled."*

Open market operations include both outright transactions and repo transactions. Outright transactions, however, are less frequently used. The purpose of outright sales (absorb liquidity) can be fulfilled by the issuance of MSBs. Outright purchases have been employed to expand the pool of securities available for use in open market operations, but on an infrequent basis (as the market is currently liquid).<sup>374</sup> This reduces the chances of the BoK transacting on securities on a discretionary basis. RPs are the most commonly used tool for liquidity adjustment. Although RPs can have up to 91 days of maturity, most contracts range from overnight to 14 days. They are the primary tool to manage shortages and excesses of reserve funds. The monetary policy operational framework was reformed in March 2008, and the frequency of such transactions ceased to be discretionary, and they began to be conducted with regularity: seven-day RP transactions (the main tool) are offered once a week on Thursdays.<sup>375</sup> RP transactions are mainly conducted either by fixed rate tenders or variable rate tenders. A series of procedures, including tender announcements, bidding, notification of successful bids and settlement, are carried out online in real time using a computer network linking the BoK and its trading counterparties.

---

<sup>373</sup> See ASEAN, *Republic of Korea Bond Market Guide*, ASEAN 3 ABMF Vol. 1, Part 2, Sec 5 KOR, 2012, pp. 5, 67, 97, 100, 101.

<sup>374</sup> BoK, "Open market operations", available at: <http://eng.bok.or.kr/broadcast.action?menuNaviId=1905>.

<sup>375</sup> BoK, *Monetary Policy in Korea*, Second Edition, p. 57.

While regulated under the Chapter "Open Market Operations", Monetary Stabilisation Bonds (MSBs) are regulated further in a separate provision (Article 69). Their issuance and redemption are effected in the open market (for further detail, see the Annex). MSBs originated as a major tool of monetary policy during the period when the volume of government/public bonds remained insufficient for open market operations. These central bank obligations have relatively long maturities, and once issued, they are not, in principle, redeemable prior to maturity. Thus they are used as a major structural adjustment tool whose policy effects are long lasting.<sup>376</sup> MSBs are distributed through competitive bidding or OTC sale. Under competitive bidding, the BoK sells bonds to financial institutions that offer prices above its reserve price (lower than its reserve interest rate). The allocation method is based on the offer prices using a 'Dutch method'.<sup>377</sup> The issue of MSBs through OTC sale is undertaken when necessary in consideration of the market situation. Participants are not limited to counterparty financial institutions and the interest rate is set in advance.

The Monetary Stabilisation Account (MSA) is regulated under Article 70 of the BoK Act, and was introduced in October 2010, as a deposit facility mainly used to fine-tune the reserve levels and to cope with unexpected changes in reserve supply and demand.

Liquidity Facilities are regulated in Articles 64-65 of the BoK Act. Article 64 (Credit Operations with Banking Institutions), which regulates the normal extension of credit, enumerates the types of transactions that the BoK may conclude under this framework (re-discounting, discounting, buying, selling or instruments, making of collateralised loans (for further detail, see Annex in Section 5.2.6 of the present study). In 2008 the BoK extended and reformed its existing lending facilities by introducing Liquidity Adjustment Loans and Deposits as standing facilities. The more regular facilities are the liquidity adjustment loans and deposits, followed by the Bank Intermediated Lending Support Facility. The Intraday Overdraft and the Special Loans are used for more specific purposes. Liquidity adjustment loans and deposits are standing facilities, introduced in March 2008, which enable financial institutions to borrow from the BoK to make up for shortages of funds, and to deposit any surplus funds with the BoK. Eligible financial institutions are those subject to the holding of required reserves. Both loans and deposits have maturities of one business day, and their interest rates are 100 basis points above and below the BoK Base Rate, respectively.<sup>378</sup>

Other instruments are the bank-intermediated lending support facility, intraday overdrafts and special loans. The BoK-intermediated lending support facility consists of loans with low interest rates extended to banks in order to boost lending to SMEs (lending is based on SMEs' loan performance).<sup>379</sup> Intraday overdrafts were introduced in September 2000 to extend financial support to banks experiencing temporary shortages of settlement funds in the course of a day. Eligible financial institutions are those subject to reserve requirements and participants in BOK-Wire. For banks that fail to redeem borrowings by the close of the business day, non-redeemed intraday overdraft amounts are converted into a liquidity adjustment loan.<sup>380</sup> Finally, the provision of credit by the BoK outside normal circumstances (special loans) is regulated in Article 65 of the BoK Act (Emergency Credit to Banking Institutions) and Article 80 (Credit to for-profit enterprises). For further detail, see the Annex in Section 5.2.6 of the present study.

---

<sup>376</sup> Ibid. p. 54.

<sup>377</sup> (from the highest to the lowest), but the value of successful bids is in proportion to that of the bids made in the event of several financial institutions bidding the same price. The lowest price (highest interest rate) among those offered by successful bidders is applied to all transactions.

<sup>378</sup> Liquidity adjustment loans help prevent the call rate from deviating too widely from the base rate in the call market. If the Monetary Policy Committee finds it necessary to ensure the smooth functioning of financial markets interest rates for liquidity adjustment, loans and deposits can be adjusted to the same level as the base rate, and the loan maturities can be extended to as long as one month. See BoK, "Lending and Deposit Facilities", available at: [www.bok.or.kr/broadcast.action?menuNaviId=1906](http://www.bok.or.kr/broadcast.action?menuNaviId=1906).

<sup>379</sup> Ibid.

<sup>380</sup> Ibid.

## **2.3.10.4 Transparency of the transactions**

### **2.3.10.4.1 Regulatory transparency**

The OTC market accounts for 80% of the Korean bond market, whereas the Korea Exchange (KRX) market accounts for 20% of the Korean bond market.<sup>381</sup> The Korea Financial Investment Association (KOFIA) is a self-regulatory body based on the Financial Investment Business and Capital Markets Act (FIBCA), Financial Services Commission (FSC) Regulations under FSCMA, and FSC Enforcement Rules under FSCMA, and manages the information related to the transactions of bonds and their disclosure. KOFIA introduced the OTC Bond Quotation System (BQS) in collaboration with the Financial Supervisory Commission (FSC) to increase transparency in the OTC bond market. The purpose of the disclosure is to yield real-time bond index based on KOFIA's FreeBond, which is used as a benchmark index for bond ETFs.<sup>382</sup>

There are rules stipulating the disclosure obligations for trading participants to disclose yields.<sup>383</sup> It provides the mechanism for designation of Reporting Companies,<sup>384</sup> and the basic principles for reporting.<sup>385</sup> They also include a list of the bonds subject to reporting, which includes government bonds, monetary stabilisation bonds and the instruments usually transacted by the BoK.<sup>386</sup> All financial investment companies are also subject to trade reporting within 15 minutes for bonds.<sup>387</sup>

With regard to exchange-traded bonds, all bonds listed on the KRX, such as government bonds, municipal bonds, specific law bonds, convertible bonds (CB), bonds with warrants (BW), exchangeable bonds (EB), corporate bonds, etc., are eligible for trading.

Government bonds are traded exclusively in a special (Primary Dealer) market. Applicable bonds are Korea Treasury Bonds (KTBs), monetary stabilisation bonds, and

---

<sup>381</sup> Before the Korean government made it mandatory for primary dealers (PD) to deal in the exchange market to develop the Korea Treasury bond (KTB) market (in October 2002), the OTC market accounted for 98-99% of all bond trading. See ASEAN, *Republic of Korea Bond Market Guide*, ASEAN 3 ABMF Vol. 1, Part 2, Sec 5 KOR, 2012, p. 43.

<sup>382</sup> All bond transactions must be reported to KOFIA within 15 minutes of the transaction. KOFIA posts the daily yields of 8 types of bonds and 51 closing yields. Among them, the three-year and five-year treasury bond yields are the benchmark indicators of the Korean financial market. More information available at: [http://eng.kofia.or.kr/wpge/m\\_22/about/markeOperation.do](http://eng.kofia.or.kr/wpge/m_22/about/markeOperation.do).

<sup>383</sup> Standards (Proposal) on Yield Reporting for Disclosure of Last Quoted Yield formulated on 14 December 2012, amended on 8 October 2013.

<sup>384</sup> Section 3 of the Standard provides that: "Every six months (the first half year and the second half year), the Association designates companies to report yields on each type of bonds [bonds, certificates of deposit (hereinafter referred to as 'CD'), commercial papers (hereinafter referred to as 'CP')] by considering their performance in the areas of bond trading and bond underwriting. The top ten (10) performing companies are designated for reporting yields on bonds and CDs, whereas two (2) banks concurrently engaged in comprehensive financial investment business and the top six (6) performing companies are designated for reporting yields on CPs."

<sup>385</sup> Section 5 of the Standard provides that: "(1) In the case of bonds, the trading details of the applicable bonds on the relevant day, bid and offer prices, bond spreads, the Bank of Korea's benchmark interest rate, the bond market's trends, etc., shall be comprehensively considered when reporting is made. (2) In the case of CDs, the details of issuance and trading of CDs on the relevant day, yields on similar bonds such as bank bonds, etc., the Bank of Korea's benchmark interest rate, trends for short-term interest rates, etc., shall be comprehensively considered when reporting is made. (3) In the case of CPs, the details of issuance and trading of CPs on the relevant day, the Bank of Korea's benchmark interest rate, trends for short-term interest rates, etc., shall be comprehensively considered when reporting is made."

<sup>386</sup> Section 7 of the Standard.

<sup>387</sup> Section 7-5 of the Regulation on Business Conduct and Services of Financial Investment Companies provides that: "A financial investment company engaged in bond trading shall, when trading or brokering bonds (excluding foreign currency bonds issued in foreign countries and electronic short-term corporate bonds; hereinafter the same in this paragraph) with investors in the OTC market, report the records on the case-specific trading and brokering related on such bond trading within fifteen (15) minutes from the point of settlement of the sales agreement through the electronic media, etc. to the Association. In this case, the details on the scope of reporting, etc. shall be prescribed by the chairman of the Association" [amended on 4 April 2014].

Korea Deposit Insurance Corporation (KDIC) bonds. The specialised market of government bonds adopts a full automatic trading system based on the Internet-order environment of the Korea Exchange (KRX) Trading System (KTS) for government securities.<sup>388</sup>

Despite this regime, according to the BoK there is currently no general domestic pre- and post-trade public transparency regime with a content similar to that of MiFIR. Accordingly, there is no explicit waiver as to transactions conducted with central bank of issue (or foreign central banks for that matter). According to the BoK staff's own assessment, *financial supervisory authorities will introduce such a regulation sooner or later*, but there is no pre-specified date for that. With regard to OTC derivatives, measures have been adopted to require central clearing and reporting to trade repositories, but there are no requirements of trading in exchanges or electronic platform, or market transparency.<sup>389</sup>

#### **2.3.10.4.2 Non regulatory transparency**

The BoK releases some information, for example in auctions of monetary stabilization bonds, but releases are primarily directed to market participants, rather than the public. According to the BoK disclosure is made after the transaction takes place, if the institution is subject to public disclosure requirements. The information disclosed by the BoK is restricted to statistical information on aggregates.<sup>390</sup>

The department in charge of Reserve Management Investment Strategy declined to answer due to confidentiality issues. However, in the annual report the foreign reserve investments are classified into three tranches, according to the purpose of the holding, these resulting into liquidity tranche composed of short-term financial instruments, such as U.S. Treasury Bills and deposits (5%), an investment tranche composed of bonds denominated in major developed countries' currencies (US dollar, euro, yen, pound sterling), such as government bonds, agency bonds, corporate bonds, and asset-backed securities (80%), and an external management tranche composed of a diversified portfolio of stocks as well as bonds managed by designated external management companies (15%). Specific information on portfolio composition or investment strategy with regard to reserve management is not disclosed. Information on results of competitive US dollar loan facility auctions using US dollar proceeds of swap transactions with the Fed was disclosed in the past, but discontinued in 2009.<sup>391</sup>

#### **2.3.10.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the market transparency and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for BoK (see Section 2.1.6). However, the European Commission shall consider that the central bank has a lack of transparency in the operational framework compared to the other central banks that are included in this study. The assessment relies on the following findings:

---

<sup>388</sup> Payment adopts the fund-transfer method through Bank of Korea (BOK)-Wire while settlement of government bonds adopts transfer method between deposit accounts at the Korea Securities Depository (KSD). ASEAN, *Republic of Korea Bond Market Guide*, ASEAN 3 ABMF Vol. 1, Part 2, Sec 5 KOR, 2012, p. 48.

<sup>389</sup> Financial Stability Board *OTC Derivatives Market Reforms Eighth Progress Report on Implementation 7* November 2014, pp. 13-14 (reporting and clearing), 23-24 (trading).

<sup>390</sup> More information available at: [www.bok.or.kr/broadcast.action?menuNaviId=654](http://www.bok.or.kr/broadcast.action?menuNaviId=654). For the statistical calendar, see [http://ecos.bok.or.kr/jsp/use/releasedate\\_e/ReleaseDateList.jsp?lm=4&tab=0&nowNo=22&idx=0](http://ecos.bok.or.kr/jsp/use/releasedate_e/ReleaseDateList.jsp?lm=4&tab=0&nowNo=22&idx=0)

<sup>391</sup> More information available at: <http://www.bok.or.kr/broadcast.action?menuNaviId=1562>

- In terms of market transparency, there are no reporting requirements for non-equity instruments contained in mandatory rules. However, self-regulatory rules contain reporting obligations of reference prices for the non-equity instruments in which the BoK normally trades. Exchange-trade of non-equity instruments (subject to even greater transparency requirements) represents 20% of total trade. There are no measures in place to promote transparency in trading for OTC derivatives.
- In terms of operational transparency, BoK only publishes aggregate information of items of its balance sheet. On foreign exchange management, the BoK publishes aggregate information on the investment tranche of its foreign assets. The investment strategy or detailed portfolio composition is treated confidentially.
- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available for domestic transactions by foreign central banks;
  - BoK can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role;
  - Albeit BoK has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

### **2.3.11 The Swiss National Bank (SNB)**

#### **2.3.11.1 Mandate and policies**

Pursuant to Article 99 of the Federal Constitution, the Swiss National Bank (SNB) shall pursue monetary policy objectives in line with the general interest of the country. Article 5 of the National Bank Act provides that:

*" The National Bank shall pursue a monetary policy serving the interests of the country as a whole. It shall ensure price stability. In so doing, it shall take due account of the development of the economy.*

*Within this framework, it shall have the following tasks:*

- a. It shall provide the Swiss franc money market with liquidity.*
- b. It shall ensure the supply and distribution of cash.*
- c. It shall facilitate and secure the operation of cashless payment systems.*
- d. It shall manage the currency reserves.*
- e. It shall contribute to the stability of the financial system.*

*It shall participate in international monetary cooperation. For this purpose, it shall work jointly with the Federal Council in accordance with the relevant federal legislation. It shall provide banking services to the Confederation. In so doing, it shall act on behalf of the competent federal authorities".*

The responses to the questionnaire confirmed that the SNB's mandate involves price stability, foreign exchange policies, financial stability, economic and employment growth and investment. When executing monetary policy, the SNB acts as an independent central bank. Its primary goal is to ensure price stability, while taking due account of economic developments. In so doing, it creates an appropriate environment for economic growth.

The institution distinguishes between transactions that have a monetary, foreign exchange, financial stability or investment purpose. Transactions for monetary purposes can involve repos/reverse repos in CHF and foreign currencies, foreign exchange-spot, foreign exchange-forwards and options as well as purchases of domestic bonds. Transactions for foreign exchange purposes can involve foreign exchange-spot, foreign exchange-forwards and options. Transactions for investment purposes can involve



foreign exchange-spot, foreign exchange-forwards and options, fixed-income cash instruments, interest rate swaps and futures, repo/reverse repo transactions in foreign currencies and credit derivatives.

### **2.3.11.2 Operations, instruments and transactions**

The SNB implements its monetary policy by means of three different elements: a definition of price stability (consumer price index of less than 2% per annum), a medium-term inflation forecast and a target range for a reference interest rate. In practice, the SNB sets a target range for the three-month Swiss franc Libor with a bandwidth of one percentage point.<sup>392</sup> The SNB may implement different monetary policy instruments, as listed under Article 9 of the SNB National Bank Act which include the opening and maintenance of banks and other financial market participants, buying and selling receivables and securities, issuing and repurchasing bonds, creating derivatives, or entering into credit transactions with banks (for further detail, see the Annex in Section 5.2.7 of the present study). These transactions are described in further detail in the *Guidelines of the Swiss National Bank on monetary policy instruments*. Nevertheless, the SNB is entitled to deviate at any time and without prior notification from the terms and procedures described in those Guidelines.

According to the Guidelines of the SNB, which are further developed by the *Instruction Sheets*, the monetary policy instruments include open market operations, standing facilities and foreign exchange transactions. Open market operations include:

- Repo transactions, which enable the SNB to provide or absorb liquidity to/from the economy (maturities range between one day (overnight) and one year);
- Issues of SNB bills, which are interest-bearing debt certificates with a maximum term of 12 months issued by the SNB and denominated in Swiss francs, which enable the SNB to absorb liquidity from the market.<sup>393</sup>
- Purchases and sales in the secondary market.

Standing facilities include:

- Liquidity-shortage financing facility, which enables counterparties of the SNB to overcome unexpected short-term liquidity bottlenecks;<sup>394</sup>
- Intraday facility, which provides interest-free liquidity available to the counterparties of the SNB<sup>395</sup> (it must be repaid on the following bank working day).

Foreign exchange transactions include:

- Foreign exchange swaps;
- Subscription, purchase or sell derivatives on receivables, securities, precious metals or pairs of currencies;
- Deposit facility; and
- Purchase or sale of Swiss franc-denominated securities.

Instruction sheets, which are legally binding, supplement the SNB Guidelines' description of the monetary policy instruments.

---

<sup>392</sup> Guidelines of the Swiss National Bank, section 1, available at: [www.snb.ch/en/iabout/snb/legal/id/snb\\_legal\\_rules#t2](http://www.snb.ch/en/iabout/snb/legal/id/snb_legal_rules#t2).

<sup>393</sup> SNB bills issue conditions are available at: [www.snb.ch/en/mmr/reference/snb\\_bill\\_terms\\_20140801/source/snb\\_bill\\_terms\\_20140801.en.pdf](http://www.snb.ch/en/mmr/reference/snb_bill_terms_20140801/source/snb_bill_terms_20140801.en.pdf).

<sup>394</sup> Swiss National Bank, *Instruction sheet on the liquidity-shortage financing facility (special-rate repo transactions)*, available at:

[www.snb.ch/en/mmr/reference/repo\\_mb25/source/Merkblatt\\_3\\_Engpassfinanzierungsfazilit%C3%A4t\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb25/source/Merkblatt_3_Engpassfinanzierungsfazilit%C3%A4t_en.pdf).

<sup>395</sup> Swiss National Bank, *Instruction sheet on the intraday facility*, available at: [www.snb.ch/en/mmr/reference/repo\\_mb24/source/Merkblatt\\_2\\_Innertagsfazilit%C3%A4t\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb24/source/Merkblatt_2_Innertagsfazilit%C3%A4t_en.pdf).

**Table 22. Operations and instruments**

|                                              | <b>Types of transactions</b>               |                                        | <b>Maturity</b> | <b>Frequency</b>   | <b>Procedure</b>                        |
|----------------------------------------------|--------------------------------------------|----------------------------------------|-----------------|--------------------|-----------------------------------------|
|                                              | <b>Liquidity provision</b>                 | <b>Liquidity absorption</b>            |                 |                    |                                         |
| <b>Open market operations</b>                |                                            |                                        |                 |                    |                                         |
| <b>Repo transactions</b>                     | Repo                                       | Reverse repo                           | 1 day – 1 year  | Every business day | Auction / Bilateral procedure           |
| <b>Issues of SNB bills</b>                   | -                                          | They absorb liquidity                  | <12 months      |                    | Auction / Bilateral procedure           |
| <b>Standing facilities</b>                   |                                            |                                        |                 |                    |                                         |
| <b>Liquidity-shortage financing facility</b> | Liquidity provision                        |                                        | Overnight       |                    | Special-rate repo transaction (auction) |
| <b>Intraday facility</b>                     | Liquidity provision                        | -                                      |                 | Every business day | Auction                                 |
| <b>Foreign-exchange operations</b>           |                                            |                                        |                 |                    |                                         |
|                                              | Purchase of securities, swaps, derivatives | Sale of securities<br>Deposit facility |                 |                    |                                         |

### 2.3.11.3 Procedural framework

#### 2.3.11.3.1 Eligible counterparties

Based on *Instruction sheet on open market operations*, all domestic banks, i.e. in Switzerland and the Principality of Liechtenstein, with a sight deposit account at the SNB are in principle admitted as counterparties for SNB monetary policy operations.<sup>396</sup> Under Article 10 of the Federal Act on Currency and Payment Instruments (CPIA)<sup>397</sup> “...the National Bank shall specify the conditions under which institutions offering payment transaction services may maintain Swiss franc sight deposits”.

In addition, “[O]ther domestic participants in the financial market and banks operating abroad or domestic branches of foreign banks may be admitted as counterparties for monetary policy operations where this serves monetary policy interests, the participants or banks contribute to the liquidity of the secured Swiss franc money market, and where the requirements for opening a sight deposit account are met”.<sup>398</sup> In 2013, 150 domestic and foreign banks and 7 domestic insurance companies were admitted as counterparties.

The SNB executes transactions both on EU trading venues and with EU-domiciled financial intermediaries that internalise orders (Q4 to Q7). On the other hand, SNB indicated that most of the transactions are executed with trading venues with pre-trade and post-trade transparency (50-100%). However, this responds to a specific arrangement by the SNB.

The SNB’s open market operations currently take place on the SIX Repo electronic trading platform, run by SIX Repo Ltd, part of the SIX Group, the privately owned Swiss financial market infrastructure provider. Until April 2014 the SNB’s market operations took place on the Eurex Repo trading platform, run by Eurex Ltd, a joint venture between SIX Group and Deutsche Börse until 2011. Since January 2012, Eurex is completely owned by Deutsche Börse. In the following paragraph we provide a summary of operations with their execution mechanisms.

<sup>396</sup> Swiss National Bank, *Instruction sheet on open market operations*, available at: [www.snb.ch/en/mmr/reference/repo\\_mb23/source/Merkblatt\\_1\\_Offenmarktopoperationen\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb23/source/Merkblatt_1_Offenmarktopoperationen_en.pdf).

<sup>397</sup> More information available at: [www.admin.ch/ch/e/rs/9/941.10.en.pdf](http://www.admin.ch/ch/e/rs/9/941.10.en.pdf).

<sup>398</sup> Swiss National Bank, *Instruction sheet on open market operations*, available at: [www.snb.ch/en/mmr/reference/repo\\_mb23/source/Merkblatt\\_1\\_Offenmarktopoperationen\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb23/source/Merkblatt_1_Offenmarktopoperationen_en.pdf).

### 2.3.11.3.2 Implementation of monetary policy instruments

The implementation of Open Market Operations (OMOs) varies between repo transactions, and issuance of SNB Bills. Repo transactions can be conducted either in the form of auctions or bilaterally with individual counterparties. Repo auctions can be conducted by volume tender or by variable rate tender<sup>399</sup> and the allotment can be done under the Dutch or American system. Repo transactions are executed via an electronic trading platform, SIX Repo Ltd.<sup>400</sup> For securities clearing, settlement is conducted via the SECOM system operated by SIX SIS Ltd (SIS), and for Swiss franc clearing it is executed by means of SIC system run by SIX Interbank Clearing Ltd (SIC).<sup>401</sup> The issuance of SNB bills can be conducted either in the form of auctions or bilaterally with individual counterparties. SNB bills auctions are generally conducted in the form of variable rate tender with allotment according to the American system. Nevertheless, they can be executed in the form of volume tender (fixed rate tender) and the allotment may be done under the Dutch system.<sup>402</sup> They are, in general, executed via an electronic trading platform, SIX Repo Ltd.<sup>403</sup>

With regard to the SNB Standing facilities its procedures focus on the liquidity-shortage financing facility. This type of transaction is executed in the form of special-rate repo transactions. In order to use this facility, counterparties need to have a Custody Cover Account SNB with SIX SIS Ltd (SIS)<sup>404</sup> and the transaction is concluded via the SIX Repo Ltd platform. For securities clearing, settlement is conducted via SECOM system operated by SIX SIS Ltd (SIS), and for Swiss franc clearing it is executed by means of the SIC system run by SIX Interbank Clearing Ltd (SIC) Intraday facility. This type of transaction is conducted in the form of auctions, concretely, in the form of volume tenders. They are executed through SIX Repo Ltd.

### 2.3.11.4 Transparency of the transactions

#### 2.3.11.4.1 Regulatory transparency

Based on the responses to the questionnaire (Q8), the current legal framework provides for: (i) an obligation of the stock exchanges to make public the information that is necessary to maintain a transparent market, such as prices and volume of traded securities (Section 5, para 3 of the Stock Exchanges and Securities Trading Act (SESTA)); (ii) record keeping and reporting obligations of securities dealers in order to ensure a transparent market (Section 15 SESTA); and (iii) disclosure obligations for market participants regarding shareholdings or instruments granting similar (voting) rights on securities (see Section 20 SESTA).

However, the Draft Act on Financial Market Infrastructure (FMIA), which is currently under discussion in Parliament (its enactment and entry into force is expected for 2015), provides for additional disclosure obligations, such as reporting of derivative transactions to a trade repository (see Section 103 of the Draft Act). Pre- and post-trading disclosure of securities transactions are covered by Sections 29 and 39 of the Draft Act. Details are

---

<sup>399</sup> *Guidelines of the Swiss National Bank*, section 2.1 and *SWISS NATIONAL BANK, Instruction sheet on open market operations*, available at:

[www.snb.ch/en/mmr/reference/repo\\_mb23/source/Merkblatt\\_1\\_Offenmarktoperationen\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb23/source/Merkblatt_1_Offenmarktoperationen_en.pdf).

<sup>400</sup> More information available at: [www.snb.ch/en/ifor/public/qas/id/qas\\_repos#t8](http://www.snb.ch/en/ifor/public/qas/id/qas_repos#t8).

<sup>401</sup> *Swiss National Bank, Instruction sheet on open market operations*, available at: [www.snb.ch/en/mmr/reference/repo\\_mb23/source/Merkblatt\\_1\\_Offenmarktoperationen\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb23/source/Merkblatt_1_Offenmarktoperationen_en.pdf).

<sup>402</sup> *Swiss National Bank, SNB Bills – Issue Conditions*, available at:

[www.snb.ch/en/mmr/reference/snb\\_bill\\_terms\\_20140801/source/snb\\_bill\\_terms\\_20140801\\_en.pdf](http://www.snb.ch/en/mmr/reference/snb_bill_terms_20140801/source/snb_bill_terms_20140801_en.pdf).

<sup>403</sup> See [www.snb.ch/en/ifor/public/qas/id/qas\\_repos#t8](http://www.snb.ch/en/ifor/public/qas/id/qas_repos#t8).

<sup>404</sup> *Swiss National Bank, Instruction sheet on the liquidity-shortage financing facility (special-rate repo transactions)*, available at:

[www.snb.ch/en/mmr/reference/repo\\_mb25/source/Merkblatt\\_3\\_Engpassfinanzierungsfazilit%C3%A4t\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb25/source/Merkblatt_3_Engpassfinanzierungsfazilit%C3%A4t_en.pdf).

governed by the Ordinance of the Swiss Financial Market Supervisory Authority on Stock Exchanges and Securities Trading (SESTO-FINMA). The SNB indicated that the law does not currently contain any explicit exemption but that it is not subject to any reporting or disclosure obligations.

From a regulatory perspective, according to Section 29, paragraph 3, of the Draft FMIA, the Federal Council may exempt, while taking into account recognised international standards and legal developments abroad, securities transactions that are executed by the SNB with regard to pre- and post-trade transparency. In addition, Section 39, paragraph 3, of the Draft FMIA states that the SNB is exempt from pre- and post-trade disclosure obligations for central bank policy transactions. Furthermore, the SNB will also be exempt from the reporting obligations to a trade repository for derivative transactions (Section 93, paragraph 1, letter b, Draft FMIA). Based on Section 77 of the Draft FMIA, the Federal Council may decide to restrict access to the trade repository in order to protect transactional data of central banks. The referred exemptions from transparency requirements may, under certain circumstances, be extended to central banks and institutions from third countries. However, this rule is currently under discussion and there is no specific procedure to inform the counterparty that it is exempted from transparency requirements.

From a practical perspective, the SNB indicated that the SIX Repo platform is (as the Eurex platform before it was) mainly used for the secured interbank market, and it has pre- and post-trade transparency. Quotations are completely transparent (with names of institutions); trades are made publicly available but anonymised (without names). In terms of the specific transparency of the SNB's open market operations (executed through SIX Repo/Eurex Repo) the bids by the counterparties are not disclosed (pre-trade), nor are the details of each transaction once concluded (however, see below for the details disclosed). In foreign exchange transactions, on the other hand, the SNB indicated that it acts as a normal counterparty, and subjects itself to the level of transparency of the venue (though there was no specification about which venues or counterparties were used).

### **2.3.11.4.2 Non-regulatory transparency**

The transparency and disclosure by the SNB of its transactions varies depending on the instrument. For open market operations executed through repo transactions the SNB announces repo auction conditions through Reuters (SNBAUCT1, SNBAUCT2) and Bloomberg (SNBO <go>, Menu item 9) Announcements). The information that is disclosed in these announcements includes the contract, term, procedures, etc.<sup>405</sup>

In addition, once the auction has been executed, each participant can check its allotment on the trading platform. The SNB confirmed that, in its auctions for open market operations, the repo rate, contract type and collateral basket are revealed to all counterparties (domestic and foreign) before the auction; but, then, only the overall allocated amount has been published in the past, i.e. not the amount of specific transactions.

In the issuance of SNB bills the issue conditions and the results of the auctions are publicly available.<sup>406</sup> SNB bills Issue Conditions determine that *"the issuer is not obliged to publish the result of the issue"*.<sup>407</sup>

---

<sup>405</sup> Swiss National Bank, *Instruction sheet on open market operations*, available at: [www.snb.ch/en/mmr/reference/repo\\_mb23/source/Merkblatt\\_1\\_Offenmarktoperationen\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb23/source/Merkblatt_1_Offenmarktoperationen_en.pdf).

<sup>406</sup> More information available at: [www.snb.ch/en/ifor/finmkt/operat/id/finmkt\\_bills](http://www.snb.ch/en/ifor/finmkt/operat/id/finmkt_bills)

<sup>407</sup> Swiss National Bank, *SNB Bills – Issue Conditions*, available at: [www.snb.ch/en/mmr/reference/snb\\_bill\\_terms\\_20140801/source/snb\\_bill\\_terms\\_20140801.en.pdf](http://www.snb.ch/en/mmr/reference/snb_bill_terms_20140801/source/snb_bill_terms_20140801.en.pdf).

For standing facilities, in the case of the liquidity-shortage financing facility the SNB announces the details of the special-rate repo transaction via Reuters (SNBRATES1) and Bloomberg (; as well as via the SNB's website.<sup>408</sup>

In its answers to the questionnaire, the SNB states that "*no items are made public by the SNB pre-trading*". On the contrary, once the transaction has been completed, the trading venue discloses the transactional data and also includes data of the SNB transactions. Nonetheless, the SNB itself is not subject to ex post disclosure obligations.

SNB publishes detailed information on foreign exchange reserves management. The information disclosed includes the principles SNB uses to conduct its foreign reserves management.<sup>409</sup> Investment Policy Guidelines define the scope for SNB's investments and for the investment and risk management process. SNB also discloses information on the composition of the portfolio, holdings of foreign assets, and investment performance. Returns on currency reserves and Swiss franc bonds are publicly disclosed and included in the Annual Report.

### **2.3.11.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the high market transparency, the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for SNB (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency there are reporting requirements for non-equity instruments, and the SIX Repo platform, through which the SNB executes a great volume of its transactions, is also able for repo transactions in the interbank market, and subject to pre- and post-transparency requirements. Measures to promote OTC derivatives trading in platforms and dissemination of information are in process.
- In terms of operational transparency, the SNB releases to the public the details of its OMOs and Standing Facilities. Its repo transactions, executed through the SIX Repo Platform, though names of counterparties and their bids are not disclosed, are subject to some degree of transparency. The SNB also publishes detailed information on foreign reserves management, including the principles used in the conduct of reserve management, portfolio composition and size, and investment performance of reserves.
- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available for domestic transactions by foreign central banks, but it is under discussion in the review of the law on financial markets infrastructure;
  - SNB can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role;
  - Albeit SNB has no procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

---

<sup>408</sup> Swiss National Bank, *Instruction sheet on the liquidity-shortage financing facility (special-rate repo transactions)*, available at: [www.snb.ch/en/mmr/reference/repo\\_mb25/source/Merkblatt\\_3\\_Engpassfinanzierungsfazilit%C3%A4t\\_en.pdf](http://www.snb.ch/en/mmr/reference/repo_mb25/source/Merkblatt_3_Engpassfinanzierungsfazilit%C3%A4t_en.pdf)

<sup>409</sup> More information available at: [www.snb.ch/en/i/about/assets](http://www.snb.ch/en/i/about/assets).

## **2.3.12 The Central Bank of the Republic of Turkey (CBRT)**

### **2.3.12.1 Mandate and policies**

Article 1 of the Law on the Central Bank of the Republic of Turkey (Law no. 1211, 1970, amended 2003) establishes the Central Bank of the Republic of Turkey (hereafter CBRT). The mandate is described in Article 4 of the CBRT Law as follows: *"The primary objective of the Bank shall be to maintain price stability. The Bank shall determine on its own discretion the monetary policy that it shall implement and the monetary policy instruments that it is going to use in order to maintain price stability. The Bank shall, provided that it shall not conflict with the objective of maintaining price stability, support the growth and employment policies of the Government."*

In Article 56 of CBRT Law, the prohibition of monetary financing is laid out: *"The Bank may not, grant advance and extend credit to the Treasury and to public establishments and institutions, and may not purchase debt instruments issued by the Treasury and public establishments and institutions in the primary market. The Bank may not extend credit and grant advance except for the operations authorized by this Law, and the credit to be extended and the advance to be granted may not be unsecured or without cover, and in any manner whatsoever the Bank may not, be a guarantor or provide security except for the transactions directly related to itself."*

The CBRT confirmed this in its responses to the questionnaire, indicating that monetary policy, understood as price stability, foreign exchange policy, financial stability and growth and employment policies (supporting the government, to the extent it does not conflict with the purpose of maintaining price stability) form part of the institution's mandate. According to the CBRT, investment or other policies do not form part of that mandate.

On the question of whether the institution distinguishes or not between policies (Q2), the CBRT clarified the fundamental duties and powers of the CBRT regarding transactions that have a monetary purpose (monetary transactions), foreign exchange purpose (foreign exchange transactions), financial stability purpose (financial stability transactions), and investment purpose (investment transactions) are enumerated separately in the CBRT Law. CBRT distinguishes at the level of policy, but not necessarily at transactional level, of implementing those policies (Q3). The CBRT indicated that transactions in non-equity securities are conducted only for the management of foreign exchange reserves

### **2.3.12.2 Operations, instruments and transactions**

Article 4 of the CBRT Law describes the CBRT's fundamental duties, which include carrying on open market operations, protecting the value of the Turkish lira, managing the exchange rate, determining reserve and liquidity requirements, conducting rediscount operations, overseeing payment systems and financial markets. In addition to this, Article 52 indicates the possibility to conduct open market operations in the form of outright and repo transactions, securities lending and borrowing, and lending and borrowing on deposits, as well as the issuance of liquidity bills. In line with Article 56 (prohibited activities), paragraph 4 reiterates the prohibition of monetary financing. According to Article 45 (Acceptance of bills and documents for rediscount and advance), the CBRT may also accept commercial bills for rediscount. With regard to its role as lender of last resort, Article 40 explains that the bank may extend collateralised intraday credit to the system, or extend credit to the banks subject to uncertainty and lack of confidence. Article 53 of the CBRT Law also regulates the CBRT powers with regard to transactions in gold and foreign exchange, which include the possibility of executing purchase and sales, as well as swaps and other derivative transactions.

**Table 23. Operations and instruments**

|                                                                                                                                                                                                                          | Types of transactions |                      | Maturity                                                                                                                                                                 | Frequency                        | Procedure |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------|
|                                                                                                                                                                                                                          | Liquidity provision   | Liquidity absorption |                                                                                                                                                                          |                                  |           |
| Open market operations                                                                                                                                                                                                   |                       |                      |                                                                                                                                                                          |                                  |           |
| Repo transactions                                                                                                                                                                                                        | Repo                  | Reverse repo         | 1 week                                                                                                                                                                   |                                  | Auction   |
| Outright transactions                                                                                                                                                                                                    | Purchases             | Sales                |                                                                                                                                                                          | Variable                         | Auction   |
| Bills                                                                                                                                                                                                                    |                       | Liquidity Bills      | Less than 91 days                                                                                                                                                        |                                  | Auction   |
| Standing Facilities                                                                                                                                                                                                      |                       |                      |                                                                                                                                                                          |                                  |           |
| Liquidity Facilities (Late Liquidity Window Facility, Intraday Liquidity Facility, Liquidity Support Credit Facility, Repo- Reverse Repo Facility within the İstanbul Stock Exchange, Primary Dealer Liquidity Facility) | Repos, Loans          | Deposits             | Late Liquidity Facility: overnight<br>Intraday Facility: intraday<br>Liquidity support: 1 month<br>Stock Exchange: pre-specified maturities<br>Primary Dealer: overnight | At the request of counterparties |           |
| Rediscount and advance operations                                                                                                                                                                                        |                       |                      |                                                                                                                                                                          |                                  |           |
| Rediscount and advance                                                                                                                                                                                                   | Purchase              |                      | Variable                                                                                                                                                                 | At request of counterparties     |           |
| Foreign exchange interventions                                                                                                                                                                                           |                       |                      |                                                                                                                                                                          |                                  |           |
|                                                                                                                                                                                                                          | Purchases/<br>Sales   |                      |                                                                                                                                                                          | Variable                         |           |

It is important to mention also Article 55, which acts as a sort of catch-all provision: *"The Bank may perform banking operations and services to be determined by the Board."*

For further details related to this section, please see Annex 5.2.8.

### 2.3.12.3 Procedural framework

#### 2.3.12.3.1 Eligible counterparties

Information on eligible counterparties for Open Market Operations is provided in Article 52 (*open market operations*): *"The Bank shall be authorized to designate establishments and institutions related to the operations falling within the scope of this article, from among banks and intermediary institutions specified in Law No. 2499 on Capital Markets, by taking the nature of the operation into consideration."*

The main counterparties are normally the firms that were selected already as Primary Dealers (PDs) for Treasury securities. PDs must sign a contract, where, in exchange for certain privileges (no collateral requirements before auctions, right to submit bids at auctions, the possibility to participate in the Primary Dealership Consultation Board with two representatives, or the ability to borrow and lend securities at the Securities Lending Market established at the Central Bank), they assume certain responsibilities, such as acquiring a certain percentage of securities per month, or quote bid and offer prices for certain benchmark securities at the İstanbul Stock Exchange Bonds and Bills Market.<sup>410</sup> Some information on the primary dealership system is publicly available.<sup>411</sup> The list of

<sup>410</sup> The contract template is available at: [www.hazine.gov.tr/File/?path=ROOT%2fDocuments%2fGeneral+Content%2fPrimary\\_Dealership\\_Contract\\_2014.pdf](http://www.hazine.gov.tr/File/?path=ROOT%2fDocuments%2fGeneral+Content%2fPrimary_Dealership_Contract_2014.pdf).

<sup>411</sup> More information available at: [www.treasury.gov.tr/default.aspx?nsw=paJHHE+p0MgEfachX/sFgQ==SgKWD+pQItw=&nm=826](http://www.treasury.gov.tr/default.aspx?nsw=paJHHE+p0MgEfachX/sFgQ==SgKWD+pQItw=&nm=826).

PDs is available from the website of the Istanbul Stock Exchange at the Borsa Istanbul (BIST).<sup>412</sup>

### 2.3.12.3.2 Implementation of monetary policy instruments

A majority of bond trading in Turkey is conducted OTC, but Borsa Istanbul has an unusually large market share (for government securities, it is 38%)<sup>413</sup> in its Bills & Bonds Market Segment (B&BMS). Government bonds, treasury bills, revenue-sharing certificates, bonds issued by public corporations and entities, private sector bonds, asset-backed securities and commercial papers and other accepted securities may be traded on this market.<sup>414</sup> Most important for our purposes, unlike other cases, the CBRT is a member of the B&BMS,<sup>415</sup> and executes transactions through this venue.

In its responses to the questionnaire, the CBRT indicated that most of the transactions are executed either with counterparties that can internalise orders (estimated at 50-100%) whereas bilateral execution with parties that do not internalise (private transaction), trading venues with pre- and post-trade transparency, trading venues without such transparency, and hybrid voice-brokered venues, were given each less than 10%.

The provisions in the Law regulate the banks' duty to hold reserves, and the CBRT's ability to hold deposits, and to determine interest rates (or even penalty rates) for those deposits:<sup>416</sup>

“

---

<sup>412</sup> More information available at: <http://borsaistanbul.com/en/products-and-markets/markets/debt-securities-market/outright-purchases-and-sales-market/market-making>. While Article 65 Capital Markets Law No. 6362 (2012) of Turkey, permits the establishment of other exchanges, Borsa Istanbul remains the dominant player. See Article 138, for the establishment of Borsa Istanbul from the former Istanbul Stock Exchange. According to this provision, 49% of its shares are in the hands of the treasury. The main regulation is the Istanbul Stock Exchange Stock Market Regulation, Official Journal No. 22559 Official Journal Date: 19.02.1996. See [http://borsaistanbul.com/data/bylaws/ISE\\_Stock\\_Market\\_Regulation.pdf](http://borsaistanbul.com/data/bylaws/ISE_Stock_Market_Regulation.pdf).

<sup>413</sup> It reached a peak of 65% in 2009. The gradual decline in market share since 2009 is mostly due to the importance of foreigners in the secondary market, who hold 26% of the Turkish public debt, but are not members of BIST, and prefer trading OTC. See *Electronic Trading Platforms in Government Securities Markets* DRAFT Background Note, November 2013, pp. 45-46.

<sup>414</sup> Article 5 of Regulation on Bonds and Bills Market.

<sup>415</sup> Article 3 of the Regulation on Bonds and Bills Market of Borsa Istanbul states: “*The Central Bank of the Republic of Turkey, members of the Exchange, and Banks that have obtained authorization from the Capital Markets Board can execute trades on the Bond and Bill Market.*” More information available at: <http://borsaistanbul.com/en/members/members>.

<sup>416</sup> Article 40, para II of the CBRT Law states:

*“Banks and other financial institutions to be deemed appropriate by the Bank including those issuing electronic payment instruments shall, by taking into consideration their liabilities, maintain reserve requirements in cash, at the accounts to be opened with the Bank. All types of procedures and principles pertaining to implementation including the scope of liabilities subject to reserve requirements, the ratio of reserve requirements, their establishment period and interest rate to be applied to those requirements when necessary, the transactions to be executed in extraordinary withdrawals from deposit or participation funds and in mergers, acquisitions and divisions shall be determined by the Bank.*

*The qualification and the ratio of the liquidity requirement to be maintained by the above-mentioned institutions against their undertakings shall be determined by the Bank when necessary.*

*When it is required according to the regulation to be issued by the Bank that, the reserve requirements are kept blocked in the accounts with the Bank, reserve requirements kept in the blocked accounts shall not be utilized to finance any purpose or issue, shall not be assigned or attached.*

*Where reserve requirements and liquidity requirements are not established within the specified period or are established deficiently, the Bank, in accordance with the procedures and principles that it shall determine, shall be authorized, for the deficient portion, to either request interest-free deposit to be kept in the accounts with the Bank or impose penalty interest. The accrued penalty interest claims shall be collected in accordance with Law No. 6183 on the Procedure of Collection of Public Claims. The penalty interest so collected shall be registered as revenue to the Savings Deposits Insurance Fund.”*



- a) *Within the framework of the powers delegated to the Bank by legislation for the execution of its fundamental powers and duties, banks shall notify the Bank of the interest rates to be charged in credit operations and deposit-taking in accordance with the principles to be determined.*
- b) *The Bank shall determine the terms and types of deposits in banks and the terms of participation funds in special finance houses.”*

With regard to liquidity facilities the CBRT distinguishes between the procedures for different facilities.

The Turkish Lira Deposit & Lending Facilities are the standing facilities provided by the CBRT for banks that are willing to borrow or lend Turkish lira against collaterals at interest rates announced by the CBRT for certain maturities, and the transactions are carried out in the Interbank Money Market established within the CBRT. The Late Liquidity Window Facility, on the other hand, is a lender-of-last-resort (LoLR) facility provided by the CBRT for banks to meet their temporary liquidity needs. The Intraday Liquidity Facility (IDLF) is a borrowing facility for banks with urgent liquidity needs, to remedy bottlenecks in payment systems during the day. It is extended during the day subject to the banks' limits and collateral, and to repayment at the end of day. The Liquidity Support Credit Facility helps to facilitate the extension of credit by the CBRT: (i) as advance payments, with one-month maturities, for a maximum period of one year; (ii) at the lending rate set for the intraday transactions carried out at the Interbank Money Market (interest rates are higher than open market rates); (iii) against collaterals accepted at the Interbank Money Market; (iv) when limited to twice the amount of the equity capital of the applying bank.<sup>417</sup> The Repo-Reverse Repo Facility within the Borsa Istanbul is available for banks and intermediaries, and executed via the Borsa Istanbul for certain maturities at previously announced interest rates. Finally, the Primary Dealer Liquidity Facility is an overnight borrowing facility in Turkish liras provided for primary dealer banks, and executed through repo transactions with predetermined interest rates.

Regarding foreign exchange management and operations, guidelines and decisions made by the Board based on the authority granted by the CBRT Law constitute the basis (together with the law itself) of the foreign exchange and gold reserve management practices. There is a three-tier hierarchical decision-making structure. The Board, as the top decision-making authority of the CBRT, determines the general investment criteria for reserve management by approving the Guidelines for Foreign Exchange Reserve Management and authorises the Executive Committee and the Foreign Exchange Risk and Investment Committee (FXRIC) to take decisions regarding implementation. The second-tier is formed by the decisions made by the Executive Committee and FXRIC in accordance with the Guidelines for Foreign Exchange Reserve Management approved by the Board. In this tier the benchmark portfolio, which reflects the CBRT's general risk tolerance and investment strategy, is determined and approved. According to the strategic asset allocation preferences of the bank, the benchmark portfolio is determined by the FXRIC at each year-end to be implemented in the following year and becomes effective with the approval of the Executive Committee. The last tier of the institutional decision-making process is the implementation of reserve management practices by the Reserve Management Division within the limits specified by the Guidelines and the benchmark portfolio.

Reserve management activities are carried out within an organisational structure formed in accordance with a principle of separation of duties. The Reserve Management Division

---

<sup>417</sup> Press release on the Liquidity Support Facility, 29 January 2009. More information available at: [www.tcmb.gov.tr/wps/wcm/connect/53697b2e-a468-4efd-bba7-681caceddc61/ANO2009.pdf?MOD=AJPERES](http://www.tcmb.gov.tr/wps/wcm/connect/53697b2e-a468-4efd-bba7-681caceddc61/ANO2009.pdf?MOD=AJPERES).

performs reserve management activities, whereas the Risk Management Division carries out risk management related to the reserve management operations.<sup>418</sup>

## **2.3.12.4 Transparency of the transactions**

### **2.3.12.4.1 Regulatory transparency**

The CBRT has the exclusive power and responsibility in designing and pursuing its monetary policy and monetary policy instruments at its own discretion. As a natural consequence of this discretion, the bank is also required to establish the highest possible level of accountability and transparency. According to Article 42 of the CBRT Law under the heading “Special audit and public disclosure”, the Governor reports to the Council of Ministers and briefs the Parliament twice a year on the bank’s activities. Moreover, the bank discloses its monetary policy implementation to the public by means of periodic reports and announcements on issues that might adversely affect market conditions and endanger financial stability. In addition, if by any chance inflation targets are missed or should there be a probability of failing to hit the targets, the bank explains the reasons thereof to the government and to the public. In addition, the CBRT may have the balance sheet and the income statements audited by independent external auditing institutions.

The initial answers to the questionnaire, thus, were more focused on its “public” role, and its transparency and accountability *vis-à-vis* Parliament rather than its and its counterparties’ transparency *vis-à-vis* investors and the market. As a consequence, it was indicated that the questions on exemptions, for the CBRT or foreign central banks, as well as the ability to unilaterally waive requirements, were not applicable.

The standards applicable to bond trading are largely a result of BIST standards for the B&BMS (*supra*).<sup>419</sup> The prices and rates registered as a result of the trades in the B&BMS will be displayed on the screens immediately and announced in the BIST bulletin in the succeeding business day.<sup>420</sup> Exchange members are required to register OTC trades,<sup>421</sup> and the same applies to market members who are not exchange members.<sup>422</sup> BIST provides extensive information on debt securities trading,<sup>423</sup> including off-exchange fixed-income securities transactions,<sup>424</sup> by brokerage houses and banks. The CBRT is a member of the B&BMS, whose rules contain no explicit exemption. Thus the information on traded values, which includes a breakdown by members, includes the information on

---

<sup>418</sup> Controlling risks that the CBRT is exposed to during reserve management operations including market risk, liquidity risk and credit risk starts with the strategic asset allocation process; in other words, when defining the benchmark portfolio. The Risk Management Division has to prepare the proposals for the counterparty lists for the approval of upper decision-making bodies and also to monitor and report the credit risk exposure of the reserve management activities.

<sup>419</sup> According to Article 67 of the Capital Markets Law No. 6362 (2012) of Turkey, many matters *shall be determined with by-laws to be prepared by the related exchange and approved by the Board* (the Capital Markets Board, which is the main supervisory institution) after hearing different authorities. For present purposes the most relevant rules are the Regulation on Bonds and Bills Market of 1996. See [http://borsaistanbul.com/data/bylaws/ISE\\_Bonds\\_and\\_Bills\\_Market\\_Regulation.pdf](http://borsaistanbul.com/data/bylaws/ISE_Bonds_and_Bills_Market_Regulation.pdf).

<sup>420</sup> The bulletins will include the lowest, highest and weighted average prices, the return on simple and compound interest rates, the trading volumes and the number of contracts registered during the session. Article 20 of the Regulation on Bonds and Bills Market.

<sup>421</sup> Article 26 of the Regulation on Bonds and Bills Market states: “*Exchange Members are required to register with the Exchange the transactions of the securities listed in Article 5 of this Regulation executed outside the Bonds and Bills Market of the Exchange, under the terms and conditions determined by the Executive Council of the Exchange.*”

<sup>422</sup> Article 26 of the Regulation on Bonds and Bills Market.

<sup>423</sup> More information available at: <http://borsaistanbul.com/en/data/data/debt-securities-market-data>.

<sup>424</sup> More information available at: <http://borsaistanbul.com/en/data/data/debt-securities-market-data/off-exchange-fixed-income-securities-transactions>.

the volume of transactions executed by the CBRT on the exchange.<sup>425</sup> It is a rare occurrence among central banks.

For off-exchange transactions, the breakdown of information does not include the transactions executed by the CBRT,<sup>426</sup> but, in principle, the rules do not expressly exempt CBRT transactions either. The rules on OTC transactions require members to register them under the terms and conditions determined by the Executive Council of the Exchange. It is unclear whether the information on the volume of transactions includes information on OTC transactions executed with the CBRT.

Upon inquiry the CBRT confirmed the information about transactions executed through BIST. The CBRT has to comply with all the rules of BIST in terms of pre- and post-trade transparency and there is no special arrangement in place. All the details of these transactions are publicly disclosed by BIST. The CBRT did not specify how much of its transaction volume is executed via BIST, or whether the information disclosed through BIST includes the information on transactions executed outside this venue. However, it indicated that the CBRT is active in the Interbank Repo-Reverse Repo Market and the Repo-Reverse Repo Market. It also stated that the CBRT enters into transactions in non-equity instruments executed outside of BIST for technical reasons, due to open market operations portfolio considerations. The CBRT needs to hold a sufficient amount of government domestic debt securities (GDDS) and Turkish lira-denominated lease certificates, issued by the Asset Leasing Company of the Turkish Treasury (ALCTT), to be able to control interest rates at the BIST Repo-Reverse Repo Market and the Interbank Repo-Reverse Repo Market and to preserve instrument variety for liquidity management and operational flexibility. In nominal terms, a total of TL 3.1 billion of the open market operations portfolio will be due in 2015. Thus the maturing securities will be replaced by GDDS or lease certificates, through purchases effected in 2015, in the months deemed appropriate to be announced.

#### **2.3.12.4.2 Non-regulatory transparency**

The CBRT voluntarily discloses aggregate information pertaining to Open Market Operations, including Bank Policy Rate (1-Week Repo), Repo Auctions, Repo Transactions Through Quotation, Reverse Repo Auctions, Reverse Repo Transactions Through Quotation, Outright purchases through auction, outright purchases through quotation, Outright Sales Through Auction, or Liquidity Bill Issues.<sup>427</sup> It also voluntarily publishes information on basic liquidity and foreign exchange policies.<sup>428</sup>

Furthermore, the CBRT has created the Electronic Data Dissemination System, which is a dynamic and interactive data dissemination system providing access via internet to the statistical data produced and/or compiled by the Central Bank of the Republic of Turkey,<sup>429</sup> including Foreign Exchange and Banknotes Market Foreign Exchange Deposit Market Intermediated Transactions (as of transaction date), Foreign Exchange and Banknotes Transactions, Interbank Money Market Transactions Summary, Open Market Repo and Reverse Repo Transactions, Over/Night interest rates in BIST Interbank Repo

---

<sup>425</sup> More information available at: <http://borsaistanbul.com/en/data/data/debt-securities-market-data/traded-value-data>. Its code is MB.

<sup>426</sup> More information available at: <http://borsaistanbul.com/en/data/data/debt-securities-market-data/off-exchange-fixed-income-securities-transactions>.

<sup>428</sup> More information available at: [www.tcmb.gov.tr/wps/wcm/connect/TCMB+EN/TCMB+EN/Main+Menu/MONETARY+POLICY/Basic+Liquidity+and+FX+Policies/Decisions](http://www.tcmb.gov.tr/wps/wcm/connect/TCMB+EN/TCMB+EN/Main+Menu/MONETARY+POLICY/Basic+Liquidity+and+FX+Policies/Decisions).

<sup>429</sup> More information available at: [http://evds.tcmb.gov.tr/index\\_en.html](http://evds.tcmb.gov.tr/index_en.html).

Market Source, Repo and Reverse Repo Operations, or Total Volume of Foreign Exchange Transaction of Banks Against Turkish Lira (CBRT).<sup>430</sup>

In its responses to the questionnaire (Q16-Q23), the CBRT specified that it uses the data dissemination platform (via the Markets Data Delivery System, which is an internal system of the CBRT) for disclosure purposes. Before the transaction, the CBRT makes publicly available all the information related to the rules and the terms of transactions, the timeframe between the publication of the details of the transaction and the transaction results being a few hours. For post-trade information, all the transaction details are made public once the transaction has been completed, without mentioning the name of the counterparty, within a few hours, although this may vary if technical problems arise.

The volume of foreign exchange interventions is made public 15 business days after the transaction is completed. The CBRT indicated there are not any circumstances in which it may waive ex ante or ex post disclosure requirements. Each year the reserve management activities are disclosed in the CBRT Annual Report, which includes information on the benchmark portfolio and the composition of the portfolio. Also, the CBRT discloses information to the IMF through several reports such as SDDS, SEFER and COFER.

### **2.3.12.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the high market transparency, the transparency of its operational framework and the important volume of trading activities with EU counterparties or EU-listed financial instruments, which could potentially fall under the scope of MiFIR, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for CBRT (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency Turkey has reporting requirements for non-equity instruments (except OTC derivatives) contained in mandatory rules and self-regulatory rules, for both instruments traded in Borsa Istanbul, and traded OTC. The CBRT is a member of Borsa Istanbul, and its trading volumes on non-equity instruments through this platform are disclosed by the exchange, together with those of the rest of the members.
- In terms of operational transparency the CBRT releases aggregate details of Open Market Operations, such as repo and reverse repo through auctions and quotations, outright purchases through auctions and quotations, as well as on Liquidity Bill. Borsa Istanbul releases CBRT trading volumes executed through its platform. The CBRT discloses information on reserve management activity in its Annual Report (information on investment benchmark, generic information of the composition of the portfolio) and in some monthly reports. In addition, information on foreign exchange interventions is made public 15 days after the transaction is completed. The CBRT executes its transactions through Borsa Istanbul, but also bilaterally with eligible counterparties.
- In light of the institution's high trading volumes with EU counterparties or in EU-listed financial instruments, the exemption may yield economic necessity due to the potential market impact of transparency requirements on transactions with a high average size.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available for domestic transactions by foreign central banks;

---

<sup>430</sup> More information about Market Statistics available at: [http://evds.tcmb.gov.tr/index\\_en.html](http://evds.tcmb.gov.tr/index_en.html).

- CBRT can distinguish between transactions for policy purposes and transactions for 'pure' investment purposes, which have a marginal role.
- Albeit CBRT has not a procedure in place to notify its counterparties of the existence of an exemption, it is ready to implement it once the MiFIR regime is in place.

## **2.3.13 The United States Federal Reserve System (US Fed)**

### **2.3.13.1 Mandate and policies**

According to Section 12A of the Federal Reserve Act, 12 U.S. Code § 225a, the Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long-run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices and moderate long-term interest rates. This is referred to as the Federal Reserve's "dual mandate".

The Federal Reserve System is structured among 12 reserve banks, each entrusted with a specific "district" (Section 2, Federal Reserve Act). The governance of the institution, however, is centralised through the seven-member Board of Governors of the Federal Reserve System, and the Federal Open Market Committee (FOMC), entrusted with the most important task of the Federal Reserve System: the setting of monetary policy objectives (Section 12A, Federal Reserve Act). This is abroad mandate, as defined in statutory provisions, to which new statutes have added regulatory and supervisory competences (including the consolidated supervision of financial holding companies). In addition to this, Section 1101 of the Dodd-Frank Wall Street Reform and Consumer Protection Act inserted a new paragraph (3) in Section 13 of the Federal Reserve Act, for emergency lending facilities (including rediscount facilities). See Annex in Section 5.2.9 of the present study for further details.

The Federal Reserve also undertakes foreign exchange management operations. The Secretary of the Treasury is the chief international monetary policy official of the United States. In practice, the decisions are made in close and continuous consultation and cooperation between the Treasury and Federal Reserve. If the central banks choose to intervene in the foreign exchange market, the Federal Reserve Bank of New York conducts the intervention.<sup>431</sup>

The response indicated that the purposes and functions of the Board of Governors of the Federal Reserve fall into four areas:

- Monetary policy, influencing the credit conditions in the economy in pursuit of maximum employment, stable prices and moderate long-term interest rates;
- Supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers;
- Maintaining the stability of the financial system and containing systemic risk that may arise in financial markets;<sup>432</sup> and
- Providing financial services to depository institutions, the US government, and foreign official institutions, including playing a major role in operating the nation's payments system.

The FRBNY indicated (response to Q2) that there is no formal distinction by purpose of open market operations undertaken by the Federal Reserve Bank of New York. Some

<sup>431</sup> More information available at: [www.newyorkfed.org/aboutthefed/fedpoint/fed44.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed44.html).

<sup>432</sup> The Federal Reserve also has specific responsibilities under various other federal laws, such as a requirement, under Section 165 of the Dodd-Frank Act to establish enhanced prudential standards for certain bank holding companies and non-bank financial companies to prevent or mitigate risks to the financial stability of the United States.

operations are undertaken to generate an investment return on reserves that are held for potential policy foreign exchange operations.<sup>433</sup> However, investment transactions for purposes other than foreign-exchange management are marginal.

### **2.3.13.2 Operations, instruments and transactions**

The U.S. Federal Reserve system has a number of tools to conduct its monetary policy. It is also important to note that the 2008-09 financial crisis constituted a test to the resilience of the financial system, which led to the creation of special facilities to improve the liquidity of the system, to grant access to liquidity to third-country central banks, and to support economic policy. While these facilities have expired, it is useful to include a brief description of them in order to draw the comparison between the characteristics of Federal Reserve policy in normal times and in times of crisis.

Monetary policy tools/instruments include open market operations (OMOs), liquidity facilities and liquidity arrangements with foreign central banks:

Open market operations include:

- Temporary open market operations (repo and reverse repo)
- Permanent open market operations (large-scale asset purchases)

Liquidity facilities include:

- Term Deposit Facility
- Securities Lending Program
- Discount Window Lending

Technically, the first two tools can help to manage reserves, and thus to implement monetary policy, but they also serve other purposes (primarily liquidity-management).

The Federal Reserve also has a role in the implementation of foreign exchange policy. When a decision is made to support the dollars' price against another currency, the foreign exchange trading desk of the New York Fed<sup>434</sup> buys dollars and sells the foreign currency; conversely, to reduce the value of the dollar, it sells dollars and buys the foreign currency.<sup>435</sup> In addition to this, the Federal Reserve has concluded different liquidity arrangements with foreign central banks, which consist in foreign-exchange swap lines. The Special lending facilities for purposes of the stability of the US financial system include Term Asset-backed Securities Loan Facility, but it has been discontinued<sup>436</sup>

---

<sup>433</sup> See also Federal Open Market Committee (FOMC) Authorization for Foreign Currency Operations (as amended effective 27 January 2015). More information available at: [www.federalreserve.gov/monetarypolicy/files/FOMC\\_ForeignAuthorization.pdf](http://www.federalreserve.gov/monetarypolicy/files/FOMC_ForeignAuthorization.pdf).

<sup>434</sup> More information available at: [www.federalreserve.gov/monetarypolicy/files/FOMC\\_ForeignAuthorization.pdf](http://www.federalreserve.gov/monetarypolicy/files/FOMC_ForeignAuthorization.pdf).

<sup>435</sup> More information available at: [www.newyorkfed.org/aboutthefed/fedpoint/fed44.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed44.html).

<sup>436</sup> The information included here refers to the facilities for which information is still included in the reports of the Federal Reserve's balance sheet. The response to the crisis included other programmes, such as the Money Market Investor Funding Facility (expired 30 October 2009), the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, and the Commercial Paper Funding Facility, both closed on 1 February 2009. The Term Asset-Backed Securities Loan Facility itself, initially authorised to offer new TALF loans through 31 December 2009, was subsequently authorised an extension until 31 March 2010 for loans against newly issued ABS and legacy CMBS, and until 30 June 2010 for loans against newly issued CMBS. The Federal Reserve closed the TALF for new loan extensions against newly issued CMBS on 30 June 2010, and for new loans against all other types of collateral on 31 March 2010. All remaining TALF loans mature no later than 30 March 2015. See: [www.federalreserve.gov/monetarypolicy/bst\\_lendingother.htm](http://www.federalreserve.gov/monetarypolicy/bst_lendingother.htm). Another specific programme whose assets are still reported in the Federal Reserve reports is Maiden Lane, which consisted of an arrangement reached in March 2008 between FRBNY and JPMorgan Chase in relation to the latter's acquisition of The Bear Stearns Companies. The FRBNY was authorised, under Section 13(3) of the Federal Reserve Act, to extend credit to Maiden Lane LLC, a Delaware LLC, to partially fund the purchase of a portfolio of mortgage-

**Table 24. Operations and instruments**

|                                                                 | Types of transactions<br>Liquidity<br>provision | Liquidity<br>absorption | Maturity                                       | Frequency                     | Procedure                              |
|-----------------------------------------------------------------|-------------------------------------------------|-------------------------|------------------------------------------------|-------------------------------|----------------------------------------|
| <b>Open market operations</b>                                   |                                                 |                         |                                                |                               |                                        |
| <b>Temporary short-term Open Market Operations (OMOs)</b>       | Reverse repo                                    | Repo                    | Variable (normal: 1-4 days)                    | Daily <sup>437</sup>          | Tender auction                         |
| <b>Temporary long-term OMOs</b>                                 | Reverse repo                                    | Repo                    | 14 days                                        | Every Thursday <sup>438</sup> | Tender auction                         |
| <b>Permanent Open Market Operations (Structural Operations)</b> | Outright purchases                              | Outright sales          |                                                | Non-standardised              | Tender auction                         |
| <b>Liquidity Facilities</b>                                     |                                                 |                         |                                                |                               |                                        |
| <b>Discount Window Lending</b>                                  | Reverse transaction                             |                         | Overnight                                      |                               |                                        |
| <b>Securities Lending program</b>                               |                                                 |                         |                                                |                               |                                        |
| <b>Term Deposit Facility</b>                                    | -                                               | Deposits                | Variable <sup>439</sup>                        | Variable <sup>440</sup>       | Standard tenders <sup>441</sup>        |
| <b>Special lending facilities</b>                               |                                                 |                         |                                                |                               |                                        |
| <b>Term Asset-backed Securities Loan Facility (TALF)</b>        |                                                 |                         | Discontinued                                   |                               |                                        |
| <b>Foreign operations</b>                                       |                                                 |                         |                                                |                               |                                        |
| <b>Regular foreign exchange transactions</b>                    | Sales                                           | Purchases               | Variable according to market needs             |                               |                                        |
| <b>Liquidity arrangements with foreign central banks</b>        | FX swaps                                        | FX swaps                | Variable (overnight – 3 months) <sup>442</sup> | Non-regular                   | Bilateral (with foreign central banks) |

### 2.3.13.3 Procedural framework

The powers of the Federal Reserve to undertake different types of operations are listed in different Sections of the Federal Reserve Act. The authority to conduct Open Market

related securities, residential and commercial mortgage loans, and associated hedges from Bear Stearns. The FRBNY lent approximately \$28.2 billion to Maiden Lane LLC in the second quarter of 2008 (JPMC made a subordinated loan to Maiden Lane LLC to absorb first losses). On 14 June 2012, the FRBNY announced that its loan to Maiden Lane LLC had been repaid in full, with interest. In accordance with the Maiden Lane LLC agreements, the FRBNY would receive all future cash flows generated from the remaining Maiden Lane LLC assets. The legal existence of Maiden Lane II LLC and Maiden Lane III LLC was formally terminated. The small amount of cash held in reserve by each LLC was paid to the New York Fed and AIG, after payment of final trailing expenses, in accordance with their respective interests on 20 November 2014. See: [www.newyorkfed.org/markets/maidenlane.html](http://www.newyorkfed.org/markets/maidenlane.html).

<sup>437</sup> Most of the information refers to reverse repos. Repos have been much less frequent in recent years, with four transactions in 2013, and two in 2012, 2008 being the last year when they were conducted regularly. See: [www.newyorkfed.org/markets/omo/dmm/historical/tomo/temp.cfm](http://www.newyorkfed.org/markets/omo/dmm/historical/tomo/temp.cfm).

<sup>438</sup> During the crisis years these operations have been more rare. This was the status quo in pre-crisis 2007. See FRBNY "Open Market Operations" at: [www.newyorkfed.org/aboutthefed/fedpoint/fed32.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed32.html).

<sup>439</sup> In 2014 the maturity was weekly. More information available at: [www.federalreserve.gov/monetarypolicy/tdf.htm](http://www.federalreserve.gov/monetarypolicy/tdf.htm). In 2010, 14 days was a usual term, and in 2011-13 the normal term was 28 days. More information available at: [www.federalreserve.gov/monetarypolicy/tdf\\_2013.htm](http://www.federalreserve.gov/monetarypolicy/tdf_2013.htm).

<sup>440</sup> In 2014 the frequency was weekly. More information available at: [www.federalreserve.gov/monetarypolicy/tdf.htm](http://www.federalreserve.gov/monetarypolicy/tdf.htm). In 2010-13 the frequency of the announcements was bi-monthly. More information available at: [www.federalreserve.gov/monetarypolicy/tdf.htm](http://www.federalreserve.gov/monetarypolicy/tdf.htm).

<sup>441</sup> Term deposits may be awarded through different formats, including a competitive single-price auction format with a non-competitive bidding option, a fixed-rate format at the interest rate specified in advance, or a floating-rate format. See "Term Deposit Facility Overview" p. 1, available at: [https://www.frb-services.org/files/centralbank/pdf/tdf\\_overview.pdf](https://www.frb-services.org/files/centralbank/pdf/tdf_overview.pdf).

<sup>442</sup> More information available at: [www.newyorkfed.org/markets/fxswap/fxswap.cfm](http://www.newyorkfed.org/markets/fxswap/fxswap.cfm).

Operations (OMOs) is granted by Section 14 of the Act, which restricts the type of securities that can be used. Section 14 also provides the legal grounds for entering into liquidity swap lines with other countries' central banks.

The Discount Liquidity Window, and the lending to depository institutions in general, is governed by Section 10B of the Act. Most special lending programmes, which were created in the wake of the crisis, are based on Section 13 (3) (*Discounts for individuals, partnerships, and corporations*). The Dodd-Frank Wall Street Reform and Consumer Protection Act modified Section 13 (3) and prohibits (with certain exceptions) lending through the discount window to institutions that are registered as swap dealers or major swap participants.

Whereas the main policy decisions are made by the Board of Governors, and, in what concerns monetary policy, by the FOMC, the implementation of those decisions is delegated, and the agent of the FOMC is, customarily, the Trading Desk of the Federal Reserve Bank of New York (FRBNY),<sup>443</sup> which is considered the manager of the System of Open Market Accounts (SOMA).

After each policy meeting, the FOMC gives a Directive to the SOMA Manager (the FRBNY Trading Desk) outlining the approach to monetary policy, and the target fed funds to trade over the inter-meeting period. While the target policy rate is the uncollateralised lending rate between banks (fed funds rate), the Fed operates in the collateralised lending market with Primary Dealers (PDs).

### **2.3.13.3.1 Eligible counterparties**

The traditional counterparties of the FRBNY for OMOs are the PDs that trade in US government bonds and other securities. The PDs are:<sup>444</sup>

- Bank of Nova Scotia, New York Agency;
- BMO Capital Markets Corp.;
- BNP Paribas Securities Corp.;
- Barclays Capital Inc.;
- Cantor Fitzgerald & Co.;
- Citigroup Global Markets Inc.;
- Credit Suisse Securities (USA) LLC;
- Daiwa Capital Markets America Inc.;
- Deutsche Bank Securities Inc.;
- Goldman, Sachs & Co.;
- HSBC Securities (USA) Inc.;
- Jefferies LLC;
- J.P. Morgan Securities LLC;
- Merrill Lynch, Pierce, Fenner & Smith Incorporated;
- Mizuho Securities USA Inc.;
- Morgan Stanley & Co. LLC;
- Nomura Securities International, Inc.;
- RBC Capital Markets, LLC;
- RBS Securities Inc.;
- SG Americas Securities, LLC;
- TD Securities (USA) LLC;
- UBS Securities LLC.

---

<sup>443</sup> The FOMC delegates responsibility for implementing US monetary policy to the manager of the System Open Market Account (SOMA) at the Federal Reserve Bank of New York through the authorisation. This authorisation is contained in the minutes of the first FOMC meeting of each year. See Federal Reserve Bank of New York, "Open Market Operations", available at: [www.newyorkfed.org/aboutthefed/fedpoint/fed32.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed32.html).

<sup>444</sup> More information available at: [www.newyorkfed.org/markets/pridealers\\_current.html](http://www.newyorkfed.org/markets/pridealers_current.html).



The PDs are expected to comply with the requirements of the 1988 Primary Dealers Act, as well as with the operating policies elaborated by the Federal Reserve.<sup>445</sup> In terms of regulatory requirements, the Federal Reserve policies include the following:

*"A primary dealer must be either a broker-dealer registered with and supervised by the Securities and Exchange Commission (SEC) or a U.S.-chartered bank (commercial bank, thrift, national bank or state bank) that is subject to official supervision by bank supervisors. The primary dealer must meet certain minimum capital requirements:*

- A registered broker-dealer must have at least \$150 million in regulatory net capital as computed in accordance with the SEC's net capital rule. The broker-dealer must otherwise be in compliance with all capital and other regulatory requirements imposed by the SEC or its self regulatory organization (SRO).*
- A bank must meet the minimum Tier I and Tier II capital standards under the applicable Basel Accord and must have at least \$150 million of Tier I capital as defined in the applicable Basel Accord"*

With regard to *foreign-owned* banks or broker dealers, the Primary Dealers Act stipulates that they cannot be designated as PDs if the Board of Governors and the New York Fed conclude that the country where the foreign *parent* is domiciled does not provide the same competitive opportunities to US companies as it does to domestic firms in the underwriting and distribution of government debt. Affirmative determinations have been made with respect to France, Germany, Japan, the Netherlands, Switzerland and the United Kingdom, while firms controlled by parents domiciled in Canada and Israel were grandfathered under the Act.<sup>446</sup>

Aside from regulatory/legal requirements, the New York Fed tries to ensure the PDs' status as counterparties that regularly engage in market-making. Therefore, to be eligible as PDs, or keep their status as such, firms are required to provide sizeable and sustained performance at least in the repo and cash markets (and preferably in other markets where the fed transacts). Specifically, in Federal Reserve repo operations and Treasury auctions the PD will be expected to bid in every operation/auction, in an amount commensurate with its size, and at a price that is reasonable compared with the market's range. They are also expected to provide the New York Fed's trading desk with market commentary and market information and analysis helpful in the formulation and implementation of monetary policy.

PDs are also subject to the "responsible counterparty and market participant". This includes complying with Treasury's Best Practices for Treasury, Agency Debt and Agency Mortgage-Backed Securities Markets.<sup>447</sup> It also includes the requirement, in cases where the New York Fed counsels PDs as to the appropriate use of any traditional or non-traditional PD financing facilities, to behave consistently with the NY Fed's guidance.<sup>448</sup>

Since 2009, the FRBNY has taken steps to expand the types of counterparties to include entities *other* than primary dealers *only* for reverse repos, in order to enhance the Federal Reserve's capacity to drain reserves. The additional counterparties are not eligible to participate in transactions other than reverse repos.<sup>449</sup> Also, in February 2013, the FRBNY introduced a pilot programme to expand the execution of outright purchases/sales beyond PDs, a programme that ran for a year (it concluded on 31 July

---

<sup>445</sup> New York Fed, "Administration of Relationships with Primary Dealers", 11 January 2010, available at: [www.newyorkfed.org/markets/pridealers\\_policies.html](http://www.newyorkfed.org/markets/pridealers_policies.html).

<sup>446</sup> Ibid.

<sup>447</sup> U.S. Treasury, "Best Practices for Treasury, Agency Debt and Agency Mortgage-Backed Securities Markets", 14 September 2010, available at: [www.ny.frb.org/tmpg/bestpractice\\_09142010.pdf](http://www.ny.frb.org/tmpg/bestpractice_09142010.pdf).

<sup>448</sup> New York Fed, "Administration of Relationships with Primary Dealers", 11 January 2010.

<sup>449</sup> Successive moves to broaden the sets of eligibility criteria, and thus expand the range of counterparts, were adopted in 2010-11 (three waves, which included smaller domestic money market funds and GSEs (Freddie Mac and Fannie Mae)), and 2011-12 (aimed at banks, savings associations, GSEs and money market funds). More information available at: [www.newyorkfed.org/markets/expanded\\_counterparts.html](http://www.newyorkfed.org/markets/expanded_counterparts.html).

2014) in order for the FRBNY to evaluate the cost/benefit of a wider range of participants. A similar pilot programme was announced on 2014 for FRBNY agency MBS operations.<sup>450</sup>

In its response to the questionnaire, the FRBNY indicated that:

- It does not deal in exchange-traded instruments;
- It did not execute transactions on EU trading venues; and
- It was not aware of whether its counterparties internalised orders, and thus did not provide estimates as to the relative importance of each method of execution.

There are separate eligibility and performance criteria for the counterparties to foreign exchange transactions.<sup>451</sup>

### **2.3.13.3.2 Implementation of monetary policy instruments**

OMOs are the primary mechanism through which the Federal Reserve System implements monetary policy. They can be divided in "permanent" OMOs (outright purchases or sales) and "temporary" OMOs (repos and reverse repos).

For permanent OMOs the FRBNY Trading Desk manages the SOMA portfolio as a result of the permanent OMOs. Permanent OMOs were traditionally used to accommodate the longer-term factors driving the expansion of the Federal Reserve's balance sheet, which permanently drain reserves from the banking system (such as Federal Reserve notes and currency in circulation). During the crisis, however, the expansion of SOMA securities holdings has been driven by large-scale asset purchase programmes (LSAPs). From March 2009 through March 2010, the Federal Reserve purchased direct obligations of FannieMae, Freddie Mac, and MBS guaranteed by them and Ginnie Mae; as well as longer-term Treasury securities. In the following years successive announcements of more purchases of Treasuries and agency debt and MBS were made. In 2011 and 2012, permanent open market operations (purchases) were also used to extend the average maturity of securities held in the SOMA, which primarily affected Treasury securities. In 2013 the pace of purchases was slowed in light of recovery, and, on 29 October 2014, the FOMC announced that it had decided to conclude its asset purchase programme.

Temporary OMOs include short-term and long-term repos and reverse repos. The Fed's total portfolio includes a long-term repo book and a short-term repo book. The long-term repo book is used to offset seasonal movements in factors, and long-term repos were normally conducted every Thursday, with a maturity of 14 days (the actual operational details will have to be ascertained once the normal operational pace is recovered after the LSAP is finished). The short-term repo book consists of repos with shorter-than-14-day maturities, and is dominated by overnight repos.

In addition to OMOs the New York Federal Reserve distinguishes, for purposes of implementation, different liquidity mechanisms. One such mechanism is the overnight securities lending facility, which is operated as a vehicle to address market pressures for specific Treasury securities. Since 9 July 2009, this facility has also lent housing-related GSE debt securities that are particularly in demand.

Another mechanism is the Discount Window Lending, which helps to relieve liquidity strains for individual depository institutions and for the banking system as a whole by providing a source of funding in times of need. Since 2003 depository institutions had access to (i) primary credit (available to depository institutions in generally sound

---

<sup>450</sup> Board of Governors of the Federal Reserve, *Quarterly Report on Federal Reserve Balance Sheet Developments*, November 2014, p. 8.

<sup>451</sup> More information available at: [www.newyorkfed.org/markets/fxop\\_policies.html](http://www.newyorkfed.org/markets/fxop_policies.html).

financial condition with few administrative requirements, at an interest rate that is 50 basis points above the FOMC's target rate for federal funds); (ii) secondary credit (available to depository institutions that do not qualify for primary credit, subject to review by the lending Reserve Bank, at an interest rate 50 basis points above the rate on primary credit); and (iii) seasonal credit (short-term funds to smaller depository institutions that experience regular seasonal swings in loans and deposits).

In December 2007, the Fed entered into agreements to establish temporary currency arrangements (central bank liquidity swap lines) with the ECB and the SNB in order to provide liquidity in US dollars. Subsequently, the FOMC authorised swap lines with the RBA, the BCB, the BoC, the BoJ, Danmarks Nationalbank, the Bank of England, the BoK, Banxico, the Reserve Bank of New Zealand, Norges Bank, the MAS, and Sveriges Riksbank. Two types of temporary swap lines were established: US dollar liquidity swap lines and foreign currency liquidity swap lines. These temporary arrangements expired on 1 February 2010. In May 2010, temporary US dollar liquidity swap lines were re-established with the BoC, the BoE, the BoJ, the ECB, and the SBN in order to address the re-emergence of strains in global US dollar short-term funding markets. After successive extensions and modifications in January 2014, the Fed and FCBs converted these temporary swap lines to standing arrangements that will remain in place until further notice and will continue to serve as a prudent liquidity backstop. The standing arrangements constitute a network of bilateral swap lines among the six central banks that allow provision of liquidity in each jurisdiction in any of the five currencies foreign to that jurisdiction.

Finally, foreign currencies (typically euros and Japanese yen) are deployed from Federal Reserve holdings and the Exchange Stabilization Fund of the Treasury.<sup>452</sup> Interventions may be coordinated with other central banks (especially the central bank of the country whose currency is being used). The FRBNY often deals directly with many large interbank dealers simultaneously to buy and sell currencies in the spot exchange rate market (the Fed historically has not engaged in forward or other derivative transactions). The Treasury Secretary typically confirms US intervention while the Fed is conducting the operation or shortly thereafter. US intervention in the foreign exchange market has become more rare.<sup>453</sup>

### **2.3.13.4 Transparency of the transactions**

#### **2.3.13.4.1 Regulatory transparency**

The analysis is limited to instruments traded OTC, as the FRBNY indicated that it does not engage in transactions in exchange-traded instruments.<sup>454</sup> From responses to the questionnaire (Q14), it was clear that the FRBNY does not have discretion to waive any of the disclosure requirements applicable to it. For analysing transparency and disclosure standards it is necessary to distinguish between standards for transactions in US government securities, standards for OTC derivatives transactions, and standards for Federal Reserve reporting.

For transactions in US government securities it is necessary to differentiate between real-time transaction reporting and position reporting. Transaction reporting is not subject to regular securities markets rules (1933 Securities Act, 1934 Securities and Exchange Act), and does not fall under the authority of the SEC or other supervisors, but

---

<sup>452</sup> Congress in the Gold Reserve Act of 1934 appropriated to the ESF \$2 billion out of the increment resulting from a reduction in the weight of the gold dollar. Section 7 of the Bretton Woods Agreements Act of 1945 made the ESF's operations permanent. More information available at: [www.treasury.gov/resource-center/international/ESF/Pages/basis.aspx](http://www.treasury.gov/resource-center/international/ESF/Pages/basis.aspx).

<sup>453</sup> More information available at: [www.newyorkfed.org/aboutthefed/fedpoint/fed44.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed44.html).

<sup>454</sup> The following analysis follows from the extensive responses to the questionnaire and explanations, and research on the specific rules.

under the Financial Industry Regulatory Authority (FINRA),<sup>455</sup> which introduced the Trade Reporting and Compliance Engine (TRACE) in 2002 for corporate bonds. TRACE reporting and dissemination requirements were expanded to transactions in US agency debentures and US dollar-denominated asset-backed and mortgage-backed securities. The list of TRACE-eligible securities leaves out securities denominated in currencies other than the US dollar, foreign sovereign debt securities, U.S. Treasury securities and money market instruments.<sup>456</sup>

Each FINRA member that is a party<sup>457</sup> to a reportable TRACE transaction<sup>458</sup> must transmit a report to TRACE within 15 minutes of the transaction execution,<sup>459</sup> including the transaction's relevant information.<sup>460</sup>

FINRA rules entail the disseminating information on eligible transactions immediately upon receipt of the transaction report (excluding private placements and some primary market transactions).<sup>461</sup> There is no exemption for transactions between FINRA members and Federal Reserve Banks. However, U.S. Treasury securities are not subject to FINRA trade reporting requirements (see above). In addition to the above all persons transacting in U.S. Treasury securities are subject to regulatory large position reporting

---

<sup>455</sup> FINRA is an independent, non-for profit organisation (<http://www.finra.org/AboutFINRA/>). As a self-regulatory body, it is not part of the US government, but provides financial regulation for FINRA member firms. The U.S. Securities and Exchange Act of 1934 requires securities brokers/dealers operating in the US to register with at least one US self-regulatory organisation. See 15 USC § 78o(b) (1). Although a majority of broker/dealers are registered with FINRA, there are other self-regulatory organisations: the International Securities Exchange, LLC, NYSE Area, Inc., BATS Exchange, Inc., NASDAQ OMX PHLX, Inc., BOX Options Exchange LLC. FINRA's rules are subject to review by the Securities and Exchange Commission (SEC).

<sup>456</sup> FINRA Rule 6710 (a) (Definitions). More information available at: <http://finra.complinet.com/>.

<sup>457</sup> FINRA Rule 6710 (c) states: "Party to a Transaction" means an introducing broker-dealer, if any, an executing broker-dealer, or a customer. "Customer" includes a broker-dealer that is not a FINRA member".

<sup>458</sup> FINRA Rule 6710 (c) provides that:

"Reportable TRACE Transaction" means any transaction in a TRACE-Eligible Security except: (1) a transaction that is not reported as specified in Rule 6730(e); and (2) a sale from an issuer to an underwriter(s) or initial purchaser(s) as part of an offering, except a sale of an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) from a Securitizer as defined in paragraph (s) to any purchaser".

FINRA Rule 6730 (Transaction reporting), letter (e) (Reporting Requirements for Certain Transactions and Transfers of Securities) provides that: "The following shall not be reported: (1) Transfers of TRACE-Eligible Securities for the sole purpose of creating or redeeming an instrument that evidences ownership of or otherwise tracks the underlying securities transferred (e.g., an exchange-traded fund). (2) Transactions in TRACE-Eligible Securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly. (3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-Eligible Security (e.g., to allow the seller to make a gift). (4) Provided that a data sharing agreement between FINRA and NYSE related to transactions covered by this Rule remains in effect, for a pilot program expiring on October 23, 2015, transactions in TRACE-Eligible Securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400, 1401 and 86 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE. (5) Transactions resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a credit default swap, other type of swap, or a similar instrument. (6) Transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA."

<sup>459</sup> FINRA Rule 6730 (Transaction reporting) (a)(2) and (3).

<sup>460</sup> FINRA Rule 6730 (c) (Transaction Information to be Reported) provides that: "Each TRACE trade report shall contain the following information: (1) CUSIP number or if a CUSIP number is not available at the Time of Execution, a similar numeric identifier (e.g., a mortgage pool number) or a FINRA symbol; (2) The size (volume) of the transaction as required by paragraph (d)(2) below; (3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by paragraph (d)(1) below; (4) A symbol indicating whether the transaction is a buy or a sell; (5) Date of Trade Execution ('as/of' trades only); (6) Contra-party's identifier; (7) Capacity — Principal or Agent (with riskless principal reported as principal); (8) Time of Execution; (9) Reporting side executing broker as 'give-up' (if/any); (10) Contra side Introducing Broker in case of 'give-up' trade; (11) The commission (total dollar amount); (12) Date of settlement; and (13) Such trade modifiers as required by either the TRACE rules or the TRACE users guide."

<sup>461</sup> FINRA Rule 6750.

requirements.<sup>462</sup> Furthermore, for both agency debt and U.S. Treasury securities, US residents (including financial and non-financial firms) are subject to certain limited position and non-real-time transaction reporting requirements related to cross-border investment flows.<sup>463</sup> Primary dealer activity in U.S. Treasury securities, repos and agency MBS are also subject to reporting requirements under FR 2004 reports.<sup>464</sup>

Because the FRBNY is not a member of FINRA, it does not have any obligation to report into the FINRA TRACE system (responses to Q9-Q10). FRBNY's counterparties that are FINRA members (all PDs) must report all required transactions into the FINRA TRACE system. There is no exemption for transactions between FINRA members and Federal Reserve Banks, and, in general, transactions with the Fed are not exempt from the reporting that an institution is otherwise required to make. The position of foreign central banks is similar to that of Federal Reserve Banks. Since foreign central banks are not broker dealers required to be members of FINRA, they are not required to report into TRACE.<sup>465</sup> On the other hand, to the extent that central banks are transacting with US broker dealers that are members of FINRA, there is no exemption from TRACE reporting for transactions between FINRA members when dealing with central banks. The FRBNY is subject to certain TIC reporting requirements, contained in the instructions to TIC Form B for Banks and Other Financial Firms. Effective 10 March 2015, the U.S. Treasury has amended its large position reporting<sup>466</sup> to eliminate prior exemptions for central banks, foreign governments and Federal Reserve Banks, including the FRBNY.<sup>467</sup>

With regard to *OTC derivatives (swaps)* Title VII of the Dodd-Frank Act introduced comprehensive regulation of OTC derivatives markets and market participants, which require reporting of "swaps" to swap data repositories and public recording of swaps (and give regulatory authority over derivatives and market participants to the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. SEC). Transactions with any Federal Reserve Bank, the US federal government and any of its agencies are, however, excluded from the definition of "swap", and thus from regulatory reporting requirements. The Dodd-Frank Act does not categorically exclude transactions with non-US central banks, sovereigns or international financial institutions. Both SEC and CFTC have provided certain relief and exclusions for these entities in implementing regulations and guidance. There are currently no regulatory exceptions or specific relief, however, for reporting of swaps between US swaps dealers and foreign central banks.

---

<sup>462</sup> 15 USC §78o-5(f); 17C.F.R. Part 420 (large position reporting).

<sup>463</sup> U.S. Department of the Treasury, "Frequently Asked Questions Regarding the TIC System and TIC Data" ([www.treasury.gov/resource-center/data-chart-center/tic/pages/ticfaq1.aspx](http://www.treasury.gov/resource-center/data-chart-center/tic/pages/ticfaq1.aspx)).

<sup>464</sup> These reports collect information on market activity from primary dealers in US government securities. This family of reports consists of the Weekly Report of Dealer Positions (FR 2004A), the Weekly Report of Cumulative Dealer Transactions (FR 2004B), the Weekly Report of Dealer Financing and Fails (FR 2004C), the Weekly Report of Specific Issues (FR 2004SI), the Daily Report of Specific Issues (FR 2004SD), and the Daily Report of Dealer Activity in Treasury Financing (FR 2004WI). The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on outright, financing, and fails positions in current or on-the-run issues. Under certain circumstances this information is also collected on a daily basis on the FR 2004SD for on-the-run and off-the-run securities. The FR 2004WI collects daily data on positions in to-be-issued Treasury coupon securities, mainly the trading on a when-issued delivery basis. More information available at: [www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDZq2f74T6b1cw==](http://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDZq2f74T6b1cw==).

<sup>465</sup> TIC reports, however, which impose requirements on "US residents", define the term broadly to include "any individual, corporation, or other organization located in the United States, including branches, subsidiaries, and affiliates of foreign entities located in the United States". This, according to the response to question 10, may in some cases require reporting by central banks or their affiliated entities.

<sup>466</sup> 17 C.F.R. Part 420.

<sup>467</sup> More information available at: Government Securities Act Regulations, Large Position Reporting Rules Federal Register, Vol. 79, No. 237, 10 December 2014. See [www.treasurydirect.gov/instit/statreg/gsareg/FinalRule.pdf](http://www.treasurydirect.gov/instit/statreg/gsareg/FinalRule.pdf). The U.S. Treasury has stated in the explanation of the Final Rule that it "believes that the voluntary submission of Reports by foreign official organizations and US Federal reserve Banks is consistent with the purposes of the GSA [Government Securities Act] and will help Treasury to better understand supply and demand dynamics in the Treasury securities market".

Finally, with regard to Federal Reserve Reporting, Section 1103 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added a new subsection (s) to Section 11: Powers of Board of Governors of the Federal Reserve System of the Federal Reserve Act, which establishes the new framework for the release of specific information (broken down by transaction) by the Federal Reserve (no exceptions or waivers based on the status of the party). See Annex 5.2.9 for the text of the provisions.

Transaction data on open market, securities lending and foreign currency transactions are provided in accordance with Section 1103 of the Dodd-Frank Act. For the initial reporting period, the data reflect transactions conducted after the date of enactment of the Dodd-Frank Act: 21 July through 30 September 2010. Information for subsequent periods is published quarterly, approximately two years after the transaction was conducted.

Information on Discount Window Lending is published quarterly, with a two-year lag, and includes a very detailed level of information, most notably the details about the borrower, and the transaction.<sup>468</sup>

## **2.3.13.4.2 Non-regulatory transparency**

For open market operations, the Federal Reserve has been regularly publishing information on operation announcements and results, statements and operating policies, and portfolio holdings data on an aggregate basis. This also applies to securities lending. OMOs (both permanent and temporary) are announced on the FRBNY website to participants through an electronic auction system called FedTrade, where the parties are invited to submit bids or offers.

The conditions of the auction are communicated in advance (except the size in repo auctions, which is communicated after the operation is closed). The aggregate results are published on the FRBNY website. The details are published separately for Permanent OMOs in U.S. Treasury Securities<sup>469</sup>; Permanent OMOs in Agency Mortgage-backed Securities<sup>470</sup>; and Temporary Open Market Operations executed via Repos and Reverse Repos<sup>471</sup>. The same standard of disclosure applies to the securities lending programme.<sup>472</sup>

---

<sup>468</sup> More information available at: [www.federalreserve.gov/newsevents/reform\\_discount\\_window.htm](http://www.federalreserve.gov/newsevents/reform_discount_window.htm).

<sup>469</sup> The items disclosed for permanent OMOs in US Treasury securities are: *Trade Date, Trade Amount, CUSIP, Total Amount Transferred, Settlement Date, Issuer, Price, Counterparty, Transaction Category, Security Description, and Accrued Interest*. Details on purchases and sales of Treasury securities, including current and historical operational results, and statements and operating policies for conducting Treasury security operations, are available on FRBNY's website at: [www.newyorkfed.org/markets/OMO\\_transaction\\_data.html#tabs-1](http://www.newyorkfed.org/markets/OMO_transaction_data.html#tabs-1); [www.newyorkfed.org/markets/pomo/operations/index.html](http://www.newyorkfed.org/markets/pomo/operations/index.html); [www.newyorkfed.org/markets/op\\_policies.html](http://www.newyorkfed.org/markets/op_policies.html). Additional information on the specific policy directives to execute purchases and sales of Treasury securities is available in the FOMC's meeting statements and minutes ([www.federalreserve.gov/monetarypolicy/fomccalendars.htm](http://www.federalreserve.gov/monetarypolicy/fomccalendars.htm)).

<sup>470</sup> The items disclosed in the case of permanent OMOs in Agency MBS are: *Trade Date, Operation Type, Coupon, Price, Notes, Settlement Date, Trade Amount, Term, Total Amount Transferred, Transaction Category, Agency, CUSIP, Counterparty*. Details on agency MBS operations, including tentative purchase amounts and historical operational results, frequently asked questions, and statements and operating policies for conducting agency MBS operations, are available on FRBNY's website at: [www.newyorkfed.org/markets/ambs/](http://www.newyorkfed.org/markets/ambs/) and [www.newyorkfed.org/markets/op\\_policies.html](http://www.newyorkfed.org/markets/op_policies.html).

<sup>471</sup> The items disclosed in the case of repo and reverse repos are: *Trade Date, Operation Amount, Trade Amount, Security Type, Settlement Date, Transaction Category, Repo Rate, Amount Of Securities, Repurchase Date, Term, Counterparty*. Details on repo operations and reverse repo operations and statements and operating policies for conducting repo and reverse repo operations, are available on the FRBNY's website. Additional information on the specific policy directives to execute temporary OMOs is available in the FOMC's meeting statements and minutes.

<sup>472</sup> The items disclosed in the case of securities lending operations are: *Details include Trade Date, Actual Return Date, Market Value Of Security Lent, CUSIP, Counterparty, Settlement Date, Term, Issuer, Lending Fees, Collateral, Original Maturity Date, Per Amount Lent, Security Description, Penalty Fees*. Details on the

In the Term Deposit Facility the Federal Reserve announces offerings of term deposits in advance of the operation date through the Board of Governors' website. Once the transaction is concluded public press releases will provide aggregate summary information for all Term Deposit Facility operations. They will be available on the Board of Governors' website,<sup>473</sup> as well as historical results.<sup>474</sup> Participants will be able to view the results in their application. They will have award information on the specific tender if the auction system is used. In fixed- and floating-rate operations all tenders that are complete and compliant with the fixed-rate operation parameters will be accepted in full.

This was confirmed by the FRBNY in questionnaire (Q19). FRBNY voluntarily discloses certain aggregate information on domestic open market policy operations on a real-time basis<sup>475</sup> and its weekly balance sheet includes the aggregated results of certain operations activity. Foreign currency operations are also subject to disclosure.<sup>476</sup> There is a separate disclosure of Foreign Exchange Transactions;<sup>477</sup> Foreign Currency Reserve Investments;<sup>478</sup> and Euro Repurchase Agreements.<sup>479</sup> The FRBNY also voluntarily discloses weekly information on foreign central bank swap transaction activity (not otherwise subject to Dodd-Frank disclosure requirements).<sup>480</sup> The FRBNY provided a table with even more detailed information on the transparency of the transactions, which is available in Annex in Section 5.2.9 of this study.

### **2.3.13.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

In light of the high transparency of the market and its operational framework, the exemption under Article 1 paras. 6 and 9 MiFIR is appropriate and necessary for US Fed. (see Section 2.1.6). The assessment relies on the following findings:

- In terms of market transparency, the United States has extensive reporting requirements for non-equity instruments contained in self-regulatory rules (Trade Reporting and Compliance Engine by FINRA). Government securities are excluded from trade reporting requirements (though all persons transacting in US Treasury securities are subject to regulatory large position reporting requirements), and

---

securities lending program, including the terms of the program and operation announcements and results, are available at: [www.newyorkfed.org/markets/securitieslending.html](http://www.newyorkfed.org/markets/securitieslending.html).

<sup>473</sup> More information available at: [www.federalreserve.gov/monetarypolicy/tdf.htm](http://www.federalreserve.gov/monetarypolicy/tdf.htm).

<sup>474</sup> More information available at: [www.federalreserve.gov/monetarypolicy/tdf\\_2013.htm](http://www.federalreserve.gov/monetarypolicy/tdf_2013.htm).

<sup>475</sup> More information available at:

[www.newyorkfed.org/markets/pomo/operations/index.html](http://www.newyorkfed.org/markets/pomo/operations/index.html) (Permanent OMOs);

[www.newyorkfed.org/markets/ambs/](http://www.newyorkfed.org/markets/ambs/) (Permanent Operations, Agency MBS);

[www.newyorkfed.org/markets/omo/dmm/temp.cfm](http://www.newyorkfed.org/markets/omo/dmm/temp.cfm) (Temporary OMOs);

[www.newyorkfed.org/markets/seclend/sec\\_lendop.cfm](http://www.newyorkfed.org/markets/seclend/sec_lendop.cfm) (Securities Lending).

<sup>476</sup> More information available at: [http://www.newyorkfed.org/markets/OMO\\_transaction\\_data.html#tabs-3](http://www.newyorkfed.org/markets/OMO_transaction_data.html#tabs-3)

<sup>477</sup> The items disclosed in the case of Foreign Exchange Transactions are: *Trade Date, Currency Purchased, Amount Sold, Counterparty, Settlement Date, Amount Purchased, Exchange Rate, Transaction Category, Currency Sold, Exchange Rate Units, Foreign Currency Reserve Investments, Euro Repurchase Agreements*.

Details on Federal Reserve foreign exchange operations and currency market developments are provided in quarterly reports available at: [http://www.newyorkfed.org/markets/quar\\_reports.html](http://www.newyorkfed.org/markets/quar_reports.html). Additional background information on U.S. foreign exchange intervention ([www.newyorkfed.org/aboutthefed/fedpoint/fed44.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed44.html)), the Federal Reserve's roles in the international arena ([www.newyorkfed.org/aboutthefed/fedpoint/fed47.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed47.html)) and the services the FRBNY provides to central banks and international institutions ([www.newyorkfed.org/aboutthefed/fedpoint/fed20.html](http://www.newyorkfed.org/aboutthefed/fedpoint/fed20.html)).

<sup>478</sup> The items disclosed in the case of foreign currency reserve investments include: *Trade Date, Currency, Security Description, Accrued Interest, Settlement Date, Trade Amount, ISIN, Total Amount Transferred, Transaction Category, Issuer, Price, and Counterparty*. Details on the SOMA's holdings of foreign reserves are provided in the quarterly reports available at: [www.newyorkfed.org/markets/quar\\_reports.html](http://www.newyorkfed.org/markets/quar_reports.html).

<sup>479</sup> The items disclosed in the case of euro repurchase agreements include: *Trade Date, Transaction Category, Trade, Amount, Security Type, Settlement Date, Term Repo Rate, Amount Of Securities, Repurchase Date, Currency, Counterparty*.

<sup>480</sup> More information available at: [www.newyorkfed.org/markets/fxswap/fxswap.cfm](http://www.newyorkfed.org/markets/fxswap/fxswap.cfm).

US agency debentures and US dollar-denominated asset-backed and mortgage-backed securities. The Dodd-Frank Act introduced comprehensive regulation of OTC derivatives which require reporting of “swaps” to swap data repositories and public recording of swaps, but transactions with any Federal Reserve Bank, the US federal Government and any of its agencies are, however, excluded from the definition of “swap”.

- In terms of operational transparency, the FRBNY releases extensive information about the details of its transactions both before and after they are concluded. This includes permanent (on US Treasuries, US agency securities and US asset-backed securities) and temporary (repos and reverse repos) OMOs and securities lending. Details on FX operations (including reserve management) are published in quarterly reports (size and composition of foreign currency denominated assets in the SOMA portfolio). Finally, the Fed is the only central that releases individual transaction data with respects to both domestic and foreign currency operations with a two-years time lag.
- In light of the institution’s low trading volumes with EU counterparties or in EU-listed financial instruments, the economic necessity of an exemption is very limited.
- Regarding the additional criteria:
  - An exemption from transparency requirements is not available in principle for transactions by foreign central banks, but they can rely on the exclusion for government bonds and foreign currency securities. OTC derivatives transactions with foreign central banks are not categorically excluded (as OTC derivatives with US authorities are);
  - The FRBNY can distinguish between transactions for policy purposes and transactions for ‘pure’ investment purposes, which have a marginal role;
  - The FRBNY has no procedure in place to notify its counterparties of the existence of an exemption.

## **2.3.14 The Bank of International Settlements (BIS)**

### **2.3.14.1 Mandate and policies**

Articles 3 and 19 of the BIS Statutes describe the BIS mandate in the following terms:

#### *Article 3*

*The objects of the Bank are: to promote the co-operation of central banks and to provide additional facilities for international financial operations; and to act as trustee or agent in regard to international financial settlements entrusted to it under agreements with the parties concerned.*

#### *Article 19*

*The operations of the Bank shall be in conformity with the monetary policy of the central banks of the countries concerned.*

BIS stands out from other institutions examined in this report in that no reference is made to a set of policies and it has a supporting role, i.e. to aid central banks in their operations, rather than adopt a policy of its own.<sup>481</sup>

As specified in the questionnaire, the BIS offers a wide range of financial services specifically designed to assist central banks and other official monetary institutions in the management of their foreign exchange reserves. Approximately 140 customers,

---

<sup>481</sup> This impression is confirmed by the second paragraph of Article 19 of the Statutes, which describes the possibility of BIS intervention in a certain market, and establishes the need to give the central bank(s) concerned the opportunity to object, in which case the proposed operation shall not take place.



including various international financial institutions, currently make use of these services and on average, over the last few years, approximately 4% of global foreign exchange reserves have been invested by central banks with the BIS. The BIS indicated that market operations and management of reserves at the “disposition of the banking community” included transactions with a monetary, foreign exchange or financial stability purpose.

From this, the BIS also drew the conclusion that “in light of its unique position and role in the international financial system, as well as its mission and activities, the ESCB Exemption under MiFIR should appropriately be extended to it”.

The BIS restated its case by emphasising, *“When implementing trade transparency and other regulatory requirements, the ability of the BIS to carry out its important public interest functions and to assist the international central banking community should not be prejudiced. The necessary confidentiality inherent in the financial operations of the BIS should at all times be preserved. Failure to extend the ESCB Exemption to the BIS could undermine the confidentiality required by the BIS and its central bank customers and impair the operational capability of the BIS and, indirectly, the operational capability of its central bank customers, including members of the ESCB. We would like to note in this regard that the European Market Infrastructure Regulation (EMIR) in Article 1 (4), for these and similar reasons, treats the BIS in exactly the same manner as those central banks that are members of the ESCB. Consequently, as is the case with members of the ESCB, none of the clearing obligations, reporting obligations and risk mitigation requirements of EMIR relating to OTC derivatives apply to the BIS. We therefore believe that the mission and activities of the BIS entirely justify that the ESCB Exemption under MiFIR should appropriately be extended to the BIS.”*

The BIS also indicated (Q7) it may have been instructed as a counterparty to central banks to conduct market operations on behalf of a central bank without having been informed as to the purpose of the operation.

#### **2.3.14.2 Operations, instruments and transactions**

The operations are described in Articles 21, 23 and 24 of the BIS Statutes,<sup>482</sup> which allow the BIS to buy, sell and hold gold, make discounts or rediscounts, purchase or sell of bills of exchange, buy and sell exchange or negotiable securities, as well as facilitate the settlement of transactions between central banks (using, for example, gold reserves) while prohibiting it from certain transactions, such as accepting bills of exchange, or financing governments (for further details, see Annex 5.2.10).

In its response to the questionnaire, the BIS describes the continued efforts to adjust its operational framework: *“BIS continually adapts its product range in order to respond more effectively to the evolving needs of central banks. Besides standard services such as sight/notice accounts and fixed-term deposits, the BIS has developed a range of more sophisticated financial products which central banks can actively trade with the BIS to increase the return on their foreign exchange reserve assets.”*

BIS banking operations also include foreign exchange operations facilitating the holding or management of official foreign reserves of central bank customers, whether members of the ESCB or third-country central banks. The BIS transacts foreign exchange and gold on behalf of its customers thereby providing access to a large liquidity base in the context of, for example, regular rebalancing of reserve portfolios or major changes in reserve currency allocations. The foreign exchange and gold services of the BIS provided to its central banking customers may include spot transactions in major currencies and

---

<sup>482</sup> More information available at: <https://www.bis.org/about/statutes-en.pdf>.

Special Drawing Rights (SDR) as well as swaps, outright forwards, options and dual currency deposits.

In addition to its regular banking operations, the BIS could, at times of financial market instability or otherwise, be called upon by its central bank customers to undertake direct operations to support financial stability, for example, to provide liquidity, particularly foreign exchange liquidity, to the central bank or to the banking sector of the relevant country or countries. Such transactions could be large in volume and at short notice and could as such necessitate the sale of non-equity securities by the BIS to raise liquidity on EU markets, whether outright or by way of repo, or could require related hedging operations.

The BIS could also be called upon by its central bank customers to undertake operations in support of the relevant central bank customer's monetary policy operations which again could necessitate either the raising of liquidity or entering into hedges.

BIS distinguishes between the transactions conducted on behalf of the central banks (which are all policy related) and their own investment activities. These transactions result in two different portfolios: banking portfolio (the purpose is not profit making but rather supporting central banks in fulfilling their mandates) vs investment portfolios (investing its own equity).

### **2.3.14.3 Procedural framework**

The BIS Statutes and publicly available information is scant on details about how the operations and transactions are carried out. Article 25 includes a very broad call for the BIS to maintain liquidity:

*"The Bank shall be administered with particular regard to maintaining its liquidity, and for this purpose shall retain assets appropriate to the maturity and character of its liabilities. Its short-term liquid assets may include bank-notes, cheques payable on sight drawn on first-class banks, claims in course of collection, deposits at sight or at short notice in first-class banks, and prime bills of exchange of not more than ninety days, of a kind usually accepted for rediscount by central banks.*

*The proportion of the Bank's assets held in any given currency shall be determined by the Board with due regard to the liabilities of the Bank."*

Article 22 of the Statutes simply states:

*"Any of the operations which the Bank is authorised to carry out with central banks under the preceding Article may be carried out with banks, bankers, corporations or individuals of any country provided that the central bank of that country does not object."*

In its response to the questionnaire (Q4 to Q7), the BIS indicated that for the regular spot transactions in major currencies and Special Drawing Rights (SDR) such as swaps, forwards, options and dual currency deposits it was necessary for the BIS to enter into both direct securities transactions and hedging arrangements with commercial counterparties in the EU on both an OTC and on-venue basis.

Also, direct operations to support financial stability, for example, to provide liquidity (especially foreign exchange liquidity) could require the performance of hedging operations in EU markets by way of derivatives with EU counterparties.

Finally, operations in support of a central bank monetary policy could also require the raising of liquidity or entering into hedges on EU markets and with EU counterparties.

The BIS indicated that the operations *may* involve non-equity securities and *may be* executed through any of the operational possibilities indicated in the questionnaire. However, due to confidentiality reasons, the BIS was unable to provide any percentage estimate of the volumes of the transactions. It was not entirely clear whether the references to “*may involve*” meant that operations *actually* involve such mechanisms of execution. The BIS also indicated (Q6 and Q7) that the transactions executed on behalf of its central bank customers are strictly confidential, and thus did not disclose information on the volume, nature and purpose of its operations. It also mentioned that, when asked to conduct a certain operation by a central bank, the BIS is not currently informed about the purpose such activities.

#### **2.3.14.4 Transparency of the transactions**

The BIS alleged that the concept of “domestic provisions that contain the general requirements on public disclosure of information about the transaction” used in the questionnaire to assess the relative level of transparency, and the existence of waivers to it, was difficult to assess in light of the BIS’s status as an international public organisation, founded by a treaty, and supervised by a Board of Directors, which includes 21 members who are governors or senior officials of central banks.<sup>483</sup> It stated, nonetheless, that in Switzerland, where the BIS headquarters are located, and where the BIS enjoys special status, the BIS is not subject to any requirement to disclose information to the public regarding its transactions in financial instruments (ex ante or ex post).

#### **2.3.14.5 Appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR**

Due to a lack of disclosure about the operational framework and the transactions executed with EU counterparties or EU-listed financial instruments as a principal counterparty, which could potentially fall under the scope of MiFIR, there is insufficient information to make a final assessment about the appropriateness and necessity of the exemption under Article 1 paras. 6 and 9 MiFIR for the BIS (see Section 2.1.6). The assessment relies on the following findings:

- The domestic market transparency regime (Switzerland) does not apply to BIS transactions.
- In terms of transparency of the institution, the BIS scores “Low”. The institution releases information in aggregate terms. It is not possible to determine the main transactional mechanisms through which the BIS fulfils its mandate. The BIS customer relationships are only with central banks, monetary authorities and international public institutions. However, when assisting in the management of foreign reserves, it may execute transactions through bilateral transactions with counterparties (which may or may not internalize orders) as well as trading venues. The extent to which the BIS uses each type of execution mechanism cannot be assessed.
- Information on trading volumes of transactions with EU counterparties or in EU-listed financial instruments was not available, so the economic necessity of an exemption couldn’t be assessed. BIS only submitted a statement confirming the existence of such transactions and about the necessity of an exemption.
- The institution does not comply with none of the key criteria discussed above. Moreover, the three additional criteria provides the following information:

---

<sup>483</sup> The BIS emphasised that those members included the President of the Governing Council of the ECB and the governors of the Deutsche Bundesbank, Banque de France, Banca d’Italia, Banque Nationale de Belgique and De Nederlandsche Bank.

- The criterion of an exemption for foreign central banks is not applicable in the case of the BIS, since the domestic law (Switzerland) does not apply to their transactions;
- The BIS distinguishes between transaction purposes. The lack of information about transaction volumes with EU counterparties or in EU-listed financial instruments does not allow further assessment;
- The BIS has not provided information on the procedure to notify its counterparties of the existence of an exemption.

### **3 Analysis under Article 6(1) and 6(5) of the Market Abuse Regulation (MAR) for third-country central banks and debt management offices**

The scope of this section is to assess, according to Article 6 paras. 1 and 5 of MAR, the appropriateness and necessity of an exemption for third-country central banks (CBs) and/or third-country offices in charge of public debt management ("debt management offices" or "DMOs") from the application of MAR with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

For purposes of such assessment, key criteria (or requirements) for an effective market abuse regime that would be comparable with the framework in the EU have been identified (see section on the EU benchmark). Criteria have been identified on the basis of the EU market abuse rules and the rules of conduct and/or ethical principles applicable to the central banks (CBs) of the European System of Central Banks (ESCB) and EU DMOs.

The assessment draws from the analysis of the legal frameworks applicable to third-country CBs and DMOs, completed via legal desk research and responses to a questionnaire submitted to those CBs and DMOs. The survey covers the following non-EU jurisdictions: Australia, Brazil, Canada, China, Hong Kong SAR, India, Japan, Mexico, Singapore, South Korea, Switzerland, Turkey and the US.

#### **3.1 Appropriateness and necessity assessment**

##### **3.1.1 Criteria for the assessment**

Criteria have been selected on the basis of their effectiveness in preventing, deterring and/or punishing market abuse pursued by staff members of the CB or DMO. In more general terms, depending on the identified requirement, the non-EU regulatory framework applicable to the CB or DMO would receive zero points in the case of absence of any rule; one point, where a general principle or rule of conduct exist; and two points, where detailed implementing rules, e.g. conditions, and an effective enforcement mechanism complement the general principle or rule of conduct.

Furthermore, the third-country CB or DMO would receive zero points if the national legal framework gives no exemption from national market abuse rules to domestic and foreign CBs and DMOs; one point, if the national legal framework grants such exemption to the domestic CB and/or DMO only; two points, if the national legal framework grants such exemption to both domestic and foreign CBs and/or DMOs. The reason for awarding one point in case of an exemption for domestic CB or DMO is the symmetry the requirement would have with the actual text of MAR.

Therefore, this methodology for the assessment exercise defines how the different non-EU regulatory frameworks compare with the EU framework. The key criteria employed for the overall assessment (see Section 3.2 for more details) are the following:

1. Prohibition against insider dealing by CB or DMO staff members:
  - a. No rules or information unavailable (0 points)
  - b. Yes (1 point)
2. Prohibition against unlawful disclosure of inside information by CB or DMO staff members:
  - a. No rules or information unavailable (0 points)
  - b. Yes (1 point)
3. Prohibition against market manipulation by CB or DMO staff members:
  - a. No rules or information unavailable (0 points)

- b. Partial (only one among trade-, action-, information-based; 1 point)<sup>484</sup>
  - c. Partial (only two among trade-, action-, information-based; 2 points)
  - d. Yes (action, trade, information-based; 3 points)
- 4. Exemption from market abuse regulation for the CB or DMO:
  - a. No or information unavailable (0 points)
  - b. Yes (national only, 1 point)
  - c. Yes (national and third-country, 2 points)
- 5. Application of risk management standards to CB or DMO operations:
  - a. Not applied or information unavailable (0 points)
  - b. Applied but not disclosed (1 point)
  - c. Applied and disclosed (2 points)
- 6. Staff rules of conduct on use of confidential information:
  - a. No rules or information unavailable (0 points)
  - b. Professional secrecy (1 point)
  - c. Professional secrecy and prohibition against private use of inside information (2 points)
- 7. Staff rules of conduct on transactions in assets for private interests:
  - a. No rules or information unavailable (0 points)
  - b. Duty to keep record and report holdings of, and transactions in, assets (1 point)
  - c. Restrictions in trading and holding of assets (2 points)
- 8. Staff rules of conduct on independence and conflicts of interest:
  - a. No rules or information unavailable (0 points)
  - b. Duty to maintain independence from third-party interests (1 point)
  - c. Duty to maintain independence and avoid conflicts of interest (2 points)
  - d. Duty to maintain independence and disqualification if unavoidable conflict of interest (3 points)
- 9. Enforcement of staff rules of conduct:
  - a. No rules or information unavailable (0 points)
  - b. Disciplinary actions up to dismissal (1 point)
  - c. Internal unit enforcing disciplinary actions up to dismissal (2 points)

### 3.1.2 Comparative overview

A positive assessment of appropriateness and necessity (under Article 6.5 of MAR) of the exemption to a third-country CB and/or DMO is given if at least one of the two conditions below is met:

- At least 1 point per criterion (the individual criteria are listed in the columns in the table below) or
- A total number of points at least equal to half of the total points available, provided that each of the prohibitions against insider dealing, unlawful disclosure of inside information, trade, action and information-based market manipulations apply.

---

<sup>484</sup> For the notions of trade-based, action-based and information-based market manipulation, please see Subsection 3.2.2 below.

**Table 25. Comparative table**

|           |     | Insider dealing rules | Inside information disclosure rules | Market manipulation rules | CB/DMO exemption       | Risk-management standards | Confidential information                | Private transactions in assets                | Independence and conflicts of interest                         | Enforcement                     | Exemption |
|-----------|-----|-----------------------|-------------------------------------|---------------------------|------------------------|---------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|---------------------------------|-----------|
| Australia | CB  | Yes                   | Yes                                 | Yes                       | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interest              | Internal unit enforcing actions | Yes       |
|           | DMO | Yes                   | Yes                                 | Yes                       | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes       |
| Brazil    | CB  | Yes                   | Yes                                 | Yes                       | No                     | Applied and disclosed     | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes       |
|           | DMO | Yes                   | Yes                                 | Yes                       | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interest              | Internal unit enforcing actions | Yes       |
| Canada    | CB  | Yes                   | Yes                                 | Yes                       | Yes (only domestic CB) | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes       |
|           | DMO | Yes                   | Yes                                 | Yes                       | No                     | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Internal unit enforcing actions | Yes       |
| China     | CB  | Yes                   | Yes                                 | Yes                       | Yes (only domestic)    | Applied but not disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable          | Internal unit enforcing actions | Yes       |

|                      |                    |     |     |     | CB)                                  |                                      |                                         |                                               | conflict                                                       |                                      |     |
|----------------------|--------------------|-----|-----|-----|--------------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|--------------------------------------|-----|
|                      | <b>DMO</b>         | Yes | Yes | Yes | Not publicly available/<br>disclosed | Not publicly available/disclosed     | Professional secrecy                    | Not publicly available/disclosed              | Independence duty                                              | Disciplinary actions up to dismissal | n/a |
| <b>Hong Kong SAR</b> | <b>CB</b>          | Yes | Yes | Yes | Yes<br>(only domestic CB)            | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions      | Yes |
|                      | <b>DMO</b>         | Yes | Yes | Yes | Yes<br>(only domestic DMO)           | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Internal unit enforcing actions      | Yes |
| <b>India</b>         | <b>CB/<br/>DMO</b> | Yes | Yes | Yes | Yes<br>(only domestic CB)            | Applied but not disclosed            | Professional secrecy                    | Restrictions in trading and holding of assets | Independence duty                                              | Internal unit enforcing actions      | Yes |
| <b>Japan</b>         | <b>CB</b>          | Yes | Yes | Yes | No                                   | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty                                              | Disciplinary actions up to dismissal | Yes |
|                      | <b>DMO</b>         | Yes | Yes | Yes | Not publicly available/<br>disclosed | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and avoid conflicts of interests             | Disciplinary actions up to dismissal | Yes |
| <b>Mexico</b>        | <b>CB</b>          | Yes | Yes | Yes | Yes<br>(only domestic CB)            | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions      | Yes |
|                      | <b>DMO</b>         | Yes | Yes | Yes | No                                   | Applied but not                      | Professional secrecy and                | Keep record and report                        | Independence duty and                                          | Internal unit enforcing              | Yes |



|                    |                    |     |     |     |                               | disclosed                                  | no private<br>use                                | assets<br>holdings/<br>transactions                    | disqualification if<br>unavoidable<br>conflict                             | actions                                                 |     |
|--------------------|--------------------|-----|-----|-----|-------------------------------|--------------------------------------------|--------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------------------------|---------------------------------------------------------|-----|
| <b>Singapore</b>   | <b>CB/<br/>DMO</b> | Yes | Yes | Yes | Yes<br>(only domestic<br>CB)  | Applied but not<br>disclosed               | Professional<br>secrecy and<br>no private<br>use | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and avoid<br>conflicts of<br>interests                | Internal unit<br>enforcing<br>actions                   | Yes |
|                    | <b>CB</b>          | Yes | Yes | Yes | No                            | Applied but not<br>disclosed               | Professional<br>secrecy and<br>no private<br>use | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and<br>disqualification if<br>unavoidable<br>conflict | Internal unit<br>enforcing<br>actions                   | Yes |
| <b>South Korea</b> | <b>DMO</b>         | Yes | Yes | Yes | No                            | Not publicly<br>available nor<br>disclosed | Not publicly<br>available nor<br>disclosed       | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and<br>disqualification if<br>unavoidable<br>conflict | Internal unit<br>enforcing<br>actions (no<br>dismissal) | Yes |
|                    | <b>CB</b>          | Yes | Yes | Yes | Yes<br>(only domestic<br>CB)  | Applied but not<br>disclosed               | Professional<br>secrecy and<br>no private<br>use | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and<br>disqualification if<br>unavoidable<br>conflict | Internal unit<br>enforcing<br>actions                   | Yes |
| <b>Switzerland</b> | <b>DMO</b>         | Yes | Yes | Yes | Yes<br>(only domestic<br>DMO) | Not publicly<br>available nor<br>disclosed | Professional<br>secrecy and<br>no private<br>use | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and<br>disqualification if<br>unavoidable<br>conflict | Disciplinary<br>actions up to<br>dismissal              | Yes |
|                    | <b>CB</b>          | Yes | Yes | Yes | Yes<br>(only domestic<br>CB)  | Applied but not<br>disclosed               | Professional<br>secrecy and<br>no private<br>use | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and<br>disqualification if<br>unavoidable<br>conflict | Internal unit<br>enforcing<br>actions (no<br>dismissal) | Yes |
| <b>Turkey</b>      | <b>DMO</b>         | Yes | Yes | Yes | No                            | Applied but not<br>disclosed               | Professional<br>secrecy and<br>no private        | Restrictions in<br>trading and<br>holding of           | Independence<br>duty and<br>disqualification if<br>unavoidable             | Internal unit<br>enforcing<br>actions (no               | Yes |
|                    | <b>CB</b>          | Yes | Yes | Yes | Yes<br>(only domestic<br>CB)  | Applied but not<br>disclosed               | Professional<br>secrecy and<br>no private<br>use | Restrictions in<br>trading and<br>holding of<br>assets | Independence<br>duty and<br>disqualification if<br>unavoidable<br>conflict | Internal unit<br>enforcing<br>actions (no<br>dismissal) | Yes |

|     |     |     |     |     | use                                  | assets                               | conflict                                | dismissal)                                    |                                                                |                                 |     |
|-----|-----|-----|-----|-----|--------------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------|----------------------------------------------------------------|---------------------------------|-----|
| USA | CB  | Yes | Yes | Yes | Yes<br>(only domestic CB)            | Applied but not disclosed            | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |
|     | DMO | Yes | Yes | Yes | Not publicly available/<br>disclosed | Not publicly available nor disclosed | Professional secrecy and no private use | Restrictions in trading and holding of assets | Independence duty and disqualification if unavoidable conflict | Internal unit enforcing actions | Yes |

*Note: "CB" stands for "central bank" and "DMO" stands for "debt management office".*

### **3.1.2.1 Australia**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Reserve Bank of Australia) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the CB, although failing to score 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Australian Office of Financial Management) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

### **3.1.2.2 Brazil**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Central Bank of Brazil) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the CB, although failing to score 1 point for each of the criteria listed above, scores 16 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (National Treasury of Brazil) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

### **3.1.2.3 Canada**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Bank of Canada) may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 15 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Department of Finance of Canada) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

### **3.1.2.4 China**

An exemption under Article 6(1) and 6(5) of MAR for the CB (People's Bank of China) may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 16 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Ministry of Finance) may not be appropriate and necessary. The DMO failed to score at least 1 point for each of the criteria listed above and scores only 8 points out of 18 overall.

### **3.1.2.5 Hong Kong SAR**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Hong Kong Monetary Authority) may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 15 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Financial Services and the Treasury Bureau of Hong Kong) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although

failing to score 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

### **3.1.2.6 India**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Reserve Bank of India), which also serves as DMO, may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 13 points out of 18 overall.

### **3.1.2.7 Japan**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Bank of Japan) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the CB, although failing to score 1 point for each of the criteria listed above, scores 11 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Ministry of Finance Japan) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score 1 point for each of the criteria listed above, scores 12 points out of 18 overall.

### **3.1.2.8 Mexico**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Bank of Mexico) may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 16 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Ministry of Finance and Public Credit of Mexico) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score at least 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

### **3.1.2.9 Singapore**

The Monetary Authority of Singapore serves both as CB and DMO (as fiscal agent of the Ministry of Finance).

An exemption under Article 6(1) and 6(5) of MAR for the CB (Monetary Authority of Singapore), which also serves as DMO, may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 15 points out of 18 overall.

### **3.1.2.10 South Korea**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Bank of Korea) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the CB, although failing to score at least 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Ministry of Strategy and Finance) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score at least 1 point for each of the criteria listed above, scores 12 points out of 18 overall.

### **3.1.2.11 Switzerland**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Swiss National Bank) may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 16 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Swiss Federal Department of Finance) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score at least 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

### **3.1.2.12 Turkey**

An exemption under Article 6(1) and 6(5) of MAR for the CB (Central Bank of the Republic of Turkey) may be appropriate and necessary. The CB scores at least 1 point for each of the criteria listed above and, additionally, scores 16 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (Undersecretariat of Treasury of the Republic of Turkey) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score at least 1 point for each of the criteria listed above, scores 15 points out of 18 overall.

### **3.1.2.13 United States**

An exemption under Article 6(1) and 6(5) of MAR for the CB (US Federal Reserve System) may be appropriate and necessary. The CB scores at least 1 point under each of the criteria listed above and, additionally, scores 15 points out of 18 overall.

An exemption under Article 6(1) and 6(5) of MAR for the DMO (U.S. Department of the Treasury) may be appropriate and necessary. The jurisdiction prohibits and punishes all the relevant forms of market abuse, while the DMO, although failing to score at least 1 point for each of the criteria listed above, scores 14 points out of 18 overall.

## **3.2 European benchmark**

### **3.2.1 Insider dealing and unlawful disclosure of information rules**

The EU regulatory framework on insider dealing and unlawful disclosure of inside information is based on the Regulation (EU) no. 596/2014 of 16 April 2014 ("Market Abuse Regulation" or "MAR"), which requires Member States to prohibit insider dealing, attempted insider dealing, and unlawful disclosure of inside information and set forth dissuasive administrative sanctions; and the Directive no. 2014/57/EU of 16 April 2014 ("CSMAD"), which complements MAR by requiring imposition of criminal penalties for serious offences of insider dealing, attempted insider dealing and unlawful disclosure of inside information when committed with intent. Together, they will replace the current regulatory regime established under the Directive no. 2003/6/EC of 28 January 2003 ("Market Abuse Directive I" or "MAD I") and the relevant Commission Directives thereunder with effect from 3 July 2016.

The EU regulatory framework aims at enhancing market efficiency, market integrity and investor protection (Moloney, 2014). Equal access to price-sensitive information by

market participants (Hopt, 1996) or, in the telling words of the European Court of Justice ("ECJ"), placing investors "on an equal footing"<sup>485</sup> and guaranteeing "equality between the contracting parties"<sup>486</sup> foster trust and confidence in public markets (IOSCO, 2003; see also UK Financial Services and Markets Tribunal, *Philippe Jabre and Financial Services Authority*, 2006). By lowering the perceived financial risk in investing in financial instruments arising from potential informational asymmetries to the disadvantage of the investor public, equal access to information also incentivises investments in financial instruments at a lower cost for issuers (Bhattacharya-Daouk, 2002). This, in turn, is perceived as contributing to decreasing the overall cost of capital of issuers and promoting the efficient allocation of financial and productive resources.

For purposes of safeguarding equal access to price-sensitive information and preventing the risk that persons in possession of inside information may directly or indirectly take advantage of ill-informed investors and, as a result, undermine investor confidence and market integrity, MAR prohibits:

- (i) any person in possession of inside information<sup>487</sup> from engaging or attempting to engage in insider dealing;
- (ii) any person in possession of inside information from recommending or inducing another person to engage in insider dealing; and
- (iii) any person in possession of inside information from unlawfully disclosing inside information (Article 14).<sup>488</sup>

Insider dealing is defined in Article 8(1) as arising "where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be

<sup>485</sup> Case C-384/02, *Grøngaard & Bang*, 2005 E.C.R. I-9939; Case C-391/04, *Georgakis*, 2007 E.C.R. I-3741.

<sup>486</sup> Case C-45/08, *Spector Photo Group NV and Chris Van Raemdonck v. Commissie voor het Bank, Financien en Assurantiewezen*, 2009, E.C.R. I-12073.

<sup>487</sup> Any person in possession of inside information means any person that possesses inside information as a result of: "(a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant; (b) having a holding in the capital of the issuer or emission allowance market participant; (c) having access to the information through the exercise of an employment, profession or duties; or (d) being involved in criminal activities; as well as to any person who possesses inside information under circumstances other than those just referred to where that person knows or ought to know that it is inside information" (Article 8(4)).

<sup>488</sup> For the purposes of MAR, inside information comprises the following types of information: "(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments; (b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets; (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments; (d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments" (Article 7(1)). Article 7, paragraphs 1, 2 and 3, further establish the meaning of information "of a precise nature", while Article 7(4) defines under what conditions non-public information, if it were made public, would be deemed "likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances".

*considered to be insider dealing.*" In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information also comprises submitting, modifying or withdrawing a bid by a person for his own account or for the account of a third party.

Under Article 8(2), recommending or inducing another person to engage in insider dealing, arises where the person possesses inside information and: "(a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or (b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment."<sup>489</sup>

Pursuant to Article 10(1), unlawful disclosure of inside information arises "where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties". Article 10(1) further clarifies that "the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information".

The rules on insider dealing and unlawful disclosure of inside information apply to any transaction, order or behaviour concerning financial instruments as referred to in Article 2(1)<sup>490</sup> "irrespective of whether or not such transaction, order or behaviour takes place on a trading venue" (Article 2(3)). Furthermore, the prohibitions and requirements set out in MAR apply to "actions and omissions irrespective of whether they occur in the Union or in a third country" (Article 2(4)).

Unless the Member States already provide for criminal sanctions against insider dealing and/or unlawful disclosure of inside information, MAR requires Member States to implement dissuasive administrative sanctions so as to deter and consistently punish both types of conduct. In particular, among the multiple administrative measures set forth in Article 30(2), the disgorgement of the profits gained or losses avoided and administrative pecuniary sanctions of at least three times the amount of profits gained or losses avoided because of the infringement are worth mentioning. Where a natural person is involved, the maximum administrative pecuniary sanction is set at €5 million.

Further, subject to the principle of "*ne bis in idem*" (see Recital 23), CSMAD requires Member States that have not yet resorted to criminal sanctions in punishing serious cases of insider dealing and unlawful disclosure of inside information<sup>491</sup> to do so at least in respect of acts committed intentionally.<sup>492</sup>

---

<sup>489</sup> Under Article 8(3), the use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

<sup>490</sup> MAR applies to: "(a) financial instruments [as defined in point (15) of Article 4(1) of Directive 2014/65/EU of 15 May 2014] admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; (b) financial instruments traded on an multilateral trading facility ('MTF'), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made; (c) financial instruments traded on an organised trading facility ('OTF'); (d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference." The broadening of the perimeter of the relevant trading venues, which fixes one of the perceived weaknesses of MAD I (Enriques-Gatti, 2008), follows from the dramatic increase in trading activity on venues other than regulated markets over the past decade.

<sup>491</sup> According to Recital (11) of CSMAD, "[I]nsider dealing and unlawful disclosure of inside information should be deemed to be serious in cases such as those where the impact on the integrity of the market, the actual or

Based on the foregoing, the first criterion employed to assess the appropriateness of an exemption under Articles 6(1) and 6(5) of MAR is the availability in the third-country jurisdiction of rules that consistently prohibit and punish insider dealing and unlawful disclosure of inside information, including when they are committed by persons working under a contract of employment or otherwise for central banks and DMOs where those persons carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account.<sup>493</sup>

### 3.2.2 Market manipulation rules

The EU regulatory framework on market manipulation and attempted market manipulation will likewise soon be based on MAR and CSMAD, which together will replace the regulatory regime established under MAD I and the relevant EU directives thereunder from 3 July 2016.

The same rationale that lies behind EU insider dealing regulation is believed to support EU market manipulation regulation, as manipulative practices might negatively affect investor confidence and market integrity as much as, if not more than, insider dealing. The perception of such a risk on the part of market participants once again might increase the cost of capital of the issuers (Enriques-Gatti, 2008) and in parallel decrease the financial resources to be put to productive use. Additionally, the likelihood of a misallocation of financial resources is aggravated by the distortion in the price-formation mechanism that follows from manipulative tactics (Moloney, 2014), as they undermine the accuracy of the market value of securities and/or the depth of its market liquidity, thereby damaging the informational efficiency of the market (Avgouleas, 2005).

Following the widely accepted categorisation of manipulative practices by Allen & Gale (1992),<sup>494</sup> manipulative practices may be separately identified depending on their nature. Manipulation may be defined as “trade-based” when it results from the attempt of a trader to manipulate a security solely by buying and selling the security, without taking any additional actions and without disseminating false or misleading information with a view to altering the perception of the market value of the security or affecting the

---

*potential profit derived or loss avoided, the level of damage caused to the market, or the overall value of the financial instruments traded is high. Other circumstances that might be taken into account are, for instance, where an offence has been committed within the framework of a criminal organisation or where the person has committed such an offence before”.*

<sup>492</sup> It follows that in combating insider dealing and unlawful disclosure of inside information, Member States are allowed to opt for criminal sanctions only or, as an alternative, for administrative sanctions against both less serious acts and more serious acts committed without intent, coupled with criminal sanctions for more serious acts committed with intent, provided that the same act not be sanctioned twice. Indeed, following *Cour Européenne des Droits de l’Homme*, 4 March 2014, nn. 18640/10, 18647/10, 18663/10 18668/10, 18698/10, *Grande Stevens et autres c. Italie*, when conduct is sanctioned by means of penalties that are formally administrative but criminal in nature because of their severity, the very same conduct cannot be punished twice by also applying further criminal sanctions, and vice versa.

<sup>493</sup> It should be noted that for purposes of assessing the deterrent effects of the rules on market abuse of third-country jurisdictions, no separate weight has been given to the fact that the applicable rules provide for administrative sanctions only, criminal sanctions only, or both, and in the latter case whether they are applied cumulatively or alternatively. While *ceteris paribus* criminal sanctions are certainly more dissuasive than administrative sanctions and the deterrent effects resulting from the combined application of administrative and criminal sanctions usually outweigh those resulting from the application of either administrative sanctions alone or criminal sanctions alone, the opposite may well be true. In fact, the degree of deterrence is a function, amongst others, of the minimum and maximum penalties, the quality and effectiveness of the relevant enforcement mechanisms, the varying burden of proof that must be met and the feasibility of transnational cooperation between authorities and/or prosecutors from different countries. Large administrative pecuniary sanctions alone, when applied by regulatory authorities based on mere preponderance of evidence and as a result of the international cooperation of their peers, may well be more effective than criminal sanctions applied by less-equipped criminal courts at the end of a lengthy proceeding where conviction must be based on evidence being beyond any reasonable doubt and where local prosecutors might find it more difficult to avail themselves of the international cooperation of their counterparties abroad.

<sup>494</sup> F. Allen & D. Gale, *Stock-Price Manipulation*, 5 *The Review of Financial Studies* 3, 503-529, 1992.



security market price.<sup>495</sup> Manipulation may be defined as “*action-based*” when actions (other than mere trading) are taken in order to change the actual or perceived market value of the security.<sup>496</sup> Lastly, manipulation may be of the “*information-based*” nature when false or misleading information or rumours are disseminated or spread through the media or otherwise with the aim of affecting the market price of the security.

Article 15 of MAR prohibits any person from engaging or attempting to engage in market manipulation, which pursuant to Article 12(1) comprises the following activities: “(a) *entering into a transaction, placing an order to trade or any other behaviour which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or (ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level; unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13; (b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance; (c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading; (d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark*”.

In addition, according to Article 12(2), the following behaviours are, *inter alia*, considered market manipulation: “(a) *the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions; (b) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices; (c) the placing of orders to a*

---

<sup>495</sup> Examples of trade-based manipulation are “*painting the tape*”, i.e. engaging in a series of observable transactions aimed at creating the false belief of activity or price movement in the security; “*wash sales*”, i.e. transactions in which there is no real change in the ownership of the security; “*improper match orders*”, i.e. transactions where both buy and sell orders are placed simultaneously, with the same price and quantity by different but colluding market participants; “*advancing the bid*”, i.e. increasing the bid for a security in order to increase its market price; “*pumping and dumping*”, where a security is bought at increasingly higher prices so that it can then be sold immediately thereafter at artificially inflated prices; “*marking the close*”, i.e. buying or selling a security at the close of the market session with a view of altering the closing price of the security (for such examples, see IOSCO, *Investigating and Prosecuting Market Manipulation*, May 2000, page 5 f.).

<sup>496</sup> Examples of manipulative practices based on actions are “*cornering*”, which occurs when somebody secures control of the bid or demand-side of a security and then requires short sellers to settle their obligations at prices distorted by the manipulator, and “*squeezing*”, which occurs when somebody takes advantage of a shortage in a security by controlling the demand-side and exploiting market congestion during such shortages so as to create artificial prices (for such examples, see IOSCO, *Investigating and Prosecuting Market Manipulation*, May 2000, page 6).

*trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in Article 12(1)(a) or (b), by: (i) disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so; (ii) making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or (iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend; (d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way; (e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.”<sup>497</sup>*

By virtue of the broad scope of Article 12, paragraphs 1 and 2, all of the most egregious trade-based, action-based<sup>498</sup> and information-based manipulative practices, including when attempted and yet not carried out, are banned and must be subject to the administrative sanctions listed under Article 30, unless criminal penalties are provided for, and mandatorily, in serious cases where the conduct is intentional,<sup>499</sup> to criminal penalties as required by CSMAD.

Based on the foregoing, the second criterion employed to assess the appropriateness of an exemption under Articles 6(1) and 6(5) of MAR is the availability in the third-country jurisdiction of rules that prohibit and punish market manipulation and the extent to which such rules address only one, two out of three or all three types of market manipulation that have been identified and are prohibited in the EU, including when they are committed by persons working under a contract of employment or otherwise for central banks and debt management offices where those persons carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account.

---

<sup>497</sup> Articles 12 and 15 apply to all financial instruments and transactions, orders or behaviours referred to in the section above dedicated to insider dealing as well as to: “a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on the price or value of a financial instrument referred to in Article 3(1); (b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments; and (c) behaviour in relation to benchmarks” (Article 2(2)).

<sup>498</sup> Additionally, Annex I to MAR defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing (Article 12(3)).

<sup>499</sup> According to Recital (12) of CSMAD, “market manipulation should be deemed to be serious in cases such as those where the impact on the integrity of the market, the actual or potential profit derived or loss avoided, the level of damage caused to the market, the level of alteration of the value of the financial instrument or spot commodity contract, or the amount of funds originally used is high or where the manipulation is committed by a person employed or working in the financial sector or in a supervisory or regulatory authority”.

### **3.2.3 Exemption from market abuse rules**

According to Recital (13) of MAR, *"Member States, members of the European System of Central Banks (ESCB), ministries and other agencies and special purpose vehicles of one or several Member States, and the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as they are undertaken in the public interest and solely in pursuit of those policies. Neither should transactions or orders carried out, or behaviour by, the Union, a special purpose vehicle of one or several Member States, the European Investment Bank, the European Financial Stability Facility, the European Stability Mechanism or an international financial institution established by two or more Member States, be restricted in mobilising funding and providing financial assistance to the benefit of its members."* At the same time, the exemptions for monetary, exchange-rate or public debt management policy should not extend to cases where those bodies engage in transactions, orders or behaviour other than in pursuit of those policies or where persons working for those bodies engage in transactions, orders or behaviour on their own account.

To this end, Article 6(1) provides that *"MAR does not apply to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by: (a) a Member State; (b) the members of the ESCB; (c) a ministry, agency or special purpose vehicle of one or several Member States, or by a person acting on its behalf; (d) in the case of a Member State that is a federal state, a member making up the federation"*.

However, Article 6(7) makes clear that *"the exemption above does not apply to persons working under a contract of employment or otherwise for the entities referred to Article 6 where those persons carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account."*

According to Recital (13) and Article 6(5) of MAR, the exemption from the scope of MAR referred to in Article 6(1) may be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries.

The third criterion employed for purposes of assessing the appropriateness of an exemption under Article 6(1) and 6(5) is therefore the availability in the third-country jurisdiction of an exemption from rules on market abuse for the domestic CB or DMO, provided however that their staff members remain subject to said rules when they carry out transactions or orders, or engage in behaviour, directly or indirectly, on their own account; and the availability in that third-country jurisdiction of a similar exemption for third-country CBs or DMOs.

### **3.2.4 Risk management standards**

A fourth criterion that was employed for the assessment of the appropriateness and necessity of an exemption under Article 6(1) and 6(5) of MAR is the implementation by the third-country CB or DMO of appropriate risk management standards, i.e. internal arrangements, systems and procedures aimed at preventing their staff members from carrying out transactions or orders, or engaging in behaviour, directly or indirectly, on their own account.

The requirement of effective risk management standards would become particularly important were the third-country CB or DMO to benefit from an exemption from MAR. In such a case, the very same staff members that would not be exempt when carrying out transactions or orders, or engaging in behaviour, directly or indirectly, on their own account, would be exempt when carrying out the same type transactions or orders, or

engaging in the same type behaviour, on the account of the CB or DMO, rather than their own.<sup>500</sup>

### 3.2.5 Central bank and debt management office framework

CBs belonging to the ESCB are exempt from MAR when they act in their capacity and in pursuit of their monetary, foreign exchange and public debt management policies while their staff members remain subject to all legal obligations and prohibitions provided by MAR (and CSMAD) when carrying out transactions or orders, or engaging in behaviour, directly or indirectly, on their own account (Article 6(7)).

As a consequence, the building of a EU benchmark for assessing the appropriateness of an exemption under Articles 6(1) and 6(5) also relies on the requirements contained in the internal codes of conduct and/or codes of ethics adopted by the CBs belonging to the ESCB and the EU DMOs, which are made applicable to their staff members with a view to ensuring that they comply with the law and the regulations thereunder, behave with honesty, integrity, care and diligence, pursue the sole interests of the CB or the DMO they work for, and do not otherwise undermine the reputation and credibility of the CB or the DMO.

The analysis of the codes of conduct and/or codes of ethics applicable to ESCB central banks and EU DMOs makes it possible to derive general conduct and ethical principles, or a conduct rulebook, against which third-country legal rules and regulations preventing market abuse and third-country CB and DMO internal conduct and ethical rules applicable to their staff may be assessed for their effectiveness in preventing and punishing market abuse.

All codes of conduct applicable to market participants should aim at promoting “*efficient market practices by encouraging high standards of conduct and professionalism*”.<sup>501</sup> Similarly, internal codes of conduct and ethical principles applicable to CB and DMO staff should make sure that CB and DMO employees conduct themselves in line with the highest standards of honesty, integrity and professionalism in general and, more specifically for the purposes of this analysis, are deterred from engaging in transactions or behaviours that might imply the use or disclosure of inside information or give rise to market manipulation.

The building of such a benchmark entails the assessment of rules of conduct on the following issues:

- a) Use of confidential information by staff members
- b) Transactions in assets and financial instruments by staff members
- c) Requirements for preserving the independence of the staff and safeguarding against actual and potential conflicts of interest
- d) Modes of application of the rules under a), b), and c)

Rules of conduct on the use of confidential information by staff members may further be broken down into (i) rules on professional secrecy and (ii) rules on the extent to which inside information may be used.

---

<sup>500</sup> Much like the effective arrangements, systems and procedures aimed at preventing and detecting market abuse referred to in Article 16 of MAR and required of market operators and investment firms that operate a trading venue. In this respect, see ESMA, *Consultation Paper on Draft Technical Standards on Market Abuse Regulation, Annex VI, Draft regulatory technical standards on the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions*, available at: [www.esma.europa.eu/system/files/esma\\_2014-809\\_consultation\\_paper\\_on\\_mar\\_draft\\_technical\\_standards.pdf](http://www.esma.europa.eu/system/files/esma_2014-809_consultation_paper_on_mar_draft_technical_standards.pdf).

<sup>501</sup> This quotation is taken from the Model Code “International Code of Conduct and Practice for the Financial Markets” adopted by ACI – The Financial Market Association.

Rules on transactions in assets and financial instruments by staff members may further be broken down into (i) rules on the extent to which transactions in assets and financial instruments for private purposes are allowed and (ii) rules demanding the recording and reporting of transactions and investment portfolios by the staff.

Requirements for preserving the independence of the staff and safeguarding against potential conflicts of interest while performing their tasks may be broken down into (i) independence rules and (ii) conflict of interest rules.

Lastly, application of the rules refers to the means of private and public enforcement of those rules, such as having in place a monitoring or compliance function headed by an ethics officer or the like and taking disciplinary actions in case of misconduct.

The nature and scope of the staff rules of conduct concern the use of confidential information, transactions in assets and financial instruments, staff independence and conflicts of interest and their modes of application are the other four key criteria that, together with previous ones, are used for the purposes of assessing the appropriateness and necessity of an exemption under Article 6(1) and 6(5) of MAR.

The EU benchmark for CBs has been built up on the basis of the responses to a questionnaire submitted to the management of the European Central Bank, the National Bank of the Czech Republic, the Danmarks Nationalbank, the Deutsche Bundesbank, Narodowy Bank Polski, Banco de España, the Sveriges Riksbank and the Bank of England – a representative sample of central banks – and the existence and public availability of codes of conduct and/or ethics.

Likewise, the sample of DMOs of EU Member States used to build the EU benchmark has been selected on the basis of the existence and public availability of codes of conduct and/or ethics and on the basis of the responses to a questionnaire we have submitted to their management. As a result, the sample is composed of the Federal Debt Agency of Belgium, the Ministry of Finance of the Czech Republic, the Debt Management Office of Denmark, the Agence France Trésor of France, the Deutsche-Finanzagentur of Germany, the Dipartimento del Tesoro of Ministero dell'Economia e delle Finanze (MEF) of Italy, the National Debt Office of Sweden, the Dutch State Treasury Agency of the Netherlands and the Debt Management Office of the United Kingdom.

The details of the sampled CBs and DMOs are reported under Subsection 3.3 below.

### **3.2.5.1 Use of confidential information by staff members**

Confidentiality matters greatly for preventing insider dealing and unlawful disclosure of inside information and preserving the integrity of markets in which CBs and DMOs operate or which might be affected by CB or DMO operations. As CB or DMO staff could be tempted to take advantage of critical confidential information, internal rules and procedures must exist that ensure secrecy, provide guidelines on how to use confidential information, and prevent, detect and punish any misuse, or attempted misuse, of such information.

The codes of conduct of all the CBs and DMOs in the sample provide that staff members must refrain from making unauthorised disclosure of any classified information that they have received in the context of their work to any person outside the institution, including their family members, and to colleagues inside the institution who do not need the information to perform their duties, unless that information has already been made public or is accessible to the public.

In addition, the codes of conduct of all the CBs and DMOs in the sample provide that staff members must refrain from using or attempting to use information which pertains to the activities of the CB. Staff members are generally prohibited from taking advantage

of such information in any manner, including transactions in financial instruments or with financial institutions or recommending or advising against such transactions. More specifically, staff members who have access to inside information about the CB's monetary policy, exchange rate issues, financial operations, financial stability analysis, pre-release statistics, or any other market sensitive information must refrain altogether from making transactions in financial instruments on which that inside information might come to bear.

The obligations of staff members under the relevant codes of conduct apply throughout the employment term and usually continue to apply for a minimum of six months or one year up to an indefinite term after the termination of the employment with the bank.

### **3.2.5.2 Transactions in assets and financial instruments by staff members**

The evaluation of the internal rules on treatment of transactions in assets, and in financial instruments in particular, by staff members is of relevance for the assessment under Article 6(1) and 6(5) of MAR to the extent that prevention of insider dealing by an employee, or her related parties, requires as a precondition full transparency about the investments and disinvestments periodically or occasionally made by them. Such transparency may be achieved by requiring immediate and/or periodic disclosure and reporting of transactions carried out by the CB's and DMO's staff and their related parties on their own account. Moreover, prohibiting, or applying limitations to, a number of transactions during a given timeframe, or above a certain threshold (by nominal value) or executed by certain employees may be warranted either in order to avoid any risk or mere appearance of risk that certain transactions be carried out on the basis of critical confidential information or, more generally, to safeguard the reputation and credibility of the CB or DMO and its staff.

Transactions in assets in general, and in financial instruments in particular, for private interest are generally allowed in all the CBs in the sample, provided that there is no use of relevant inside information. However, as seen under the subsection above, staff members who have access to inside information about the CB's monetary policy, exchange rate issues, financial operations, financial stability analysis, pre-release statistics or any other market sensitive information are always prohibited from making transactions in financial instruments on which said information might come to bear. Also prohibited are transactions in financial instruments issued by entities that are subject to prudential regulation and oversight by the CB itself.

Short-term trading in financial instruments, i.e. the purchase and sale of financial instruments within a short timeframe that is variably identified by the internal rules, when it is not prohibited, is allowed on condition that, prior to such transactions, the ethics officer or the line manager, where applicable, is satisfied about the non-speculative nature and the proper justification for such transactions.

The internal rules of conduct of all the CBs in the sample provide that staff members must keep records of all their transactions in financial instruments and holdings of financial instruments, and of transactions of any connected persons, for at least 12 months. Additionally, staff members must make them available to the bank for inspection on the bank's request.

Transactions in assets in general, and in financial instruments in particular, are generally allowed in all sampled DMOs provided that there is no use of relevant inside information and unless the nature of their work requires *ad hoc* restrictions.

Rules demanding the recording and reporting of transactions and investment portfolios by the staff tend to be of limited application. Only in a few DMOs do civil servants

declare their business interests (including directorships) or holdings of shares or other securities which they, or members of their immediate family (spouse, including partner where relevant, and children), hold.

### **3.2.5.3 Staff independence and conflict of interest**

Of relevance for building the EU benchmark and for the purpose of the assessment under Article 6(1) and 6(5) of MAR are also the internal requirements for preserving the independence of the CB's or DMO's staff and safeguarding against potential conflicts of interest. The former are meant to fend off the possible undue influence over staff of external circumstances, such as unlawful gifts or remunerated private activities, which might incentivise insider dealing or unlawful disclosure of inside information. The latter are meant to offset the risk that potential conflicts of interest, which might surface despite the application of pre-emptive independence rules, might distort the incentives to act in the exclusive interest of the CB or DMO and cause them to engage in prohibited acts or activities.

In the performance of their duties, staff members of all the CBs and DMOs in the sample must neither seek nor take instructions from any government, authority, organisation or person outside the bank. They must maintain caution in their relations with interest groups and the media. They may neither solicit nor accept any gifts or other benefits from third parties save for limited exceptions. In addition, they must not accept for themselves any fees from third parties in respect of external activities which are connected in any way with the employment with the bank.

Furthermore, staff members must not engage in private activities which might, in any way, impair the performance of their duties to the bank. Prohibited occupations are not always listed specifically. An assessment is usually made on a case-by-case basis. Staff members may usually engage in non-remunerated private activities which do not have a negative impact on their obligations towards the bank and/or are not a likely source of conflict of interest. Otherwise, staff members are usually required to obtain the bank's prior authorisation for any private activities.

With regard to all the CBs and DMOs in the sample, staff members are required to avoid any situation which is liable or may be perceived to give rise to a conflict of interest between their work and their private interests. In particular, they must inform the bank or the ethics officer of any gainful employment of their spouse or recognised partner that might lead to a conflict of interest. If a conflict of interests arises, this disqualifies the employee from working on the matter. This applies both to preparation for a potential decision and the actual decision-making process.

### **3.2.5.4 Application of rules of conduct**

The means of applying the internal conduct rules are of relevance for building the EU benchmark and for the assessment under Article 6(5) and 6(1) of MAR insofar as CB and DMO employees must face personal consequences in the form of disciplinary actions and penalties as a result of their professional and ethical behaviour during, and possibly even after, the term of their employment with the CB or DMO.

If not held accountable, they might not be sufficiently deterred from engaging in that very conduct the internal rules want to prohibit in the first place. For deterrence to occur, however, a supervisory mechanism must be in place that detects, reports and effectively punishes any wrongdoing while, at the same time, providing information, training and advice *ex ante* on allowed conduct by staff and those ethical issues that might arise in the course of their employment with the CB or DMO.

The internal rules of conduct of all CBs and DMOs in the sample provide either for a single, centralised ethics unit/department, with an ethics officer in charge of evaluating the conduct of all of the staff members, or for a decentralised structure based on multiple and separate reporting lines, each of which is in charge of evaluating the conduct of a single internal department, division or team.

Staff members may, and are usually encouraged to, ask the ethics officer or the line manager to provide guidance *ex ante* on any matter related to their compliance with the bank's ethics framework and report to them suspicions of irregularities, incongruities and deviations from the ethical regulations.

Failure to comply with the internal policies at all CBs and DMOs in the sample may result in action under the relevant disciplinary procedures. In particular, if the CB or DMO concludes that the employee has committed gross misconduct, the staff members may face disciplinary actions up to suspension from duties and dismissal.

### **3.3 EU central bank and debt management office standards**

This section reviews the market abuse rules and internal procedures of central banks and DMOs of a selected group of European countries.<sup>502</sup> It only includes the entities that have replied to our questionnaire and for which there was sufficient information publicly available.

#### **3.3.1 European Central Bank**

##### **3.3.1.1 Risk management standards**

The ECB, together with all the CBs belonging to the ESCB, is exempt from the application of MAR with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. However, the execution of transactions and orders as well as behaviours in pursuit of monetary, exchange rate or public debt management policy are subject to specific risk management standards.

In particular, as regards the ECB's institutional trading, the Directorate General Market Operations applies the Model Code "The International Code of Conduct and Practice for the Financial Markets" (hereinafter, the "Model Code") issued by the ACI, the Financial Markets Association. The Model Code is designed to have global application to over-the-counter (OTC) professional financial markets and is perceived to be considered by market participants as a globally accepted minimum standard.

The ECB has two different sets of frameworks that apply to own funds' investments (euro-denominated portfolio) and foreign reserves management, respectively. The frameworks are aimed at mitigating market, credit and liquidity risks. Furthermore, the ECB applies *ex ante* and *ex post* compliance checks to its investment portfolios. In addition, the monetary policy programmes define the trading framework in detail, which the ECB and the national CBs have to apply.

In addition, the Directorate Internal Audit provides independent and objective assurance services<sup>503</sup> designed to improve the ECB's operations. It helps the ECB to accomplish its

---

<sup>502</sup> Countries have been selected for their size (GDP), gross public debt levels and geographical coverage.

<sup>503</sup> Assurance services are services under which outside professionals, such as accountants or auditors, apply procedures in order to probe and test the credibility and reliability of the information on which the decision-maker bases its decisions (For such a definition, see the American Institute of CPAs, *Assurance Services: A White Paper for Providers and Users of Business Information*, p. 5, available at [https://www.aicpa.org/interestareas/frc/assuranceadvisoryservices/downloadabledocuments/asec\\_wp\\_provider\\_s\\_users\\_bi.pdf](https://www.aicpa.org/interestareas/frc/assuranceadvisoryservices/downloadabledocuments/asec_wp_provider_s_users_bi.pdf)).



objectives by bringing a systematic approach to evaluating and improving the effectiveness of risk management, control and governance processes.

### **3.3.1.2 Use of confidential information by staff members**

#### **3.3.1.2.1 Rules of conduct on professional secrecy**

As to the duty to maintaining professional secrecy over the course of their work at the ECB, staff members must comply with the rules on management and confidentiality of documents and seek prior authorisation to disclose information within and outside the ECB (Article 0.3.1, *ECB Staff Rules containing the Ethics Framework*, hereinafter referred to as "ECB Staff Rules").

#### **Special rules for the members of the Governing Council**

Professional secrecy, provided for in Article 38 of the Statute of the ESCB, requires the non-divulgence of confidential information. Members of the Governing Council must take this into account, in particular, in public speeches or statements and in relations with media with regard to monetary policy decisions that have not yet been officially disclosed to the public. They must also take all necessary measures to ensure that the persons having access to their information also respect the professional secrecy obligations imposed by Article 38 of the Statute of the ESCB (Article 5, *Code*).

#### **Special rules for the members of the Supervisory Board**

Members of the Supervisory Board and other participants in Supervisory Board meetings must take into account the requirements of professional secrecy in Article 37 of the Statute of the ESCB, Article 27(1) of Regulation (EU) No 1024/2013 and Article 23a of the Rules of Procedure of the European Central Bank, pursuant to which members are required not to disclose confidential information, whether in public speeches or statements or to the media, with regard to supervisory decisions that have not yet been officially published (Article 14.1, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*). They must also take all necessary measures to ensure that persons having access to the members' information respect the professional secrecy obligations in Article 37 of the Statute of the ESCB (Article 14.2, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*).

#### **3.3.1.2.2 Rules of conduct on the use of inside information**

As for the use of insider information that staff members of the ECB may become acquainted with while working for the ECB, it is stated that they must "*refrain from using or attempting to use information which pertains to the activities of the ECB, national central banks, national competent authorities or the European Systemic Risk Board, and which has not been made public or is not accessible to the public, to further their own or another's private interests*". In particular, they are "*specifically prohibited from taking advantage of such information in any financial transaction or in recommending or advising against such transactions*" (Article 0.4.1.3, *ECB Staff Rules*).

The prohibition to use inside information laid down in Article 0.4.1.3 continues to apply as long as the information has not been made public (Article 0.4.3.6, *ECB Staff Rules*).

#### **Additional rules for the members of the Governing Council**

The members of the Governing Council are barred from using confidential information to which they have access for the purpose of carrying out private financial transactions, whether directly or indirectly via third parties or whether conducted at their own risk and for their own account, or at the risk and for the account of a third party (Article 4.3, *Code*).

### **3.3.1.3 Transactions in assets and financial instruments by staff members**

#### **3.3.1.3.1 Rules of conduct on trading in assets**

The ultimate objective of these rules is *"to protect the reputation and credibility of the ECB"*, which could be damaged by the suspicion that the ECB staff may use inside information for their own benefit. Therefore, the ethics framework must ensure that *"staff do not undertake private financial transactions that or may be perceived as being based on privileged information obtained by staff in the context of the exercise of their professional duties with the ECB"* (Recitals (9) and (10) of the Decision of the ECB of 3 December 2014 amending the ECB Staff Rules as regards the ethics framework).

For this purpose, Article 0.4.2, *ECB Staff Rules*, divides private financial transactions into four categories:

- a. Private transactions that are exempt from any special regime*
- b. Private transactions that are prohibited*
- c. Private transactions that are subject to prior authorisation*
- d. Private transactions that are subject to ex post reporting*

Private transactions under (a) above may be undertaken without being subject to any particular restrictions or notification obligations provided that they consist of: purchase or sale of units in collective investment schemes in respect of which the staff member has no influence on the investment policy; purchase or redemption of insurance policies or annuities; purchase or sale of foreign exchange of the occasional acquisition of non-financial investments or assets; expenditures, including purchase or sale of non-financial investments or assets including real estate; arrangement of mortgages; other private financial transactions which are neither prohibited nor subject to prior authorisation and whose value does not exceed €10,000 within any calendar month (Article 0.4.2.1, *ECB Staff Rules*).

Private transactions under (b) above, which may never be undertaken by staff members, consist of: transactions relating to or with either a private entity or individuals with whom the staff member has an ongoing professional relationship on behalf of the ECB, and transactions concerning the following (per Article 0.4.2.2, *ECB Staff Rules*):

- i. Individual marketable bonds and shares issued by financial corporations (except central banks) established or having a branch in the Union*
- ii. Derivative instruments related to such bonds and shares*
- iii. Combined instruments if one of the components falls under (i) or (ii)*
- iv. Units in collective investment schemes whose main purpose is to invest in such bonds, shares or instruments*

Private transactions under (c) above may be undertaken on the condition of the prior authorisation of the Compliance and Governance Office and consist of:

- i. short-term trading, i.e. the sale or purchase of assets which have been purchased or sold within the previous month, save for subsequent sales made in execution of a stop-loss order given the staff member's broker;*
- ii. transactions exceeding €10,000 within any given calendar month in (i) government securities issued by euro area Member States; (ii) derivative instruments related to such government securities; (iii) combined instruments if one of the components falls under (i) or (ii); and (iv) units in collective investment schemes whose main purpose is to invest in such securities or instruments;*
- iii. transactions exceeding €10,000 within any given calendar month in (i) gold and gold-related derivative instruments (including gold-indexed securities); (ii) shares, bonds or related derivative instruments issued by companies whose*

- principal business is mining or producing gold; (iii) combined instruments if one of the components falls under (i) or (ii); and (iv) units in collective investment schemes whose main purpose is to invest in such securities or instruments;*
- iv. *foreign exchange transactions other than those indicated in Article 0.4.2.1. and exceeding €10,000 within any given calendar month (Article 0.4.2.3, ECB Staff Rules).*

Lastly, private transactions under (d) above may be undertaken provided that they are reported to the Compliance and Governance Office. They consist of any private financial transaction exceeding €10,000 within any given calendar month which does not fall under one of the previous three categories (Article 0.4.2.4, *ECB Staff Rules*).<sup>504</sup>

Subject to the prior authorisation of the Compliance and Governance Office, financial transactions are exempt from the restrictions and notification obligations listed above if *“they are made by a third party to whose discretion the member of staff has entrusted the management of their private financial transactions under a written asset management agreement”*. The authorisation is granted insofar as the staff member is not positioned to directly or indirectly influence the asset management decisions (Article 0.4.2.7).

### **Special rules for the members of the Executive Board**

Members of the Executive Board are strongly recommended to place their investments under the control of one or more recognised portfolio managers with full discretion. This recommendation does not apply to current accounts, deposit accounts, savings accounts and money market funds or comparable short-term instruments. This recommendation is also without prejudice to the possibility to occasionally mobilise funds for the purchase of certain goods or for investing in real estate (Article 5, *Supplementary Code of Ethics Criteria for the members of the Executive Board of the European Central Bank*).

#### **3.3.1.3.2 Rules of conduct on record-keeping**

Staff members are required to provide the Compliance and Governance Office with, and keep updated, current lists of the following:

- a. *Their bank accounts, including shared accounts, custody accounts, credit card accounts and accounts with stockbrokers*
- b. *Any powers of attorney which third parties have conferred on them in connection with their bank accounts, including custody accounts (Article 0.4.3.1, ECB Staff Rules)*

In view of their reporting obligations, staff members must keep records for the previous and current calendar years of all of the following:

- a. *Account statements for all accounts listed in Article 0.4.3.1*
- b. *Any sale or purchase of financial assets or rights made by staff members or third parties at the risk and for the account of staff members or third parties*
- c. *The conclusion or the amendment of mortgages or other loans at their own risk and for their own account, or by them at the risk and for the account of others*
- d. *Their dealings in relation to retirement plans, including the ECB’s Pension Scheme*

<sup>504</sup> Staff members are allowed to keep assets resulting from transactions of the kind described above when such assets are acquired at a later point in time without action by them, in particular by way of inheritance, gift, change in the family status, or as a result of a change in the capital structure or a change of control of the entity in which the staff member holds the assets or rights. However, the later disposal of those assets is subject to prior authorisation by the Compliance and Governance Office. Moreover, the Compliance and Governance Office may request the staff member to dispose of such assets if necessary to avoid conflicts of interest (Article 0.4.2.5, *ECB Staff Rules*).

*and Retirement Plan*

- e. *Any powers of attorney which third parties have conferred on them in connection with their bank accounts, including custody accounts*
- f. *The terms and conditions of any written asset management agreement as defined in Article 0.4.2.7 and of amendments to such agreement (Article 0.4.3.2, ECB Staff Rules)*

Subject to the approval of the Executive Board, the Compliance and Governance Office may request an external service provider to carry out:

- a. *regular compliance checks covering a certain percentage of staff members as determined by the Compliance and Governance Office; and*
- b. *ad hoc compliance checks focusing either on a specific group of members of staff or on specific types of transactions (Article 0.4.3.3, ECB Staff Rules).*

The obligations of members of staff under Article 0.4.3 (reporting of transactions and holdings of assets and financial instruments) continue to apply until the end of the calendar year following the year in which their employment ended.

### ***Special rules for the members of the Supervisory Board***

Members of the Supervisory must submit to the President of the ECB, either during their first three months of office or during the period of three months following the entry into force of this Code of Conduct, a written statement setting out their patrimony, any direct or indirect involvement in any company, and the prospective organisation for the management of their assets during their term of office as a member of the Supervisory Board. These written statements, including wealth declarations required under applicable national rules, must be updated on an annual basis (Article 6, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*).

#### **3.3.1.4 Staff independence and conflicts of interest**

##### **3.3.1.4.1 Rules of conduct on independence**

Staff members are prohibited from soliciting and accepting for themselves or any other person *"any advantage connected in any way with their employment with the ECB"* (Article 0.2.2.1, *ECB Staff Rules*),<sup>505</sup> such as gifts, hospitality or other benefits of a financial or non-financial nature that are susceptible to improving the financial, legal or personal situation of the recipient or any other person (Article 0.2.2.2, *ECB Staff Rules*) save for benefits that are non-frequent, of limited value and the acceptance of which is required by specific circumstances (see Article 0.2.2.3, *ECB Staff Rules*).

In addition, staff members must not accept for themselves any payments from third parties on the basis of the performance of their professional duties at the ECB (Article 0.2.5, *ECB Staff Rules*). In particular, they must obtain prior authorisation from the Director General of Human Resources before engaging in any external activity of an occupational nature, unless such external activity is unremunerated, falls in the domain of culture, science or the like, and is not related to the ECB or the employee's professional duties at the ECB (Article 0.2.6.1 and 0.2.6.2, *ECB Staff Rules*). Any external activity, whether previously authorised or exempt from authorisation, must be terminated upon the request of the Director General of Human Resources, if at some point in time it is deemed to give rise to a conflict of interest (Article 0.2.6.6, *ECB Staff Rules*).

---

<sup>505</sup> An advantage is considered *"connected with recipient's employment with the ECB"* if such advantage is *"offered on the basis of the recipient's position with the ECB, rather than on a personal basis"* (Article 0.2.2.2).

Furthermore, staff members are subject to post-employment restrictions, which vary in intensity according to the position and the functions performed at the ECB. All staff members must always inform the Compliance and Governance Office if the nature of the prospective occupational activity may lead to a conflict of interest with the current duties at the ECB (Article 0.2.8.1, *ECB Staff Rules*). Those staff members who are involved in supervisory activities over credit institutions must also notify the Compliance and Governance Office before accepting any occupational activity during predetermined notification periods (Article 0.2.8.2, *ECB Staff Rules*). Additionally, these staff members are held to cooling-off periods after termination of employment with the ECB, during which they are prohibited from working for credit institutions in the supervision of which they were involved (Article 0.2.8.3, *ECB Staff Rules*).

Lastly, staff members must be "*mindful of the ECB's independence, reputation and the need to maintain professional secrecy*". In the performance of their professional duties, they must "*neither seek nor take instructions from any government, authority, organisation or person outside the ECB*". Staff Members are required to inform their line manager of any attempt by a third party to influence the ECB in the performance of its tasks (Article 0.3.2.1).

### **Special rules for the members of the Governing Council**

The members of the Governing Council are required to "*observe the highest standard of ethical conduct. They are expected to act honestly, independently, impartially, with discretion and without regard to self-interest and to avoid any situation liable to give rise to a personal conflict of interests. They are expected to be mindful of the importance of their duties and responsibilities, to take into account the public character of their function and to conduct themselves in a way that maintains and promotes the public's trust in the ECB*" (Article 2, *Code of Conduct for the Members of the Governing Council*).

It follows from these general principles of conduct that members of the Governing Council, when exercising the powers and carrying out the tasks and duties conferred upon them, must not seek nor take instructions from Community institutions or bodies, from any government of a Member State or from any other body, including any decision-making body, that they belong to (Article 3.1, *Code of Conduct for the Members of the Governing Council*). Further, they cannot apply for, receive or accept from any source except from within the ESCB any benefits, rewards, remuneration or gifts in excess of EUR 200, whether financial or non-financial, which are connected in any way whatsoever with the function as a member of the Governing Council (Article 3.3, *Code of Conduct for the Members of the Governing Council*). They must ensure that non-ESCB activities, if any, whether remunerated or not, have no negative impact on their obligations and will not damage the image of the ECB (Article 3.6, *Code of Conduct for the Members of the Governing Council*). Relations with interest groups must be based upon an approach that is compatible with their independence as members of the Governing Council and the principle of integrity (Article 3.7, *Code of Conduct for the Members of the Governing Council*).

### **Special rules for the members of the Executive Board**

As regards acceptance of benefits, the acceptance of a gift is prohibited if it may impair or influence the objectivity and freedom of action of a member of the Executive Board. It can never create an inappropriate obligation or expectation on the part of the recipient or the provider. In any event, private sector gifts of a value exceeding €50 are prohibited. Those not exceeding such value are permissible to the extent they are due to relations with other central banks and public, national and international organisations, provided they do not go beyond what is customary and considered appropriate (Article 2, *Supplementary Code of Ethics Criteria for the members of the Executive Board of the European Central Bank*).

### **Special rules for the members of the Supervisory Board**

In accordance with Article 19(1) of Regulation (EU) No 1024/2013, members of the Supervisory Board and other participants in Supervisory Board meetings, when carrying out the tasks conferred upon them, must act independently and objectively in the interest of the Union as a whole, regardless of national or personal interest, and must not seek or take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body. They must, in particular, carry out the tasks conferred upon them free from undue political influence and from commercial interference that would affect their personal independence. In addition, they must abstain from professional activities and resign from any position that could hinder their independence or present them with the possibility of using privileged information (Article 4, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*).

Additionally, members of the Supervisory Board and other participants in Supervisory Board meetings must respect the separation of the ECB's specific tasks concerning policies relating to prudential supervision from its tasks relating to monetary policy, as well as other tasks, and must comply with internal ECB rules on the separation of prudential supervision from monetary policy to be adopted pursuant to Article 25(3) of Regulation (EU) No 1024/2013 (Article 3.1, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*). In the performance of their tasks, they take into account the objectives set by Regulation (EU) No 1024/2013 without interfering with other tasks of the ECB (Article 3.2, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*).

#### **3.3.1.4.2 Rules of conduct on conflicts of interest**

As a general principle, staff members must avoid conflicts of interest in performing their professional duties (Article 0.2.1.1, *ECB Staff Rules*).<sup>506</sup>

Article 0.2.1.3, *ECB Staff Rules*, provides that if staff members “become aware of a conflict of interest when performing their professional duties they must immediately inform their line manager of such a conflict. The line manager may then initiate any appropriate measures to avoid such conflict of interest after having sought the advice of the Compliance and Governance Office. If the conflict cannot be solved or mitigated by other appropriate measures, the line manager may relieve staff from responsibility for the relevant matter. If the conflict of interest is related to a procurement process, the line manager shall inform the Central Procurement Office or the Procurement Committee, as applicable, which shall then decide on the measures to be taken”. The same rule applies in case the conflict of interest is due to the gainful occupational activity of the spouse (Article 0.2.7, *ECB Staff Rules*).

Furthermore, before appointing candidates the ECB must assess whether there may be a conflict of interest resulting from the candidate's previous occupational activities or their close personal relationship to staff members, members of the Executive Board or members of other internal bodies (Article 0.2.1.4, *ECB Staff Rules*).

During the first year after their duties have ceased, the members of the Governing Council must continue to avoid any conflict of interest that could arise from any new private or professional activities. They must, in particular, inform the members of the

---

<sup>506</sup> According to Article 0.2.1.2, *ECB Staff Rules*, a “conflict of interest” means “a situation where members of staff have personal interests that may influence or appear to influence the impartial and objective performance of their professional duties”, while “personal interests” means “any benefit or potential benefit, of a financial or non-financial nature, for members of staff, their family members, their other relatives or their circle of friends and close acquaintances”.

Governing Council in writing whenever they intend to engage in such activities and shall seek their advice before committing themselves (Article 6, *ECB Staff Rules*).

### **Special rules for the members of the Supervisory Board**

Members of the Supervisory Board and other participants in Supervisory Board meetings shall avoid any situation which could give rise or may be perceived as giving rise to a conflict of interest (Article 9.1).<sup>507</sup> Any situation that could cause or could be perceived as causing a conflict of interest must be disclosed in writing by members of the Supervisory Board and other participants in Supervisory Board meetings to the Supervisory Board and these members are barred from participating in any deliberation or vote in relation to that situation (Article 9.2, *Code of Conduct for the Members of the Supervisory Board of the European Central Bank*).

## **3.3.1.5 Application of rules of conduct**

### **3.3.1.5.1 Ethics officer**

The Compliance and Governance Office, which is established within the Directorate General Secretariat, has internalised the function of the Ethics Office. The Compliance and Governance Office reports directly to the ECB President in matters and its activities related to the ethics framework.

The Compliance and Governance Office, together with the Director General of Human Resources, Budget and Organisation or their Deputy, may issue guidelines on the interpretation and application of the ethics framework (Article 0.7.1, *ECB Staff Rules*). Additionally, staff members may request the Compliance and Governance Office, or the Director General of Human Resources, Budget and Organisation or their Deputy in cases where they are competent to decide, to provide guidance on any matter related to their compliance with the ethics framework. Staff conduct that fully complies with the advice given by the Compliance and Governance Office or the Directorate General of Human Resources, Budget and Organisation is presumed to comply with the ethics framework and does not give rise to any disciplinary procedure. Such advice does not release staff from any liabilities under national law (Article 0.7.2, *ECB Staff Rules*).

### **3.3.1.5.2 Disciplinary actions and enforcement**

As provided for by an Administrative Circular, potential breaches of professional duties – including the ethics framework – must be reported by any manager who becomes aware of the incident, and may be reported by any non-managerial staff member. When related to issues falling within the competence of the European Anti-Fraud Office, all staff members must report relevant illegal activities. The respective Administrative Circular provides for referral to a collegiate body composed of three senior managers, who advise on the relevance of the allegations, and on the need to conduct an internal fact-finding exercise to determine whether any breaches of professional duties have occurred.

Additionally, if the external service provider that has been employed by the Compliance and Governance Office upon the authorisation of the Executive Board identifies evidence giving rise to a suspicion of a breach of professional duties by a member of staff or a breach of contractual duties by an external person working for the ECB and subject to the restrictions laid down in Article 0.4, *ECB Staff Rules*, about private financial transactions, it is asked to report such a potential breach together with the supporting documentation to the Compliance and Governance Office. The Compliance and

---

<sup>507</sup> Within the meaning of this provision, a conflict of interest arises “where the members of the Supervisory Board and other participants in Supervisory Board meetings have private or personal interests that may influence the impartial and objective performance of their tasks including any potential benefit or advantage to themselves, their family members or their recognised partners”.

Governance Office must then assess the potential breach and, if the suspicion is substantiated, report it to the competent body or business area(s) for further investigation, if necessary, or disciplinary follow-up. The report of the external service provider, including the supporting documentation submitted in accordance with the rules above, may be part of any subsequent internal and/or external proceedings (Article 0.4.3.5, *ECB Staff Rules*).

Training on the internal rules of conduct takes place upon recruitment and when rules change. Regular staff training in form of workshops and e-learning are provided. The latter are combined with an annual certification of compliance with the ethics framework. Any relevant amendment to the Conditions of Employment and Staff Rules is first subject to transparent consultation with the Staff Committee and subsequently published on the intranet. It is then communicated and circulated by other suitable means (presentations, staff meetings, etc.).

### **3.3.2 Belgium**

#### **3.3.2.1 Debt management office framework (Belgian Federal Debt Agency)**

Article 25, §2, al. 3, and Article 40, §5, of the Law of 2 August 2002 related to the surveillance of the financial sector and the financial services state that the prohibitions regarding insider dealing and market manipulation do not apply to the transactions in the pursuit of monetary, exchange or public debt management policies by a Member State of the EEA, the ESCB, by the bank (in this case, the National Bank of Belgium)) or any other national central bank (NCB) of other EEA Member States, by the Securities Regulation Fund, by the communities, regions, French Community Commission, provinces, municipalities, urban cities and federations of municipalities, or by any person acting for the account of the above mentioned entities. At present, there are no exemptions in place for third-country DMOs.

##### **3.3.2.1.1 Risk management standards**

The Belgian Federal Debt Agency (BFDA) has internal procedures when dealing in the financial markets. The Minister of Finance grants power to individuals from DMO, on an annual basis, in order to engage the Kingdom of Belgium in financial market-related deals.

Internal standards for market risk (proposed by the DMO and approved annually by the Minister of Finance under the form of "General Guidelines") and credit risk (per counterparty and based upon the financial strength ratios of the counterparty) management are in place and followed by the Middle Office. The Executive Committee is informed of the risk exposure by the means of monthly "management information system" (MIS) and credit risk reports.

An online automated follow-up of the credit risk per counterparty supervises all commitments made by the Front Office during a working day.

An internal auditor is present in the DMO and applies a "continuous auditing" methodology, i.e. following and evaluating daily the financial transactions and the operational treatment of the deals. His daily reporting can be read online by the Superior Audit Institution (SAI) of the Belgian Federal Parliament (the Court of Audit).



### **3.3.2.1.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

BFDA staff members are bound by professional secrecy regarding the information acquired in the context of their work, pertaining to BFDA and deemed confidential. Such professional secrecy is provided for in the Penal Code (Article 458), the Deontological Code, and the BFDA Charter. The ACI Model Code for traders does not include specific professional secrecy but rather “confidentiality”.

The DMO staff can only disclose information if authorised by the Minister of Finance or instructed by a court.

The Deontological Code provides that the civil servants should seek authorisation before entering into contact with the press. The BFDA Charter prohibits DMO staff from expressing an opinion or otherwise providing information to external persons or entities.

#### **Rules of conduct on the use of inside information**

BFDA staff members are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of their family.

### **3.3.2.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

The BFDA Charter prohibits staff members from:

- i. dealing for own account via the BFDA and
- ii. dealing in securities issued by BFDA.

There are no limitations in place for the dealing of financial instruments outside their professional activity.

BFDA staff members are subject to limitations in dealing, receiving as gifts or inheritances, and holding financial instruments, including for these purposes public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

#### **Rules of conduct on record-keeping**

There are no specific obligations in place.

### **3.3.2.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

The Charter of the BFDA provides that staff members cannot exercise a secondary activity (paid or unpaid) without prior approval from the Treasury’s Administrator General.

There are no lists in place, such as a “black list” of prohibited remunerated or non-remunerated activities, a “white list” of permitted remunerated or non-remunerated activities, or a “grey list” of remunerated or non-remunerated activities subject to prior authorisation, on what type of activities BFDA staff members are allowed to carry out in the context of their work and outside their working hours. The staff has to inform the

hierarchy/line managers of any secondary activity (whether paid or unpaid). These type of notifications are assessed on a case-by-case basis.

The public Charter of the BFDA prohibits the acceptance of gifts and other direct or indirect advantages of a more than symbolic value by its staff members, within the general framework of the federal debt management activity. The Code of Deontology of the Ministry of Finance also prohibits the acceptance or demand for gifts, money and discounts from a business.

### **Rules of conduct on conflicts of interest**

The Deontological Code provides that the hierarchy/line managers must be informed of existing or potential conflicts of interests.

BFDA staff members are forbidden from participating in a decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision. The mix of the wholesale banking of a DMO and the private financial affairs of individuals is not feasible in practice and would be against the staff independency policy stated in the Charter of the BFDA and the Deontological Code.

### **3.3.2.1.5 Application of rules of conduct**

#### **Ethics officer**

Within the General Administration of the Treasury, the line management ensures the compliance with the Deontological Code of the civil servants and staff working on a contractual basis. The Belgian DMO is a fully integrated department within the Ministry of Finance. The line managers have to report any misconduct, conflicts or irregularities to the hierarchy/line managers. The ultimate power remains with the President of the Ministry of Finance and his Management Committee ("*Comité de Direction*") who has the competency for taking disciplinary actions.

#### **Disciplinary actions and enforcement**

BFDA staff members must report actual or suspected breaches of the internal code of conduct to the hierarchy/line managers. The internal reporting mechanism can be written or oral.

A breach can also be qualified as a tort or a criminal or administrative offence. The key factor is "service breach to the citizens" and/or not respecting the laws, public regulations, public budget, etc.

The federal statute of the civil servants provides for disciplinary actions that can ultimately lead to interruption of the employment contract. The disciplinary sanctions are the following:

- i. Rappel à l'ordre (Reminder of the rule)
- ii. Blâme (Reprimand)
- iii. Retenue de traitement (Withheld salary)
- iv. Déplacement disciplinaire (Imposed displacement)
- v. Suspension disciplinaire (Disciplinary suspension)
- vi. Régression barémique (Pay cut)
- vii. Rétrogradation (Demotion)
- viii. Démission d'office (Compulsory retirement)
- ix. Révocation (Dismissal)

Ethics and deontology rules are part of the learning programme dedicated to civil servants. Occasional voluntary information sessions are organised to provide a reminder of the rules to the staff. Training mainly takes place during recruitment and voluntary information sessions are organised once every two years or more.

BFDA staff members receive an internal specific communication (generally via internal e-mail; alerts can be launched but only on a reactive basis if circumstances require) that make them promptly aware of modifications and/or additions and/or ways of applying the internal code of conduct.

Employees are not bound by any specific obligations beyond their employment contract.

### **3.3.3 Czech Republic**

#### **3.3.3.1 Central bank framework (Czech National Bank)**

The central bank is exempt from the market abuse regulation pursuant to Article 124(6)(a) and 126(2)(f) of Act no. 256/2004 Coll., on Business Activities on the Capital Market. No exemption for third-country central banks is provided for.

##### **3.3.3.1.1 Risk management standards**

Operations on behalf of the Czech National Bank (CNB) are governed by a system of internal guidelines, e.g. rules and operational procedures governing the activities connected with trading on behalf of the CNB on financial and capital markets (see official information of the CNB dated 29 July 2011 on the Manner of Execution of the CNB's Operations on the Domestic Money Market).

Operations carried out for the management of foreign exchange reserves are governed by internal guidelines issued by the Risk Management Department and are binding for Risk Management Department, Back Office, Middle Office and Financial Markets Department, the last of which carries out trading activities on behalf of the CNB. Risk management standards are part of these guidelines. In the area of foreign exchange reserves management, compliance with the rulebook is monitored daily by staff from the Middle Office, Back Office and Risk Management Department.

##### **3.3.3.1.2 Use of confidential information by staff members**

###### **Rules of conduct on professional secrecy**

Staff members are bound by a duty of professional secrecy (see Ethical Code of the CNB and internal rules on the protection of restricted and classified information; and Article 50, Act No. 6/1993 Coll., on the CNB).

The duty of confidentiality applies beyond the termination of employment.

###### **Rules of conduct on the use of inside information**

Act No. 6/1993 Coll., on the CNB, Article 50, paragraph 2, states: "*Persons subject to the obligations referred to in paragraph 1 may be exempt from the confidentiality obligation by the Czech National Bank in cases specified by other legislative acts, in the public interest or where necessary to protect the interests of the Czech National Bank. This shall be without prejudice to the confidentiality obligation laid down in the Statute (Article 37 of the Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank)*". The Act is also reproduced in the CNB's internal rules No. 76/2013.

### **3.3.3.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

They vary depending on the information the staff members are acquainted with and on the type of financial instrument.

#### **Rules of conduct on record-keeping**

Some transactions are subject to reporting obligations to the Ethics Committee.

Reporting is applicable under special circumstances only. Reporting in some cases is mandatory. The Ethics Committee is entitled to demand the documents on a selected list of financial transactions.

### **3.3.3.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

The Working Rules of CNB (Articles 12 to 15) in connection with national legislation (Act 262/2006 Coll., Labour Code) prohibit some activities outside the bank and subject others to prior authorisation.

#### **Rules of conduct on conflicts of interest**

Conflicts of interest are dealt with in the Ethics Code of CNB (Articles 2 to 4). In particular, members are forbidden from participating in decisions (including policy decisions) when they have a private/personal interest in the preparation or outcome of the decision.

In case of conflict of interests, the staff member is obliged to inform the line manager.

### **3.3.3.1.5 Application of rules of conduct**

#### **Ethics officer**

As stated in the Ethics Code, an Ethics Committee judges cases of breach, assesses whether reported financial transactions are in compliance with the Ethics Code, and plays an advisory role.

The employees are acquainted with the Ethics Code upon recruitment. However, there are no periodic checks on their knowledge of the rules.

The Ethics Code is available on the intranet. Each modification of every internal rule is communicated to the employees by e-mail and newsletter.

#### **Disciplinary actions and enforcement**

No disciplinary actions apply.

### **3.3.3.2 Debt management office framework (Czech Ministry of Finance)**

There is no exemption for domestic and third-country DMOs.

### **3.3.3.2.1 Risk management standards**

Public debt management operations are governed by a system of internal guidelines of the Ministry of Finance and monitored by staff of the Middle Office and Back Office divisions within the Debt and Financial Assets Management Department.

### **3.3.3.2.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Staff members are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to their employer and classified as confidential and/or over inside information. According to the national legislation, the duty of confidentiality shall last even beyond the term of employment.

#### **Rules of conduct on the use of inside information**

Staff members are prohibited from using inside information for private/personal purposes, i.e. for their own interest or for the interest of their family.

### **3.3.3.2.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Staff members are subject to limitations in dealing in and holding financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

#### **Rules of conduct on record-keeping**

No specific rules are in place.

### **3.3.3.2.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Staff members are bound by a general duty of independence and/or impartiality and/or integrity.

#### **Rules of conduct on conflicts of interest**

Staff members are prohibited from engaging in transactions for the purposes, in the name and on behalf of the institution, when they have a private/personal interest in the transaction and/or the financial instruments or the issuer of financial instruments involved in the transaction.

### **3.3.3.2.5 Application of rules of conduct**

#### **Ethics officer**

There is no internal function responsible for supervising the application of the internal rules of conduct. Each modification of every internal rule is communicated to the employees by e-mail and newsletter. Training on their content and application take place on recruitment. No breach or suspected behaviour reporting mechanism is provided for in the applicable rules.

## **Disciplinary actions and enforcement**

Disciplinary actions are taken if the breach of rules also meets the conditions set in the criminal code (Act 40/2009 Coll.) or other legal act.

### **3.3.4 Denmark**

#### **3.3.4.1 Central bank framework (Danmarks Nationalbank)**

The exemption from market abuse regulation applies to transactions which are entered into by a sovereign state, a central bank, the ESCB, or their agents when such transactions are part of monetary policy, exchange rate policy or government debt policy (Section 35(4) and 39(3) of the Securities Trading Act). No other exemption is in place for third-country central banks.

##### **3.3.4.1.1 Risk management standards**

Danmarks Nationalbank (DN) operations are subject to risk management standards (see the by-laws of DN). DN's Audit carries out, in cooperation with appointed external auditors, the auditing of DN's accounts, administrative and financial practices, procedures, internal control environment and IT. The internal rules on insider dealing, etc., provides that a violation of the rules could result in disciplinary action, including termination of employment.

##### **3.3.4.1.2 Use of confidential information by staff members**

###### **Rules of conduct on professional secrecy**

Members are bound by a duty of professional secrecy over information acquired in the context of their work. Rules on professional secrecy extend beyond the term of employment.

###### **Rules of conduct on the use of inside information**

Such information can be disclosed to other public authorities if:

- i. prior informed content has been given;
- ii. such disclosure is mandated in statutory law or regulation; or
- iii. if the information is presumed to be of significant importance to that other authority.

##### **3.3.4.1.3 Transactions in assets and financial instruments by staff members**

###### **Rules of conduct on trading in assets**

The members of the board of governors, all managers and all employees of certain departments are prohibited from engaging in the dealing of instruments issued by financial institutions (with a few exceptions) or parent companies of these institutions. Furthermore, rules on prohibition of "speculative transactions"<sup>508</sup> apply.

---

<sup>508</sup> The respondents to the questionnaire have not specified the meaning of "speculative transactions".

### **Rules of conduct on record-keeping**

Members of the board of governors as well as all managers must keep record of holdings of, and transactions in, financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles. They must also report them upon request.

#### **3.3.4.1.4 Staff independence and conflicts of interest**

### **Rules of conduct on independence**

General duties of independence mandated by Danish administrative law apply.

### **Rules of conduct on conflicts of interest**

Members are forbidden from participating in the decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision.

#### **3.3.4.1.5 Application of rules of conduct**

### **Ethics officer**

The bank has no internal function entrusted with the application and monitoring of the internal and/or a code of ethics (or ethical regulation).

### **Disciplinary actions and enforcement**

They include termination of employment.

#### **3.3.4.2 Debt management office framework (Danish DMO established within the Danmarks Nationalbank)**

The exemption applies to transactions that are entered into by a sovereign state, a central bank, the ESCB, or their agents when such transactions are part of monetary policy, exchange rate policy or government debt policy (Section 35(4) of the Securities Trading Act). No exemption is in place for non-domestic DMOs.

#### **3.3.4.2.1 Risk management standards**

DN's own risk management standards apply.<sup>509</sup>

#### **3.3.4.2.2 Use of confidential information by staff members**

### **Rules of conduct on professional secrecy**

DN's staff members are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to DN and classified as confidential and/or over inside information. Such information can be disclosed to other public authorities if:

- i. prior informed content has been given;
- ii. such disclosure is mandated in statutory law or regulation; or

---

<sup>509</sup> However, the contents of such risk management standards are not made publicly available, nor have they been illustrated in detail via questionnaire.

- iii. if the information is presumed to be of significant importance to that other authority.

Rules on professional secrecy extend beyond the term of employment.

#### **Rules of conduct on the use of inside information**

DN's staff members are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of their family.

### **3.3.4.2.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

DN's staff members are subject to limitations in dealing in and holding financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

The members of the board of governors, all managers and all employees of certain departments are prohibited from engaging in the dealing of instruments issued by financial institutions (with a few exceptions) or parent companies of these institutions. Furthermore, rules on prohibition from so-called 'speculative transactions' apply.

#### **Rules of conduct on record-keeping**

Members of the board of governors as well as all managers must keep record of holdings of, and transactions in, financial instruments, including for these purposes public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

### **3.3.4.2.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

DN's members are bound by a general duty of independence pursuant to Danish administrative law while performing their tasks.

There is a "grey list" of remunerated or non-remunerated activities subject to prior authorisation, which DN's members are allowed or not allowed to carry out in the context of their work and outside their working hours.

There are rules concerning the acceptance of gifts, awards and/or fees from outside individuals and/or entities by staff members related to the performance of their tasks.

#### **Rules of conduct on conflicts of interest**

DN's code of ethics provides for the identification, disclosure and management of conflicts of interest.

DN's staff members are prohibited from engaging in transactions for the purposes, in the name and on behalf of the institution, when they have a private/personal interest in the transaction and/or the financial instruments or the issuer of financial instruments involved in the transaction.

DN's staff members are forbidden from participating in the decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision.



### **3.3.4.2.5 Application of rules of conduct**

#### **Ethics officer**

There is not an internal function entrusted with the application and monitoring of the internal code of ethics and/or arrangements, systems or procedures, such as an ethics officer.

#### **Disciplinary actions and enforcement**

The code of ethics provides for disciplinary actions (such as termination of employment) in case of abuse, misconduct and/or breach of its provisions.

The training of DN's staff members includes learning about the content and application of the internal code of ethics, but no periodic evaluations are conducted. DN's staff members receive an internal specific communication that makes them promptly aware of modifications and/or additions and/or modes of applying the internal code of conduct.

### **3.3.5 France**

#### **3.3.5.1 Debt management office framework (Agence France Trésor)**

No exemption from market abuse rules is in place for domestic and foreign DMOs.

##### **3.3.5.1.1 Risk management standards**

No information was provided or publicly available on the application of risk management standards by the French DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

##### **3.3.5.1.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

The employees are bound by professional secrecy as to all information related to the performance of their duties and shall keep confidential the terms of the operations (Article 1, *Charte de déontologie de l'agence de la dette Agence France Trésor*,<sup>510</sup> hereinafter referred to as "*Charte de déontologie*").

Employees who have the opportunity to get acquainted with inside information while exercising their functions may neither use nor pass it on before the public has had knowledge of it. Inside information may be disclosed inside or outside the agency to the extent that such communication is essential to the exercise of the tasks assigned to the agency. Non-compliance with these provisions constitutes a criminal offense (Article 2, *Charte de déontologie*).

#### **Rules of conduct on the use of inside information**

Employees should not spread to the public by any means false or misleading information likely to influence the price of securities or markets in financial instruments (Article 2, *Charte de déontologie*).

---

<sup>510</sup> More detailed information available at:  
[www.legifrance.gouv.fr/affichTexte.do;jsessionid=11D36EEF349B95416FD9ECF12CDC81EB.tpdila23v\\_2?cidTexte=LEGITEXT000027806931&dateTexte=20150414](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=11D36EEF349B95416FD9ECF12CDC81EB.tpdila23v_2?cidTexte=LEGITEXT000027806931&dateTexte=20150414).

Employees are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of their family.

### **3.3.5.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Employees are prohibited from performing privately operations that could create a conflict of interest with the agency (Article 1, *Charte de déontologie*).

#### **Rules of conduct on record-keeping**

There are no internal rules on record-keeping and reporting of holdings and transactions in financial instruments and/or other relevant assets by the members of Agence France Trésor (AFT).

### **3.3.5.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Employees are prohibited from soliciting or accepting, directly or indirectly, offers, promises, donations, gifts or any other advantages. They should also refrain from abusing their real or supposed influence with a view to obtaining employment, contracts or any other favourable decision from an authority or a public administration distinctions. As such, an employee is forbidden to receive, directly or indirectly, any compensation from intermediaries and investors with whom the agency is or may be related. It is also forbidden to receive gifts or benefits from intermediaries, investors or others that could be considered unusual practices in business relations. In case of doubt, the hierarchy must be notified to decide on what should be done and record the case in a specific folder, if needed. Any financial payment, whatever the amount and source, must be immediately refused and, if applicable, returned.

Non-compliance with the provisions of this section constitutes a criminal offense (Article 3, *Charte de déontologie*).

There is a prohibition of exercising multiple activities, with some exceptions subject to prior authorisations (such as teaching and writing).

#### **Rules of conduct on conflicts of interest**

Employees' personal interests may by no means interfere with the execution of their tasks. Their position should not be used for personal purposes, either in terms of influence over outcomes or power to dispose of certain means, services or information (Article 1, *Charte de déontologie*).

AFT's staff members are forbidden from participating in the decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision.

### **3.3.5.1.5 Application of rules of conduct**

#### **Ethics officer**

The president and general director ensure that within the agency there is a "compendium of ethics recommendations" with different options or suggestions for the employees and their families in order for them to avoid running risks in this area (hereinafter, the Ethics Book). Specific recommendations pertaining to certain positions may be included in this collection.

Employees are made aware of the content of the Ethics Book upon their joining the agency and once a year thereafter; after becoming aware of it, they are required to sign a register held by the head of risk control who is responsible for the availability and timeliness of the Ethics Book.

Line managers must ensure compliance with the ethics rules. They ensure that the confidentiality of transactions and counterparties is preserved, by raising awareness amongst staff members and circulating notes on the issues and avoiding undue flow of information through adequate procedures in place (Article 4, *Charte de déontologie*).

AFT has a dedicated person, an ethics officer, who is responsible for legal matters in the Internal and Risk Control Administration. The staff member has to sign a letter in front of the ethics officer certifying that he/she has read the AFT's Code of Ethics and will comply with it. The same procedure is applied also by services of the Directorate-General of the Treasury with respect to its own Code of Ethics.

### **Disciplinary actions and enforcement**

AFT staff members have to report suspected breaches of the internal code of ethics to the line managers and to the ethics officer. The ethics adviser and the line managers are obliged to alert the AFT's Chief Executive Officer as well as the Directorate-General of the Treasury's Chief Executive Officer and even the Minister in the case of a serious breach.

In case of abuses, misconduct and/or breach of internal rules, disciplinary sanctions are provided by the 1983 Act on the General Status of Civil Servants. Some breaches of the ethics rules constitute also a criminal offence (professional secrecy, conflict of interest) while others constitute an administrative offence (obligation as to circumspection).

The code of ethics applies to AFT employees beyond their employment term.

## **3.3.6 Germany**

### **3.3.6.1 Central bank framework (Deutsche Bundesbank)**

Section 1 (3) of the Securities Trading Act exempts from market abuse regulation transactions carried out by the central bank for monetary policy purposes or in connection with the public debt management. The same section exempts from market abuse regulation a foreign country or its central bank or another body commissioned to conduct such transactions or any person acting on their own account with regard to transactions carried out for monetary policy purposes or for purposes of public debt management. This exemption also applies to non-EU central banks.

#### **3.3.6.1.1 Risk management standards**

General risk management standards apply.<sup>511</sup>

#### **3.3.6.1.2 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Pursuant to Section 32 of the Bundesbank Act (Bundesbankgesetz – "BBankG"),<sup>512</sup> all staff is bound to secrecy concerning bank affairs and facilities, as well as the transactions

---

<sup>511</sup> However, the content is not publicly available, nor they have been illustrated in detail via questionnaire.

<sup>512</sup> More information available at:

it conducts. Without permission, they may not testify or make statements in or out of court about such matters that have come to their notice in the course of their activities, not even after they have ceased working at the bank, i.e. rules on professional secrecy extend beyond the term of employment.

### **Rules of conduct on the use of inside information**

Staff members are not allowed to make use of not publicly available information for their own interest or that of others.

In particular, bank employees who, in the performance of their work or owing to their position in the bank, have access to market-relevant information which is not yet general knowledge are prohibited from using this information to gain any economic benefit for themselves or third parties until this information has become generally available. Nor can they disclose or make available such information to third parties or recommend that third parties acquire or dispose of securities or other assets on the basis of such information.

### **3.3.6.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

The DB's Guidelines provide, *inter alia*, that staff members' transactions cannot conflict with the interests of the bank's customers or those of the bank.

Where conflicts of interest arise, the interests of the bank's customers or of the bank itself have priority. Transactions which create an impression of impropriety or could call into question the credibility of the bank or its staff must not be undertaken.

#### **Rules of conduct on record-keeping**

Staff members are obliged to fully disclose their accounts or safe custody accounts and the powers of attorney they have assumed at the request of the bank.

Staff members that come into contact with inside information on a regular basis must report, on their own initiative and without delay, any transactions conducted via a third-party institution to the Compliance Officer, including all details and the name of the institution. At least once a year, or on request, all staff performing special functions<sup>513</sup> must submit to the Compliance Officer a declaration of completeness regarding the transactions they have conducted or, if appropriate, a negative statement.

### **3.3.6.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Pursuant to Section 60 of the Federal Civil Servants Act (Bundesbeamtengesetz - BBG), civil servants have to perform their tasks in an impartial and just manner.

### **Rules of conduct on conflicts of interest**

According to the German Federal Civil Servants Code, civil servants have to administer their duties in an impartial way. Therefore, a conflict of public interest with the private interest of the civil servant should be avoided. In the case of a conflict of interest, the civil servant should inform his superior and, if necessary, abstain from his official duties.

Employees should also report possible conflicts of interest to their superior as a collateral duty arising from the employment relationship.

#### **3.3.6.1.5 Application of rules of conduct**

##### **Ethics officer**

There is an internal compliance function that initiates, revises and updates policies and procedures on compliance-related issues and monitors transactions in securities by the staff. It is also responsible for granting permission to accept gifts. The compliance function reports to the competent Executive Board member.

DB performs training on the internal rules upon recruitment and thereafter performs regular in-house trainings. In addition, all relevant rules and relevant amendments thereto are made available to all employees on the intranet.

##### **Disciplinary actions and enforcement**

Breaches of rules may result in disciplinary measures ranging from a written warning to the dismissal of the civil servant depending on the circumstances and the seriousness of the breach. More specifically, measures under the relevant employment rules are: admonishments, written warnings and notices of termination of the employment contract.

Furthermore, a breach of the rules on the acceptance of gifts constitutes a criminal offence pursuant to Section 331 of the German Criminal Code (Taking Bribes) and/or Section 332 (Taking Bribes meant as an incentive to violate one's official duties). In addition, breaches of DB rules on insider dealing may constitute a crime committed by the respective employee under Section 38 of the Securities Trading Act.

Criminal or administrative offences must be reported to the competent authorities.

#### **3.3.6.2 Debt management office framework (Deutsche Finanzagentur)**

According to Section 1(3) of the Securities Trading Act, a foreign country or its central bank or another body commissioned to conduct such transactions or any person acting on their account are exempt regarding transactions carried out for monetary policy purposes or for purposes of public debt management. The exemption therefore also applies to foreign DMOs. General risk management standards also apply.

##### **3.3.6.2.1 Risk management standards**

Information is neither publicly available nor has it been provided via questionnaire.

### **3.3.6.2.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

DF staff are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to DF and classified as confidential and/or over inside information.

According to Article 4 of DF's General Terms of Business, "*The Federal Republic of Germany and the Finanzagentur will maintain secrecy concerning all facts and evaluations, of which they may become aware in dealings with parties to a business transaction (business secrecy). Such duty to maintain secrecy is however not binding between the competent departments for supervision and regulation of the debt management of the Federal Republic of Germany and the Finanzagentur. Circumstances covered by such a principle of business secrecy, may only be revealed to third parties when stipulated under statutory requirements or when the party to a business transaction is in agreement therewith. Such shall however not apply to subject matter, which has been made known to the public by the press, radio- or television broadcasting, or through other media, without the influence of the Federal Republic of Germany or the Finanzagentur*".<sup>514</sup>

#### **Rules of conduct on the use of inside information**

DF staff are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of their family.

### **3.3.6.2.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

DF staff are subject to limitations in dealing in and holding financial instruments, including for public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles. Employee transactions must be reported to the internal compliance officer within a defined scope.

#### **Rules of conduct on record-keeping**

There is not a record of holdings of, and transactions in, financial instruments, including for public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

DF staff must keep records of bank accounts, securities or stockbroker accounts, custody accounts (in their own name, or shared) and their statements, dealings with mortgages, pension or retirement plans, sales or purchases of instruments or rights (by them or in their account), as well as authorisations (by means of power of attorney or otherwise) and/or instructions or guidelines given by or to them for the holding and/or management of the above accounts, products or instruments. Employees' custody accounts must be reported periodically to the internal compliance officer.

---

<sup>514</sup> More information is available at: [www.deutsche-finanzagentur.de/en/gtb/](http://www.deutsche-finanzagentur.de/en/gtb/).

#### **3.3.6.2.4 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

There are rules concerning the acceptance of gifts, gratuities, awards and/or fees from outside individuals and/or entities by DF staff members related to the performance of their tasks.

##### **Rules of conduct on conflicts of interest**

There are specific internal rules and/or policies to identify, disclose and manage conflicts of interest affecting DF staff members.

DF staff are forbidden from participating in the decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision.

#### **3.3.6.2.5 Application of rules of conduct**

##### **Ethics officer**

No specific information about the existence of an internal unit or officer in charge of applying the internal rules of conduct is publicly available. Nor has such information been provided via questionnaire.

##### **Disciplinary actions and enforcement**

No specific information about the existence of an internal unit or officer in charge of applying the internal rules of conduct is publicly available. Nor has such information been provided via questionnaire.

### **3.3.7 Italy**

#### **3.3.7.1 Debt management office framework (Ministero Dell'Economia e delle Finanze)**

An exemption for the national DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is provided for in Article 183, paragraph 1, b), of the Legislative Decree no. 58/1998. This provision also applies to EU DMOs. Such an exemption, however, is not extended to non-EU DMOs.

Public debt management operations are carried out under Article 3 of the Public Debt Consolidated Act (Decree of The President of The Republic of 30 December 2003, no. 398) and in line with the internal directives for conducting financial transactions.

##### **3.3.7.1.1 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Staff members shall refrain from making unauthorised disclosure of any information that they have received in the context of their work, unless that information has already been made public or is accessible to the public (Article 5, *Ethics Code for MEF Employees*).<sup>515</sup>

---

<sup>515</sup> Available at: [www.mef.gov.it/documenti/allegati/Codice\\_etico\\_e\\_di\\_comportamento\\_dei\\_dipendenti\\_del\\_Ministero\\_dell'Economia\\_e\\_delle\\_Finanze.pdf](http://www.mef.gov.it/documenti/allegati/Codice_etico_e_di_comportamento_dei_dipendenti_del_Ministero_dell'Economia_e_delle_Finanze.pdf).

### **Rules of conduct on the use of inside information**

Staff members shall refrain from using information which pertains to the activities of the Ministero Dell'Economia e delle Finanze (MEF) and which has not been made public or is not accessible to the public, and using them for activities that are not connected with MEF activities. They have to take great care when such disclosing information, even when this occurs unintentionally (Article 5, *Ethics Code for MEF Employees*; Article 3.3, *Code of Conduct for Public Officials*, Legislative Decree No. 165 of 30 March 2001).<sup>516</sup>

#### **3.3.7.1.2 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

MEF staff members are subject to limitations in dealing in and holding financial instruments.<sup>517</sup>

##### **Rules of conduct on record-keeping**

At the start of the employment, MEF staff members must provide a detailed overview of their investments and remunerated activities carried out in the previous three years (Article 6.1, *Code of Conduct for Public Officials*).

#### **3.3.7.1.3 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

In the performance of their duties, staff members shall neither seek nor take external instructions or recommendations (Article 5, *Ethics Code for MEF Employees*).

Staff members may neither solicit nor accept any gift, for them or for other people, of value exceeding €150. Staff members shall return to MEF any received gift of value exceeding €150. The acceptance of a gift shall not, in any event, impair or influence the objectivity and freedom of action (Article 5, *Ethics Code for MEF Employees*; Article 4, *Code of Conduct for Public Officials*).

There is a "black list" of prohibited remunerated or non-remunerated activities, a "white list" of permitted remunerated or non-remunerated activities, and a "grey list" of remunerated or non-remunerated activities subject to prior authorisation that MEF staff are allowed to carry out in the context of their work and outside their working hours. The general rules of public employment are applicable. In particular, see Article 53 of Legislative Decree No. 165 of 30 March 2001<sup>518</sup> and Article 5 of *Ethics Code for MEF Employees*.

##### **Rules of conduct on conflicts of interest**

Staff shall avoid any situation that is liable to give rise to a conflict of interest between their work and their private interests. Staff members who, in the performance of their duties, are called on to decide on a matter in the handling or outcome of which they have a personal interest, shall inform their immediate superior and shall refrain from taking decisions (Article 5, *Ethics Code for MEF Employees*; Article 6.2 and Article 7, *Code of Conduct for Public Officials*).

---

<sup>516</sup> Available at: [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2013-04-16;62](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:2013-04-16;62).

<sup>517</sup> However, no further information in this regard is publicly available or has been provided via questionnaire.

<sup>518</sup> Available at [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2001-03-30;165!vig](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2001-03-30;165!vig).



### **3.3.7.1.4 Application of rules of conduct**

#### **Ethics officer**

The Ethics Board supervises the enforcement of ethics rules and is charged with the circulation and the periodic revision of the Code (Article 6, *Ethics Code for MEF Employees*).

Line managers are responsible for monitoring the enforcement of the MEF Code of Conduct and they have the powers to start disciplinary procedures (Article 15, *Code of Conduct for Public Officials*). In addition, for the prevention of corruption, see Law 6 November 2012, n. 190.

#### **Disciplinary actions and enforcement**

A “whistleblowing procedure” is in force pursuant to Article 54-bis of Legislative Decree No. 165 of 30 March 2001. An electronic procedure for reporting suspect infringement and managing it is in place. It guarantees confidentiality of the identity of the employee. In general, for the disciplinary procedure see Article 55-bis of Legislative Decree No. 165 of 30 March 2001.

The most serious breaches fall under the criminal law (crime against the Public Administration). Without prejudice to the enforcement (applicability) of the criminal law, the disciplinary measures and administrative sanctions provided by employment laws and contracts are generally applicable. The disciplinary procedures are laid down in the Legislative Decree No. 165 of 30 March 2001, Article 55 to Article 55-sexies and by Article 56, which establish the specific provisions of the general collective employment and individual contracts.

At least once per year, MEF staff training includes learning about the content and application of the internal code of conduct, the duties of the public employees and disciplinary procedures (Article 15.5, *Code of Conduct for Public Officials*).

MEF staff receive an internal specific communication that makes them promptly aware of modifications and/or additions and/or modes of application of the internal code of conduct or informs them about training programmes.

With regard to actions that might result in a criminal offence, the code of conduct applies beyond the employment term.

### **3.3.8 Poland**

#### **3.3.8.1 Central bank framework (Narodowy Bank Polski)**

The Narodowy Bank Polski (NBP) and ESCB staff members are exempt from the market abuse regulation pursuant to Article 39.3(2) and 156.7(1) of the Law on trading in financial instruments.

The exemption does not apply to non-EU central banks.

#### **3.3.8.1.1 Risk management standards**

Application of risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is pursued via internal rules approved by the Management Board.<sup>519</sup>

---

<sup>519</sup> No further information is publicly available or has been provided via questionnaire.

### **3.3.8.1.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

According to Article 55 of the Act of the NBP, the staff of the NBP and members of the Council and consultative and advisory bodies with the NBP Management Board are bound by an obligation not to disclose to unauthorised persons any information acquired when carrying out their duties, including information that constitutes banking secrecy pursuant to the Banking Act of 29 August 1997, information subject to protection according to the provisions on the protection of confidential information, as well as other information protected by statute.

Under point 5(4) of the NBP employees' Code of Ethics, after termination of employment at the NBP, caution must be exercised when taking any action related to the former employment with the NBP. In particular, using or disclosing to anyone outside the NBP information possessed in connection with the performance of the duties at the NBP is forbidden.

#### **Rules of conduct on the use of inside information**

If the information constitutes banking secrecy, the provisions of the Banking Act of 29 August 1997 apply. Articles 104, 105 and subsequent articles of the Banking Act describe the circumstances under which the information may be disclosed.

Paragraphs 5(1) – (4) of the NBP employees' Code of Ethics, provide that the NBP employee:

- i. ensures the protection of legally protected information from being read by unauthorised persons and, in particular, does not leave unattended documents, follows IT security standards, protects against loss of paper documents and electronic equipment and devices for recording or transmission of information;*
- ii. in any situation, including during social conversations in public places and in social media, is mindful of not disclosing information; in case of doubt the information shall be treated as not intended for public disclosure;*
- iii. does not use for personal purposes information and materials, which are not publicly disclosed and which he/she obtained in the course of work at the NBP; in particular, does not use this type of information to achieve financial and non-financial benefits for himself/herself or others, including family members;*
- iv. after termination of employment with the NBP shall be careful when taking any action related to his/her former employment with the NBP, and in particular does not use or disclose to anyone outside the NBP the information possessed in connection with the performance of his/her duties at the NBP.*

### **3.3.8.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

No rules of this kind are in place.

#### **Rules of conduct on record-keeping**

No rules of this kind are in place.

### **3.3.8.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Under paragraph 6(8) of the NBP employees' Code of Ethics, the NBP employee is not allowed to benefit from conditions for financial services more favourable than those offered to the general public.

Under paragraph 10(1) of the NBP employees' Code of Ethics, the NBP employee:

- i. shall not accept gifts or other benefits (including attendance of events and entertainment), the acceptance of which would have a negative impact on the image of the NBP;*
- ii. shall exercise a special caution in benefiting from the hospitality of others.*

Further, under paragraph 6(7) of the NBP employees' Code of Ethics, the NBP employee shall avoid financial obligations, including, in particular, borrowing or acting as a guarantor, in a situation where they could jeopardise his/her impartiality, objectivity, reliability, or put him/her in a conflict of interest in the performance of official duties.

In addition, under paragraphs 7(1) and (2) of the NBP employees' Code of Ethics, the NBP employee:

- i. shall not engage in additional business activity if it may lead to a conflict of interest or that activity makes it difficult to perform his/her duties, or exposes the NBP employee or the NBP to the loss of public trust and raises doubts about the impartiality, fairness or objectivity of the NBP employee;*
- ii. in performing additional business activity shall not use the NBP's trademark, unless the NBP has given its consent.*

Lastly, under paragraph 8 of the NBP employees' Code of Ethics, the NBP employee shall treat impartially and objectively bodies and institutions, financial market participants and customers of the NBP when he/she deals with their issues in the performance of his duties. The NBP employee shall not act under any pressure or influence stemming from personal relationships, including family and friendship commitments.

#### **Rules of conduct on conflicts of interest**

Under Article 6 of the NBP employees' Code of Ethics, an employee of the NBP shall:

- i. refrain from any action and behaviours that could result in actual or potential conflict of interest or raise the suspicion of such a conflict; actual conflict of interest occurs when an employee's private interests adversely affect the impartial, fair and objective performance of his official duties, interest or reputation of the NBP; potential conflict of interest occurs when an employee's private interests may adversely affect the impartial, fair and objective performance of his official duties or the interests or reputation of the NBP;*
- ii. not use either the information related to his job or his position for personal gain for himself or others, including family members;*
- iii. inform the direct superior (chief) about the occurrence of circumstances which may give rise to doubts as to the impartiality of the employee, their fairness or objectivity in the performance of official duties or the possibility of obtaining personal benefit or to avoid damage as a result of getting work-related information;*
- iv. refrain, after consultation with the direct superior, from taking action in the matter, where there may be a conflict of interest;*
- v. not engage in discussions on the possible employment in other institutions, unless it happens with the knowledge and consent of his superior;*

- vi. *refrain from performing duties that may affect the future employer upon initiation of negotiations (after consultation with the direct superior) concerning the future employment or occupation after the termination of employment with the NBP;*
- vii. *avoid financial obligations, including, in particular, to borrow or act as a guarantor, in a situation where it could jeopardise his impartiality, objectivity, reliability, or put him in a conflict of interest in the performance of official duties.*

Additionally, according to Article 3(4) of the NBP employees' Code of Ethics, the NBP employee shall neither employ nor supervise or otherwise perform control under relatives or other persons closely related to him/her. He/she must abstain from all forms of favouritism.

### **3.3.8.1.5 Application of rules of conduct**

#### **Ethics officer**

A member of the NBP Management Board in charge of ethics matters and an Ethics Commission have been provided for by Ordinance No. 26/2014 of the President of the NBP of 19 December 2014 on the establishment of "the NBP's employees Code of Ethics".

Under the provisions of this Ordinance, the NBP Management Board member in charge of ethics matters must perform the following tasks:

- i. *Monitor compliance with the Code of Ethics*
- ii. *Interpret the Ethics Code for purposes of its application*
- iii. *Provide ex ante guidance on the application on the Code of Ethics*<sup>520</sup>
- iv. *Report on the application of the Code of Ethics at the NBP*

This NBP Management Board members is also responsible for deciding:

- i. *How to enhance knowledge of Code of Ethics among the NBP staff*
- ii. *The activities to be performed by the Operational Risk and Compliance Department*

The Ethics Commission advises the member of the NBP Management Board in charge of ethics matters with respect to the interpretation and application of the Code of Ethics.

#### **Disciplinary actions and enforcement**

Under point 4(2) of the NBP employees' Code of Ethics, the NBP employee acting as superior/supervisor supervises the application of the Code of Ethics by subordinate staff and commences the inquiry and the disciplinary proceeding on information about breach of the Code of Ethics.

### **3.3.9 Spain**

#### **3.3.9.1 Central bank framework (Banco de España)**

Neither the Banco de España nor foreign CBs are exempt from market abuse regulation with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

---

<sup>520</sup> Interpretation of the Code of Ethics may be exercised in particular in respect of the following: 1. issuing an opinion on the compliance with the Code of Ethics of the NBP by the staff; 2. issuing an opinion on the compliance with the Code of Ethics at the request of third parties.

### **3.3.9.1.1 Risk management standards**

There are extensive standards and controls aimed at preventing market abuses by the bank's employees. Such rules of conduct are set out in Circular Internal 10/2002.<sup>521</sup>

### **3.3.9.1.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Articles 6 and 6bis of the Central Bank Law<sup>522</sup> provide for a regime for professional secrecy compatible with official disclosure needs and with management of private affairs.

The rules on professional secrecy are broad and yet do not impede the disclosure needed to discharge certain policy functions. They also allow access to information by Parliament subject to prior arrangements.

The obligation of secrecy extends beyond the period of service.

#### **Rules of conduct on the use of inside information**

Information is ranked as confidential, restricted, etc., and made accessible according to the sensitivity of its content.

Employees are subject to inside information restrictions established in Article 81 of the Securities Markets Law. The internal rules establish that employees with potential access to inside information linked to monetary policy and official portfolio management are explicitly prohibited from trading based on such information. A reporting scheme has been set up to trace compliance.

### **3.3.9.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Trading is not forbidden per se but is subject to restrictions.

#### **Rules of conduct on record-keeping**

The Internal Audit Department collects self-assessments of holdings and transactions made by employees.

### **3.3.9.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Employees are bound by a general duty of independence, impartiality and integrity.

Employees are subject to restrictions regarding activities they are allowed to perform outside the bank.

Acceptance of gifts and gratuities is forbidden.

---

<sup>521</sup> Which, however, is not made publicly available, nor has it been illustrated in detail in the responses to the questionnaire.

<sup>522</sup> Available at: [www.bde.es/f/webbde/COM/funciones/ficheros/en/leyautone.pdf](http://www.bde.es/f/webbde/COM/funciones/ficheros/en/leyautone.pdf).

## **Rules of conduct on conflicts of interest**

Employees are required to avoid conflicts of interest.

### **3.3.9.1.5 Application of rules of conduct**

#### **Ethics officer**

Internal audit monitors the compliance with internal rules and procedures.

The internal reporting mechanism is consistent with the hierarchical arrangement in place for general management purposes.

The bank holds from time to time seminars on ethics and code of conduct matters.

#### **Disciplinary actions and enforcement**

In case of misconduct, disciplinary actions apply.<sup>523</sup>

### **3.3.10 Sweden**

#### **3.3.10.1 Central bank framework (Sveriges Riksbank)**

An exemption with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies only to the national central bank and the national debt management office (see § 14, lag (2005:377) om straff för marknadsmissbruk vid handel med finansiella instrument (Act on Sanctions for Market Abuse in Trade in Financial Instruments)).

##### **3.3.10.1.1 Risk management standards**

Financial risk is subject to monitoring. Compliance will be involved when it comes to breaches of internal rules. Internal audit can audit the rules and standards as well as the compliance.

Risk management standards are principally aimed at limiting the Riksbank's financial risks.<sup>524</sup>

##### **3.3.10.1.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

The Public Access to Information and Secrecy Act<sup>525</sup> regulations apply to all employees. With regard to assignments covered by professional secrecy, staff members are obliged to observe the secrecy regulation not only during the period of employment at the bank, but also after employment has ceased. A person who reveals or unlawfully makes use of confidential information can be convicted of breach of professional secrecy.

Qualified professional secrecy applies to most of the information classified as confidential at the Riksbank, which means that professional secrecy takes priority over freedom of communication. This applies, for instance, to information regarding monetary policy,

---

<sup>523</sup> The respondents to the questionnaire have not, however, specified what kind of disciplinary actions may concretely be taken.

<sup>524</sup> However, their content is not made publicly available, nor has it been illustrated in detail via questionnaire.

<sup>525</sup> Available at: [www.government.se/content/1/c6/13/13/97/aa5c1d4c.pdf](http://www.government.se/content/1/c6/13/13/97/aa5c1d4c.pdf).

confidential statistics, information on the Riksbank's lending and deposits and information on security and surveillance measures (Article 6, *Ethical Regulations*).<sup>526</sup>

The obligation of secrecy extends beyond the period of service.

### **Rules of conduct on the use of inside information**

In addition to compliance with the Insider Trading Penalty Act for Market Abuse in Financial Instrument Trading (SFS 2005:377), staff members are required to be extremely cautious when buying and selling securities of all kinds and in discussing with outsiders information obtained at work (Article 2, *Ethical Regulations*).

### **3.3.10.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Holdings of financial instruments should be long-term, in the sense that trading in financial instruments is not allowed if the aim is to hold them for less than three months. This also applies to negative (short) positions, for instance through short selling. Profits from holdings or transactions in financial instruments may not be realised or otherwise settled within a shorter period of time than three months from the acquisition or equivalent. The only exception is if the financial instrument is sold at a lower price than the purchase price, meaning that the transaction entails a financial loss.

When the Riksbank gives special access to asset price developments, transactions in financial instruments should be avoided. Additionally, staff members are not allowed to own shares in Swedish credit institutions. Similarly, all employees with particular insight into credit institutions' operations are recommended to refrain from transactions in other shares that may be affected by the credit institutions' position and results, including other financial instruments with such shares as underlying assets, such as options, convertibles or futures, except for interest-bearing securities or mutual fund units issued by Swedish credit institutions.

Those staff members who gain insight into future decisions on, for instance, the policy rate or the contents of a Monetary Policy Report, should refrain from investments in the fixed income market and from taking out or cancelling loans prior to publication of the decisions/reports. If such transactions cannot be avoided, investments should be made and loans should be taken out at a variable interest rate (Article 3, *Ethical Regulations*).

#### **Rules of conduct on record-keeping**

The obligation to report in writing the holdings of financial instruments and changes in holdings shall apply to all employees and consultants at the Riksbank with insight into developments in the money and foreign exchange markets. The same applies to employees or consultants who take part in the preparation of monetary policy and foreign exchange policy matters and those who have insight into the operations of financial companies. It is the heads of department who decide which employees and consultants in their respective departments will be under the obligation to report.

Reporting is required for all holdings of financial instruments, such as transferable securities that can be traded on the capital market (shares, bonds, securities linked to shares or bonds), money market instruments (treasury bills, certificates of deposit, commercial papers and other instruments normally traded on the money market),

mutual fund units (shares in investment funds, unit trust companies and other companies for collective investment – however, some unit fund shares are exempted, see next paragraph) and financial derivatives (options, forward contracts, swaps, other derivative contracts referring to securities, foreign currencies, interest rates or yields and derivative instruments regarding commodities. Exempt from reporting are savings in pension and insurance products unless the individual may influence the investments in securities funds, shares in securities funds and in other corresponding funds within the EEU and shares in Swedish special funds unless they are shares in funds or mutual funds traded on stock exchanges or other markets (Article 3, *Ethical Regulations*).

### **3.3.10.1.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

An employee may not have any occupation or work or exercise other business that could damage confidence in his/her or another employee's impartiality in state service or that could damage the reputation of the Riksbank (Article 4, *Ethical Regulations*).

Prohibited occupations are not listed separately. An assessment is made on a case-by-case basis. In general, a low risk level is acceptable while a more qualified, extensive and well-paid secondary occupation may be questioned. If the secondary occupation entails tasks similar to those carried out at the Riksbank, a greater risk of damaging confidence is usually perceived. Similarly, there is a presumption of greater risk when the company for which the secondary occupation is carried out has interests that are in some way connected with the Riksbank's operations. The scope of the secondary occupation is also significant. Employment and assignments, including seats on boards of directors, within private companies are dealt with as critical. The same applies to self-employment, for instance as a consultant. Secondary occupations shall be reported on an annual basis.

The Swedish Administrative Procedures Act contains regulations about disqualification. The provisions regarding disqualification mean that if a matter or question concerns an employee in a way other than as representative of the Riksbank, the employee should refrain from becoming involved in the matter. The same applies if anyone might suspect that the employee is willing to pursue a matter in a particular way for personal reasons or if there is some special reason that may damage confidence in the employee's impartiality and objectivity. Each employee is responsible for informing her line manager if there is any circumstance that might disqualify her (Article 5, *Ethical Regulations*).

A person who is an employee or carries out assignments and receives, approves a promise of, or requests unlawful benefits for doing his or her job or assignment, either for him/herself or for another person, can be convicted of receiving bribes according to the Swedish Penal Code.

Whether or not a benefit or gift is unlawful is determined on the basis of an overall assessment of all of the relevant circumstances in the given case. However, a gift is generally deemed unlawful if it is not a natural part of, or does not have an immediate relation to, the recipient's exercise of his/her duties, or is not an expression of a generally accepted form of social intercourse. Even benefits given to immediate family can be unlawful. Furthermore, a gift cannot be accepted if it could be thought of as influencing the exercise of the employee's duties. If the value of the gift is more than negligible, it should not be accepted.

Public sector employees should never accept gifts to a value exceeding SEK 400 but for exceptional personal circumstance, such as 50th birthdays and similar occasions, where gifts of higher value are tolerated. During public procurement procedures, ongoing negotiations or similar situations where integrity is particularly important, no gifts should be accepted at all (Article 7, *Ethical Regulations*).



### **Rules of conduct on conflicts of interest**

If a conflict of interest arises, this disqualifies the employee from working on the matter. This applies both to preparation for a potential decision and the actual decision-making process (Article 5, *Ethical Regulations*).

#### **3.3.10.1.5 Application of rules of conduct**

##### **Ethics officer**

Every employee has the possibility to report suspicions of irregularities, incongruities and deviations from the ethical regulations. Such matters should first and foremost be reported to the line manager. They can also report them to the Chief Compliance Officer or the Human Resources Manager (Article 10, *Ethical Regulations*).

##### **Disciplinary actions and enforcement**

General rules on disciplinary sanctions can be found in the Public Employment Act (Lag (1994:260) om offentlig anställning).

Infringements of these regulations or other regulations can lead to various forms of sanctions. Some infringements, such as gross misconduct or breach of professional secrecy, may lead to the employee being convicted of a crime in a general court of law. The employee may also be dismissed or given notice.

Even when an infringement is not regarded as a crime in accordance with general penal provisions, actions may be examined by the Riksbank's Staff Disciplinary Board in accordance with the regulations on disciplinary responsibility in the Swedish Act on Public Employment. There might in this case be disciplinary consequences for official misconduct, such as a warning notice and a salary deduction (Article 9, *Ethical Regulations*).

#### **3.3.10.2 Debt management office framework (The Swedish National Debt Office)**

No exemption for national or foreign DMOs with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies.

##### **3.3.10.2.1 Risk management standards**

The Swedish National Debt Office has policies and guidelines that govern the debt management (and risk management standards), e.g. financial and risk policy, policy for internal management and control, guideline for operational risk, guideline for internal management and control. The Swedish national Debt Office also has internal instructions and delegations both general and specific.

The Legal Department and the Risk Department within the Swedish National Debt Office cooperate with the Compliance Department and advice and assist the organisation on these issues. A risk report is supplied to the Swedish National Debt Office's Board three times a year.

The Swedish National Debt Office has an internal auditor that reviews and audit different internal processes. The focus of the audit is decided by the internal auditor. The internal auditor is employed by, answers to and reports to the board of the Swedish National

Debt Office. The internal auditor is governed by the Ordinance for internal audit (2006:1228).

### **3.3.10.2.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

The Public Access to Information and Secrecy Act contains provisions on document secrecy and the duty of confidentiality. Information regarding the central financial policy, the monetary policy, or the national foreign exchange policy is confidential. Such information may not be disclosed and used outside the debt management. Information on other matters, even though it is secret under the act, may be disclosed under certain circumstances.

Violation of the confidentiality and secrecy is a criminal offence governed by the Swedish Penal Code (1962:700). There are other sections in the Public Access to Information and Secrecy Act that govern secrecy, e.g. business agreements and financial information regarding counterparties to the public debt management operations.

Sweden has a constitutional freedom of speech and press according to the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Public Access to Information and Secrecy Act contains provisions supplement the provisions contained in the Freedom of the Press Act on the right to obtain official documents, for example provisions on the obligation of public authorities to register official documents, appeals against decisions of authorities, etc. The Public Access to Information and Secrecy Act also contains provisions concerning the application of the principle of public access to information by municipal enterprises and certain private bodies. It entails restrictions both on the right of the public to obtain official documents under the Freedom of the Press Act and on the right of public functionaries to freedom of expression under the Instrument of Government. The Public Access to Information and Secrecy Act also contains provisions on the cases where a duty of confidentiality pursuant to the provisions on secrecy limits the right to communicate and publish information permitted according to the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Public Access to Information and Secrecy Act also contains provisions on the cases where a duty of confidentiality under enactments other than the Public Access to Information and Secrecy Act limits such right.

#### **Rules of conduct on the use of inside information**

The Swedish National Debt Office is a Swedish government agency and is governed by the public laws and regulations.

Under public law the government agencies have an obligation to respond quickly to requests from the public. The principle of public access is a fundamental right regarding access to official documents and is governed by the Freedom of the Press Act. It means that the public and the mass media – newspapers, radio and television – are entitled to receive information about state and municipal activities. In principle, all Swedish citizens and aliens are entitled to read the documents held by public authorities. However, this right is restricted in two ways. Firstly, the public only enjoy the right to read such documents that are regarded as official documents. Not all documents of a public authority are in fact considered official documents. Thus, for example, a draft of a decision, a written communication or the like is not an official document if the draft is not used when the matter in question is finally determined. Secondly, a number of official documents are secret. This means that the public is not entitled to read the documents and the public authorities are forbidden from making them public. A government agency's decisions may be tried in a court of law and its management may

also be tried by the Office of the Chancellor of Justice. The Swedish National Debt Office has guidelines on how to handle public documents and requests.

### **3.3.10.2.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

The Swedish National Debt Office has guidelines regarding dealing in, and holding, financial instruments and loans.<sup>527</sup>

#### **Rules of conduct on record-keeping**

No such rules are in place.

### **3.3.10.2.4 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

The Swedish National Debt Office has an ethics policy and guidelines. The Swedish National Debt Office and its staff members are governed by the Swedish laws and regulations on the use of bribes and other types of corruption.

#### **Rules of conduct on conflicts of interest**

The Swedish Administrative Act contains rules on conflicts of interest. These rules apply to all staff members at the Swedish National Debt Office. In addition, the Swedish National Debt Office's policy and guidelines on ethical issues contain a section regarding conflict of interests.

### **3.3.10.2.5 Application of rules of conduct**

#### **Ethics officer**

The Swedish National Debt Office has an ethics board. The Legal Department and the Risk Department within the Swedish National Debt Office work with the Compliance Department and advice and assist the organisation on these issues.

A risk report is supplied to the Swedish National Debt Office's Board three times a year.

The Swedish National Debt Office has an internal auditor that reviews and audits different internal processes. The focus of the audit is decided by the internal auditor and may entail processes within the debt management. The internal auditor is employed by, answers to and reports to the Board of the Swedish National Debt Office.

The Swedish National Debt Office is also under the supervision of the Swedish National Audit Office.

#### **Disciplinary actions and enforcement**

The Swedish National Debt Office members must report breaches or suspected breaches of internal policies and guidelines.

The Swedish National Debt Office has a series of presentations for all new employees, where they are informed of relevant rules and regulations.

---

<sup>527</sup> The respondents to the questionnaire have not, however, specified the contents of such guidelines.

Any important news about internal policies and guidelines is posted on their internal website or the information is mentioned at the enlarged office meeting, for all staff, held every Friday morning.

### **3.3.11 The Netherlands**

#### **3.3.11.1 Debt management office framework (Dutch State Treasury Agency)**

An exemption for the national DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies pursuant to Section 5:56 paragraph 5, and Section 5:58, paragraph 2, of the Act on Financial Supervision (Wet op het financieel toezicht). It does not apply to foreign DMOs (EU or non-EU).

##### **3.3.11.1.1 Risk management standards**

Specific risk management standards are set out by the Policy and Risk Department.<sup>528</sup>

##### **3.3.11.1.2 Use of confidential information by staff members**

###### **Rules of conduct on professional secrecy**

Staff of the Dutch State Treasury Agency (DSTA) are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to DSTA and classified as confidential and/or over inside information. DSTA staff are allowed to disclose inside information only if required by law (parliamentary enquiry, court).

*"Civil servants are obliged to treat in confidence any information to which they become privy as a result of their position, in so far as such an obligation arises from the nature of the information in question"* (Article 125(a)(3), Civil Servants Act).

###### **Rules of conduct on the use of inside information**

DSTA staff are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of their family.

##### **3.3.11.1.3 Transactions in assets and financial instruments by staff members**

###### **Rules of conduct on trading in assets**

DSTA staff are not subject to limitations in dealing in and holding financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles, but it has to be reported to the compliance officer if the financial instrument is on the restricted list.

###### **Rules of conduct on record-keeping**

DSTA staff must keep records of holdings of, and transactions in, financial instruments, including for public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles. The records must be given to the compliance

---

<sup>528</sup> However, their contents are not made publicly available, nor have they been illustrated in detail via questionnaire.

officer, if requested. At the start of the employment, every civil servant must provide a detailed overview of their investments.

#### **3.3.11.1.4 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

DSTA staff are bound by a general duty of independence while performing their tasks. (*Civil Servant Law, General State Civil Servant Rulebook and Code of Ethics and Insider regulations.*)

There is a “grey list” of remunerated or non-remunerated activities subject to prior authorisation that DSTA staff are allowed or not allowed to carry out in the context of their work and outside their working hours.

There are rules concerning the acceptance of gifts, gratuities, awards and/or fees from outside individuals and/or entities by DSTA staff related to the performance of their tasks. Gifts over €50 are not allowed.

##### **Rules of conduct on conflicts of interest**

There are specific internal rules and/or policies to identify, disclose and manage conflicts of interest affecting DSTA staff.

DSTA staff are forbidden from participating in the decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision.

#### **3.3.11.1.5 Application of rules of conduct**

##### **Ethics officer**

DSTA has an internal function entrusted with the application and monitoring of the internal code of ethics. The internal function provides advice to the Secretary General, who can take measures.

##### **Disciplinary actions and enforcement**

DSTA staff must report suspicions of criminal activity to the police and to the competent authority. There is no internal reporting mechanism.

A breach or suspected breaches of the internal code of ethics is always qualified as a tort or a criminal or administrative offence. Disciplinary actions (warning, fines, suspension, and dismissal) are provided in case of abuses, misconduct and/or breach of internal rules.

Once a year, the training of DSTA staff includes learning about the content and application of the internal code of ethics. DSTA staff receive an internal specific communication that makes them promptly aware of modifications and/or additions and/or application of the internal code of ethics.

The code of ethics does not apply to DSTA staff beyond their employment term.

### **3.3.12 The United Kingdom**

#### **3.3.12.1 Central bank framework (Bank of England)**

An exemption for the national central bank with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies.

Under the civil regime, such behaviour does not amount to market abuse if it is done by a person acting on behalf of a public authority with respect to exchange rates or the management of public debt or foreign exchange reserves. Under the criminal regime, the Criminal Justice Act exemption states that the insider dealing prohibition does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign reserves.<sup>529</sup>

### **3.3.12.1.1 Risk management standards**

Risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, are in place. Trading activities, including disposal of financial instruments, are constrained by a number of benchmarks, product restrictions and limits. Dealers are covered by a range of risk management standards which establish strict parameters for trading, including disposal of instruments. The internal audit division regularly assesses trading activities including compliance with risk management standards.

The Staff Handbook states that failure to comply with the bank's policies may lead to disciplinary action.

### **3.3.12.1.2 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

According to the BOE Staff Handbook, *"Any information acquired in the course of work which concerns either the affairs of the Bank itself or those of any of the Bank's customers, including HM Government, holders of stock managed by the Bank, or any other persons, companies or organisations with whom the Bank has dealings or is concerned, must be treated in the strictest confidence, must not be disclosed outside the Bank (other than in the proper exercise of your duties or as required by law) and must not be used to secure any financial advantage, or minimise any financial loss, for [the employee] or any other person, company or organisation"*<sup>530</sup> (BOE Staff Handbook 2013, p. 53).<sup>531</sup>

Additionally, in order to protect both the individual concerned and the bank from any potential criticism regarding unauthorised disclosure of market sensitive or otherwise confidential information, especially where staff who are in possession of such information resign from the bank to take up a job elsewhere which might give rise to a conflict of interest, such individuals may be moved to restricted duties (so called, "purdah";<sup>532</sup> BOE Staff Handbook 2013, p. 27).

In particular, members of the Financial Policy Committee (hereinafter referred to as "FPC members") from the start of the policy meetings to the day after publication of the record of that meeting must avoid media comment or speaking engagements related to FPC matters (Section on "Purdah", *Code of Conduct for FPC Members*). Furthermore,

---

<sup>529</sup> "Public sector body" for these purposes includes the UK government, a local authority, the Bank of England and the central bank of any sovereign State. The exemption would then also apply to non-EU central banks.

<sup>530</sup> The full rules relating to secrecy are set out in a declaration (hereinafter referred to as the "Secrecy Declaration") which staff members are required to sign on starting work and thereafter annually. The Secrecy Declaration reminds them that any infraction of the rules will render them liable to action under the disciplinary procedures and draws their attention to the fact that the improper disclosure of certain information may also lead to prosecution.

<sup>531</sup> Available at: [www.bankofengland.co.uk/about/Documents/humanresources/equal-opportunities.pdf](http://www.bankofengland.co.uk/about/Documents/humanresources/equal-opportunities.pdf).

<sup>532</sup> It means that they could be kept for a minimum period of time away from "sensitive" positions at the bank and/or the prospective employer.

those FPC members who are not members of the MPC should avoid discussing UK monetary policy decisions (Section on "Communications", *Code of Conduct for FPC Members*).<sup>533</sup>

Monetary Policy Committee members (hereinafter referred to as "MPC members") must not give speeches on monetary policy matters or meet or talk to the media or other outside interests, on or off the record, for a period of eight days from the Friday of the pre-MPC meeting to the Friday after the announcement. In the months when the Inflation Report publication and press conference take place, the purdah period will extend until the end of the day of the publication of that Report. (Section on "Purdah", *Code of Conduct for MPC Members*.<sup>534</sup>) Additionally, MPC members must not make statements that might give clues to developments in monetary analysis or confidential official statistics that have not been disclosed, or that might confuse or mislead the public about monetary policy. (Section on "Secrecy", *Code of Conduct for MPC Members*.)

### **Rules of conduct on the use of inside information**

A general obligation not to seek profit (or avoid a loss) by making use of information acquired in the course of their duties at the bank is imposed on all staff by their terms of employment (as set out in the *BOE Staff Handbook*) and by the Secrecy Declaration signed by all. Dealing in securities on the basis of inside information is a criminal offence.

All staff is, accordingly, expected to be familiar with the contents of the guidance note on Market Abuse (Insider Dealing and Market Manipulation) of 1 July 2005 (*BOE Code of Conduct for Personal Financial Transactions*,<sup>535</sup> Section 1.1). More generally, staff members are asked to exercise caution in the management of their finances and not to undertake transactions that by their nature or purpose might endanger the reputation of the bank (*BOE Code of Conduct for Personal Financial Transactions*, Section 1.2). All staff members covered by the rules are also reminded that the Secrecy Declaration precludes the passing on of information gained in the course of work at the bank (*BOE Code of Conduct for Personal Financial Transactions*, Section 12.3).

### **3.3.12.1.3 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

According to *BOE Code of Conduct for Personal Financial Transactions*, Section 6.1, "Members of Court, the Prudential Regulatory Authority ("PRA") Board, MPC, FPC, and Executive Teams (hereinafter referred to as the "Senior Policy Group") are invited to refrain from being actively involved in managing an investment portfolio, even within the transaction reporting and pre-clearance arrangements. Accordingly, those who hold a substantial portfolio are particularly strongly advised to place it under full discretionary management."

Court members, PRA Board, ET, FPC and MPC members, Heads of Division, and any other staff, who have been notified that they are subject to the following rules by virtue of the work being done or the position being held, are required to obtain prior permission for financial transactions as defined within Section 9 of the *BOE Code of Conduct for Personal Financial Transactions*. (*BOE Code of Conduct for Personal Financial*

---

<sup>533</sup> Available at: [www.bankofengland.co.uk/financialstability/Documents/fpccoc.pdf](http://www.bankofengland.co.uk/financialstability/Documents/fpccoc.pdf).

<sup>534</sup> Available at: [www.bankofengland.co.uk/monetarypolicy/Documents/mpccoc.pdf](http://www.bankofengland.co.uk/monetarypolicy/Documents/mpccoc.pdf).

<sup>535</sup> Available

at:

[www.bankofengland.co.uk/about/Documents/humanresources/personalfinancialtransactions.pdf](http://www.bankofengland.co.uk/about/Documents/humanresources/personalfinancialtransactions.pdf).

*Transactions*, Section 8.1). Such requirement applies to any of the following transactions:

- i. *Purchases, sales or other dealings in investments (excluding the house)*
- ii. *Purchases or sales of foreign exchange where the value of a transaction (or series of transactions) is greater than £10,000*
- iii. *Any futures or options transactions and contracts for differences in respect of the assets described in the preceding points i and ii, or in respect of any financial instrument*
- iv. *Arranging a mortgage*
- v. *Setting up a personal pension plan with a choice of funds or exercising an option under such a plan to switch funds*
- vi. *Transferring funds into, out of, or between savings, deposit or investment accounts (i.e. any non-transactions account) or interest-bearing National Savings instrument, including switching between a fixed and a floating rate interest account, where the value of the transaction (or set of related transactions) is more than £15,000*
- vii. *Any financial transaction not specified above but which, in the nature and spirit of these rules, could reasonably be seen as sensitive (BOE Code of Conduct for Personal Financial Transactions, Section 9.1)*

Permission is not usually given to acquire marketable shares in any entity regulated by the bank (including PRA-regulated firms or their financial holding companies) or the Financial Conduct Authority. Rights arising from any previous holding may be exercised or sold, although this must be reported via the transaction reporting system. It is recognised that a discretionary portfolio (see Section 5) is likely to contain some financial shares, and this is deemed to be acceptable provided the staff member has no control over day to day investment decisions (*BOE Code of Conduct for Personal Financial Transactions*, Section 10.1).

Staff cannot engage in transactions whose main purpose is speculative, or in betting on financial variables or indices. Generally, a Reporting Officer may refuse to approve a transaction which appears to be speculative and will question a transaction that is reversed within six months and, depending on the circumstances, this may be treated as a breach of the code. Alternatively, the Reporting Officer may refuse to approve the sale of an investment held for less than six months. Contracts for differences (including spread-betting) and fixed odd bets are not permitted in relation to UK securities, UK indices/sectors or economic variables of direct interest to the bank and its forecasting processes, e.g. commodity, currency markets (*BOE Code of Conduct for Personal Financial Transactions*, Section 11.1).

These rules cover transactions undertaken by staff on their own account and for the benefit of any other person including spouses, partners, parents and children, or where they are acting as executor or trustee. Transactions undertaken by a spouse or other family member do not need to be reported unless the staff member actively directs or advises on the investment decisions (subject to paragraph 12.2). However, staff should make every effort to ensure that transactions undertaken by persons connected to them comply with these rules (*BOE Code of Conduct for Personal Financial Transactions*, Section 12.1). Members of the Senior Policy Group (see section 6) have a responsibility to make themselves aware of any transaction of the nature covered by these rules by a spouse or other connected person that could cause damage to the reputation of the bank and the failure to seek approval for any such transaction may be treated as a breach of the code on the part of the senior policy group member (*BOE Code of Conduct for Personal Financial Transactions*, Section 12.2).

The pre-clearance procedures will not apply in respect of investment assets to the extent that they are managed by independent portfolio managers with full discretion over



investment decisions on terms approved by the Secretary of the bank (*BOE Code of Conduct for Personal Financial Transactions*, Section 5.1).

### **Rules of conduct on record-keeping**

Members of the Senior Policy Group, on becoming subject to these rules, and annually thereafter, must disclose to their Reporting Officer the holdings of financial assets, which they control jointly or individually (*BOE Code of Conduct for Personal Financial Transactions*, Section 6.2). Members of the Senior Policy Group must keep records of all their financial transactions, and of any connected persons, for at least 12 months and make them available on request to the bank (*BOE Code of Conduct for Personal Financial Transactions*, Section 6.3).<sup>536</sup>

The reporting procedures do not apply in respect of investment assets to the extent that they are managed by independent portfolio managers with full discretion over investment decisions on terms approved by the Secretary of the Bank (*BOE Code of Conduct for Personal Financial Transactions*, Section 5.1).

## **3.3.12.1.4 Staff independence and conflicts of interest**

### **Rules of conduct on independence**

The bank does not oppose that the staff take up any additional employment, if such additional employment does not appear to be either detrimental to, or in conflict with, the interests of the bank. Staff are not, however, in any circumstances permitted:

- i. to act as a dealer in gold and foreign exchange, whether as a principle or as an intermediary;
- ii. to act directly or indirectly as a broker or dealer or other intermediary in buying, selling or exchanging any securities on commission;
- iii. to receive any commission or gratuity from such a broker or dealer for recommending business to him.

Contravention of any of these three restrictions is considered as gross misconduct under the bank's Disciplinary Procedures (*BOE Staff Handbook 2013*, p. 41).

No BOE employee must accept or offer in their official capacity, any fee, gratuity, gift, hospitality, entertainment or consideration of any kind, from or to a bank customer, supplier or any other person, without authorisation from the Manager/Head of Division. If he/she is in any doubt about accepting or offering a gift or entertainment, then he/she should discuss this with their manager prior to doing so.

Compliance with the procedures for reporting and recording the receipt of entertainment and gifts is subject to audit and the Secretary of the bank will, from time to time, review consistency of practice across the bank. Breaches of central or business area rules could result in action under the bank's disciplinary procedures. Any questions about the application or implementation of these standards and guidelines should be referred to the Secretary or the Deputy Secretary of the bank (*BOE Guidelines and Rules on the Acceptance of Entertainment and Gifts*).<sup>537</sup>

---

<sup>536</sup> Reporting Officers do not routinely ask to see documentary evidence of transactions, e.g. a contract note, but may request such evidence if they see fit (*BOE Code of Conduct for Personal Financial Transactions*, Section 13.1). The Internal Audit Division looks at the adequacy of the bank's safeguards in respect of personal financial transactions and may inspect local records and procedures from time to time (*BOE Code of Conduct for Personal Financial Transactions*, Section 13.3).

<sup>537</sup> Available at [www.bankofengland.co.uk/about/Documents/humanresources/ethicalbusinessstandards.pdf](http://www.bankofengland.co.uk/about/Documents/humanresources/ethicalbusinessstandards.pdf).

### **Rules of conduct on conflicts of interest**

Staff should seek to avoid conflicts of interest and, if they find that they have a personal interest in a matter that they are advising on or deciding – whether financial or otherwise – they are urged to declare it to their manager without delay (*BOE Staff Handbook 2013*, p. 40).<sup>538</sup>

Appointment to the FPC presupposes that the member has no financial or other interests that could substantially restrict his/her ability to discharge the functions required of a member of the committee. These include financial interests significant enough to conflict with the member's duty to the FPC, and conflicts of duty and other relationships (including employment and advisory positions connected with regulated firms) that could give rise to a perception that the individual concerned could not be wholly independent, disinterested and impartial as a member of the committee (Section on "Conflicts of interest", *Code of Conduct for FPC Members*). The acceptability of particular appointments and interests is assessed on a case-by-case basis prior to appointment. Members should also notify the Secretary of the bank if they plan to take on any new outside commitment or interest which might be seen as in any way in conflict with membership of the FPC, or if a potential conflict arises in respect of any existing commitment or interest (Section on "Conflicts of interest", *Code of Conduct for FPC Members*).

Members of the MPC may not retain any directorship, trusteeship, advisory post or other interest, whether or not remunerated, which is, or could be seen to be, in conflict with membership of the Committee. The acceptability of particular appointments and interests is assessed on a case-by-case basis.<sup>539</sup> On appointment, members are asked to disclose all relevant commitments and interests to the Governor and to the Chancellor. The Chancellor will decide whether the continuation of any commitment or interest is incompatible with membership of the committee; the Governor may give advice in this regard. Members are also urged to notify the Secretary of the bank in advance if they plan to take on any new outside commitment or interest which might be seen as in any way in conflict with membership of the MPC, or if a potential conflict arises in respect of any existing commitment or interest (Section on "Conflicts of interest", *Code of Conduct for MPC Members*).

### **3.3.12.1.5 Application of rules of conduct**

#### **Ethics officer**

Rather than providing for an ethics officer, the bank establishes different reporting lines for the central group in relation to any disclosures and proposed transactions as follows. The Governor and both Deputy Governors report, via the Secretary of the bank, to the Chair of Court; members of the Court, Executive Directors, External Members of the Monetary Policy Committee and of the Financial Policy Committee, the PRA Board and Advisers to the Governor report to the Secretary of the bank; Heads of Division report to the relevant Executive Director and any other staff, when they are made aware of their being subject to the rules of conduct applicable to them, are also instructed about their

---

<sup>538</sup> For these purposes, a conflict of interest arises when the work for the bank could be affected by a personal interest or relationship. This could arise when a family member or other close relation works in the bank or for a company with which the bank deals or which it regulates. Employees must disclose such relationships. They are also asked to disclose the identities of the banks and other financial institutions with which they have accounts or hold financial products.

<sup>539</sup> Examples of conflicts of interest are where MPC members provide their services as consultants or as non-executive directors to banks, securities firms, investment managers or other financial institutions or to any other body if their relationship involves, or could be seen to involve, the provision, directly or indirectly, of commercially valuable advice relating to the conjectural position or to prospects in the UK or for the foreign exchange market.

specific reporting line (*BOE Code of Conduct for Personal Financial Transactions*, Section 7.1).

### **Disciplinary actions and enforcement**

Failure to comply with the internal policies may result in action under the Disciplinary Procedures. In particular, if the bank is satisfied that the employee has committed gross misconduct, the employee may be dismissed.

The following are examples of what would normally be considered gross misconduct and could lead to summary dismissal. The list is not exhaustive:

- i. *Any form of dishonesty, including but not limited to fraud, theft, concealment of information from management, and deliberate falsification of records*
- ii. *Actions which are likely to bring the reputation of the bank into disrepute*
- iii. *Failure to meet the required standards of conduct specified in a final written warning*
- iv. *Charges relating to or conviction of a criminal offence which in the bank's judgement makes him/her unsuitable for continued employment at the bank*
- v. *Serious breach of any of the policies and rules published by the bank from time to time, save in the proper performance of his/her duties as an employee of the bank*
- vi. *Acting as a dealer in gold and foreign exchange, whether as a principal or as an intermediary; acting either directly or indirectly as a broker or dealer or other intermediary in buying, selling or exchanging any securities on commission*
- vii. *Receiving any commission or gratuity from such a broker or dealer for recommending business to him*

Those having concerns that the bank or anyone in it is contravening the policies described in the Staff Handbook, or that other policies are being disregarded in ways that put the bank or its staff at risk, are invited to raise the matter with management, if necessary through the 'Speak Up' policy (*BOE Staff Handbook 2013*, p. 47).

Where required, the bank passes on information of misconduct to the Financial Conduct Authority. On occasion, the bank may alert other agencies such as the Serious Fraud Office or the National Crime Agency.

Staff joining high risk areas are given induction training on the internal rules. However, the bank is in the process of expanding the provision of compliance training more broadly. Training is largely upon recruitment, with some refresher training.

The *Code of Conduct for FPC Members* and the *Code of Conduct for MPC Members* continue to apply for three months after the end of the FPC or MPC member's engagement, either at the expiry of the fixed period, or at any other time (section on "Application after Termination of Contract", *Code of Conduct for FPC Members* and Section on "Other Issues", *Code of Conduct for MPC Members*).

An exemption from market abuse regulation applies to the DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. To the opposite, such exemption does not apply to foreign DMOs.

### **3.3.12.1.6 Risk management standards**

Risk management standards are in place but no further information is publicly available or was presented in the response to the questionnaire.<sup>540</sup>

### **3.3.12.1.7 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Civil servants must not, without relevant authorisation, disclose official information which has been communicated in confidence within the government or received in confidence from others (Article 4.2.2, *Civil Service Management Code*).<sup>541</sup> Civil servants must continue to observe this duty of confidentiality after they have left Crown employment (Article 4.2.3, *Civil Service Management Code*).

Civil servants must not take part in any activities or make any public statement which might involve the disclosure of official information or draw upon experience gained in their official capacity without the prior approval of their department or agency. They must clear in advance material for publication, broadcasts or other public discussion which draws on official information or experience (Article 4.2.4, *Civil Service Management Code*). Civil servants must not seek to frustrate the policies or decisions of Ministers by the use or disclosure outside the government of any information to which they have had access as civil servants (Article 4.2.6, *Civil Service Management Code*).

Civil servants must continue to observe the duty of confidentiality after they have left Crown employment (Article 4.2.3, *Civil Service Management Code*).

#### **Rules of conduct on the use of inside information**

Civil servants must not use information acquired in the course of their work to advance their private financial interests or those of others (Article 4.3.8, *Civil Service Management Code*).

### **3.3.12.1.8 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Civil servants may freely invest in shareholdings and other securities unless the nature of their work is such as to require constraints on this (Article 4.3.8, *Civil Service Management Code*).

#### **Rules of conduct on record-keeping**

Civil servants must therefore declare to their department or agency any business interests (including directorships) or holdings of shares or other securities which they or members of their immediate family (spouse, including partner where relevant, and children) hold, to the extent which they are aware of them, which they would be able to further as a result of their official position. They must comply with any subsequent instructions from their department or agency regarding the retention, disposal or management of such interests (Article 4.3.9, *Civil Service Management Code*).

---

<sup>540</sup> However, their contents are not made publicly available, nor have they been illustrated in detail via questionnaire.

<sup>541</sup> Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418696/CSMC-April\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418696/CSMC-April_2015.pdf).

### **3.3.12.1.9 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

UK DMO staff members are bound by a general duty of independence in the performance of their tasks. These are contractual obligations under an individual's terms and conditions of employment.

Departments and agencies must require staff to seek permission before accepting any outside employment which might affect their work either directly or indirectly, and must make appropriate arrangements, which reflect the Business Appointments Rules for Civil Servants in annex A and any local needs, for the handling of such requests (Article 4.3.4, *Civil Service Management Code*).

Civil servants must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity (Article 4.1.3(d), *Civil Service Management Code*).

#### **Rules of conduct on conflicts of interest**

Civil servants must not be involved in taking any decision which could affect the value of their private investments, or the value of those on which they give advice to others (Article 4.3.8, *Civil Service Management Code*).

There are specific internal rules and/or policies to identify, disclose and manage conflicts of interest affecting UK DMO staff.

### **3.3.12.1.10 Application of rules of conduct**

#### **Ethics officer**

The training of UK DMO staff members includes learning about the content and application of the internal code of conduct. It takes place on a regular basis and as rules are updated in the form of e-learning.

UK DMO staff members receive internally in the form of a weekly email and through general civil service updates communication that makes them promptly aware of modifications and/or additions and/or means of application of the internal code of conduct.

#### **Disciplinary actions and enforcement**

It is for the office to define the circumstances in which initiation of disciplinary procedures may be appropriate. The office's rules for staff make clear the circumstances in which the application of the disciplinary procedures may be considered, and these must include:

- i. breaches of the organisation's standards of conduct or other forms of misconduct, and*
- ii. any other circumstances in which the behaviour, action or inaction of individuals significantly disrupts or damages the performance or reputation of the organisation (Article 4.3.8, Civil Service Management Code).*

The code of conduct applies to UK DMO's staff members beyond their employment term.

## 3.4 Third-country analysis

### 3.4.1 Australia

#### 3.4.1.1 Insider dealing and unlawful disclosure of inside information rules

The regulatory framework on insider dealing and unlawful disclosure of inside information rules is based on the Corporations Act of 2001 (hereinafter referred to as the "Act").

Section 1043A(1) of the Act punishes insider dealing by providing that: *if "(a) a person (the insider) possesses inside information, and (b) the insider knows, or ought reasonably to know, that the matters specified in paragraphs (a) and (b) of the definition of inside information in section 1042A are satisfied in relation to the information, the insider must not (whether as principal or agent): (c) apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3 financial products; or (d) procure another person to apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3 financial products"*<sup>542, 543, 544</sup>. Failure to comply with this section constitutes both an administrative offence, subject to administrative sanctions, and a criminal offence, subject to criminal penalties.

Moreover, Section 1043A(2) of the Act, punishes unlawful disclosure of inside information and reads as follows: *"[I]f (a) a person (the insider) possesses inside information, and (b) the insider knows, or ought reasonably to know, that the matters specified in paragraphs (a) and (b) of the definition of inside information in section 1042A are satisfied in relation to the information, and (c) relevant Division 3 financial products are able to be traded on a financial market operated in [the jurisdiction of Australia], the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to: (d) apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3 financial products; or (e) procure another person to apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3*

---

<sup>542</sup> For purposes of Section 1043A of the Act, "inside information" means information in relation to which the following paragraphs are satisfied: "(a) the information is not generally available; and (b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular Division 3 financial products". The notion of "information" includes: "(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and (b) matters relating to the intentions, or likely intentions, of a person". A "material effect", in relation to a reasonable person's expectations of the effect of information on the price or value of Division 3 financial products, occurs "if (and only if) the information would, or would be likely to, influence persons who commonly acquire Division 3 financial products in deciding whether or not to acquire or dispose of the first mentioned financial products" (Section 1042A of the Act). Moreover, for purposes of Section 1043A of the Act, information is generally available if: "(a) it consists of readily observable matter; or (b) both of the following subparagraphs apply: (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in Division 3 financial products of a kind whose price might be affected by the information; and (ii) since it was made known, a reasonable period for it to be disseminated among such persons has elapsed; or (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following: (i) information referred to in paragraph (a); (ii) information made known as mentioned in subparagraph (b)(i)" (Section 1042C of the Act).

<sup>543</sup> For purposes of Section 1043A of the Act, "Division 3 financial products" means: "(a) securities; or (b) derivatives; or (c) interests in a managed investment scheme; or (ca) debentures, stocks or bonds issued or proposed to be issued by a government; or (d) superannuation products, other than those prescribed by regulations made for the purposes of this paragraph; or (e) any other financial products that are able to be traded on a financial market".

<sup>544</sup> If a person "incites, induces, or encourages an act or omission by another person, the first mentioned person is taken to procure the act or omission by the other person" (Section 1042F of the Act).

*financial products*". Failure to comply with this section constitutes both an administrative offence, subject to administrative sanctions, and a criminal offence, subject to criminal penalties.

As for criminal penalties, a person who engages in insider dealing is subject to a fine equal to the greater of A\$765,000 or three times the profit gained or loss avoided, and/or imprisonment up to ten years. As for administrative penalties, the maximum of the monetary penalty that applies to an individual is A\$200,000.

It is up to the Australian Securities Commission to choose whether to pursue an administrative proceeding or a criminal proceeding.

The above-mentioned rules apply to staff members of the central bank and the debt management office.

### **3.4.1.2 Market manipulation rules**

The regulatory framework on market manipulation, likewise based on the Corporations Act of 2001 (hereinafter referred to as the "Act"), is extensive and articulated. It includes all major behaviours and practices that are generally recognised as manipulative.

Sections from 1041A to 1041C prohibit all forms of trade-based and action-based market manipulation and.

In greater detail, under Section 1041A of the Act, a person must not take part in, or carry out (whether directly or indirectly and whether in the jurisdiction of Australia or elsewhere): *"(a) a transaction that has or is likely to have; or (b) two or more transactions that have or are likely to have the effect of (c) creating an artificial price for trading in financial products on a financial market operated in this jurisdiction, or (d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction"*.

In addition, according to Section 1041B(1) of the Act, a person must not perform, or omit to perform, an act (whether in the jurisdiction of Australia or elsewhere) *"if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance (a) of active trading in financial products on a financial market operated in this jurisdiction; or (b) with respect to the market for, or the price for trading in, financial products on a financial market operated in this jurisdiction."*<sup>545</sup>

Moreover, Section 1041C(1) of the Act states that a person must not enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in: *"(a) the price for trading in financial products on a financial market operated in this jurisdiction being maintained, inflated or depressed; or (b) fluctuations in the*

---

<sup>545</sup> For purposes of 1041B(1) of the Act, a person is considered to have created a false or misleading appearance of active trading in particular financial products on a financial market if the person: *"(a) enters into, or carries out, either directly or indirectly, any transaction of acquisition or disposal of any of those financial products that does not involve any change in the beneficial ownership of the products, or (b) makes an offer (the regulated offer) to acquire or to dispose of any of those financial products in the following circumstances: (i) the offer is to acquire or to dispose of at a specified price, and (ii) the person has made or proposes to make, or knows that an associate of the person has made or proposes to make: (A) if the regulated offer is an offer to acquire—an offer to dispose of, or (B) if the regulated offer is an offer to dispose of—an offer to acquire the same number, or substantially the same number, of those financial products at a price that is substantially the same as the price referred to in subparagraph (i)"* (Section 1041B(2)). The reference in Section 1041B(2)(a) to the acquisition or disposal of financial products includes: *"(a) a reference to the making of an offer to acquire or dispose of financial products; and (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to acquire or dispose of financial products"*.

*price for trading in financial products on a financial market operated in this jurisdiction".* Section 1041C(2) further clarifies that the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive in determining whether a transaction is fictitious or artificial.

The Act also prohibits information-based market manipulation per Sections 1041D and 1041E.

In particular, Section 1041E of the Act provides that a person must not make a statement, or disseminate information, if: *"(a) the statement or information is false in a material particular or is materially misleading; and (b) the statement or information is likely: (i) to induce persons in this jurisdiction to apply for financial products; or (ii) to induce persons in this jurisdiction to dispose of or acquire financial products; or (iii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market operated in this jurisdiction; and (c) when the person makes the statement, or disseminates the information: (i) the person does not care whether the statement or information is true or false; or (ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading"*.

In addition, according to Section 1041F of the Act, a person must not, in this jurisdiction, induce another person to deal in financial products: *"(a) by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive; or (b) by a dishonest concealment of material facts; or (c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if: (i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and (ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to the other person, or a class of persons that includes the other person"*.

Lastly, Section 1041D of the Act adds that a person must not circulate or disseminate, or be involved in the circulation or dissemination of, any statement or information to the effect that the price for trading in financial products on a financial market operated in the jurisdiction of Australia will, or is likely to, rise or fall, or be maintained, because of a transaction, or other act, in relation to those financial products, if: *"(a) the transaction, or thing done, constitutes or would constitute a contravention of Sections 1041A, 1041B, 1041C, 1041E or 1041F of the Act [i.e., any of the above mentioned Sections on market manipulation]; and (b) the person, or an associate of the person: (i) has entered into such a transaction or done such an act or thing; or (ii) has received, or may receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising the circulation or dissemination of, the statement or information."*

Failure to comply with any of the Sections from 1041A to 1041F above constitutes both a criminal offence and an administrative offence. The applicable sanctions are the same as those applicable in case of insider dealing, i.e. as to criminal penalties, a fine equal to the greater of A\$765,000 or three times the profit gained or loss avoided, and/or imprisonment up to ten years; as to administrative penalties, a maximum monetary penalty of A\$200,000.

The above-mentioned rules apply to staff members of the central bank and the debt management office.



### **3.4.1.3 Central bank framework (Reserve Bank of Australia)**

#### **3.4.1.3.1 Exemption from market abuse rules**

The Reserve Bank of Australia (RBA) is not explicitly exempt from market rules on insider dealing, unlawful disclosure of inside information and market manipulation with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

Foreign central banks (CBs) are not exempt, either. However, they may be entitled to a certain degree of immunity pursuant to the Foreign States Immunities Act of 1985. In general, foreign CBs are entitled to the same immunity from jurisdiction as foreign states and are subject to the same exception. The Foreign States Immunities Act distinguishes between immunity from jurisdiction and immunity from enforcement/execution. In relation to immunity from jurisdiction, the Foreign States Immunities Act provides that a foreign central bank is generally immune from the jurisdiction of the courts of Australia (Section 9 and Section 22), save for a few exceptions, including: if the foreign central bank submits to the jurisdiction of Australian courts; or it engages in commercial transactions (Section 11).

#### **3.4.1.3.2 Risk management standards**

With regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, internal policies and procedure documents outline operational processes. All transactions need to be undertaken in accordance with the RBA's risk management framework. However, the content of the risk management framework is not made publicly available, nor has it been illustrated in detail via questionnaire.

#### **3.4.1.3.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

The Code of Conduct for RBA staff<sup>546</sup> applies to people who:

- (i) *are an employee of the bank;*
- (ii) *occupy a position (whether as a contractor, consultant, agency employee or otherwise) within the organisational structure of the bank;*
- (iii) *have access to the information and communications technology systems (ICT Assets) of the bank and the bank has informed them that they are required to comply with some or all of the Code of Conduct; or*
- (iv) *are a contractor, consultant or visitor to the bank and the bank has informed them that they are required to comply with some or all of the Code of Conduct (Article 1.2, Code of Conduct for Reserve Bank Staff).*

There is a general requirement for RBA staff members to preserve the confidentiality of information that is deemed confidential, sensitive, privileged, and personal or protected. In addition to their individual obligations, each staff member must ensure that whoever has access to such information preserves its confidentiality.

As mentioned, in the course of their employment with the bank, staff members may have access to a range of information, which may qualify as:

- (i) confidential to the bank, insofar as it is not generally available outside of the bank;

---

<sup>546</sup> Available at: [www.rba.gov.au/about-rba/code-conduct-rba-staff.html](http://www.rba.gov.au/about-rba/code-conduct-rba-staff.html).

- (ii) confidential to a third party, insofar as it is not generally available outside of that third party;
- (iii) sensitive, insofar as it has the potential to be valuable in the hands of someone outside of the bank;
- (iv) privileged, insofar as it is information in respect of which the bank benefits from legal protection;
- (v) personal, insofar as it relates to an individual; or
- (vi) otherwise specifically protected by legislation.

The access to such information, or any document containing such information, is solely for the purpose of enabling staff members to perform their duties. Therefore, staff members have a legal obligation:

- (i) not to use this information for any purpose other than in the proper course of their work for the bank and, where it is specifically protected by legislation or the terms of a contract with a third party, other than in accordance with the relevant legislation or contract;
- (ii) not to disclose this information unless staff members are satisfied that the disclosure is permitted or required by relevant legislation or a relevant contract with a third party;
- (iii) to take reasonable steps to preserve the confidentiality of this information; and
- (iv) to take reasonable steps to ensure that others who have access to this information do not use or disclose it other than in the circumstances referred to above and preserve its confidentiality.

Without limiting these obligations, staff members must protect this information from intentional or unintentional disclosure to foreign officials or other people not entitled to it.<sup>547</sup>

The duty of confidentiality continues to apply beyond the term of employment.

### **Rules of conduct on the use of inside information**

Staff members are generally prohibited from using information that is not publicly available for their own private/personal benefit. Staff members are also not allowed to enable others to benefit from such information.

When using social media, staff members must ensure that their communications do not lead to any unauthorised disclosure of the bank's operations or views and do not bring the bank or any of its staff into disrepute (Article 2.10, *Code of Conduct for Reserve Bank Staff*).

If, as a result of their position with the bank, staff members have access to information that is not publicly available, they must not profit, or enable others to profit, from information available to them which is not publicly available (Article 2.8, *Code of Conduct for Reserve Bank Staff*).

---

<sup>547</sup> Foreign officials include embassy or foreign government officials within Australia, and foreign officials or nationals outside of Australia (including trade or business representatives). Staff members should report to their Head of Department or relevant Governor any instances when: "i. a foreign official or any other individual or group, regardless of nationality, seeks to obtain information which, under the rules set out above, should not be disclosed to them; and ii. any contact [staff members] have with any foreign official that seems suspicious, persistent or unusual in any respect. This contact could be in either an official or social capacity" (Article 4.3, *Code of Conduct for Reserve Bank Staff*).

#### **3.4.1.3.4 Transactions in financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Neither staff members nor any entity they control may enter into, arrange, buy, sell or otherwise deal in interest rate or foreign exchange derivatives. Neither staff members nor any entity they control may engage or be involved in active trading in any financial instrument. Active trading is regarded as trading which is frequent and speculative. If staff members have any uncertainty about this, their Head of Department or relevant Governor provides them with specific guidance as to whether a particular form of trading would be regarded as active trading (Article 2.8, *Code of Conduct for Reserve Bank Staff*).

The bank also has a blackout period in which staff members and any entity they control are not permitted to undertake any discretionary transactions in "Blackout Financial Instruments".<sup>548</sup> These requirements apply to all discretionary acquisitions or disposals of, or other dealings in, Blackout Financial Instruments. To the contrary, they do not apply to passive, predetermined investment (for example, the rollover of a pre-existing term deposit, a regular prearranged contribution to a managed investment scheme or shares purchased under a dividend reinvestment plan). The blackout period is a one-week period each month that commences at close of business on the Tuesday prior to the monthly meeting of the Reserve Bank Board and ends at close of business on the Tuesday on which that meeting is held. During this period staff members and any entity they control must not undertake discretionary transactions in any Blackout Financial Instruments. Where the blackout period would create genuine hardship, staff members may approach their Head of Department or relevant Governor for guidance (Article 2.8, *Code of Conduct for Reserve Bank Staff*).

Staff members may be required to adhere to additional restrictions if they work in certain roles or areas of the bank due to the information they will have access to. This includes, for example, the Financial System Group, parts of the Financial Markets Group and employees with access to restricted liaison information (Article 2.8, *Code of Conduct for Reserve Bank Staff*).

##### **Rules of conduct on record-keeping**

There is no specific requirement to keep a record of transactions in assets and financial instruments by staff members.

#### **3.4.1.3.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

Staff members must not show any favour towards friends or relatives in their dealings with or on behalf of the bank or misuse their position in any other way; or receive payment or other benefits for activities outside of the bank, which are offered to them as a result of their position in the bank (except for payments or benefits that are approved by their Head of Department or the relevant Governor) (Article 2.3, *Code of Conduct for Reserve Bank Staff*).

Staff members are prohibited from engaging in any form of bribery or corruption. They must also take reasonable steps to ensure that any person who reports to them does not engage in such activities. Some examples include: "*paying or offering an amount of*

---

<sup>548</sup> "Blackout Financial Instruments" means interest rate products (including but not limited to bonds, bills, notes, certificates of deposit and term deposits), shares, warrants, options, corporate bonds and foreign exchange (except for travel purposes).

*money or otherwise providing or offering to provide a benefit to a foreign government official with an intention to influence them in their official duties; inappropriate allocation of trading business to a counterparty for personal gain; or accepting money or another benefit in return for information which staff members have as a result of their work for the Bank. Giving or accepting gifts, hospitality or other benefits can also amount to bribery and corruption” (Article 2.4, Code of Conduct for Reserve Bank Staff). Staff members must report any suspected or known bribery or corruption to the Deputy Governor as soon as practicable.*

In the course of their work at the bank, staff members must exercise care when giving or receiving gifts, hospitality and other benefits. They must not: *“give or receive a gift, hospitality or other benefit that may (or may appear to) compromise [their] judgement in [their] official capacity at the Bank, damage relationships with other persons or organisations or indicate favouritism towards a person or group of people, accept any personal monetary payment, including in cash, from a third party [they] deal with in the course of [their] work with the Bank; or accept sponsored transportation or accommodation from a third party, unless it has been approved by the Deputy Governor” (Article 2.7, Code of Conduct for Reserve Bank Staff).*

In circumstances where it may be reasonable to give or receive gifts, hospitality or other benefits, the following must be observed: *“[A]ny gifts received must not exceed \$100 in value; approval from the Secretary must be sought before giving any gift on behalf of the Bank that exceeds \$100 in value; any hospitality given or received should not ordinarily exceed \$100; all gifts, hospitality and other benefits received or provided in the course of the work with the Bank must be recorded on a register kept by the Head of Department or the relevant Governor”.* When it is inappropriate to decline a gift, an offer of hospitality or other benefit which may otherwise be inconsistent with the guidelines set out above, members of staff must seek guidance from their Head of Department or the relevant Governor and (in the case of a gift) hand the gift to Secretary’s Department as soon as practicable (Article 2.7, Code of Conduct for Reserve Bank Staff).

### **Rules of conduct on conflicts of interest**

Staff members must act honestly and fairly in all their dealings for and on behalf of the bank. Any actual or perceived conflicts of interest should be disclosed to their Head of Department or the relevant Governor.

Staff members are required to *“recognise and properly manage situations which could, or could be seen to, generate a conflict between [their] interests and [their] duties towards the Bank. If there is a reasonable basis to believe that such a conflict of interest and duty exists, details of the interest must be discussed with the relevant Head of Department or Governor. Should the conflict be a material personal interest, then [they] are required to disclose the details of the interest” (Article 2.2, Code of Conduct for Reserve Bank Staff).* Guidance for staff on disclosure requirements is contained in the *Disclosure of Material Personal Interests – Instructions*.

Members are prohibited from engaging in activities (remunerated or non-remunerated) that may result in a conflict of interest. Members must inform senior management before engaging in any activities (remunerated or non-remunerated).

Staff members must in particular *“not engage in other employment or business activities (including paid or unpaid activities) which are offered to [them] as a result of their position in the Bank, or which may create a conflict of interest with, or otherwise impact on, [their] obligations towards the Bank. [They] must not perform any paid or unpaid work in any capacity for an authorised deposit-taking institution; a holder of an Australian credit licence; or any private sector entity operating in Australia whose main business is the provision of finance”.* Staff members are required to inform their Head of Department or the relevant Governor of any other employment or external business

activity they are considering accepting before undertaking it (Article 2.5, *Code of Conduct for Reserve Bank Staff*).

#### **3.4.1.3.6 Application of rules of conduct**

##### **Ethics officer**

The Human Resources Department is responsible for administering the Code of Conduct. It reviews the Code of Conduct annually, ensures that all staff members are aware of their responsibilities under the Code of Conduct and deals with alleged instances of misconduct.

Accepting the internal Code of Conduct is a condition of employment at the RBA. Upon recruitment, staff members would undertake training on the code. Training is conducted via online training modules, and each year staff must review these modules. Any changes to the Code of Conduct would be communicated via email and intranet website. If necessary, informative sessions and compulsory online training modules would be conducted. These activities are monitored by senior management.

If staff members are aware of any conduct in breach of the Code of Conduct, they are required to report it as soon as practicable. They can do so by informing their supervisor, the Head of Human Resources, the Assistant Governor (Currency Group), the Deputy Governor or the Governor. They can do this in person, by telephone or in writing. They can remain anonymous if they wish (Article 5.1, *Code of Conduct for Reserve Bank Staff*).

The Human Resources Department investigates alleged breaches of the Code of Conduct and takes disciplinary action, as appropriate.

##### **Disciplinary actions and enforcement**

The RBA will determine how to respond to a breach or alleged breach of the Code of Conduct by reference to the circumstances of each case. The bank's response may include disciplinary actions up to and including termination of employment, and serious breaches may be reported to the police (Article 5.2, *Code of Conduct for Reserve Bank Staff*).

In most cases, it is necessary for the RBA to investigate complaints or alleged breaches of the Code of Conduct. If an investigation is required in a particular case, the bank determines the form and timing of the investigation and the person to conduct the investigation and considers the following: "(i) the general desirability of confidentiality of investigations into employee matters; (ii) the need to ensure that the investigation is conducted fairly; (iii) the circumstances of each party; (iv) the desirability of conducting the process quickly and efficiently; (v) the need to ensure that any outcome of the investigation is accurate and reliable; (vi) and if the Public Interest Disclosure Act 2013 applies, the requirements of that Act." The bank may decide to suspend employment during an investigation (Article 5.3, *Code of Conduct for Reserve Bank Staff*).

Breaches of the Code of Conduct may result in criminal and/or administrative offences. Assessment is on a case-by-case basis.

#### **3.4.1.3.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in

preventing, deterring and punishing market abuse by staff members of the RBA. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. While administrative sanctions overall are lenient, criminal penalties are severe enough to exert deterrence. Staff members of the national CB are subject to all relevant rules and penalties.
- Unlike in the EU, the national CB is not formally exempt from the rules on insider dealing, unlawful disclosure of inside information or market manipulation. Likewise, no exemption is provided for third-country CBs, although depending on the circumstances third-country CBs may benefit from immunity under the Foreign States Immunity Act.
- The CB applies risk management standards in undertaking its operations but the contents of such standards are not publicly available, nor have they been disclosed in detail.
- Staff members are subject to a duty of professional secrecy under several legal provisions and the applicable internal code of conduct. Additionally, such duty continues to apply beyond the term of employment.
- Rules exist that explicitly prevent staff members from active trading in financial instruments for personal purposes, i.e. trading that is frequent and speculative. Staff members are also restricted from dealing in financial instruments around the time the board of the CB meets. However, there is no requirement for staff members to keep record and report their investments.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions to carry out conflicting remunerated and non-remunerated activities and accept improper benefits (such as gifts) from third parties (the acceptance of which might amount to bribery or corruption), and avoid conflicts of interest. In case of an unavoidable conflict of interest, staff members must disclose it with the relevant head of department but they are not explicitly and necessarily disqualified from taking part in decisions in relation to which they are conflicted.
- The human resources department presides over the application of the internal code of conduct and is entrusted with reviewing it, disseminating it and taking disciplinary action in case of breach of it. Staff members are made aware of the existence and applicability of an internal code of conduct upon recruitment and are examined on a continuous basis on the knowledge they have of it.
- Depending on the seriousness of the misconduct, disciplinary actions may be up to and include termination of employment. Furthermore, competent authorities are notified of the act or fact that might constitute a criminal or administrative offence.

#### **3.4.1.4 Debt management office framework (Australian Office of Financial Management)**

##### **3.4.1.4.1 Exemption from market abuse rules**

No exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the benefit of the national DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies to the Australian Office of Financial Management (AOFM).

Likewise, no such exemption applies for the benefit of third-country DMOs. But the privilege of sovereign immunity established by the Foreign States Immunity Act of 1985 might apply to foreign DMOs depending on the circumstances.

#### **3.4.1.4.2 Risk management standards**

There exist regulations that apply to all the relevant government bodies that deal with risk management. However, the contents of the risk management standards applicable with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, are not publicly available and have not been illustrated via questionnaire.

#### **3.4.1.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

An AOFM employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff (Part 3, Section 13(6), *Public Service Act 1999*).<sup>549</sup>

An AOFM employee must also not disclose information that she has obtained or generated in connection with the employment if the information (a) has been or is to be communicated in confidence within the government or (b) has been received in confidence by the government from a person or persons outside the government, whether or not the disclosure would be judged a breach of confidence (see Part 2, Section 2.1, *Public Service Act 1999* and *Enhancing ethical awareness in the APS*, p. 19).<sup>550</sup>

An AOFM employee must not disclose information which the AOFM employee obtains or generates in connection with the AOFM employee's employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programmes. Depending on the circumstances, this restriction could cover information, such as opinions, consultation, negotiations (including about the management of a contract), incomplete research, or advice or recommendations to the government, leading or related to, the development or implementation of the government's policies or programmes (*Enhancing ethical awareness in the APS*, p. 22). AOFM employees need to consider on each occasion whether the disclosure of information could damage the effective functioning of the government, including, for example, in relation to unclassified information and in circumstances where there is no relevant guidance from an agency head. (*Enhancing ethical awareness in the APS*, p. 22).

Regulations do not prevent a disclosure of information by an AOFM employee if:

- (i) the information is disclosed in the course of the AOFM employee's duties;
- (ii) the information is disclosed in accordance with an authorisation given by an agency head;
- (iii) the disclosure is otherwise authorised by law; or
- (iv) the information that is disclosed is already in the public domain as the result of a disclosure of information that is lawful under regulations or another law.

Regulations do not limit the authority of an agency head to give lawful and reasonable directions in relation to the disclosure of information.

Unauthorised disclosure of official information may breach the Code of Conduct and result in sanctions under the Public Service Act. It may also breach Section 70 of the

---

<sup>549</sup> More information available at: [www.comlaw.gov.au/Details/C2013C00310](http://www.comlaw.gov.au/Details/C2013C00310).

<sup>550</sup> More information is available at: [www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice](http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice).

Crimes Act of 1914, which makes it an offence for a Commonwealth officer to publish or communicate any fact or document (except where authorised to do so) which comes into his or her knowledge or possession, and which it is his or her duty not to disclose. Section 3 of the Crimes Act provides an extended definition of a Commonwealth officer, which has the effect of extending Section 70 to persons performing services for or on behalf of the Commonwealth. Such disclosure constitutes an offence resulting in a penalty of maximum two years imprisonment (*Enhancing ethical awareness in the APS*, p. 24).

#### **Rules of conduct on the use of inside information**

An AOFM employee must not improperly use inside information or the employee's duties, status, power or authority: "(a) to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or (b) to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person" (Part 3, Section 13(10), *Public Service Act 1999*). Such information includes information about a company that may enable employees to speculate on the stock market. It also includes information about a tender exercise which could unfairly advantage a person, such as a friend or a relative, who is tendering for a contract (*Enhancing ethical awareness in the APS*, p. 24).

Additionally, when making comment in an official capacity, employees are also required to abide by the institutions' policies relating to clearance of material for public release (*Enhancing ethical awareness in the APS*, p. 27).

The Criminal Code makes it an offence for a Commonwealth officer to use official information to dishonestly obtain a benefit for himself or another person or dishonestly cause detriment to another person (Section 142.2(1)). The same provisions apply to former Commonwealth public officials. The offence may result in a penalty of maximum of five years imprisonment (*Enhancing ethical awareness in the APS*, p. 25).

### **3.4.1.4.4 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

More specifically, AOFM employees are prohibited from engaging in dealing with securities in which the institution deals. As AOFM issues Australian Government Bonds, AOFM employees are prohibited from engaging in direct trading or investing in such instruments.

#### **Rules of conduct on record-keeping**

There are no rules on record keeping and reporting of holdings and transactions in financial instruments and/or other relevant assets by the AOFM employees.

However, agency heads and Senior Executive Service (SES) employees are subject to a specific regime that requires them to submit, at least annually, a written declaration of their and their immediate family's financial and other interests that could involve a real or apparent conflict of interest. The purpose of the declaration is to ensure that agency heads are aware of any private interests or relationships of AOFM employees in leadership or other sensitive positions which could or could be seen to influence the decisions the employees are taking or the advice they are giving. These could include personal interests and relationships that could involve a real or potential conflict of interest in terms of the employee's responsibilities. The completion of a declaration of interests also provides employees with the opportunity to consider whether any of their financial or personal interests might give rise to a real or perceived conflict with their duties and take action to remove or minimise the potential for that to occur (*Enhancing ethical awareness in the APS*, p. 73).



There is no standard list of items that must be included in the declaration. Rather, it is the responsibility of employees to whom the declaration policy applies to consider and declare these private interests or relationships that could or could be seen to impact upon the decisions they are taking or the advice they are giving. Factors to be taken into account in considering what to disclose include:

- (i) The particular roles and responsibilities of the employee's agency and its probity concerns
- (ii) The particular roles and responsibilities of the employee

Examples of organisations and situations where transparency and openness about private and personal financial interests are particularly important include:

- (i) Agencies, organisations and positions undertaking an investigatory or regulatory role
- (ii) Agencies, organisations and positions that allocate contracts or disperse Australian government funds
- (iii) Agencies, organisations and positions that are responsible for the protection and management of sensitive policy, commercial or personal information

The types of interests and relationships that may need to be disclosed include: real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income significant liabilities, gifts, private business or social/personal relationships, paid, unpaid or voluntary outside employment that could or could be seen to impact upon the employee's responsibilities. On the other hand, ownership of personal assets such as an unencumbered personal or family home, works of art, jewellery, furniture, antiques, etc., are most unlikely to have any real or perceived impact on an employee's responsibilities and would not normally need to be declared, since their possession is unlikely to involve a conflict of interest or any other threat to an employee's probity (*Enhancing ethical awareness in the APS*, p. 74).

While it is the responsibility of employees to declare personal and private interests, it is the responsibility of the Agency Head to ensure that any conflict of interest or other threat to the integrity of the agency that is identified in the declarations is avoided or effectively managed. Declarations made by Agency Heads are usually submitted to the Minister. If the statement discloses a conflict, the Minister and the Agency Head must take steps to resolve the conflict (*Enhancing ethical awareness in the APS*, p. 75).

#### **3.4.1.4.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

AOFM employees are bound by a general duty of independence while performing their tasks.

##### **Rules of conduct on conflicts of interest**

An AOFM employee must: (a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and (b) disclose details of any material personal interest of the employee in connection with the employee's AOFM employment (Part 3, Section 13(7), *Public Service Act 1999*).

APS employees are barred from participating in the decision (including policy decision) when they have a private/personal interest in the preparation or outcome of that decision.

All AOFM staff are bound by the Code of Conduct to behave with integrity and to avoid or manage conflicts of interest in their employment.

#### **3.4.1.4.6 Application of rules of conduct**

##### **Ethics officer**

The Internal Compliance and Assurance Function ensures that AOFM staff members adhere to the relevant regulations and that the activities undertaken are consistent with the relevant regulations. This function reports directly to the CEO who has the ultimate delegated authority to enforce appropriate actions, if needed.

The training of the AOFM employees includes learning about the content and application of the Code of Conduct. The learning activity takes place periodically.

AOFM employees receive an internal specific communication that makes them promptly aware of modifications and/or additions to the Code of Conduct.

##### **Disciplinary actions and enforcement**

AOFM employees must report actual or suspected breaches of the Code of Conduct to the Internal Compliance and Assurance function. Were a breach to occur, the breach would be investigated internally under the relevant procedures and then the CEO and any other heads of areas would be involved in informing an external regulatory body, as the particular situation dictates.

The Code of Conduct does not constitute a collection of statements of intent. It is mandatory. Therefore, a breach of the Code of Conduct can result in sanctions, ranging from a reprimand to termination of employment. All AOFM employees are required to comply with the code. Failure to do so may attract sanctions.

However, the Code of Conduct does not apply to AOFM employees beyond their employment term.

#### **3.4.1.4.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the AOFM. The assessment relies on the following findings:

- Staff members of the DMO are subject to all the relevant rules on insider dealing, unlawful disclosure of inside information, and market manipulation (trade-based, action-based and information-based). While administrative sanctions are lenient, criminal penalties are severe enough to exert deterrence.
- Unlike in the EU, no exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is provided for the national DMO. Nor are third-country DMOs exempt from such rules, even though these ones may benefit from sovereign immunity depending on the circumstances.
- Staff members are bounded by general regulations that apply risk management standards to government bodies. However, no detail about the contents of these standards is publicly available or has been provided via questionnaire.
- Staff members are subject to a stringent duty of professional secrecy, which is strengthened by the provision of criminal liability in case of violation. They are also prohibited from making use of inside information for private purposes with no exception, even though none of these duties continue beyond the term of employment.

- Staff members are prevented from trading in financial instruments issued by the DMO with no exception. Although staff members are not obliged to report their investments annually, agency heads and other senior employees are obliged to submit, at least annually, a written declaration of their, and their immediate family's financial and other interests.
- Staff members are subject to a general duty to preserve their independence from third-party interests, even though such duty is not strengthened by detailed prohibitions to carry out conflicting activities and accept improper benefits from third parties. Staff members must also avoid conflicts of interest and, should the conflict of interest be unavoidable, staff members are disqualified from participating in the decision-making process.
- An internal compliance function is in place in order to preside over the application of the internal rules of conduct, the knowledge of which is part of the learning activity of staff members, investigate breaches and report to external authorities when required. Staff members must report actual or suspected breach of the internal rules of conduct.
- Depending on the seriousness of the case, disciplinary actions may vary from reprimand to dismissal.

### **3.4.2 Brazil**

#### **3.4.2.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is based on Law no. 6385 of 7 December 1976 ("Securities Law") and the regulations thereunder issued by the Securities and Exchange Commission of Brazil (CVM).

Article 27-D of the Securities Law prohibits both insider dealing and unlawful disclosure of inside information by providing that any use of relevant information not yet disclosed to the market, which a person may possess and which should have remained confidential, so as to create undue advantages for oneself or others through the negotiation of securities on one's behalf or on behalf of others, is punished by imprisonment of one to five years and subject to a fine of up to three times the amount of the undue advantage obtained as a result of the criminal activity.

Such general legal provision, which is applicable to all market agents, is supplemented by Instruction 358 of 2002 issued by the CVM, concerning the disclosure and the misuse of information about relevant acts or facts regarding listed companies and related to the securities issued by these companies. Article 8 of Instruction 358 in particular provides that controlling shareholders, directors, members of the administrative council, of the statutory audit committee and of any bodies with technical or advising functions provided for the bylaws, as well as the employees of the company, are under the obligation to keep confidential all information related to material events to which they have privileged access due to the position they hold, until its release to the market, as well as to ensure that their subordinates and any third party with whom they entertain a fiduciary relationship do the same.

The above-mentioned rules also apply to staff members of the national central bank and of the debt management office.

#### **3.4.2.2 Market manipulation rules**

The regulatory framework on market manipulation is likewise based on Law no. 6385 of 7 December 1976 ("Securities Law"), and the regulations thereunder issued by the CVM.

Under Article 27-C of the Securities Law, engaging in fraudulent transactions or other deceitful action aiming at artificially disrupting the orderly functioning of regulated securities markets, such as stock exchanges and futures and commodities exchanges, as well as over-the-counter (OTC) markets or organised OTC markets, for the purpose of obtaining undue advantages or profits for oneself or others, or to cause damage to third parties, is punished by imprisonment of one to eight years and subject to a fine of up to three times the amount of the undue advantage obtained as a result of the crime.

Furthermore, according to the Instruction no. 8 of 1979 issued by the CVM, managers and stockholders of listed companies, intermediaries, and other participants in the securities market are prohibited from creating artificial conditions of demand, supply, or price of securities, and from engaging in price manipulation, in fraudulent operations, and other unfair practices. For the purposes of this Instruction, the following acts are prohibited: a) artificial demand, supply or price conditions of securities determined as a result of trades performed by market participants or intermediaries that, by means of fraudulent action or intentional omission, cause direct or indirect alterations in the flow of purchase or sale orders for securities; b) price manipulation on the securities market by utilising any process or stratagem intended directly or indirectly to raise, maintain, or lower the price of a security, or to induce third parties to purchase and sell a security; c) fraudulent trading on the securities market as a result of deceptions or stratagems to induce or maintain third parties in erroneous judgements, for the purposes of obtaining illicit capital gains for the parties involved in the operation, the intermediaries or third parties; d) unfair practices on the securities market arising directly or indirectly, effectively or potentially, from treatment of any of the parties to transactions in securities that places them in an improper position of imbalance or inequality compared with the other participants in the transaction.

The scope of Article 27-C of the Securities Law and the Instruction no. 8 of 1979 issued thereunder is wide enough to include, and prohibit, all forms of trade-based, action-based and information-based market manipulations that may be conceived.

Other national rules applicable to market agents aim at preventing, prohibiting and sanctioning market manipulation in securities markets. In particular, among others, the following:

- (i) Article 27-C of Law no. 6385/1976 (as modified by Law no. 10303/2001), which establishes that market manipulation is a crime against the securities market
- (ii) Articles 74 (I) and 97 (I) of the Instruction 461 of 2007 issued by the CVM, which provide that trading rules in the securities market (both stock and commodities exchange markets and OTC markets) must avoid and curb "*fraud or manipulation designed to create artificial demand, offer or price conditions of the securities traded*"
- (iii) Instruction 8 of 1979 issued by the CVM, which prohibits securities market agents from "*creating artificial conditions of demand, supply, or price of securities*", from "*engaging in price manipulation*" and "*in the execution of fraudulent operations*"

Public employees are subject to a number of laws, regulations, codes of ethics and conduct guidelines meant for curbing any illegal or unethical behaviour.<sup>551</sup> These provisions ensure that all public employees, including staff members of the national central bank and debt management office, act within a rigid ethical and moral standards framework, and provide for sanctions in case of non-compliance. Thereby, they

---

<sup>551</sup> See, among others, Article 37 of the Federal Constitution; the Statute of the Civil Public Servants of the Union - Law no. 8112/1990; the Code of Professional Ethics for Civil Servants of Federal Executive Power - Decree 1171 of 1994; the Code of Conduct for BCB's agents; Law no. 9650/1998.

contribute to preventing – among other illegal and unethical behaviours – market manipulation.

### **3.4.2.3 Central bank framework (Central Bank of Brazil)**

#### **3.4.2.3.1 Exemption from market abuse rules**

The operations carried out by the Central Bank of Brazil (BCB) are related to the execution of monetary, foreign exchange and financial stability policies. These operations are subject to specific rules, especially Law no. 4595/1964 (the “National Financial System Law”), and regulations thereunder issued by the National Monetary Council (CMN), which is the governing body of the National Financial System (SFN).

Although these particular rules do not include specific provisions on insider dealing, unlawful disclosure of inside information and market manipulation, BCB and its staff members, as well as all bodies and entities of the Public Administration, are subject to the Federal Constitution’s principles of legality, impersonality, publicity of administrative acts, morality and efficiency, amongst others, and the laws and regulations mentioned in the sections above.

In particular, with regard to the national rules on insider dealing and unlawful disclosure of inside information applicable to market participants in general, the standards of conduct that are required of market agents do not distinguish market agents depending on their nature and thus do not provide explicit exemptions for the BCB. Similarly, the BCB is subject to all relevant rules on market manipulation.

Based on the foregoing, both the BCB and its staff members are subject to all prohibitions and penalties against insider dealing, unlawful disclosure of inside information and market manipulation. The Securities Law and the regulations thereunder issued by CVM, which aim at avoiding and curbing unfair practices in the securities market (see Instructions 8, 461 and 358 above), do not provide for any distinction between domestic and foreign market agents or grant an explicit exemption for third-country central banks.

#### **3.4.2.3.2 Risk management standards**

BCB applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

BCB relies on its own operational rulebooks for the disposal/acquisition of financial instruments. Internal Management Operational Manuals explicitly define investment practices and operational limits that reflect institutional decisions regarding transactions for the disposal/acquisition of financial instruments. Also, staff members who engage in such activities are subject to the rules laid down in the internal Code of Conduct, Disciplinary Regime and several external and broader statutes and laws that prescribe rights and duties for the whole body of civil servants (such as the Statute of Civil Servants of the Union, Law no. 8112/1990; Conflict of Interests in the Performance of Office or Employment of the Federal Executive Power, Law no. 12813/2013).

The respondents to the questionnaire have maintained that BCB’s Risk Management Policy (RMP) is mainly based on the following risk management standards:

- (i) The Enterprise Risk Management-Integrated Framework, which is developed by the Committee of Sponsoring Organizations (COSO)
- (ii) ISO 31000:2009, which was developed by the International Organization for Standardization (ISO);

- (iii) and AS/NZS 4360:2004, which is a standard prepared in 2004 by the Joint Technical Committee OB-007 on Risk Management of the Council of Standards of Australia and New Zealand.

### **3.4.2.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

The main rules for informational secrecy are enshrined in the Brazilian Constitution.

Law no. 12527, Decree 7724 of 16 May 2012, and Decree 7845 of 14 November 2012 regulate the public access to information held by public entities and how information is classified under different degrees of secrecy. Moreover, Law no. 8112/1990, which establishes the duty to keep secrecy on issues related to public service, is applicable to Brazilian federal civil servants in general. According to Article 324 of the Penal Code, the violation of professional secrecy by public servants is a crime.

Furthermore, Law no. 105 of 10 January 2001 sets out rules on banking secrecy, including confidentiality obligations of the BCB and its officers. According to this law, disclosure of confidential information is allowed solely by judicial order, or when required by a Parliamentary Investigation Committee, or in case of communication to the competent authorities investigating criminal or administrative offences. The access, disclosure and handling of classified information, according to Decree 7845 of 14 November 2012, is limited to people that need to know it and have been authorised in compliance with the Decree. Access to classified information by otherwise unauthorised persons may exceptionally be permitted after the signing of a confidentiality agreement, and such persons will be required to maintain the confidentiality of information in accordance with criminal, civil and administrative laws.

According to the Code of Conduct, the staff member who has access to classified data or information must sign a confidentiality commitment, under federal law and regulation, which will be maintained even after the employment relationship with BCB has ceased.

#### **Rules of conduct on the use of inside information**

The Conflict of Interest Law (Law no. 12813/2013) contains rules on the prohibitions of the use of inside information by all public employees, including staff members of BCB. In particular, public employees are prohibited from making use of classified information, as well as any information obtained in the exercise of their public office, for private or personal purposes.

With regard to the use of inside information, in particular, Articles 5 and 6 (I) of Law no. 12813/2013 consider the misuse or disclosure of "privileged information" (inside information) for own benefit or the benefit of others as tantamount to furthering own interests in situations of conflict of interest. According to Article 12 of Law no. 12813/2013, without prejudice to other sanctions provided by other laws, this type of conflict of interest is considered an act of "administrative improbity" subject to civil sanctions and dismissal. Additionally, Law no. 8429/1992 – the Administrative Improbity's Law – provides civil sanctions in case of an "improbity act" varying from indemnification and civil fines to confiscation of assets illicitly embezzled or of any profits that may have been obtained.

Lastly, according to Decree 1171/1994, Section XV-A, it is prohibited to use the position or function as a public officer, its facilities, friendships, time and influence to obtain any advantage for oneself or for others. According to Section XV-M, it is prohibited to make use of privileged information obtained from the service, for the benefit of oneself, or for that of relatives, friends or third parties. The framework is further strengthened by

Article 117 of Law no. 8112/1990, which prohibits the use of the position in the public office to achieve personal or another's advantage at the expense of the civil service.

#### **3.4.2.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Although staff members may trade in financial instruments for personal purposes, there are restrictions about the use of inside information and restrictions related to the position held.

BCB staff members can deal with financial instruments on their own, but according to Article 16 of BCB's Code of Conduct, they must take into account the possibility of a potential conflict of interest with the activities performed and the possibility of situations that may, directly or indirectly, raise doubts about use of inside information. They must avoid making use of inside information acquired by virtue of their position to advise or assist any person's investments.

##### **Rules of conduct on record-keeping**

Staff members must submit to the federal government, once a year, statements on their equity investments, and high-level officers, in addition, must report whether family members work for entities that fall within the scope of the BCB regulation and supervision.

Such records are mandated in the tax legislation, and Article 13 of Law no. 8429/1992 provides that the exercise of public service is conditioned on the declaration, submitted annually, of goods and values that constitute the servant's assets, in the country or abroad, including those of spouses, children and others economically dependent on the former.

#### **3.4.2.3.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

The general duties of public servants are laid down in Law no. 8112/1990, which requires public servants:

- (i) *To exercise with dedication the duties arising out of the position held*
- (ii) *To be loyal to the institutions they work for*
- (iii) *To observe all applicable laws and regulations*
- (iv) *To comply with superior orders, unless when they are manifestly illegal*
- (v) *To maintain the confidentiality of the information obtained in the office*
- (vi) *To maintain consistent conduct with the administrative morality (Article 116)*

In addition to the duties and the prohibitions provided for in Law no. 8112/1990, according to Law no. 9650 of 27 May 1998, staff members must maintain confidentiality on the lending and borrowing operations and services provided by financial institutions (banking secrecy). They are also prohibited from providing services to institutions whose activity are regulated by the BCB and are not allowed to enter into or maintain contracts with public or private financial institutions, as well as with institutions authorised to operate by the BCB, on more favourable terms than those usually offered to other customers.

Staff members must avoid performing work or providing consulting, advisory, technical or training assistance, directly or indirectly, on a permanent or temporary basis even outside of their working hours, to any person or legal entity that by their nature, activity

or statutory mission may have relations with BCB, as well as to agencies and entities of any of the Federal Government, the States, the Federal District and municipalities, including those operated under agreements, arrangements or similar instruments funded with budget resources of the Federal Union. Staff members cannot perform additional activities, with or without an employment contract, which may bring damage to the reputation of the BCB. Staff members must ensure that publication of studies, reports, research and other work do not expose inside information or opinions that may be interpreted as an institutional statement, and/or may damage the reputation of the BCB. Finally, requests for permission to perform additional activities outside working hours must be submitted on an individual basis either to the Personnel Department or to the Ethics Committee for analysis and prior authorisation.

According to the Code of Conduct, staff members must refrain from accepting gifts, meals, transportation, lodging, services, entertainment, compensation or any favours for personal benefit, except for ceremonial situations, when they are representing the institution. Gifts received in the course of official performance of duties must be handed over to the BCB.

### **Rules of conduct on conflicts of interest**

Staff members must behave so as to avoid conflicts of interest. The Conflict of Interest Law bars public employees from making use of inside information for personal or third parties' benefit and from providing services related to the area in which they are employed. Besides, they are not allowed, whether formally or informally, to act as an intermediary for private interests.

Although there is no specific legal prohibition for public employees, including BCB staff members, to participate in the decision-making process when they have a personal interest in the preparation or outcome of a decision, the respondents to the questionnaire are of the view that, should BCB staff members find themselves in a situation of conflict of interest as to a transaction or a decision, they must abstain from engaging in such transaction or participating in such decision.

The Code of Conduct (Article 6, item II) also requires that the staff member refrain from entering into several types of professional relationships with people or companies that fall within the regulatory scope of the BCB for at least six months after employment with BCB has ceased.

### **3.4.2.3.6 Application of rules of conduct**

#### **Ethics officer**

The Ethics Committee is responsible for promoting the adoption and enforcement of the rules laid down in the Code of Professional Ethics of the Public Servant and the Code of Conduct of the Servants of BCB. It consists of three members and their alternates, nominated by the BCB's Governor for unmatched terms of three years, and whose term in office may be renewed only once. Currently, all the members are Deputy Governors: Deputy Governor for Administration, Deputy Governor for Supervision and Deputy Governor for Institutional Relations and Citizenship.

Based on its by-laws contained in the Central Bank Ordinance no. 50498 of 28 April 2008, the Ethics Committee is tasked with organising consultation for the benefit of the Public Ethics Commission (CEP) of the Federal Executive Branch on issues related to ethical rules; resolving doubts about application of conduct rules and deciding how to proceed in particular cases; promoting values, principles and standards related to the ethical conduct of public servants.



In greater detail, among its duties and responsibilities are the following: to initiate, *ex officio*, or upon request, procedures to investigate an act, fact or conduct that may constitute a breach of ethical rules or principles; to administer a sanction against the employee under investigation for misconduct; to decide questions affecting the existence of conflict of interest; to supervise the observance of the Code of Conduct of the Top Federal Administration and report to the CEP situations which may constitute a breach of its rules; to recommend, monitor and evaluate the development of actions aimed at dissemination and training on ethics rules, principles and standards.

According to Article 19 of the Presidential Resolution 10/2008, every citizen, public official, legal entity under private law, association or professional body may trigger investigations by the Ethics Committee. The preliminary procedure follows the following phases:

1. Forwarding the complaint to the Department of Professional Conduct (COGER) or to the Office of the General Counsel (PGBC) for the disciplinary assessment, as appropriate
2. Judgment of admissibility
3. Commencement of the procedure
4. Documentary evidence collection and, exceptionally, collection of the written opinion of the accused
5. Drafting of a report
6. Taking of a preliminary decision determining archiving, conversion into ethical proceeding or into a proposition of Personal and Professional Conduct Agreement (ACPP)
7. Notification of the decision to the parties. In addition, ethics-based proceedings may separately be commenced. In case of an ethics-based proceeding, a censure penalty may also be applied.

According to Articles 16 and 20(II) of the Presidential Resolution 10/2008, if the Ethics Committee finds that there have been criminal or civil offenses, administrative misconduct or disciplinary offenses, it must also alert the competent authorities for investigation of such facts, without prejudice to the adoption of other measures.

All staff members must attend introductory presentations about ethics, discipline and conflict of interests upon recruitment by the BCB. In the course of the recruitment process, candidates are examined on their knowledge of the Code of Conduct. Once in office, the employee receives a copy of the code. In addition, there is an Ethics Homepage, including a "Contact Us" functionality and Ethical Guides available for consultation. However, training sessions on such issues are not held regularly.

### **Disciplinary actions and enforcement**

According to the Code of Conduct of the BCB, staff members must alert their superiors to any act or fact that is in violation of legal or ethical principles.

The Law no. 8112/1990 provides for disciplinary penalties depending on the seriousness of the misconduct, which include:

- (i) Warning
- (ii) Suspension
- (iii) Dismissal
- (iv) Repeal of retirement
- (v) Dismissal from a commissioned office
- (vi) Dismissal from a commissioned function

The Law no. 9784/1999 regulates the administrative disciplinary proceeding.

In relation to the enforcement of the rules and principles that govern agents acting on behalf of the BCB, there are regulatory, civil and criminal enforcement mechanisms, depending on the rule that has been breached and the seriousness of the misconduct. For example, the misuse or disclosure of “privileged information” (a breach of Article 6 of Law no. 12813/2013) could result in civil and administrative sanctions established in Article 12 of Law no. 12813/2013, such as dismissal, and some of the civil sanctions prescribed in Law no. 8429/1992 (Administrative Improbability’s Law), such as indemnification, civil fine and confiscation of assets or profits that may have been obtained, among others.

The same applies to other violation of professional duties by the BCB’s agents, such as a breach of the constitutional principles and the duties imposed by the Statute of the Civil Servants of the Union, the Code of Professional Ethics for Civil Servants of Federal Executive Power and the Code of Conduct for BCB’s agents. An infringement of those professional duties, which may also constitute a crime depending on the gravity of the irregularity, may result in an administrative disciplinary process aimed at issuing administrative sanctions prescribed in the Statute of the Civil Servants of the Union, such as a warning, suspension or dismissal.

When the same fact could be subject to a public criminal proceeding, the Public Prosecutor’s Office is notified in order to lead or monitor the investigations and to assess whether a criminal lawsuit against the public agent should be filed, without prejudice to other sanctions, such as the civil penalties prescribed in Administrative Improbability’s Law.

As the conduct described in Articles 27-C (market manipulation) and 27-D (misuse of inside information) of the Law no. 6385/1976 (complemented by Law no. 10303/2001) are considered a crime, the breach of these rules would lead to criminal proceedings. On the other hand, the regulations issued by CVM (Instructions 8 of 1979; 358 of 2002; and 461 of 2007) are subject to the regulatory enforcement by the CVM itself, including imposing the administrative penalties prescribed in Article 11 of Law no. 6385/1976 (for example, warnings, fines, suspension of the authorisation for exercising activities in securities market, etc.).

#### **3.4.2.3.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the BCB. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute criminal offences. Severe criminal penalties apply. Staff members of the CB are subject to all relevant rules and penalties.
- Unlike in the EU, the national CB is not formally exempt from market abuse rules. Likewise, no exemption is provided for third-country CBs.
- The CB has an operational rulebook on the transactions for the disposal/acquisition of financial instruments, effective risk management standards are in place and consistently applied. Such standards have been sufficiently disclosed.
- Staff members are subject to a duty of professional secrecy under several legal provisions and the applicable internal code of conduct. Additionally, such duty continues to apply beyond the term of employment. Likewise, staff members are

prohibited from making use of inside information for private purposes until after the term of employment.

- Although there are no rules that provide for outright prohibitions from trading in predetermined assets or financial instruments for personal purposes, staff members must always refrain from taking any advantage of inside information or conflict of interests situations arising from their position with the CB, including by means of transactions in assets and financial instruments. Furthermore, staff members are under the obligation to report their investments annually. Therefore, transactions and holding of assets and financial instruments may constantly be monitored.
- Staff members are subject to a duty to preserve their independence from third-party interests. This is strengthened by prohibitions to carry out conflicting activities and accept improper benefits from third parties, and avoid conflicts of interest. In case of an unavoidable conflict of interest, staff members are explicitly disqualified from taking part in transactions or decisions.
- An ethics committee presides over the application of the internal rules of conduct, the task of which is to advise on its applicability, disseminate the rules of conduct among the staff, monitor their application and take disciplinary actions in case of violation.
- Depending on the severity of the misconduct, disciplinary actions range from warning to dismissal. Besides this, competent authorities are notified by the ethics committee of any act or fact that might constitute a criminal or administrative offence.

### **3.4.2.4 Debt management office framework (National Treasury)**

#### **3.4.2.4.1 Exemption from market abuse rules**

An exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the national DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy does not apply, subject however to the following clarifications.

Brazilian National Treasury (BNT) operations are mostly related to its role as a sovereign debt issuer. These operations are undertaken under Law no. 10179/2001, which covers sovereign bonds issued by the National Treasury.

Although this specific law does not provide for specific insider dealing or market manipulation restrictions, the whole public administration, including the BTN, must inform its operations to the principles laid down in the Brazilian Constitution, which include legality, impersonality, transparency of administrative acts, morality and efficiency, amongst others.

Additionally, there is a number of codes of ethics and conduct guidelines that regulate staff actions while they are acting in the name of the BNT. These rules state that staff members should solely advance the public interest when acting on behalf of the BNT, prohibit misuse of internal information for private interests and, amongst others, ensure that the whole federal administration act within rigid ethical and moral standards. Sanctions in cases of non-compliance are provided for.

In its capacity as DMO, the BNT conducts operations that are mainly confined to primary issuances. Therefore, the BNT does not actively operate on secondary markets. At most, it conducts buyback operations. The BNT in essence would be a "price taker", i.e. the primary issuances occur via auctions on electronic platforms so as to make sure that all market participants may have access to them. The electronic platform is used to collect offers, and the results are made public shortly thereafter. There is also a dealership system designed to improve competitiveness in the primary market. The secondary

market is important to the BNT only to the extent it provides price references for all market participants. As the BNT does not operate in the secondary markets (with derivatives or other instruments), the DMO has little room to engage in market abuse practices.

Although it does not apply to the BNT as a DMO, there are branches controlled by the institution that could interact with the securities markets, with particular reference to government-owned listed companies. With regard to these companies, the BNT must comply with all relevant regulations as is required of any other market participant whose actions could impact financial markets.

No exemption from market abuse rules is provided for the benefit of third-country DMOs.

#### **3.4.2.4.2 Risk management standards**

The BNT applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, even though the BNT has no specific operational rulebook or guidelines for the disposal of financial instruments.

When acting on behalf of the BNT, its staff members are bounded by the general administrative principles applicable to civil servants and the National Treasury's code of ethics. These would ensure that all operations are carried out according to moral and ethical standards. Sanctions would be taken against cases of non-compliance.

Additionally, the BNT has a unit responsible for risk management within the general framework for public debt management. The BNT also has a unit in charge of handling operational risks. In both cases, risk assessments are not made for specific transactions. However, there is a constant monitoring of BNT operations and performance throughout the year based on the Annual Borrowing Plan targets and the Treasury's medium-term debt strategy.

In addition to the unit that manages operational risks, which also monitors and serves as an internal audit for procedures within the BNT, there are two other governmental institutions that function as independent auditors within the government: the Federal Court of Accounts (TCU) and the General Comptroller's Office (CGU). Their actions include periodic audits and constant monitoring of procedures, systems and staff members actions. These two institutions can call staff members to provide clarification about actions taken on behalf of the BNT and disciplinary action will be initiated if instances of misconduct are ascertained.

#### **3.4.2.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

BNT staff members are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to BTN and classified as confidential and/or over any other piece of inside information.

In particular, staff members are prohibited from:

- (i) disclosing information related to the BNT to the press without prior approval of the Secretary or the Deputy Secretaries;
- (ii) using or transferring to third parties, through any media, including Internet, information, technology, knowledge owned or developed by the BNT without

- the prior knowledge and express authorisation of the General Coordinator of the unit; and
- (iii) disclosing matters involving confidential information or matters that might anticipate some market behaviour.

Making use of privileged information obtained from the service for the benefit of oneself or for that of relatives, friends or third parties is prohibited (Article 6, Paragraphs V, VI, XI, XII, *BNT Internal Regulation no. 27/2008*); to the contrary, it is their duty to share with other staff knowledge and information necessary for the performance of activities of the BNT (Article 5, XVI, *BNT Internal Regulation no. 27/2008*).

#### **Rules of conduct on the use of inside information**

BNT staff members are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of their family (see Article 5, III, *BNT Internal Regulation no. 27/2008*, and Article XV, A, M, of Decree no. 1171/1994). It amounts to a conflict of interest to disclose or make use of inside information for their own benefit or that of third parties, when such information is obtained by virtue of the activities performed (Article 5, I, Law no. 12813/2013).

Furthermore, it is prohibited to use the position or function as a public officer, its facilities, friendships, time and influence to obtain any advantage for oneself or for others. More generally, it is prohibited to make use of the position in the public office to achieve personal or another's advantage at the expense of the civil service (Article 117, Law no. 8112/1990).

### **3.4.2.4.4 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Staff members must take into account, in carrying out their personal investment activity, potential conflicts of interest with the activities performed in the BNT (see Article 4, III, *BNT Internal Regulation no. 27/2008*). They are prohibited from making personal financial transactions related to operations in which the employee is participating or about which he/she has inside information. They are also prohibited from acquiring or disposing of any securities, shares or other financial products issued by federal enterprises and shares in investment funds managed by federal enterprises, unless the following applies:

- i. The assets are disposed of no sooner than 12 months after the date of acquisition
- ii. Purchases are made only within the fifth working day of each month
- iii. Only one purchase per asset is made per month

They are also prohibited from acquiring and trading public bonds issued by the BNT, unless the following applies:

- i. The bonds are disposed of no sooner than 12 months after the date of acquisition
- ii. Purchases are made within the fifth working day of each month
- iii. Purchases are made from 6 pm until 5 am the next day, i.e. between closure of the markets and their reopening the next day
- iv. Only one purchase per asset is made per month

Moreover, according to Article 6, XIII-XVIII, *BNT Internal Regulation no. 27/2008*, they are prohibited from investing in the following:

- i. Clubs or funds that invest solely in public bonds or shares of state-owned companies
- ii. Mutual funds that invest in public bonds or shares of state-owned companies if the employee has more than 5% share in the investment fund or if he participates in the management of the fund
- iii. Financial derivatives related to public bonds or shares of state-owned companies

#### **Rules of conduct on record-keeping**

BNT staff members that carry out transactions in sovereign bonds issued by the BNT or in shares of state-owned companies must report annually to the Ethics and Professional Standards of Conduct Committee, in a sealed envelope, their investments as well as a list of the types and amounts of securities held and traded in the year (Article 7, *BNT Internal Regulation no. 27/2008*). They must submit, along with the information mentioned in Article 7 of the Internal Regulation no. 27/2008, recognition of the terms of investment rules under the Internal Regulation no. 27/2008 authorising the opening of the envelope for purposes of an inquiry or a disciplinary procedure (Article 8, *BNT Internal Regulation no. 27/2008*). They must also provide the details thereof to the Human Resources Department by the fifth day of the month after that in which the purchase was made (Article 2, *BNT Internal Regulation no. 3/2008*) and inform the Human Resources Department, by 31 January each year, about their investments as well as provide a list of the types and the securities held and traded in the previous year (Article 3, *BNT Internal Regulation no. 3/2008*).

Additionally, every year staff members must declare their incomes and assets for income tax calculation purposes. Members of the public administration may choose between annually delivering copies of this declaration to the Human Resources Unit of their institution or to allow unrestricted access to this information by the proper authorities according to the Normative Instruction TCU no. 65/2011.

Lastly, the exercise of public services is conditioned on the declaration of goods and values belonging to the civil servant, in the country and abroad, including those of spouses, children and others economically dependent on the former. This information must be annually updated (Article 13, Law no. 8429/1992).

### **3.4.2.4.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

In addition to the principles of legality, impartiality, transparency of administrative acts, morality and efficiency referred to in Article 37 of the Brazilian Constitution, and that of administrative morality referred to in Article 116, IX, of Law no. 8112/1990, BNT staff members must adhere to high professional conduct, and always act with diligence, honour and dignity (Article 4, I and II, *BNT Internal Regulation no. 27/2008*). They must behave with professional probity and impartiality, so as not to endanger the public patrimony, their personal and professional credibility and the image of the institution (Article 5, I, *BNT Internal Regulation no. 27/2008*). Decree no. 1171/1994 also establishes a number of guidelines for public servants regarding their integrity and impartiality, which ensure that all actions should advance the public interest.

Staff members are prohibited from carrying out other remunerated public service positions (with the exception of teaching positions) (Article 37, *Brazilian Constitution*). Members of the federal public administration must work on an exclusive dedication basis (full-time), being prohibited from exercising other potentially conflicting remunerated activities (Article 17, Law no. 11890/2008). BNT staff members are expressly prohibited from participating in the management team of a private company, acting as an intermediary with public agencies and accepting commissions, employments or foreign

state pensions (Article 117, X, XI, XIII, *Law no. 8112/1990*). The exclusive dedication system to which BNT staff members are held entails only few exceptions, namely teaching, educational activities, and participation in training events (Article 4, *Internal Regulation STN no. 383/2011*).

Staff members are prohibited from accepting, because of the position or function, fees, gifts or advantages of any kind for themselves, family members or others, including personal invitations for travel, lodging and other attractions, save from foreign authorities in cases of protocol where there is reciprocity. The following items do not fulfil this purpose:

- i. Gifts that have no commercial value
- ii. Gifts/advantages distributed by entities of any kind as a courtesy, marketing, normally or during special events or holidays, that do not exceed the unit value of R\$100 (one hundred reais) (Article 6, X, *BNT Internal Regulation no. 27/2008*)

It is forbidden to receive bribery, fees, gifts or advantages of any kind due to the function being performed (Article 117, XII, *Law no. 8112/1990*). It is considered a conflict of interest to receive gifts from someone that has an interest in the decision of the public official (Article 5, VI, *Law no. 12813/2013*).

#### **Rules of conduct on conflicts of interest**

The handling of conflicts of interest affecting staff members is based on a vast array of legal provisions, which include:

- i. Law no. 12813/2013, which governs conflicts of interest in the public service and sets forth restrictions for public servants that happened to be conflicted
- ii. MPOG (Ministry of Planning, Budgets and Management) Regulation no. 333/2013, which regulates how to deal with actual or potential conflicts of interests
- iii. SE/MF (Executive Secretariat and Ministry of Finance) Internal Regulation no. 173/2004, which establishes procedures to be adopted to meet the provisions of Law no. 12,813/2013 and MPOG (Ministry of Planning, Budgets and Management) Regulation no. 333/2013

As a result of the abovementioned rules, staff members are placed under a duty to avoid conflicts of interest. However, there is no specific prohibition, whether legal or based on internal rules of conduct, for staff members to participate in the decision-making process (including policy decisions) when they have a personal interest in the preparation or outcome of a decision.

#### **3.4.2.4.6 Application of rules of conduct**

##### **Ethics officer**

The BNT has a Committee on Ethics and Professional Conduct Standards (Article 11-16, *BNT Internal Regulation no. 27/2008*).

Besides the BNT's committee, there are other ethics committees in other relevant government bodies, such as in the Finance Ministry and the Presidential Office. The involvement of these committees will be triggered when the demand goes beyond the internal committee's competence.

The duties and responsibilities of the BNT's internal Ethics Committee as a whole are laid down in Internal Regulation no. 2/2006, Article 3, and include, amongst others: responding to inquiries, investigating possible violations of the code, applying sanctions,

establishing prohibitions for staff member's financial transactions and making recommendations.

The Presidential Resolution no. 10/2008 governs all internal ethics committees within the institutions under the executive branch, i.e. the federal public administration. The duties and responsibilities of these committees are listed in Article 2, which are in line with what is stated in the BNT's code of ethics. Also, BNT's Internal Regulation no. 2/2006 set forth the specific duties and responsibilities of the committee's president (Article 8), executive secretary (Article 11), and other members (Article 9).

Every citizen, public official, legal entity under private law, association or professional body may file a complaint with the Ethics Committee (Article 19, Presidential Resolution no. 10/2008). There are three requirements for the filing of a complaint:

- i. Making a description of the conduct/action
- ii. Indicating its author, if possible
- iii. Presenting evidence or an indication of where to find it (Article 21, Presidential Resolution no. 10/2008)

The BNT's staff members are tested on their knowledge of the ethics codes to which they are subject in the test upon their recruitment and after the selection. Changes in the ethical standards and codes of conduct are made available to the staff through corporate e-mail newsletters, message boards and intranet posts.

### **Disciplinary actions and enforcement**

According to Article 5, V, VIII, XII, BNT Internal Regulation no. 27/2008, staff members must:

- i. "speak up" to warn against any improper actions within BNT that infringe upon the principles of legality and ethics;
- ii. not yield to pressures from any source, aimed at obtaining favours, benefits or advantages that are morally, ethically or legally doubtful, and communicate them to their superiors;
- iii. report immediately to the Professional Ethics and Standards of Conduct any situation suspected to be unethical, illegal, irregular or doubtful, with confidentiality being guaranteed for the source of information.

A breach of the code of conduct qualifies as a criminal offence when it infringes on the Brazilian Penal Code and its accompanying legislation, such as Law no. 8429/1992 (Law of administrative misconduct), which provides for various penalties applicable to public officials in case of actions that result in illegitimate enrichment, damage to public funds or non-compliance with the principles of public administration that range from administrative sanctions, e.g. discharge, to civil sanctions, e.g. refund the public fund and fines, to criminal sanctions, e.g. detention or imprisonment.

If the Ethics Committee finds that there has been a criminal or civil offence, administrative misconduct or disciplinary offence, it must notify the competent authorities for further investigation of such facts, without prejudice to the adoption of other measures (Article 16, Presidential Resolution no. 10/2008). If there is evidence that the action is, at the same time, non-compliant with the ethics code and infringes other norms (administrative, civil, criminal), a file of the case should be immediately submitted to the competent authorities (Article 20, Presidential Resolution no. 10/2008).

Non-compliance with the rules stipulated in the Code of Conduct shall have the following consequences, without prejudice to other legal sanctions:

- i. Orientation of conduct, and
- ii. Censorship, as to violations of the Code of Conduct



The guidance referred to in item i, applicable in cases without intent, will consist of verbal orientation and clarification of the implications of the offender's conduct. Censorship and its explanatory memorandum, mentioned in item ii, in cases of lack of intent, will consist of an opinion signed by all members of the Ethics Committee and recorded in the internal database. Given the potential severity of the conduct or its recurrence, the Ethics Committee must forward its decision and its opinion to the Treasury Secretary, for appropriate action, in accordance with Article 143 of Law no. 8112/1990 (Article 16, *BNT Internal Regulation no. 27/2008*).

The authority that obtains knowledge of irregularities in the public service is required to initiate immediate investigation, through an administrative disciplinary administrative process, ensuring the right to full defence to the accused (Article 143, Law no. 8112/1990). Law no. 8112/1990 also provides penalties in Articles 127-143. These include, among others, suspension and dismissal. Law no. 9784/1999 sets forth the procedural rules of the administrative disciplinary proceeding.

Regardless of the criminal, civil and administrative sanctions provided for in specific legislation, administrative misconduct within the public service is subject to the following penalties, which can be applied individually or cumulatively, according to the severity of fact: seizure of goods or assets illicitly gained, compensatory damages, discharge from public service, suspension of political rights for a period that will vary according the severity, civil fine of up to two to three times the value of the benefit obtained or up to 100 times the amount of the employee's remuneration, and prohibition from contracting with the government or receiving benefits or tax incentives for a period of 3 to 10 years (Article 12, Law no. 8429/1992).

#### **3.4.2.4.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the BNT. The assessment relies on the following findings:

- Unlike in the EU, no exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is provided for the benefit of the national DMO and/or third-country DMOs.
- No specific operational rulebook for handling the disposal/acquisition of financial instruments is in place. However, while the DMO members act on behalf of the institution, they are bounded by the general administrative principles applicable to civil servants and the National Treasury's code of ethics, as well as other codes of conduct applicable to public employees in general. The overall legal and ethics framework should therefore ensure that all operations be carried out according to proper legal and ethical standards preventing and punishing misconduct. In addition, the DMO has a unit responsible for undertaking risk management within the general framework of public debt management and a unit in charge of handling operational risks.
- Staff members are subject to a duty of professional secrecy under several legal provisions and the applicable internal rules of conduct. They are also prohibited from making use of inside information for private purposes with no exception. However, such duties do not to continue beyond the term of employment.
- There are specific and detailed rules in place that explicitly prevent staff members from trading in financial instruments issued by the DMO or other government entities, unless specific and stringent conditions apply. Transactions that might give rise to conflict of interests or entail use of confidential information are

prohibited as well. Additionally, staff members are obliged to report their investments annually. Therefore, such investments and the holding of assets and financial instruments may constantly be monitored and checked for abuses.

- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out conflicting activities and accepting improper benefits from third parties. Moreover, they must avoid conflicts of interest, although there is no specific rule that provides for staff member disqualification from participating in the decision-making process.
- An internal ethics committee presides over the application of the internal rules of conduct. Its tasks consist of disseminating the rules of conduct, monitoring their application and taking disciplinary actions in case of violation. Depending on the severity of the misconduct, disciplinary actions range from warning to dismissal. Furthermore, where the misconduct constitutes an administrative or criminal offence, the competent authorities are duly notified.

### **3.4.3 Canada**

#### **3.4.3.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing is based on the Canada Business Corporations Act of 1985, the Criminal Code of 1985, and the securities laws and regulations of Canada's 13 provincial and territorial governments.

Unlike other federal jurisdictions, Canada does not have a single regulatory framework and a securities regulatory authority at the federal level. Rather, in addition to federal laws each province and territory has a securities commission (or equivalent regulatory authority) and its own provincial or territorial laws. As Ontario hosts Canada's largest capital market and is the seat of the Bank of Canada, it is the securities law of Ontario (Securities Act of 1990) and the regulation thereunder that have been selected for purposes of this review.

##### **3.4.3.1.1 Criminal offences and penalties**

Insider dealing and unlawful disclosure of inside information constitute criminal offences under the relevant provisions of the Criminal Code.

Section 382.1 punishes insider dealing as follows: *"(1) A person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years who, directly or indirectly, buys or sells a security, knowingly using inside information that they (a) possess by virtue of being a shareholder of the issuer of that security; (b) possess by virtue of, or obtained in the course of, their business or professional relationship with that issuer; (c) possess by virtue of, or obtained in the course of, a proposed takeover or reorganization of, or amalgamation, merger or similar business combination with, that issuer; (d) possess by virtue of, or obtained in the course of, their employment, office, duties or occupation with that issuer or with a person referred to in paragraphs (a) to (c); or (e) obtained from a person who possesses or obtained the information in a manner referred to in paragraphs (a) to (d)".*<sup>552</sup>

Additionally, Section 382.2 punishes unlawful disclosure of inside information. It reads as follows: *"Except when necessary in the course of business, a person who knowingly conveys inside information that they possess or obtained in a manner referred to in*

---

<sup>552</sup> For purposes of this Section and the following quoted in the text, "inside information" means "information relating to or affecting the issuer of a security or a security that they have issued, or are about to issue, that (a) has not been generally disclosed; and (b) could reasonably be expected to significantly affect the market price or value of a security of the issuer" (Section 382.4 of the Criminal Code).

*subsection (1) to another person, knowing that there is a risk that the person will use the information to buy or sell, directly or indirectly, a security to which the information relates, or that they may convey the information to another person who may buy or sell such a security, is guilty of (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or (b) an offence punishable on summary conviction". Such an act is not an offence "if it is authorized or required, or is not prohibited, by any federal or provincial Act or regulation applicable to it" (Section 382.3).*

### **3.4.3.1.2 Administrative offences and sanctions**

Insider dealing and unlawful disclosure of inside information may also give rise to an administrative offence under the relevant provisions of the applicable securities laws and regulation thereunder.

In particular, Section 76 of the Securities Act of Ontario prohibits insider dealing and unlawful disclosure of inside information by providing that: *"(1) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed. (2) No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed".*<sup>553</sup> Purchase or sale of securities on the basis of inside information as well as disclosure of inside information do not give rise to an offence *"if the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed"* (Section 76(3)).

This regulatory framework applies to staff members of the central bank and the debt management office.

### **3.4.3.2 Market manipulation rules**

The regulatory framework on market manipulation is based on the Criminal Code of 1985 and, with regard to the state of Ontario, on the Securities Act of 1990.

#### **Criminal offences and penalties**

Section 382 of the Criminal Code punishes trade-based and action-based market manipulation and reads: *"Everyone who, through the facility of a stock exchange, curb market or other market, with intent to create a false or misleading appearance of active public trading in a security or with intent to create a false or misleading appearance with respect to the market price of a security, (a) effects a transaction in the security that*

---

<sup>553</sup> For the purposes of Section 76 of the Securities Act of Ontario, "person or company in a special relationship with a reporting issuer" means: "(a) a person or company that is an insider, affiliate or associate of, (i) the reporting issuer (b) a person or company that is engaging in any business or professional activity, that is considering or evaluating whether to engage in any business or professional activity, or that proposes to engage in any business or professional activity if the business or professional activity is, (i) with or on behalf of the reporting issuer, or (ii) with or on behalf of a person or company described in sub clause (a) (ii) or (iii), (c) a person who is a director, officer or employee of, (i) the reporting issuer, (ii) a subsidiary of the reporting issuer, (iii) a person or company that controls, directly or indirectly, the reporting issuer, or (iv) a person or company described in sub clause (a) (ii) or (iii) or clause (b), (d) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c), (e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship" (Section 76(5)).

*involves no change in the beneficial ownership thereof, (b) enters an order for the purchase of the security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the sale of the security has been or will be entered by or for the same or different persons, or (c) enters an order for the sale of the security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the purchase of the security has been or will be entered by or for the same or different persons, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years”.*

### **Administrative offences and sanctions**

Trade-based and action-based market manipulation also constitute an administrative offence pursuant to Subsection 126.1(1) of the Securities Act of Ontario, according to which: “A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know, (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or (b) perpetrates a fraud on any person or company”.<sup>554</sup>

Moreover, Subsection 126.2(1) forbids information-based manipulation by prohibiting persons and companies from making “a statement that the person or company knows or reasonably ought to know, (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and (b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative”.

This regulatory framework also applies to staff members of the central bank and the debt management office.

### **3.4.3.3 Central bank framework (Bank of Canada)**

#### **3.4.3.3.1 Exemption from market abuse rules**

An exemption from the rules on insider dealing and unlawful disclosure of inside information for the CB with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy does not apply, whereas it applies in respect of the rules on market manipulation.

Third-country CBs are not exempt from any of the rules on market abuse.

#### **3.4.3.3.2 Risk management standards**

Information about the application of risk management standards by the CB with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is not publicly available, nor has it been provided via questionnaire.

---

<sup>554</sup> Under Subsection 126.1(2), a person or company shall not, directly or indirectly, attempt to engage or participate in any act, practice or course of conduct that is contrary to Subsection (1).

### **3.4.3.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

When staff members start their employment with the bank, they swear an Oath of Office, or make a Solemn Affirmation, in the form shown in Appendix I of the Code of Business Conduct and Ethics. In addition to this Oath/Solemn Affirmation, staff members have certain obligations under the law to keep bank information and third-party information acquired through their relationship with the bank confidential. These confidentiality obligations apply in all circumstances relating to their employment with the bank.

Staff members must not communicate information relating to the business and affairs of the bank (or of any third party) that they learn in the course of their work with the bank to any person not entitled to the information. Staff members must not use the information obtained during the course of their work at the bank for purposes of personal gain for themselves, their family or others connected to them. Staff members should never disclose confidential information to anyone, other than what is required of them in connection with their duties at the bank (Part III, *Code of Business Conduct and Ethics*).<sup>555</sup>

Staff members must refrain from any public discussion, in the media or otherwise, about the bank's business, affairs, policies or organisation. Only a designated spokesperson can issue statements or make comments about the bank's position on a given subject (Part III, *Code of Business Conduct and Ethics*).

If staff members are invited to speak at a conference or other event in their capacity as a bank employee, they must obtain prior approval from their supervisor regarding the speaking engagement and the content of their speech. They must ensure that the information that they present is not confidential or likely to give participants at the conference an unfair advantage in dealing with the bank or any government entity (Part IV, Article 4.2, *Code of Business Conduct and Ethics*).

The requirement to preserve the confidentiality of bank and other non-public information continues indefinitely after their employment with the bank ends (Part III, *Code of Business Conduct and Ethics*). Once employed in a new organisation, they must not use or disclose bank confidential information for any reason. This restriction also applies indefinitely after they leave the employment of the bank. In addition, for one year after staff members leave the bank, the bank will not accept representations from them on behalf of any person with whom they had significant dealings in their final year of employment with the bank.

Staff members must not counsel any person concerning the policies and processes of the bank, except in circumstances agreed to by the bank. The bank will write to their new employer advising the employer of:

- (i) their obligations of secrecy and confidentiality regarding bank information, and
- (ii) any other exit requirements (Part IV, Article 6, *Code of Business Conduct and Ethics*).

#### **Rules of conduct on the use of inside information**

Staff members, who have access to, or hear of, material information in relation to a public company before it is announced to the public, must not trade in the securities of issuers about which they have inside information or pass on this information to others.

---

<sup>555</sup> Available at: [www.bankofcanada.ca/wp-content/uploads/2014/05/code-business-conduct-ethics.pdf](http://www.bankofcanada.ca/wp-content/uploads/2014/05/code-business-conduct-ethics.pdf).

Information is regarded as material if it could affect the price of a security if it were generally known, or if an investor might consider such information important in making an investment decision to buy, hold or sell a security. The following are a few examples of factors that could be material when making investment decisions about a company: "(i) changes in previously disclosed financial information; (ii) information about proposed mergers, acquisitions or divestitures; (iii) information about liquidity problems or extraordinary borrowings; (iv) information about obtaining, or the termination of, a significant contract with the Bank; (v) changes in the capital structure; (vi) changes in management; (vii) changes in monetary or exchange rate policy; (viii) impending regulatory changes or action; (ix) tax changes; (x) information about future government actions" (Part IV, Article 7, *Code of Business Conduct and Ethics*).

### **3.4.3.3.4 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Staff members are not permitted to make use of any inside information learned as a result of their employment with the bank or otherwise when transacting in securities. For this purpose, staff members fall within one of three levels. The level that applies to them depends on their position, their access to confidential market information, their access to confidential information received from the Office of the Superintendent of Financial Institutions (OSFI), and their access to executive deliberations regarding bank policy. There are, additionally, enhanced disclosure requirements for some senior employees.

Level 1 employees are most employees below the level of Chief. An employee is considered to be a Level 1 employee unless that employee has been designated as a Level 2 or Level 3 employee. Employees are informed in writing if they have been assigned to a higher level. Level 1 employees have limited access to certain confidential information; therefore, the list of restricted instruments for this level is minimal.

Level 2 employees are those at the level of Chief or higher and others who have been designated as Level 2. Level 2 employees generally have regular access to confidential market information or participate in financial system or monetary policy deliberations, or have direct responsibilities with entities with which the bank has a regulatory or supervisory relationship.

Level 3 employees are members of Governing Council and others who have been designated as Level 3.<sup>556</sup> Like Level 2 employees, Level 3 employees have regular access to confidential market information. Level 3 employees also have regular access to confidential financial and market information from OSFI through activities such as membership on, or attendance at meetings of, the Financial Institutions Supervisory Committee (FISC), the Senior Advisory Committee (SAC) and any subcommittees of FISC and SAC.

Level 2 and Level 3 staff members may not trade in any security during the seven-calendar-day period prior to, the actual day of, and for a 24-hour period after, a fixed announcement date (FAD). When a Monetary Policy Report (MPR) is issued in conjunction with a FAD, the blackout period extends until the publication of the MPR. The bank may also impose a blackout period in the event that it makes monetary policy changes outside the usual FAD cycle. Affected staff members will be advised. When the bank is engaged in a sensitive or confidential activity that could affect the price of a security, the bank may prohibit certain staff members from trading in that security until further notice (Part V, Article 2, *Code of Business Conduct and Ethics*).

---

<sup>556</sup> Close family members of the members of Governing Council are subject to the Level 3 trading restrictions (Part V, Article 4, *Code of Business Conduct and Ethics*).

For all levels, there are securities or other instruments that staff members cannot trade ("Restricted Instruments"). Restricted Instruments for each level are listed in the "Restricted Instruments List" of the code. Staff members are permitted to trade in other securities that are not listed on the Restricted Instruments List ("Permitted Instruments"), provided that those securities are not subject to a trading blackout period and the trading in those securities is in compliance with the code.<sup>557</sup>

The restrictions for each level apply to investment accounts that staff members influence, direct or control and will normally apply to accounts where: staff members are involved in making investment decisions, staff members have a significant influence on the investment decisions or staff members are involved in voting decisions or have voting control. The restrictions for each level apply not only to investments that staff members hold in their own name but also to other accounts that they direct or control, which may include: accounts held by a close family member or associate, accounts held in trust for staff members, a close family member or associate, and accounts held by a corporation, partnership, investment club or other entity (Part V, Article 3.1, *Code of Business Conduct and Ethics*).

If staff members own Restricted Instruments when they join the bank, or as a result of changing circumstances while employed by the bank, they must enter into an arrangement satisfactory to the bank with respect to the Restricted Instruments. At any time when there is a concern that their assets other than Restricted Instruments may result in a real, potential or perceived conflict of interest, the General Counsel and Corporate Secretary may require them to enter into an arrangement satisfactory to the bank with respect to those assets. Arrangements satisfactory to the bank may include any or all of the following: "(i) refraining from any trades to acquire additional Restricted Instruments or other assets; (ii) obtaining prior approval from the General Counsel and Corporate Secretary before disposing of existing holdings; (iii) divesting themselves of the Restricted Instruments or other assets in an arm's-length transaction; (iv) divesting themselves of the Restricted Instruments or other assets by placing them in a Blind Trust on terms satisfactory to the General Counsel and Corporate Secretary; (v) avoiding circumstances or decisions that could lead to a conflict until staff members have divested themselves of the Restricted Instruments or other assets; (vi) recusing themselves from participating in matters in which they have a financial, personal or material interest; (vii) or any other reasonable terms that the Bank may impose" (Part V, Article 3.2, *Code of Business Conduct and Ethics*).

### **Rules of conduct on record-keeping**

Members of the Governing Council are required to report annually with respect to their own investments and trading activities and those of their close family members (Part V, Article 4, *Code of Business Conduct and Ethics*).

There is no specific rule mandating that other staff members keep record of holdings of, and transactions in, assets or financial instruments.

---

<sup>557</sup> At any time, the Governor may, on a case-by-case basis, or by the establishment of general criteria, classify (and declassify) securities or other instruments as Restricted Instruments if, in the Governor's opinion, these instruments create a real, potential or perceived conflict of interest (Part V, Article 3, *Code of Business Conduct and Ethics*).

### **3.4.3.3.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Staff members must never ask for gifts, hospitality or other benefits in connection with their relationship with the bank.

Staff members may occasionally accept gifts, hospitality or other benefits arising out of activities associated with their official bank duties, and offered by restricted entities or other third parties having or potentially having commercial or business dealings with the bank, if the gifts, hospitality or other benefits:

- (i) are within the bounds of propriety and normal standards of courtesy and hospitality;
- (ii) do not influence their judgment or the performance of their duties at the bank;
- (iii) do not compromise, or appear to compromise, the objectivity, impartiality or integrity of them or the bank;
- (iv) do not seem excessive, in doubtful taste or likely to have a negative impact on them or the bank's reputation; and
- (v) comply with the requirements of the code.<sup>558</sup>

Members of staff may not engage in outside employment that interferes or gives rise to a conflict of interest with their duties at the bank. They must obtain the approval of their supervisor before commencing any outside employment (Part IV, Article 5.1, *Code of Business Conduct and Ethics*). If they are contemplating, or have accepted, an offer of employment with another organisation, staff members need to be sensitive to the possibility of real, potential or perceived conflicts of interest arising. While they are still employed by the bank, they must not allow themselves to be influenced in carrying out their duties by plans for, or offers of, employment with another organisation.

#### **Rules of conduct on conflicts of interest**

Member of staff must never use or attempt to use their position at the bank to obtain any improper benefit for themselves, their family or others connected to them, and they must always seek to avoid not only real, but also potential and perceived, conflicts.<sup>559</sup>

If staff members are aware of a transaction or relationship that could reasonably be expected to give rise to a real, potential or perceived conflict, they must immediately advise their supervisor, the Compliance Officer or the General Counsel and Corporate Secretary. In particular, staff members must:

- (i) disclose any significant private or financial interests they may have in organizations under contract to the bank;
- (ii) report any interests they or their family have in any party seeking to establish a relationship with the bank;
- (iii) accept only gifts or benefits from third parties that are permitted; and
- (iv) ensure that they understand and are in compliance with the provisions of Part V, ("Conduct of Personal Financial Transactions") of the code.

---

<sup>558</sup> Staff members may accept unsolicited gifts, other than tickets to an entertainment venue, with a value of \$100 or less, provided that the cumulative value of gifts from the same source does not exceed \$200 within a 12-month period. Gifts of a greater value may be accepted only with the written approval of the Compliance Officer. In situations where declining a prohibited gift might reasonably offend the gift giver, staff members may accept the gift but then must immediately turn it over to their supervisor for appropriate disposition. The bank may determine that the gift will be donated to charity, retained for bank purposes or otherwise disposed of by the bank. Furthermore, staff members must report to the Compliance Officer in writing with respect to gifts or benefits with a value in excess of \$200 (Part IV, Article 3, *Code of Business Conduct and Ethics*).

<sup>559</sup> Staff members are deemed to be in conflict of interest if they have an interest that could in any way influence their decisions or performance in carrying out their duties and responsibilities in an objective and effective manner.



Staff members cannot:

- (i) participate in any discussions or decisions regarding a matter in which they or their family have an interest;
- (ii) publicly endorse products or suppliers;
- (iii) take part in activities or businesses outside of work that may compete with the bank or that may damage the bank's reputation; or
- (iv) use their position at the bank to advance their interests or those of their family or others connected to them (Part IV, Article 1, *Code of Business Conduct and Ethics*).

### **3.4.3.3.6 Application of rules of conduct**

#### **Ethics officer**

The Code of Business Conduct and Ethics, which is consistent with the Values and Ethics Code for the Public Sector established by the Treasury Board pursuant to the Public Servants Disclosure Protection Act (Part VII, Article 5, *Code of Business Conduct and Ethics*), applies to all employees, contractors, consultants and agents of the bank, as well as individuals seconded to the bank. Directors of the bank are subject to a separate code, which is consistent with the Code of Business Conduct and Ethics (Part I, Article 3, *Code of Business Conduct and Ethics*).

At least annually, every employee is asked to sign a form acknowledging that he or she has read the Code of Business Conduct and Ethics, agrees that he or she is in compliance with it, and understands the requirements for ongoing compliance. Given their work and access to sensitive information, certain employees are subject to stricter rules regarding personal financial transactions and are required to sign an enhanced acknowledgement form.

The Compliance Officer oversees corporate efforts to promote an ethical work environment and business practices. The Compliance Officer reports to the General Counsel and Corporate Secretary on code-related matters. The role of the Compliance Officer is to receive, review and protect confidential reports filed under the code, resolve conflict-of-interest issues, and provide information, training and advice to staff members on matters relating to conflict of interest and, generally, on matters of values and ethics (Part VII, Article 2, *Code of Business Conduct and Ethics*).

If staff members have knowledge of a potential or suspected breach of the code or of other bank policies, they have an obligation to promptly report relevant information to one of the persons listed below. The bank provides a variety of methods for obtaining answers to all questions about ethics issues and for raising any concerns about a possible breach of the code. Questions or concerns can be addressed to: supervisors, the Employee/Management Relations Officer, the Compliance Officer, or the General Counsel and Corporate Secretary.

Staff members can raise concerns orally or in writing.<sup>560</sup> Reports are treated confidentially to the extent possible and consistent with the bank's responsibility to address the issue. Employees are safeguarded against retaliation by the bank or any of its employees for reporting in good faith a violation of the code.

The bank investigates alleged improper activities in a manner consistent with the nature and apparent severity of the issue, while maintaining the confidentiality of all information

---

<sup>560</sup> If staff members feel uncomfortable reporting a breach or an improper activity to the individuals mentioned above, they can send a confidential email to the Compliance Office. In cases of suspected fraud or misappropriation of bank assets, they may communicate their concern directly to the Chief Internal Auditor or the Chair of the Audit and Finance Committee of the Board of Directors of the Bank.

reported and disclosed during the course of an investigation, and respecting the rights of the alleged offender to know that a complaint has been made. The bank discloses only the information that is absolutely necessary to properly investigate and address the suspected violation.

The Board of Directors ("the Board"), through a designated committee, oversees the administration of the code. The Board monitors how the code is being applied throughout the bank and is responsible for approving any amendments to the code. At least once every year, and more frequently if requested, the Compliance Officer reports to the Board on the administration of the code to assist in monitoring how the code is being applied and reviewing it for any appropriate changes.

The Compliance Officer may report on breaches or suspected breaches of the code and advise on matters relating to ethical conduct. The report may include information from members of Governing Council, the General Counsel and Corporate Secretary, the Compliance Officer, the Employee/Management Relations Officer, and any other employees with responsibilities for the administration of the Code (Part VII, Article 3, *Code of Business Conduct and Ethics*).

The orientation programme for new employees contains information regarding the code. New employees must also complete the Code of Business Conduct and Ethics Certification in which they affirm that they have read the code and reviewed their personal circumstances in light of the requirements of the code. In doing so, they answer questions related to various sections of the code including conflicts of interests, restricted activities, confidentiality, hospitality, gifts and other benefits, and investments.

The certification exercise is done upon joining the bank, annually thereafter, and in the case of a significant change in the employees' duties or personal circumstances. New managers are also offered training regarding the code and information sessions on various sections of the code are also offered to bank employees on a recurring basis.

When modifications or additions are made to the code, the bank prepares a communication plan which includes a variety of means of communication. These may range anywhere from a general e-mail notification to tailored mandatory informative sessions.

### **Disciplinary actions and enforcement**

Conduct that is illegal, dishonest or unethical constitutes a breach of the Code of Business Conduct and Ethics, whether or not the conduct is specifically addressed in the code. If staff members' conduct does not meet the standards set out in the code or is otherwise illegal, dishonest or unethical, they may be subject to corrective or disciplinary measures up to and including termination of employment. Contractors, consultants, agents and those seconded to the bank are reminded that the code is part of their agreements with the bank and that a breach may result in the termination of contracts, disqualification from applying for future contracts or the termination of the secondment (as applicable). The bank reserves the right and may be obligated to report breaches of the code to regulators or to law enforcement authorities (Part I, Article 8, *Code of Business Conduct and Ethics*).

The bank has implemented a structure of governance to ensure that the principles of the code are promoted throughout the organisation and that the code is managed effectively.

Staff members are expected to:

- (i) understand the code and its principles and actively promote the Code in the workplace;

- (ii) lead by providing a model of high standards of ethical conduct, creating a work environment that reflects the spirit of the code;
- (iii) assist employees in resolving questions or issues about the code;
- (iv) work with the Compliance Officer;
- (v) be vigilant in preventing, detecting and responding to any violations of the code; and
- (vi) protect those who report violations (Part VII, Article 1, *Code of Business Conduct and Ethics*).

### **3.4.3.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Bank of Canada. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to severe criminal penalties, including imprisonment up to ten years. Staff members of the national CB are subject to all relevant rules and penalties.
- Unlike in the EU, the national CB is not formally exempt from the rules on insider dealing, unlawful disclosure of inside information, whereas, like in the EU, it is exempt from rules on market manipulation. No exemption is provided for the benefit of third-country CBs.
- The CB applies risk management standards in undertaking its operations but the contents of such standards are not publicly available, nor have they been sufficiently disclosed.
- Staff members are subject to a stringent duty of professional secrecy, which forbids any use and attempt to use inside information for private interests. Additionally, of the applicability of such duty, which continues indefinitely beyond the term of employment, successive employers of the staff member are properly informed.
- Applicable rules on trading in financial instruments for personal purposes vary depending on the position of the staff member. Staff members that have access to critical confidential information face permanent prohibitions in dealing with predetermined financial instruments and temporary prohibitions in dealing with all financial instruments during predetermined "blackout" periods. The requirement to keep record and report investments of their own and their families apply only to members of the governing council of the bank.
- Staff members are subject to a duty to preserve their independence from third-party interests. This is strengthened by prohibitions to carry out conflicting remunerated and non-remunerated activities and accept improper benefits (such as gifts) from third parties. They must also avoid conflicts of interest. In case of an unavoidable conflict of interest, staff members must disclose it with the compliance officer and must abstain from participating in any discussion or decision regarding the matter in relation to which they are conflicted.
- A committee designated with the board of directors of the bank, together with the compliance office, oversees the administration of the code of conduct and is entrusted with reviewing it, disseminating its knowledge and taking disciplinary action in case of breach of it. Staff members are made aware of the existence and applicability of an internal code of conduct upon recruitment, when they are

asked to swear an oath of office, and periodically receive informative sessions about the code and its application.

- Depending on the severity of the misconduct, disciplinary actions may include termination of employment. Staff members must report suspected violations of the code. Furthermore, competent authorities are notified of the act or fact that might constitute a criminal or administrative offence.

### **3.4.3.4 Debt management office framework (Department of Finance Canada)**

#### **3.4.3.4.1 Exemption from rules on market abuse**

With regard to the applicability of an exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation in pursuit of monetary, exchange rate or public debt management policy, the DMO operates under the same conditions applicable to the CB.

Third-country DMOs do not benefit from any exemption.

#### **3.4.3.4.2 Risk management standards**

As to the application of risk management standards by the DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, the DMO is subject to the same standards applicable to the CB.

#### **3.4.3.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Employees must fully respect the confidentiality requirements of information obtained through their position in the Department of Finance (Chapter I, Other Duties and Obligations, Security of Information, *Department of Finance Code of Conduct*).<sup>561</sup>

##### **Rules of conduct on the use of inside information**

All staff members must arrange their personal affairs and conduct themselves in a manner that prevents real, potential or apparent conflicts between their private interests and the public interest served through their official duties.

Staff members are obliged to protect information obtained through their work and not to use or disclose non-public information for personal profit or to enable others to profit (Annex A, Conflict of Interest Prevention, *Department of Finance Code of Conduct*).

#### **3.4.3.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Public servants are required to evaluate their assets, taking into consideration the nature of their official duties and the characteristics of the assets held. If there is any real, apparent or potential conflict of interest with their official duties and their assets, they are to report this matter to the Director of "Values and Ethics" in a timely manner.

---

<sup>561</sup> Available at: [www.fin.gc.ca/afc/cc-eng.asp](http://www.fin.gc.ca/afc/cc-eng.asp).

Where the Director of "Values and Ethics", determines that these assets result in a real, apparent or potential conflict of interest in relation to their official duties, public servants may be required to divest those assets or take other measures to resolve the conflict. Public servants may not sell or transfer assets to family members or anyone else for the purpose of circumventing the compliance requirements (Chapter II, Conflict of Interest and Post Employment, Article 2.1 Assets, *Department of Finance Code of Conduct*).<sup>562</sup>

Staff members are urged to be aware that investments in publicly traded securities, in particular, can give rise to a real, potential or apparent conflict of interest because of the nature of the department's work and the market sensitivity of non-public information to which staff members have access. (Annex A, Conflict of Interest Prevention, *Department of Finance Code of Conduct*).

### **Rules of conduct on record-keeping**

The following are non-exhaustive examples of publicly traded securities that must be disclosed in an annual Confidential Report<sup>563</sup> whether the securities are directly or indirectly held and whether or not the staff member views the securities as giving rise to a real, potential or apparent conflict of interest:

- (i) Stocks, shares, bonds, convertible bonds, debentures, trust units (including income, royalty and realty trust units), commercial paper, medium-term notes and derivatives of any of the foregoing, whether held individually or in an investment portfolio account
- (ii) Shares, units or similar equity interests in sector investment funds – i.e. funds that concentrate their investments in specific businesses, industries or sectors of the economy, including, but not limited to, funds that invest primarily in issuers involved in mining, oil and gas extraction, precious metals, finance, insurance, broadcasting, transportation, science and technology and telecommunications – but not the underlying securities
- (iii) Publicly traded securities such as those described in paragraphs (i) and (ii) above held in wrap accounts
- (iv) Publicly traded securities such as those described in (i) and (ii) held in tax-free savings accounts, self-directed or self-administered Registered Retirement Savings Plans, Registered Education Savings Plans, Registered Disability Savings Plans or similar tax-related saving vehicles, established for the staff member's own benefit or for the benefit of others
- (v) Publicly traded securities held and traded through investment clubs

Investments in Treasury Bills, certificates of deposit, money market mutual funds and diversified investment funds are exempt from disclosure and do not require a Confidential Report unless, due to the particular nature of the staff member's official duties or the non-public information to which he or she has access, such investments give rise to a real, potential or apparent conflict of interest.

In addition, the following are non-exhaustive examples of other assets and liabilities that must be disclosed in a Confidential Report if, objectively viewed, they give rise to a real, potential or apparent conflict of interest:

- (i) Interests in partnerships, proprietorships, joint ventures, private companies and family businesses, in particular those that own or control shares of public companies or that do business with the government
- (ii) Interests in labour-sponsored venture capital corporations or similar entities

---

<sup>562</sup> The Conflict of Interest Code for the Department of Finance (Annex A) sets out the types of assets that should be reported (Annex B) and the procedures for divesting such assets are set out in the Treasury Board Directive on Reporting and Managing Financial Conflicts of Interest.

<sup>563</sup> As outlined in the Conflict of Interest Code for the Department of Finance, employees must submit an annual Confidential Report/Affirmation in accordance with the mandatory annual Reporting Schedule.

- (iii) Commercially operated farm businesses
- (iv) Real property that is not for the private use of staff members or their family members, e.g. investment property
- (v) Commodities and foreign currencies held or traded for speculative purposes
- (vi) Assets placed in trust or resulting from an estate of which the staff member is a beneficiary
- (vii) Secured or unsecured loans granted to persons other than to members of the staff member's immediate family
- (viii) Direct and contingent liabilities in respect of any of the assets described in this section
- (ix) Any other assets or liabilities that give rise to a real, potential or apparent conflict of interest due to the particular nature of the staff member's official duties or the non-public information to which he or she has access, including assets and liabilities that would otherwise be non-reportable

### **3.4.3.4.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

According to Chapter II, Conflict of Interest and Post Employment, Article 2.2 on Outside Employment or Activities, *Department of Finance Code of Conduct*: "Public servants may engage in employment outside the public service and take part in outside activities unless the employment or activities are likely to give rise to a real, apparent or potential conflict of interest or would undermine the impartiality of the public service or the objectivity of the public servant. Public servants are required to provide a report to the Director, Values and Ethics, when their outside employment or activities might subject them to demands incompatible with their official duties or cast doubt on their ability to perform their duties or responsibilities in a completely objective manner. The Director, Values and Ethics, may require that the outside activities be modified or terminated if it is determined that a real, apparent or potential conflict of interest exists. Public servants who receive a benefit or income either directly or indirectly from a contract with the Government of Canada are required to report to the Director, Values and Ethics, on such contractual or other arrangements. The Director, Values and Ethics, will determine whether the arrangement presents a real, apparent or potential conflict of interest, and may require that the contract be modified or terminated".

Public servants are expected to use their best judgment to avoid situations of real, apparent or potential conflict of interest by considering the following criteria on gifts, hospitality and other benefits and in keeping with the Values and Ethics Code for the Public Sector, the Policy on Conflict of Interest and Post-Employment and this Code. Public servants are not to accept any gifts, hospitality or other benefits that may have a real, apparent or potential influence on their objectivity in carrying out their official duties and responsibilities or that may place them under obligation to the donor. The acceptance of gifts, hospitality and other benefits is permissible if they:

- (i) are infrequent and of minimal value;
- (ii) are within the normal standards of courtesy or protocol;
- (iii) arise out of activities or events related to the official duties of the public servant concerned;
- (iv) do not compromise or appear to compromise the integrity of the public servant concerned or of his or her organisation.

Public servants are to seek written direction from their deputy head where it is impossible to decline gifts, hospitality or other benefits that do not meet the principles set out above, or where it is believed that there is sufficient benefit to the organisation to warrant acceptance of certain types of hospitality (see Chapter II, Conflict of Interest and Post Employment, Gift Hospitality and Other Benefits, *Department of Finance Code of Conduct*).

All public servants have a responsibility to minimise the possibility of real, apparent or potential conflicts of interest between their most recent responsibilities within the federal public service and their subsequent employment outside the public service. Before leaving their employment with the public service, all public servants are to disclose their intentions regarding any future outside employment or activities that may pose a risk of real, apparent or potential conflict of interest with their current responsibilities and discuss potential conflicts with their manager or the Director, Values and Ethics. Public servants staffed in executive positions are subject to a one-year limitation period after leaving office. Before leaving office and during this one-year limitation period, these public servants are to report to the deputy head all firm offers of employment or proposed activity outside the public service that could place them in a real, apparent or potential conflict of interest with their public service employment. They are to also disclose immediately the acceptance of any such offer.

In addition, these public servants may not, during the one-year period, without the deputy head's authorisation:

- (i) accept appointment to a board of directors of, or employment with, private entities with which they had significant official dealings during the period of one year immediately prior to the termination of their service;<sup>564</sup>
- (ii) make representations to any government organisation on behalf of persons or entities outside of the public service with which they had significant official dealings, during the period of one year immediately prior to the termination of their service; or
- (iii) give advice to their clients or employer using information that is not publicly available concerning the programmes or policies of the departments or organisations with which they were employed or with which they had a direct and substantial relationship.

A public servant or former public servant may apply to the Director, Values and Ethics, for a written waiver or reduction of the limitation period. The public servant is to provide sufficient information to assist the deputy head in making a determination as to whether to grant the waiver taking into consideration the following criteria:

- (i) The circumstances under which the termination of their service occurred
- (ii) The general employment prospects of the public servant or former public servant
- (iii) The significance to the government of information possessed by the public servant or former public servant by virtue of that individual's position in the public service
- (iv) The desirability of a rapid transfer of the public servant's or former public servant's knowledge and skills from the government to private, other governmental or non-governmental sectors
- (v) The degree to which the new employer might gain unfair commercial or private advantage by hiring the public servant or former public servant
- (vi) The authority and influence possessed by that individual while in the public service
- (vii) Any other consideration at the discretion of the deputy head (see Chapter II, Conflict of Interest and Post Employment, Article 3 Requirements for Preventing Post Employment Conflict of Interest Situation Before and After Leaving Office, *Department of Finance Code of Conduct*).

### **Rules of conduct on conflicts of interest**

Public servants must serve the public interest by:

---

<sup>564</sup> The official dealings in question may either be directly on the part of the public servant or through their subordinates.

- (i) acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law;
- (ii) never using their official roles to inappropriately obtain an advantage for themselves or others or to disadvantage others;
- (iii) taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favour of the public interest (see Chapter I, Expected Behaviours, Integrity, *Department of Finance Code of Conduct*).<sup>565</sup>

A public servant's general responsibilities and duties include: "(a) *taking all possible steps to recognize, prevent, report and resolve any real, apparent or potential conflicts of interest between their official responsibilities and any of their private affairs; (b) unless otherwise permitted in the Policy on Conflict of Interest and Post-Employment, refraining from having private interests which would be unduly affected by government actions in which they participate, or of which they have knowledge or information; (c) not knowingly taking advantage of, or benefiting from, information that is obtained in the course of their duties that is not available to the public; (d) refraining from the direct or indirect use of, or allowing the direct or indirect use of government property of any kind, including property leased to the government, for anything other than officially approved activities; (e) not assisting private entities or persons in their dealings with the government where this would result in preferential treatment of the entities or persons; (f) not interfering in the dealings of private entities or persons with the government in order to inappropriately influence the outcome; (g) maintaining the impartiality of the public service and not engaging in any outside or political activities that impair or could be seen to impair their ability to perform their duties in an objective or impartial manner; and (h) ensuring that any real, apparent or potential conflict that arises between their private activities and their official responsibilities as a public servant is resolved in the public interest*" (Chapter II, Conflict of Interest and Post Employment, Article 1 on "Public servants' general responsibilities and duties", *Department of Finance Code of Conduct*).

Public servants are required to report in writing to the deputy head by way of a Confidential Report, all outside activities, assets and interests that might give rise to a real, apparent or potential conflict of interest in relation to their official duties. Such a report is to be made within 60 days of their initial appointment or any subsequent appointment, transfer or deployment. On a regular basis thereafter, and every time a major change occurs in their personal affairs or official duties, every public servant is required to review his or her obligations under the code, the Policy on Conflict of Interest and Post-Employment and the Values and Ethics Code for the Public Sector. If a real, apparent or potential conflict of interest exists, he or she is to file a report in a timely manner (see Chapter II, Conflict of Interest and Post Employment, Article 2 on Requirements for preventing and dealing with situations of conflict of interest during employment, *Department of Finance Code of Conduct*).

#### **3.4.3.4.6 Application of rules of conduct**

##### **Ethics officer**

The Director, Value and Ethics, is in charge of supervising compliance with the applicable rules of conduct.

---

<sup>565</sup> According to the Department of Finance Code of Conduct, conflict of interest is a situation in which the public servant has private interests that could improperly influence the performance of his or her official duties and responsibilities or in which the public servant uses his or her office for personal gain. A real conflict of interest exists at the present time; an apparent conflict of interest could be perceived by a reasonable observer to exist, whether or not it is the case; and a potential conflict of interest could reasonably be foreseen to exist in the future.



Additionally, as provided by Sections 12 and 13 of the Public Service Disclosure Protection Act (PSDPA), if public servants have information that could indicate a serious breach of the Code of Conduct they may bring this matter to the attention of their immediate supervisor, the Department of Finance Disclosure Protection Officer (DPO) or the Public Sector Integrity Commissioner.

The DPO is responsible for supporting the Deputy Minister in meeting the requirements of the PSDPA. The DPO helps promote a positive environment for disclosing wrongdoing, and deals with disclosures of wrongdoing made by employees of the organisation.

Members of the public who have reason to believe that a public servant has not acted in accordance with this code can bring the matter to the DPO or to the Public Sector Integrity Commissioner to disclose a serious breach of the Code of Conduct.

### **Disciplinary actions and enforcement**

Compliance with the Code of Conduct, and the Policy on Conflict of Interest and Post-Employment is a condition of employment for all public servants working in the Department of Finance, including indeterminate and term employees (full- and part-time), persons on secondment to the department, casuals, students and staff on leave with or without pay.

A staff member who does not comply with the requirements of the Code of Conduct, the Values and Ethics Code for the Public Sector or the Policy on Conflict of Interest and Post-Employment is subject to appropriate disciplinary action, up to and including termination of employment.

#### **3.4.3.4.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Department of Finance. The assessment relies on the following findings:

- Staff members of the DMO are subject without exception to the applicable rules on insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) and relevant administrative and criminal penalties, with the latter being severe enough to exert deterrence.
- Unlike in the EU, no exemption from the rules on insider dealing and unlawful disclosure of inside information is provided for the benefit of the national DMO. However, like in the EU, an exemption applies with regard to the rules on market manipulation. Third-country DMOs are not exempt from any of such rules.
- Staff members are bounded by general regulations that apply risk management standards to government bodies. However, no detail about the contents of these standards is publicly available or has been provided via questionnaire.
- Staff members are subject to a duty of professional secrecy. They are also prohibited from making use of inside information for private purposes with no exception, even though none of these duties are explicitly made to continue beyond the term of employment.
- Staff members are not prevented from investing in particular assets or financial instruments unless such assets or financial instruments are believed to give rise to actual or potential conflicts of interest. Staff members must report their assets and investments on an annual basis. Such an obligation allows for a constant monitoring of the existence of such actual or potential conflicts of interest.

- Staff members are subject to a general duty to preserve their independence from third-party interests, and such duty is backed by detailed limitations on the acceptance of gifts and other benefits, outside employment opportunities and prospective employment opportunities. Staff members must also avoid and resolve their conflict of interests. Should a conflict of interest be unavoidable and not otherwise solvable, they must disclose it. However, no rule disqualifies staff members from participating in discussions and/or decisions on matter in relation to which they are conflicted.
- An internal compliance function is in place in order to preside over the application of the internal rules of conduct, the adherence to which is part of the employment contract, investigate instances of misconduct and report such instances of misconduct to external authorities.
- Depending on the severity of the misconduct, disciplinary actions may be up to and include termination of employment.

### **3.4.4 People's Republic of China**

#### **3.4.4.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework is based on the Law of the People's Republic of China on Securities of 2005 ("Securities Law"), the Guiding Opinions issued by the China Securities Regulatory Commission and the Criminal Law of the People's Republic of China of 1979 ("Criminal Law").

##### **3.4.4.1.1 Administrative offences and sanctions**

Under Article 73 of the Securities Law, persons possessing inside information relating to securities trading and persons obtaining such information unlawfully are prohibited from making use of such inside information in securities trading activities.<sup>566</sup> Article 75 provides that in the context of securities trading, any unpublished information relating to the business or financial position of a company, or carrying significant effect on the market price of the securities of a company, constitutes inside information.<sup>567</sup> Under

---

<sup>566</sup> Article 74 provides: "Persons possessing inside information relating to securities trading include: (1) the directors, supervisors and senior managers of an issuer; (2) the shareholders holding 5% or more of the shares of a company and the directors, supervisors and senior managers of such shareholders, as well as the persons in practical control of a company and the directors, supervisors and senior managers of such persons; (3) a company held by an issuer and the directors, supervisors and senior officers of such company; (4) the persons with access to the relevant inside information by virtue of their positions in a company; (5) the staff members of the securities regulatory authorities and other persons who perform their statutory administrative duties in respect of the issuance and trading of securities; (6) the relevant staff members of the sponsors, securities companies engaged for underwriting, stock exchanges, securities registrar and clearance institutions and securities service institutions; and (7) such other persons as may be so prescribed by the securities regulatory authority under the State Council."

<sup>567</sup> All of the following information falls into the category of inside information: "(1) the major events specified in the second paragraph of Article 67 of this Law, such as (i) a major change in the company's business policy or scope of business; (ii) a decision made by the company concerning a major investment or asset purchase; (iii) an important contract concluded by the company which may have a significant effect on the assets, liabilities, rights and interests, or business results of the company; (iv) the incurrence of significant debts by the company, or its default on significant debts at maturity through its breach of contract; (v) the incurrence by the company of a major deficit or a major loss; (vi) a major change in the external conditions relating to the production or business operation of the company; (vii) replacement of the directors, one-third or more of the supervisors or managers of the company; (viii) a considerable change relating to the respective shareholdings of the persons who hold 5% or more of the shares of the company, or to the control of the company by the persons in practical control; (ix) a decision made by the company to reduce its share capital, to merge, to divide, to dissolve or to apply for bankruptcy; (x) a major litigation in which the company is involved, or a resolution made by the shareholders general assembly or the board of directors of the company is rescinded or nullified pursuant to law; (xi) the initiation of an investigation by a judiciary organ on grounds of a suspected crime involving the company, or the imposition of a compulsory measure by a judiciary organ on grounds of a suspected crime involving a director, supervisor or senior manager of the company; and (xii)

Article 76, persons possessing inside information relating to securities trading and persons obtaining inside information unlawfully must not, prior to the publication of such inside information, purchase or sell the securities of the company concerned, or disclose such information, or suggest other persons trade in such securities.

As a result, both insider dealing and unlawful disclosure of inside information are prohibited.

Sanctions are provided for in Article 202, according to which: "*[P]rior to the publication of the information concerning securities issuance or trading or of other information that may have a considerable effect on the price of certain securities, a person with inside information about securities trading or a person who illegally obtains such inside information purchases or sells the securities in question, divulges such information, or suggests another person purchase or sell such securities, he shall be ordered to divest his illegally held securities according to law, his illegal gains shall be confiscated, and he shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 30,000 yuan, he shall be fined not less than 30,000 yuan but not more than 600,000 yuan. Where a unit engages in insider trading, the person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each. Where a staff member of the securities regulatory authority engages in insider trading, he shall receive a heavier punishment.*"

#### **3.4.4.1.2 Criminal offences and penalties**

Article 180 of the Criminal Law provides for criminal liability for both insider dealing and unlawful disclosure of inside information. More precisely, it states: "*[P]eople who have inside information on securities trading, illegally obtain inside information on securities trading, or buy or sell securities or leak relevant information prior to the release of information that could have a major effect on the issuance and trading of the securities concerned or on the price of other securities shall be sentenced to not more than five years in prison or criminal detention, provided the circumstances are serious. They shall be fined, additionally or exclusively, a sum not less than 100 percent and not more than 500 percent as high as their illegal proceeds. If the circumstances are especially serious, they shall be sentenced to not less than five years and not more than 10 years in prison. In addition, they shall be fined a sum not less than 100 percent and not more than 500 percent as high as their illegal proceeds. If the crimes mentioned in the preceding paragraph are committed by a unit, the unit in question shall be fined, and the individual directly in charge of it or people who are directly responsible shall be sentenced to not more than five years in prison or criminal detention*".

Staff members of the central bank and the debt management office fall within the scope of application of this regulatory framework.

#### **3.4.4.2 Market manipulation rules**

The regulatory framework on market manipulation is based on the Law of the People's Republic of China on Securities of 2005 ("Securities Law"), the Guiding Opinions issued

---

*such other events as may be so prescribed by the securities regulatory authority under the State Council; (2) a company's plan for profit distribution or capital increase; (3) a major change in the share capital structure of a company; (4) a major change in the surety for debts of a company; (5) any pledge, disposition or retirement of a principal business asset of a company, the value of a single transaction of which exceeds 30 percent of the total value of such asset; (6) potential liability for major losses to be assumed in accordance with law as a result of the activities of a director, supervisor or senior manager of a company; (7) the plans relating to the acquisition of a listed company; and (8) such other important information having an obvious effect on the trading price of securities as may be so defined by the securities regulatory authority under the State Council.*"

by the China Securities Regulatory Commission and the Criminal Law of the People's Republic of China of 1979 ("Criminal Law").

### **Administrative offences and sanctions**

Under Article 77 of the Securities Law, which forbids trade-based and action-based market manipulation, *"[N]o one is allowed to manipulate the securities markets in the following ways: 1. conducting allied or incessant purchasing and selling individually or in conspiracy with another person by building up an ascendancy of funds or shareholdings or taking advantage of information, thus manipulating the price or volume of securities trading, 2. conducting bidirectional securities transactions in collusion with another person by following previously fixed timing, price and manner, thus affecting the price or volume of securities trading, 3. conducting securities transactions among the accounts actually controlled by oneself, thus affecting the price or volume of securities trading; and 4. manipulating the securities markets by other means"*.

The above-mentioned legal provision is supplemented by Article 78, which addresses information-based market manipulations by prohibiting state functionaries and employees and the relevant persons of the media from fabricating or disseminating false information so as to disrupt the securities markets. Likewise, in the course of securities trading, stock exchanges, securities companies, securities registrar and clearance institutions, securities service institutions and their employees as well as the association of securities industry and the securities regulatory authorities and their staff members are prohibited from making misrepresentation or rendering misleading information. The media themselves are also held to the obligation to disseminate information of the securities markets in a truthful and objective manner and are prohibited from misleading the public.

Based on the previous relevant legal provisions regarding trade-based and action-based manipulation, Article 203 of the Securities Law provides that *"an entity that, in violation of the provisions of this Law, manipulates the securities markets shall be ordered to divest its illegally held securities, its illegal gains shall be confiscated, and it shall be fined not less than one time but not more than five times the illegal gains; and if there are no illegal gains or the illegal gains are less than 300,000 yuan, it shall be fined not less than 300,000 yuan but not more than 3,000,000 yuan. Where the manipulator is a unit, the person directly in charge of the unit and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 100,000 yuan but not more than 600,000 yuan each."*

As to the sanctions provided for in the case of information-based market manipulation, Article 206 states that *"where a unit or individual that, in violation of the provisions of the first or the third paragraph of Article 78 of this Law, disrupts the securities markets, it/he shall be ordered to rectify, the illegal gains shall be confiscated, and it /he shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 30,000 yuan, it/he shall be fined not less than 30,000 yuan but not more than 200,000 yuan"*.

Article 207 provides that *"where a unit or individual that, in violation of the provisions of the second paragraph of Article 78 of this Law, makes false statements or gives misleading information in the course of securities trading, it/he shall be ordered to rectify and be fined not less than 30,000 yuan but not more than 200,000 yuan; if the offender is a State functionary, he shall, in addition, be given an administrative sanction in accordance with law"*.

### **Criminal offences and penalties**

Article 181 of the Criminal Law, which punishes information-based market manipulation, states that *"whoever disrupts securities trading markets and causes serious*

*consequences by fabricating or disseminating false information that could have an effect on securities trading shall be sentenced to not more than five years in prison or criminal detention. He or she shall be fined, additionally or exclusively, not less than 10,000 yuan and not more than 100,000 yuan."*

Employees of securities exchanges, securities companies, securities associations, or securities management departments shall be sentenced to not more than five years in prison or criminal detention if they intentionally provide false information; forge, alter, or destroy trading records; or trick investors into buying or selling securities, giving rise to serious consequences. They shall be fined, additionally or exclusively, not less than ¥10,000 and not more than ¥100,000. If the circumstances are especially adverse, they shall be sentenced to not less than five years and not more than 10 years in prison. In addition, they shall be fined not less than ¥20,000 and not more than ¥200,000.

If the crimes mentioned in the preceding two paragraphs are committed by a unit, the unit in question shall be fined, and the individual directly in charge of it and other people who are directly responsible shall be sentenced to not more than five years in prison or criminal detention.

Under Article 182, that punishes trade-based market manipulation, "*whoever rigs securities trading prices and obtains illegitimate benefits or shifts the risk in any of the following ways shall be sentenced to not more than five years in prison or criminal detention, provided the circumstances are serious. He or she shall be fined, additionally or exclusively, a sum not less than 100 per cent and not more than 500 per cent as high as his or her illegal proceeds: (1) Taking advantage of one's financial strength, stock holdings, or information to jointly or continuously sell or buy securities and rig securities trading prices, either on one's own or by conspiring with other people; (2) Affecting securities trading prices or volume by conducting securities transactions with each other or by buying or selling each other's securities at a predetermined time and price and through a predetermined method in collaboration with other people; (3) Affecting securities trading prices or volume by taking oneself as the only party to a transaction and buying from or selling to oneself without transferring the right to own the securities; (4) Rigging securities trading prices by other means*".

If the crimes mentioned in the preceding paragraph are committed by a unit, the unit in question shall be fined, and the individual directly in charge of it or other people directly responsible shall be sentenced to not more than five years in prison or criminal detention.

Staff members of the central bank and the debt management office fall within the scope of application of this regulatory framework.

### **3.4.4.3 Central bank framework (People's Bank of China)**

#### **3.4.4.3.1 Exemption from market abuse rules**

The domestic market operations are conducted by the Financial Market Department of the PBoC in close cooperation with the Monetary Policy Department. SAFE is the government agency responsible for the management of official foreign reserve on behalf of and for the benefit of the People's Bank of China (PBoC). Moreover, the PBoC serves as supervisory authority of Chinese financial markets (Article 31 of the Central Bank Law) and cooperates closely with other relevant institutions, such as the Chinese Securities Regulatory Commission (CSRC) and Chinese Banking Regulatory Commission (CBRC).

An exemption from national rules on insider dealing, unlawful disclosure of inside information and market manipulation *de facto* apply in light of the duties and functions of the CB, which is entitled without restrictions to deal in government bonds (together

with foreign exchange) on the open market in the management of public debt and in pursuit of its monetary and exchange rate objectives (see Article 23(5) of Law of the People's Republic of China on the People's Bank of China of 1995 (hereinafter, the "Central Bank Law")).

To the contrary, third-country CBs are not exempt from any of such national rules.

#### **3.4.4.3.2 Risk management standards**

The PBoC applies general and specific risk management standards and relies on an internal rulebook for each business line in undertaking its operations. However, the contents of such standards and rulebook are not publicly available, nor have they been illustrated in detail via questionnaire.

The compliance and internal auditing divisions are responsible for supervising compliance with the applicable management standards and rulebooks.

#### **3.4.4.3.3 Use of confidential information by staff members**

The Governor, Deputy Governors and other staff members are required by Articles 12(6) and 53(10) of the Law of the People's Republic of China of 2005 (hereinafter, the "Public Service Law") and Article 15 of Law of the "Central Bank Law" to safeguard state secrets according to law and to safeguard the secrets of the banking institutions and other parties affected by the exercise of their function.

Additionally, according to Article 50 of the Central Bank Law, divulging State secrets or business secrets by staff members may constitute a crime or, should the case be of lesser seriousness, an administrative offence.

Use of inside information for private purposes is always prohibited.

Members are subject to confidentiality obligations until after termination of employment. The term may vary from one to six months, depending on their position previously held at the institution.

#### **3.4.4.3.4 Transactions in assets and financial instruments by staff members**

The internal code of conduct sets out restrictions in investing and holding assets and financial instruments. However, the contents of such limitations have not been detailed via questionnaire.

More generally, all investments based on the use of inside information are prohibited.

Besides, staff members must keep records of their holding of assets and financial instruments and must disclose them at the beginning of their employment and from time to time thereafter, upon request.

#### **3.4.4.3.5 Staff independence and conflict of interest**

Under Article 12(5) of the Public Service Law, all public employees must discharge their duties faithfully and behave honestly in a transparent and impartial way.

More specifically, Article 14 of the Central Bank Law provides that the Governor, Deputy Governors and other staff members must abide by their duties and, in particular, they

must refrain from abusing their power or engaging in misconduct for private ends. In addition, they are prohibited from holding positions in any other banking institutions, enterprises or foundations.

The internal code of conduct provides for limitations and prohibitions with regard to the possibility to exercise remunerated and non-remunerated activities outside working hours and the acceptance of gifts and other benefits from third parties. However, details about such restrictions have not been provided via questionnaire.

Staff members are also barred from participating in discussions and decisions on matters in relation to which they are in conflicts of interest.

#### **3.4.4.3.6 Application of rules of conduct**

Under Article 51 of the Central Bank Law, depending on the seriousness of the case, if staff members commit embezzlement, accept bribes, conduct malpractices for personal ends, abuse their power or neglect their duty, they are subject to criminal penalties or administrative sanctions.

Additionally, according to Articles 55-59 of the Public Service Law, all public employees who are found in violation of their duties are subject to disciplinary action. Disciplinary measures may include a warning, recording of a demerit, recording of a serious demerit, demotion, removal from office and discharge from employment.

Compliance with the internal rules of conduct by staff members is jointly overseen by several divisions, including Compliance, Internal Auditing and Human Resources. They are responsible for:

- (i) conducting examinations periodically;
- (ii) handling reports of misconducts;
- (iii) conducting investigations; and
- (iv) making recommendation on disciplinary actions/resolutions.

Such persons are then requested to report directly to senior management and to outside authorities, should the wrongdoing amount to a violation of the law. On their part, staff members may always report to ethics officers, line managers or senior officers if they become aware of instances of misconduct.

Knowledge of the internal rules of conduct by staff members is guaranteed by training activities, which take place once a year, and is tested through paper examinations.

In case of modifications and/or additions to the code of conduct a formal written notice is circulated within the institution. In addition, staff members are alerted to breaches that are identified and confirmed.

#### **3.4.4.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the BCB. The assessment relies on the following findings:

- Staff members of the CB are subject to all the rules that prohibit insider dealing, unlawful disclosure of inside information, and market manipulation (trade-based,

action-based and information-based), and such breaches resulting in either administrative and/or criminal offences. Both the administrative sanctions and the criminal penalties are in line with international standards and are dissuasive enough to exert deterrence and punish misconduct.

- Like in the EU and given the functions entrusted to it, the CB is exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. However, no such exemption applies to third-country CBs.
- The CB applies general and specific risk management standards when it undertakes its operations and the compliance with such standards is routinely checked by the internal compliance and audit function. However, no detail about the contents of these standards is publicly available or has been provided via questionnaire.
- Staff members are subject to a stringent duty of professional secrecy, which applies beyond the term of employment for a period varying from six months to one year. Staff members are also prohibited from making use of inside information for private purposes with no exception.
- Restrictions in investing and holding assets and financial instruments are provided for, although the precise perimeter of such limitations has not been detailed. Investments based on the use of inside information are prohibited. Furthermore, staff members must keep records of their holding of assets and financial instruments and must disclose them at the beginning of their employment and from time to time thereafter, upon request.
- Staff members are subject to a general duty to preserve their independence from third-party interests, even though such duty is not strengthened by detailed prohibitions to carry out conflicting activities and accept improper benefits from third parties. Staff members are disqualified from participating in the decision-making process in case of conflict of interest.
- An internal compliance function is in place in order to oversee the application of the internal rules of conduct, perform training activities, administering examinations on knowledge of the rules of conduct, commence investigations upon suspected breaches and report breaches to senior management.
- Depending on the severity of the misconduct, disciplinary actions may include dismissal. External authorities may be notified for proper actions under the applicable law.

#### **3.4.4.4 Debt management office framework (Ministry of Finance/PBoC)**

##### **3.4.4.4.1 Exemption from market abuse rules**

No public information is available in respect of the availability of an exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the national DMO when it executes transactions and orders or behaviours in pursuit of monetary, exchange rate or public debt management policy. Nor has such information been provided via questionnaire.

Third-country DMOs are not exempt from market abuse rules.

##### **3.4.4.4.2 Risk management standards**

No public information is available in respect of the application by the DMO of risk management standards with regard to transactions, orders or behaviour in pursuit of monetary, exchange rate or public debt management policy. Nor has such information been provided via questionnaire.



#### **3.4.4.4.3 Use of confidential information by staff members**

Articles 12(6) and 53(10) of the Public Service Law require that all public employees safeguard state secrets and secrets connected with the work they exercise.

No further information is publicly available, nor has it been provided via questionnaire.

#### **3.4.4.4.4 Transactions in assets and financial instruments by staff members**

No information in this regard is publicly available, nor has it been provided via questionnaire.

#### **3.4.4.4.5 Rules of conduct on independence and conflict of interest**

Under Article 12(5) and (8) of the Public Service Law, all public employees must discharge their duties faithfully and behave honestly in a transparent and impartial way.

However, no further information in this regard is publicly available or has been provided via questionnaire.

#### **3.4.4.4.6 Application of rules of conduct**

All public employees that are found in violation of their duties are subject to disciplinary actions. Disciplinary measure may include warning, recording of a demerit, recording of a serious demerit, demotion, removal from office and discharge from employment (see Articles 55-59 of the Public Service Law).

However, no further details in this regard are publicly available or have been provided via questionnaire.

#### **3.4.4.4.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The lack of information about the existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation applicable to the Ministry of Finance/PBoC does not allow an assessment of appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR. Too little information is available to evaluate whether the existing regulatory framework meets the identified key criteria and whether it is effective in preventing, deterring and punishing market abuse by staff members of the DMO.

In greater detail, while staff members of the DMO are subject to the rules on insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) and relevant administrative and criminal penalties, no specific or sufficiently detailed information could be obtained with regard to the following:

- The application of risk management standards by the DMO in the pursuit of its statutory objective
- The existence of rules that, besides prohibiting disclosure of confidential information, also prohibit the use of inside information for private purposes

- The existence and applicability of rules of conduct that prohibit or limit investments in assets or financial instruments and/or require recording and reporting of such transactions or holdings
- The existence and applicability of rules of conduct aimed at handling conflicts of interest
- The existence of an internal unit, in the form of an ethics officer or a general compliance function, vested with the authority to oversee the application of the internal rules of conduct and administer disciplinary proceedings in case of misconduct

### **3.4.5 Hong Kong SAR**

#### **3.4.5.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is based on the Securities and Futures Ordinance (SFO) of 2012.

##### **3.4.5.1.1 Administrative offences and sanctions**

According to Section 270(1) of SFO, insider dealing in relation to a listed corporation takes place:

- a) *when a person connected with the corporation<sup>568</sup> and having information which he knows is inside information<sup>569</sup> in relation to the corporation*
  - 1- *deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;<sup>570</sup> or*
  - 2- *counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;*
- b) *when a person connected with the corporation and knowing that any information is inside information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;*
- c) *when a person who has information which he knows is inside information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation*

---

<sup>568</sup> According to Section 248, where a public officer or a specified person in that capacity receives inside information in relation to a corporation, he/she is regarded as a person connected with the corporation.

<sup>569</sup> Section 245 of SFO defines "inside information", in relation to a corporation, as specific information that "(a) is about (i) the corporation; (ii) a shareholder or officer of the corporation; or (iii) the listed securities of the corporation or their derivatives; and (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities."

<sup>570</sup> According to Section 249, a person is regarded as dealing in listed securities or their derivatives if, "whether as principal or agent, he sells, purchases, exchanges or subscribes for, or agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to sell, purchase, exchange or subscribe for, any listed securities or their derivatives".

- 1- *deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or*
- 2- *counsels or procures another person to deal in such listed securities or derivatives.*

Section 270(2) includes unlawful disclosure of inside information in the notion of insider dealing by providing that insider dealing in relation to a listed corporation also takes place when a person who knowingly has inside information in relation to the corporation in any of the circumstances described in Section 270(1):

- a) *counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or*
- b) *discloses the inside information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the inside information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.*

A person committing insider dealing or unlawful disclosure of inside information is subject to a pecuniary sanction established by the market authority under Section 198, which provides for a penalty not exceeding the amount which is the greater of HK\$10 million or three times the amount of the profit gained or loss avoided by the person as a result of his misconduct, as well as to a judicial proceeding commenced under Section 252, which may lead to the sanctions set forth in Section 257, including a judicial order that the person pay to the government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question (so called, "disgorgement" of illegitimate profits).

### **3.4.5.1.2 Criminal offences and penalties**

Insider dealing and unlawful disclosure of inside information are also made criminal offences by Section 291, which provides that:

- 1) *A person connected with a listed corporation and having information which he knows is inside information in relation to the corporation must not*
  - a. *deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or*
  - b. *counsel or procure another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.*
- 2) *A person connected with a listed corporation and knowing that any information is inside information in relation to the corporation must not disclose the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives.*
- 3) *A person who has information which he knows is inside information in relation to a listed corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has*

*reasonable cause to believe held the information as a result of being connected with the corporation must not*

- a. deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or*
  - b. counsel or procure another person to deal in such listed securities or derivatives.*
- 4) *A person who knowingly has inside information in relation to a listed corporation in any of the circumstances described under (1), (2), or (3) must not*
- a. counsel or procure another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or*
  - b. disclose the inside information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the inside information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.*

Section 303 provides for the following penalties associated with the offences described above: (a) on conviction on indictment, a fine of \$10 million and imprisonment for 10 years; or (b) on summary conviction, a fine of \$1 million and imprisonment for three years.

Staff members of the central bank and the debt management office fall within the scope of this regulatory framework.

### **3.4.5.2 Market manipulation rules**

The regulatory framework on market manipulation is based on the Securities and Futures Ordinance (SFO) of 2012.

#### **Administrative offences and sanctions**

First of all, SFO prohibits trade-based market manipulation in the form of false trading (Section 274).

“False trading” takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention of creating, or being reckless as to whether it has or is likely to have the effect of creating a false or misleading appearance:

- (i) of active trading in securities or futures contracts traded on a relevant recognised market, by means of authorised automated trading services or with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant recognised market or by means of authorised automated trading services;
- (ii) of active trading in securities or futures contracts traded on a relevant overseas market, with respect to the market for, or the price for dealings in, securities or futures contracts traded on a relevant overseas market.

It also takes place when a person takes part in, is concerned by, or carries out, directly or indirectly, one or more transactions (whether or not any of them is a dealing in securities or futures contracts), with the intention of creating, or being reckless as to whether it or they has or have or is or are likely to have the effect of creating an artificial

price, or maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in securities or futures contracts traded on a relevant recognised market or by means of authorised automated trading services or for dealings in securities or futures contracts traded on a relevant overseas market.

Secondly, SFO prohibits trade-based market manipulation in the form of price rigging (Section 275).

"Price rigging", which takes place when, in Hong Kong or elsewhere, a person:

- (i) *enters into or carries out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized market or by means of authorized automated trading services; or*
- (ii) *enters into or carries out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, it has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities, or the price for dealings in futures contracts, that are traded on a relevant recognized market or by means of authorised automated trading services.*

The same applies if price rigging affects the price of securities traded on a relevant overseas market or has the effect of maintaining, increasing, reducing, stabilising, or causing fluctuations in the price of securities or the price for dealings in futures contracts that are traded on a relevant overseas market.

Thirdly, Section 278 prohibits the kind of stock market manipulation that occurs when, in Hong Kong or elsewhere a person enters into or carries out, directly or indirectly, two or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, reduce, or are likely to reduce, maintain or stabilise, or are likely to maintain or stabilise, the price of any securities traded on a relevant recognised market or by means of authorised automated trading services, with the intention of inducing another person to purchase or subscribe for or sell, or to refrain from selling or subscribing for or purchasing, securities of the corporation or of a related corporation of the corporation.

Additionally, SFO prohibits information-based market manipulation in the form of disclosure of false or misleading information inducing transactions (Section 277).

Such an offence takes place when, in Hong Kong or elsewhere, a person discloses, circulates or disseminates, or authorises or is concerned in the disclosure, circulation or dissemination of, information that is likely:

- (i) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;
- (ii) to induce the sale or purchase in Hong Kong of securities by another person; or
- (iii) to maintain, increase, reduce or stabilise the price of securities, or the price for dealings in futures contracts, in Hong Kong, if
  - a. the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and
  - b. the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact.

Based on the foregoing, a person committing insider dealing or unlawful disclosure of inside information within the meaning seen above is subject to the pecuniary penalties set forth in Section 198 and a judicial proceeding commenced under Section 252, which may impose sanctions, including disqualification, set forth in Section 257.

## **Criminal offences and penalties**

False trading, price rigging, stock market manipulation and disclosure of false or misleading information inducing transactions are also forbidden and punished as criminal offences by Sections 295, 296, 299 and 298, respectively.

Additionally, Section 300 forbids and punishes action-based market manipulation by providing that *"A person shall not, directly or indirectly, in a transaction involving securities, futures contracts or leveraged foreign exchange trading (a) employ any device, scheme or artifice with intent to defraud or deceive; or (b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception"*.

Section 303 provides for the following penalties associated with the offences described above: (a) on conviction on indictment, a fine of \$10 million and imprisonment for 10 years; or (b) on summary conviction, a fine of \$1 million and imprisonment for three years.

Staff members of the central bank and the debt management office fall within the scope of this regulatory framework.

### **3.4.5.3 Central bank framework (Hong Kong Monetary Authority)**

#### **3.4.5.3.1 Exemption from market abuse rules**

There is no explicit exemption in the SFO for the Hong Kong Monetary Authority (HKMA) with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, but HKMA is not bound by the market abuse provisions of the SFO, since HKMA is part of the Government of the Hong Kong Special Administrative Region.

There is no explicit exemption in the SFO for third-country CBs, either. Whether a third-country CB can claim state or sovereign immunity is doubtful and may depend on the specific facts of the case.

#### **3.4.5.3.2 Risk management standards**

HKMA applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. HKMA has an internal investment policy, a procedures manual as well as other relevant guidelines and documents as cornerstone for their investment management of the Exchange Fund. They cover all transactions for the disposal of financial instruments carried out by the staff acting for the sole purposes, in the name and on behalf of the HKMA.

The investment risk framework comprises three lines of defence. First, frontline staff is responsible for ensuring that all investment activities follow the investment restrictions and limits. Secondly, the Risk Management and Compliance Division monitors these transactions based on investment policy and guidelines, pre-agreed risk management standards and the operational rulebook. Third, the Internal Audit Division reviews overall adherence with the relevant policies and procedures.

As to the governance of the institution, the HKMA does not have a board *per se*, but the Exchange Fund Advisory Committee (EFAC) carries out many of the functions of a management board for the HKMA. The EFAC was established under the Exchange Fund Ordinance for the purpose of advising the Financial Secretary (FS) on matters related to the control of the Exchange Fund. The FS is the *ex officio* Chairman of EFAC. Other

members are experts and professionals in their community, and are appointed by the FS under the delegated authority of the Chief Executive of the Hong Kong SAR.

### **3.4.5.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Members are bound by a duty of professional secrecy over information acquired in the course of their work.

With regard to HKMA staff, in addition to the employment contract, the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong) governs the protection of official information of the government and contains provisions to control the unauthorised obtaining or disclosure of such official information.

Further, the HKMA is a banking regulator. Section 120 of the Banking Ordinance (BO) (Chapter 155 of the Laws of Hong Kong) imposes a duty of confidentiality in relation to the matters referred to in section 120(1) of the BO. Apart from the BO, other legislation such as the Monetary Statistics Ordinance (Chapter 356 of the Laws of Hong Kong), the Clearing and Settlement Systems Ordinance (Chapter 584 of the Laws of Hong Kong) and the Deposit Protection Scheme Ordinance (Chapter 581 of the Laws of Hong Kong) also contain secrecy provisions which apply to the HKMA. Where the information concerns a living individual, the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong) becomes of relevance, too.

With regard to the Exchange Fund Advisory Committee (EFAC), members of EFAC are required to observe relevant provisions on confidentiality and public comments under the Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees. In particular, Articles 3, 4 and 5 thereof provide that:

- (i) “[p]apers and proceedings of EFAC and its Sub-Committee are confidential. The papers, minutes and other documents connected with EFAC and its Sub-Committees are for the private information of Members. Members are required to make arrangements for keeping them safe and should not show or divulge their contents to any other person or organization” (Article 3);
- (ii) “[m]embers must not use confidential information given to them in connection with their membership of EFAC or of its Sub-Committees for the purpose of carrying out financial transactions, whether directly or indirectly, and whether on their own private account or on the account of any person, company or other organisation with which they have a connection” (Article 4); and
- (iii) “[i]n making comments in public (whether orally or in writing) on the work of EFAC and its Sub-Committees, Members should avoid a) disclosing or commenting on confidential information, including the contents of papers connected with meetings and the substance of discussions at meetings, b) make it clear, as appropriate, whether they are conveying the general views of EFAC or their own personal views; and c) avoid making comments that might undermine or bring into question the reputation of EFAC or of any of its Members” (Article 5).

EFAC members are also subject to any applicable law on confidential/inside information, such as the SFO and the common law offence of misconduct in public office.

#### **Rules of conduct on the use of inside information**

HKMA staff members are prohibited from using any such information made available to them in the course of their duties in return for monetary rewards or personal interest, and from disclosing such information which is not in the interest of the public or the

HKMA. Disclosing proprietary information without authority may constitute a criminal offence and/or give rise to an internal disciplinary case.

#### **3.4.5.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Since the HKMA is the regulator of the Hong Kong banking industry, staff working for the Banking Departments and designated staff having access to banking data are prohibited from buying shares or warrants of Authorised Institutions as defined in the Banking Ordinance, i.e. a bank, a restricted licence bank or a deposit-taking company. There are also restrictions for other staff. Paragraph 23 of the HKMA's Code of Conduct sets out the Rules on Restrictions on Investments by the HKMA staff and the declaration requirements.

There is no express provision under the Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees to this effect, but EFAC members are required to declare the relevant interests.

##### **Rules of conduct on record-keeping**

The declaration requirements applicable to HKMA staff are specified in the Rules on Restrictions on Investments by HKMA staff (paragraph 23 of the HKMA's Code of Conduct).

All declarations specified in the Rules on Restrictions on Investments by HKMA staff should be made within seven calendar days of the transactions. There is also an annual declaration requirement for staff of certain ranks.

#### **3.4.5.3.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

HKMA staff members must devote their time and attention during working hours to the discharge of their duties. Staff should not take up any outside work which is liable to affect the performance of, or give rise to a conflict of interest with, their official duties. Staff members are required to seek approval from relevant approving authority before taking up any paid outside work during or outside working hours, or unpaid outside work during working hours.

There is no express provision in relation to EFAC members' activities, remunerated or non-remunerated. But members are required to declare relevant activities/interests pursuant to the Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees.

All HKMA staff members are subject to the provisions of the Prevention of Bribery Ordinance (PBO) (Chapter 201 of the Laws of Hong Kong) and HKMA's Rules on Restrictions on Investments. Under Section 3 of the PBO, it is an offence for staff to solicit or accept any advantage not in accordance with the general or special permission under the Acceptance of Advantages (Chief Executive's Permission) Notice.

##### **Rules of conduct on conflicts of interest**

A conflict of interest may arise when the private interests of a HKMA staff member compete or conflict with the interests of the HKMA and the public. "Private interests" include the financial and other interests of the staff member and those of the following: family and other relations, personal friends, the clubs and societies to which he or she belongs, and any person to whom he or she owes a favour or is obligated in any way.



It is the responsibility of every staff member to be alert to and avoid engaging in situations that may lead to an actual or perceived conflict of interest. The staff member should report to his or her supervisor any conflict and either withdraw from dealing with the matter in any way or follow the directions of the supervisor. It is normally adequate for the supervisor to relieve the staff member concerned from performing or getting involved in performing the work which may give rise to a conflict of interest. Any such reports and action taken should be properly recorded and filed by the supervisor.

EFAC members are required under the Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees to declare personal or pecuniary interests under a two-tier system, as described in Articles 6<sup>571</sup> and 7.<sup>572</sup>

In Annex B of the Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees, the following guidance is given in order to assist the Members in identifying potential conflicts of interest: *"Pecuniary interests in a matter under consideration by the Committee, held either by the Member or by any close relative of his, should be declared; A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the Committee, should be declared; Similarly, some friendships might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a Member's advice to have been influenced by the closeness of the association; A Member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the Committee, should make a declaration; And any interest likely to lead an objective observer to believe that the Member's advice might have been motivated by personal interest rather than a duty to give impartial advice, should be declared"*.

### **3.4.5.3.6 Application of rules of conduct**

#### **Ethics officer**

With regard to HKMA staff, the Code of Conduct is part of the terms and conditions of the appointment letters between the HKMA staff and the HKMA. The Code of Conduct has been endorsed by the Independent Commission against Corruption (ICAC), which is the statutory entity in Hong Kong committed to fighting corruption through effective law enforcement, education and prevention.

---

<sup>571</sup> According to Article 6, "A. Register of Members' Interests: (1) The Chairman and Members should register in writing their personal interests, direct or indirect, pecuniary or otherwise, when they first join the Committee or Sub-Committee, and annually thereafter, to the Secretary. The types of interests required for registration shall include: (i) proprietorships, partnerships or directorships of companies; (ii) remunerated employments, offices, trades, professions or vocations; and (iii) shareholdings in a publicly listed or private company of more than 1% of the company's issued share capital; and/or (iv) other declarable interests, taking into consideration the nature of work of the Committee or Sub-Committee. A register of Members' interests shall be kept by the Secretary which should be made available for inspection on request by any member of the public. B. Declaration of Interests at Meetings. If a Member (including the Chairman) has any direct personal or pecuniary interest in any matter under consideration by the Committee or Sub-Committee, he or she must, as soon as practicable after he or she has become aware of it, disclose to the Chairman (or the Committee or Sub-Committee) prior to the discussion of the item. The Chairman (or Committee or Sub-Committee) will decide whether a Member disclosing an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting. When a known direct pecuniary interest exists, the Secretary may, having consulted the Monetary Authority, withhold circulation of relevant papers to the Member concerned. If a member is in receipt of a paper for discussion which he or she knows presents a direct conflict of interest, he or she is required to immediately inform the Secretary and return the paper".

<sup>572</sup> Article 7 provides that all cases of declaration of interests must be noted in the minutes of the meeting.

With regard to EFAC, the Code of Conduct for Members of the Exchange Fund Advisory Committee and its Sub-Committees has been endorsed by the EFAC and approved by the Financial Secretary. The code is adapted from the Sample Code of Conduct for Members of Public Bodies promulgated by the Independent Commission against Corruption, which is widely applicable to public bodies.

A breach of the Code of Conduct is liable to internal disciplinary actions as defined in the Rules on Appointment and Discipline annexed to each offer letter. HKMA management and Human Resources personnel would be involved in the process.

All staff members are required to be alert and vigilant with respect to bribery, other crime or illegal activities committed within the office. Attempting to bribe a public officer is a criminal offence under the Prevention of Bribery Ordinance. If any such activity comes to the attention of a staff member, he is obliged to report to their supervisors immediately or to the Independent Commission against Corruption (ICAC) without taking action that may hinder or frustrate action by the ICAC. All such reports should be treated promptly and in the strictest confidence. Staff members are also encouraged to carry out their civic duties and to report all instances of crime or alleged crime which they may come across in their private capacity.

There are trainings for staff on Prevention of Bribery Ordinance and the HKMA's Code of Conduct, although no testing of knowledge thereof is administered. The training is done annually for new recruits. The Independent Commission against Corruption (ICAC), which is the statutory entity in Hong Kong committed to fighting corruption is invited to give lectures on the Prevention of Bribery Ordinance. HKMA Human Resources personnel give briefings on the Code of Conduct. ICAC also is invited to give additional briefings to banking and investment staff where necessary.

An annual reminder on the need to comply with the Code of Conduct is arranged. *Ad hoc* reminders are also sent on special occasions.

#### **Disciplinary actions and enforcement**

Where appropriate, a Disciplinary Board comprising Human Resources personnel and other members as appointed by the HKMA's Chief Executive will consider the related issues and make recommendations on the disciplinary action to be imposed.

Disciplinary actions include termination of employment.

#### **3.4.5.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the HKMA. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions as well as disgorgement by judicial order, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. The combination of multiple administrative sanctions and severe enough criminal offences is effective in exerting deterrence. Staff members of the national CB are subject to all relevant rules and penalties.

- Notwithstanding the lack of a formal exemption, since the national CB belongs to the executive branch, it is *de facto* exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. To the contrary, no exemption is provided for third-country CBs, although depending on the circumstances, third-country CBs may benefit from state or sovereign immunity.
- The CB applies risk management standards and observes an internal investment policy and procedures manuals when it undertakes its operations. Although the contents of such management standards have not been described in detail, their mode of application has been sufficiently disclosed.
- Staff members are subject to a duty of professional secrecy, which is enforced under several legal provisions, including criminal ones, and the applicable internal code of conduct. Staff members are prohibited from using inside information in their own private interest.
- Rules exist that explicitly prevent staff members from investing in financial instruments issued by regulated entities, such as banks. An annual declaration of own investments may occasionally be required of staff members and also is annually required of staff members of higher ranks.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by the requirement of prior approval before taking up remunerated outside work and accept improper benefits (such as gifts) from third parties (the acceptance of which might amount to bribery or corruption). Staff members are made aware of the obligation to disclose conflicts of interest, the existence of which may lead to their disqualification from performing the work concerned.
- The management and human resources department presides over the application of the internal code of conduct, which is endorsed by outside regulatory authorities. Staff members are made aware of the existence and applicability of an internal code of conduct upon recruitment and are periodically reminded of the need to comply with it, although no examination is held to check staff's knowledge of the code.
- Depending on the severity of the misconduct, disciplinary actions may be up to and include termination of employment.

### **3.4.5.4 Debt management office framework (Financial Services and the Treasury Bureau of Hong Kong)**

#### **3.4.5.4.1 Exemption from market abuse rules**

There is no explicit exemption in the SFO for the national DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. However, since the DMO is part of the Government of the Hong Kong Special Administrative Region, the DMO is not bound by the provisions contained in the SFO.

Nor is there an explicit exemption for third-country DMOs. Whether a third-country DMO is entitled to claim state or sovereign immunity may depend on the specific facts of the case.

#### **3.4.5.4.2 Risk management standards**

Information about the application of risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is not publicly available, nor has it been provided via questionnaire.

#### **3.4.5.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Civil servants must refrain from making unauthorised disclosure of any information that they have received in the context of their work (Article 3.4, *Civil Service Code*).<sup>573</sup>

##### **Rules of conduct on the use of inside information**

Civil servants must use information gained by virtue of their official position for authorised purposes only. They are prohibited from disclosing documents, information or knowledge received in confidence from others in the course of their duties or by virtue of their official position (Article 3.4, *Civil Service Code*).

#### **3.4.5.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

The Declaration on Investments, *Conduct and Discipline*, Civil Service Bureau of the Government of Hong Kong,<sup>574</sup> governs the extent to which all civil servants, including members of the DMO, are entitled to undertake investments. It reads: “Every civil servant is required at all times to avoid having private investments which may cause real or apparent conflict of interest with his official duties. For civil servants who are filling certain designated posts notably those at the upper echelons of the service with access to market sensitive information, they are in addition required to declare, on a regular basis, their private investments in and outside Hong Kong. In particular, a civil servant: a. should not invest or become involved in the business venture of any person with whom he has official dealings; b. should not use information which is obtained in his official capacity to benefit himself, his family or friends financially; and c. should declare and seek guidance from management if he is asked to work in a post or area where a conflict of interest situation could arise between his private investments and his official duties”.

##### **Rules of conduct on record-keeping**

No specific information in this regard is publicly available, nor has such information been provided via questionnaire.

#### **3.4.5.4.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

Civil servants are prohibited from using their official position to further their private interests. Nor may they put themselves in a position where their private interests conflict (or may reasonably be suspected to conflict) with their official duties. They must also avoid activities or behaviour which may bring into question the impartiality of the civil service or bring the service into disrepute (General Principles, *Conduct and Discipline*, Civil Service Bureau of the Government of Hong Kong).

Under no circumstances is a civil servant allowed to:

- (i) use his official position to benefit himself, his family, relatives or friends or any person to whom he owes a favour or is obligated in any way; or

<sup>573</sup> More information available at: [www.csb.gov.hk/english/admin/conduct/files/CSCode\\_e.pdf](http://www.csb.gov.hk/english/admin/conduct/files/CSCode_e.pdf).

<sup>574</sup> More information available at: [www.csb.gov.hk/english/admin/conduct/134.html](http://www.csb.gov.hk/english/admin/conduct/134.html).

- (ii) put himself in a position that may reasonably arouse suspicion of dishonesty, or of using his official position to benefit himself or his family, relatives or friends.

There are guidelines (*Summary of the Regulatory Regime on Acceptance of Advantages and Entertainment by Civil Servants*) which require all civil servants to be vigilant at all times against any real or apparent conflict of interest situation and report to their superior immediately as and when any such situation comes to light.

The Prevention of Bribery Ordinance (POBO)<sup>575</sup> prohibits bribery in the Civil Service. It is an offence under the POBO if:

- (i) a civil servant accepts an advantage<sup>576</sup> without permission;
- (ii) he/she solicits or accepts an advantage with abuse of office; or
- (iii) he/she maintains a standard of living beyond his/her means.

Guidelines (*Summary of the Regulatory Regime on Acceptance of Advantages and Entertainment by Civil Servants*)<sup>577</sup> have been put in place to govern acceptance of advantages and entertainment by civil servants.

### **Rules of conduct on conflicts of interest**

The Civil Service Code complements what has been described in the previous paragraph by providing that *"Civil servants shall ensure that no actual, perceived or potential conflict of interest shall arise between their official duties and private interests. Where an actual, perceived or potential conflict of interest arises, they shall declare it to their supervisors so that the latter can determine how best to proceed or escalate the matter for a determination as necessary. They shall not use their official position to further personal interests or the private interests of others. They shall not solicit or accept, directly or indirectly, any advantage or gift which would, or might reasonably be seen to, compromise their integrity or judgment or influence the discharge or non-discharge of their duties and responsibilities. They shall not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties"* (Article 3.4, Civil Service Code).

To avoid any real or apparent conflict of interest, a civil servant is also required to seek prior permission from the government for any intended paid work or for entering into business during the first two years of retirement if the business or employment is carried on in Hong Kong (Outside work, *Conduct and Discipline*, Civil Service Bureau of the Government of Hong Kong).

### **3.4.5.4.6 Application of rules of conduct**

#### **Ethics officer**

It is the Secretary for the Civil Service that is in charge of safeguarding against violations of the law or other rules of conduct by civil servants. In particular, the Secretary for the Civil Service is entrusted with safeguarding *"the core values and define the standards of conduct of the Civil Service. In the performance of this role, the Secretary may issue regulations, rules and guidelines governing, among other subjects, avoidance of conflict of interest by civil servants, acceptance of advantages and entertainment, declaration of private investments, participation in political party or group activities, use of information obtained in a civil servant's official capacity, and outside*

---

<sup>575</sup> More information available at:

[www.legislation.gov.hk/blis\\_ind.nsf/WebView?OpenAgent&vwpg=CurAllEngDoc\\*201\\*0\\*201.1#201.1](http://www.legislation.gov.hk/blis_ind.nsf/WebView?OpenAgent&vwpg=CurAllEngDoc*201*0*201.1#201.1).

<sup>576</sup> "Advantage" is defined in Section 2(1) of the POBO as anything which is of value, except entertainment, which is covered separately. Common examples of advantage include any gift (both of money and in kind), loan, fee, reward, commission, office, employment and contract, etc.

<sup>577</sup> More information available at: [www.csb.gov.hk/english/admin/conduct/files/aae\\_e.pdf](http://www.csb.gov.hk/english/admin/conduct/files/aae_e.pdf).

*work during service and for a specified period after leaving service. The Secretary may also revise existing regulations, rules and guidelines from time to time in the light of changing circumstances and needs” (Article 4.1, Civil Service Code).*

### **Disciplinary actions and enforcement**

All civil service recruits, on appointment, are briefed on corruption prevention and other good management practices to avoid conflict of interest situations. The administration issues from time to time reference materials to assist senior managers in strengthening ethical values among their staff and in guarding against corruption in their organisations. As an integral part of the regular induction and refresher courses, the Civil Service Training and Development Institute and departments provide training programmes for new recruits and staff at all levels to promote the core values of the Civil Service (*Education, Conduct and Discipline*, Civil Service Bureau of the Government of Hong Kong).

For minor and isolated cases of misconduct, such as lateness for duty, informal disciplinary action involving the issue of verbal or written warning may be taken. Formal disciplinary action is taken for serious misconduct or repeated minor misconduct. Depending on the gravity of the misconduct or criminal conviction, punishment under formal disciplinary action may include reprimand, severe reprimand, financial penalty, demotion, compulsory retirement or dismissal (*Sanctions, Conduct and Discipline*, Civil Service Bureau of the Government of Hong Kong).

### **3.4.5.4.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Financial Bureau. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions as well as disgorgement by judicial order, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. The array of multiple administrative sanctions and severe enough criminal offences are effective in exerting deterrence. Staff members of the national DMO are subject to all relevant rules and penalties.
- Notwithstanding the lack of a formal exemption, since the DMO is part of the government, it is *de facto* exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. To the contrary, no exemption is provided for third-country DMOs, although depending on the circumstances, third-country DMOs may benefit from state or sovereign immunity.
- Information about application and contents of risk management standards is not publicly available, nor has it been disclosed.
- Staff members are subject to a duty of professional secrecy and are prohibited from using inside information in their own private interest.
- Staff members must not engage in private investments which may cause real or apparent conflicts of interest with their official duties. Those staff members that have access to market-sensitive information are also required to declare on an annual basis their investments in and outside Hong Kong.

- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by the requirement to abstain from soliciting or accepting any undue advantage that might compromise their integrity. Staff members are made aware of the obligation to disclose conflicts of interest to their supervisors, who will take any action they may deem appropriate.
- The Secretary for the Civil Service oversees the application of the staff rules of conduct and is entitled to issue further regulations, rules and guidelines, as well as revise them in light of changing circumstances, governing avoidance of conflicts of interests, acceptance of advantages, declaration of private investments and use of information obtained in a civil servant's official capacity as well as conditions for exercising outside work. Staff members are briefed on corruption prevention, good practices to avoid conflicts of interests and are made aware of the existence and applicability of the applicable rules and are involved in periodic training programmes aimed at promoting the core values of the civil service.
- Depending on the severity of the misconduct, disciplinary actions may vary from verbal or written warning to compulsory retirement or dismissal.

### **3.4.6 India**

#### **3.4.6.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework is based on the Securities and Exchange Board of India Act (SEBIA) of 1992 and the regulations thereunder issued by Securities and Exchange Board of India.

Section 12A(d) SEBIA provides that no person shall directly or indirectly engage in insider dealing, while Section 12A(e) SEBIA states that no person shall directly or indirectly deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder.

##### **3.4.6.1.1 Administrative offences and sanctions**

Section 15G establishes the administrative sanctions for insider dealing and unlawful disclosure of inside information by providing that any insider who *"(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or (iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."*

##### **3.4.6.1.2 Criminal offences and penalties**

Insider dealing and unlawful disclosure of inside information are also punished as criminal offences in Section 24, which provides that: *"without prejudice to any award of penalty by the adjudicating officer under SEBIA, if any person contravenes or attempts to contravene or abets the contravention of the provisions of SEBIA or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which*

*may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both".*

Insider dealing and unlawful disclosure of inside information are also addressed under Section 3 of the Securities and Exchange Board of India Regulations (SEBIR) of 1992, according to which *no insider*<sup>578</sup> *shall "(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or (ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities"*.<sup>579</sup>

As to the applicable sanctions for breach of Section 3 above, Section 11 provides that, *"[T]he Board may without prejudice to its right to initiate criminal prosecution under section 24 or any action under Chapter VIA of SEBIA, to protect the interests of investor and in the interests of the securities market and for due compliance with the provisions of the Act, regulation made thereunder issue any or all of the following order, namely: (a) directing the insider or such person as mentioned in clause (i) of sub-section (2) of Section 11 of SEBIA not to deal in securities in any particular manner; (b) prohibiting the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of SEBIA from disposing of any of the securities acquired in violation of these regulations; (c) restraining the insider to communicate or counsel any person to deal in securities; (d) declaring the transaction(s) in securities as null and void; (e) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller: Provided that in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such directions or at the time of transactions whichever is higher, shall be paid to the seller; (f) directing the person who has dealt in securities in violation of these regulations to transfer an amount or proceeds equivalent to the cost price or market price of securities, whichever is higher to the investor protection fund of a recognised stock exchange"*.

Staff members of the central bank fall within the scope of application of this regulatory framework.

### **3.4.6.2 Market manipulation rules**

The regulatory framework on market manipulation is based on the SEBIA of 1992 and the regulations thereunder issued by Securities and Exchange Board of India.

Trade-based and action-based market manipulations are prohibited by Section 12A SEBIA, according to which *"no person shall directly or indirectly (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder; (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a*

---

<sup>578</sup> "Insider" means "any person who (i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or (ii) has received or has had access to such unpublished price sensitive information" (Section 2(e)).

<sup>579</sup> "Price sensitive information" means "any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. The following shall be deemed to be price sensitive information: (i) periodical financial results of the company; (ii) intended declaration of dividends (both interim and final); (iii) issue of securities or buy-back of securities; (iv) any major expansion plans or execution of new projects. (v) Amalgamation, mergers or takeovers; (vi) disposal of the whole or substantial part of the undertaking; (vii) and significant changes in policies, plans or operations of the company" (Section 2(ha)).



*recognised stock exchange; (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of the Act or the rules or the regulations made thereunder."*

Further, Section 3 the Securities and Exchange Board of India Regulations (SEBIR) of 2003 on Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market provides that *"no person shall directly or indirectly (a) buy, sell or otherwise deal in securities in a fraudulent manner; (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under; (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange; (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under"*.

As a supplement to this latest provision, Section 4(1) prohibits any fraudulent or an unfair trade practice in securities, including any of the following:

- (i) indulging in an act which creates false or misleading appearance of trading in the securities market;*
- (ii) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
- (iii) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;*
- (iv) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;*
- (v) any act or omission amounting to manipulation of the price of a security;*
- (vi) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
- (vii) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*
- (viii) selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialised form;*
- (ix) an intermediary promising a certain price in respect of buying or selling of a security to a client and waiting till a discrepancy arises in the price of such security and retaining the difference in prices as profit for himself;*
- (x) an intermediary providing his clients with such information relating to a security as cannot be verified by the clients before their dealing in such security;*
- (xi) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
- (xii) an intermediary reporting trading transactions to his clients entered into on their behalf in an inflated manner in order to increase his commission and brokerage;*
- (xiii) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;*
- (xiv) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;*

- (xv) *encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission;*
- (xvi) *an intermediary predating or otherwise falsifying records such as contract notes;*
- (xvii) *an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract;*
- (xviii) *planting false or misleading news which may induce sale or purchase of securities (Section 4(2)).*

As a result Sections 4(1) and 4(2) SEBIR also cover instances of information-based market manipulations (see points (vi), (xi), and (xviii) above).

### **Administrative offences and sanctions**

Administrative sanctions are provided for in Article 15HA, which states: “[I]f any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher”.

### **Criminal offences and penalties**

Trade-based and action-based market manipulations are also made criminal offences and punished accordingly under Section 24, which provides that “(1) Without prejudice to any award of penalty by the adjudicating officer under SEBIA, if any person contravenes or attempts to contravene or abets the contravention of the provisions of SEBIA or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both”.

Staff members of the central bank fall within the scope of application of these rules.

### **3.4.6.3 Central bank and debt management office framework (Reserve Bank of India)**

Besides exercising the functions of a central bank, the Reserve Bank of India (RBI) also acts as a debt management office through its internal debt management department. As a consequence, the framework under which the central bank operates also applies to its debt management office and a single assessment will be done. Any reference to the CB and its staff members in the following paragraphs shall also mean reference to the DMO and its staff members.

#### **3.4.6.3.1 Exemption from market abuse rules**

An exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the benefit of the national CB with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies.

RBI operates under the Reserve Bank of India (Staff) Regulations of 1948, which are based on the Reserve Bank of India Act of 1934. All RBI staff members are also subject to a code of ethics. All front office dealers/portfolio managers involved in reserve management have to comply with the specific provisions laid down in the code.

RBI is the monetary policy authority of the country and a regulatory body. All its operations in India are policy related and not subject to any of the rules on market abuse, either under the Companies Act 2013, or under the insider dealing and market

manipulation regulations issued by the national market regulator, the Securities and Exchange Board of India.

To the contrary, third-country CBs and DMOs are not formally exempt. There is no third-country DMO that has ever undertaken transactions in India, while only a few third-country CBs operate in Indian financial markets and do so largely in government bond markets. Given the limited scope of such operations, the issue of an exemption for their benefit has not yet been considered. Nor does any request in this regard appear to have been submitted to local authorities.

#### **3.4.6.3.2 Risk management standards**

The CB applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

All front office operations related to reserve management are governed by a front office manual, which lays down detailed processes and guidelines for undertaking transactions. In addition, internal systems and processes for all market operations are well documented and their compliance ensured in line with international best practices.

All reserve management transactions are subject to clearly articulated risk management standards, adherence to which is monitored on a real time basis. A system based on concurrent audit and internal inspections and audits is in place.

Disciplinary action could be taken for violation of internal rules under the staff regulations.

#### **3.4.6.3.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

In addition to the internal code of ethics, the staff members' conduct is supervised and monitored by the Central Vigilance Commission, and it is statutorily regulated under the recently enacted anti-corruption legislation, i.e. the Lokpal and Lokayuktas Act of 2013.

RBI (Staff) Regulations of 1948 specifically provide for the obligation to maintain secrecy.

Confidential information may be disclosed under judicial or statutory or other authority, e.g. the Right to Information Act, response to parliamentary questions, etc., subject to client confidentiality obligations, or under official instruction (as per RBI Staff Regulations).

##### **Rules of conduct on the use of inside information**

Use of inside information for own/family interest is prohibited (as per RBI Staff Regulations).

RBI (Staff) Regulations forbid contributions to the press without prior approval. This provision, along with provisions relating to maintenance of secrecy in the Regulations and the code of ethics, governs the interaction with outside persons as well as other persons within the institution.

#### **3.4.6.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

RBI Staff Regulations of 1948 lay down restrictions on investments. Speculative trading in securities is not allowed. In addition, staff members must take permission/inform the bank on transactions in financial markets above certain thresholds, although more detailed information about what thresholds apply has not been provided via questionnaire.

##### **Rules of conduct on record-keeping**

RBI staff members are required to report details of assets and liabilities of self and family members on a semi-annual basis under the Lokpal and Lokayuktas Act. All relevant records are required to be produced on demand.

#### **3.4.6.3.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

RBI Staff Regulations oblige employees to carry out their responsibilities honestly and faithfully and promote the statutory objectives of the bank.

Employees of RBI are not permitted to accept, solicit or seek outside employment or undertake part-time work for outside bodies, without prior approval of the competent authority (as per RBI Staff Regulations). However, there is no predetermined list of prohibited activities.

Acceptance of gifts is not permitted.

##### **Rules of conduct on conflicts of interest**

There is no specific internal policy aimed at tackling issues of conflicts of interest that might involve staff members beside the general duty to carry out their responsibilities honestly and faithfully.

#### **3.4.6.3.6 Application of rules of conduct**

##### **Ethics officer**

There is no specific position such as an ethics officer or a centralised, internal unit dedicated to the application of the internal rules of conduct. The line officers are in charge of overseeing transactions and behaviours of the staff. However, the Central Vigilance Officer is a senior executive of the bank entrusted with the functions of monitoring the implementation of the guidelines of the Central Vigilance Commissioner. The line officers receive and prepare operational reports, while the Central Vigilance Officer checks them. In addition to monitoring and reporting fraudulent transactions, it also carries out periodic audits.

All modifications to staff regulations, ethics, or conduct rules are circulated amongst staff. These regulations are also accessible on the intranet. Important changes are put in newsletters. Training of members on contents and application of internal rules takes place on recruitment.

##### **Disciplinary actions and enforcement**

All breaches of internal rules are documented for information and action of the competent authority.

There is an incident reporting template for all the incidents and violations, which are to be reported immediately. Initially, a breach qualifies as an administrative offence, but based on its severity and motive (if any), it could also qualify as a tort or a criminal offence.

Although incentives for reporting breaches are not provided for explicitly, members may be rewarded.

The disciplinary actions provided under RBI (Staff) Regulations could range from reprimand to suspension, compensatory damages or dismissal. Where considered appropriate, criminal proceedings are initiated.

Lastly, the RBI Pension Regulations of 1990 provide for recovery from pension payments to retired employees in cases of pecuniary loss caused to the institution.

#### **3.4.6.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the RBI. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. Both pecuniary penalties and penalties consisting of imprisonment are severe enough to exert deterrence and punish misconduct. Staff members of the national CB are subject to all relevant rules and penalties.
- Like in the EU, the national CB is exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. To the contrary, no exemption is provided for third-country CBs and DMOs.
- The CB applies risk management standards in undertaking its operations and their mode of application has been sufficiently disclosed.
- Staff members are subject to a duty of professional secrecy under several legal provisions, among which are anti-corruption rules and the applicable internal rules of conduct.
- Rules exist that explicitly prevent staff members from speculative trading in financial instruments. Staff members are also required to ask for permission before entering into transactions in financial markets above certain thresholds. Additionally, staff members must keep records and report their investments on a semi-annual basis and on demand.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out conflicting remunerated and non-remunerated activities unless prior approval has been obtained, and to a ban on accepting gifts from third parties. However, there is no specific internal policy aimed at addressing issues of conflict of interest that might affect staff members besides the general obligation to act honestly and faithfully in the exclusive interest of the CB.
- There is no centralised unit in charge of the application of the rules of conduct. The oversight function falls to each line manager. However, a senior executive officer of the bank, in his/her capacity as Central Vigilance Officer, is entrusted with monitoring and reporting misconduct to an outside Central Vigilance

Commissioner based on periodic audits and reports from line managers. Staff members may be awarded for reporting breaches.

- Depending on the severity of the misconduct, disciplinary actions can result in termination of employment. Furthermore, competent authorities are notified of the act that might constitute a criminal or administrative offence.

### **3.4.7 Japan**

#### **3.4.7.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is based on the Financial Instruments and Exchange Act (Act No. 25 of 1948).

Insider dealing by corporate insiders<sup>580</sup> is prohibited under Article 166(1), according to which a corporate insider who is aware of a material fact pertaining to the business or other matters of a listed company may not deal in its securities until the material fact has been disclosed to the public. Additionally, Article 166(2) prohibits dealings in securities by any person who has come to know of the material fact by a corporate insider or in the exercise of his/her duties. The administrative offences and sanctions are detailed in Article 175, which provides for administrative monetary sanctions equal to the benefit obtained by the insider in selling or purchasing the securities. In case of sale of securities, the insider must disgorge to the national treasury the difference between the sale price and the market value of the shares after the material fact has been disclosed; in case of purchase of securities, the insider must disgorge to the national treasury the difference between the market value of the share after the material fact has been disclosed and the purchase price.

Additionally, criminal offences and penalties are laid down in Article 197-2, according to which violation of the provisions of Article 166(1) or (3) is punished by imprisonment with work for not more than five years or by a fine of not more than ¥5 million, or both.

These rules also apply to staff members of the central bank and debt management office.

#### **3.4.7.2 Market manipulation rules**

The regulatory framework on market manipulation is based on the Financial Instruments and Exchange Act (Act No. 25 of 1948).

Article 159 prohibits trade-based and action-based market manipulations in the form of false trades,<sup>581</sup> wash sales,<sup>582</sup> improper matched orders,<sup>583</sup> increasing bids for a security or derivative in order to increase the price, as well as information-based market manipulation, i.e. the spreading of rumours or of false or misleading information about a security with the effect of causing its price to change. The administrative sanctions are detailed in Article 173, according to which the perpetrator of such violations must disgorge to the national treasury any illicit profit thereby obtained. At the same time,

---

<sup>580</sup> "Corporate insider" means any director, manager, company employee, qualified shareholder, anyone undertaking contract negotiations with the company and any member of a supervisory authority.

<sup>581</sup> Which are those "in a series of transactions that are reported on a public display facility to give the impression of activity or price movement in a security" (see IOSCO, *Investigating and Prosecuting Market Manipulation*, May 2000, page 5).

<sup>582</sup> Which consist of "[i]mproper transactions in which there is no genuine change in actual ownership of the security or derivative contract" (see *Ibid.*).

<sup>583</sup> Which consist of "[t]ransactions where both buy and sell orders are entered at the same time, with the same price and quantity by different but colluding parties (see *Ibid.*).

Article 197 makes such acts criminal offences punished by imprisonment with work for not more than 10 years or by a fine of not more than ¥10 million, or both. If the market price of a security has fluctuated, or has been pegged, fixed or stabilised, the fine may reach ¥30 million.

These rules also apply to staff members of the central bank and the debt management office.

### **3.4.7.3 Central bank framework (Bank of Japan)**

#### **3.4.7.3.1 Exemption from market abuse rules**

No exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the CB and for third-country CBs applies with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

#### **3.4.7.3.2 Risk management standards**

No information about the application of risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, is publicly available, nor has it been provided via questionnaire.

#### **3.4.7.3.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

The Bank of Japan (BoJ) operates under the "Rules for the Performance of Duties", the "Rules for the Bank of Japan Personnel", "Special Rules Pertaining to Financial Transactions by the Officers" and "Special Rules Pertaining to Financial Transactions by Employees".

Article 29 of Bank of Japan Act<sup>584</sup> stipulates that the BOJ's officers and employees shall not leak or misappropriate secrets which they have learned in the course of their duties and that the same shall apply even after they have left the bank. The Rules for the Performance of Duties also stipulate confidentiality obligations for officers and employees.

Additionally, according to Article 100 of the National Public Service Act,<sup>585</sup> *"An official shall not divulge any secret which may have come to his/her knowledge in the course of his/her duties. This shall also be applied after he/she has left his/her position. In order for an official to make a statement concerning any secret in the course of his/her duties as a witness, an expert witness or in other capacities provided for by laws and regulations, he/she shall require the permission of the head of the government agency employing him/her (or in the case of a person who has left government position, the head of the government agency having jurisdiction over the government position he/she held at the time of his/her leaving of government position or any government position equivalent thereto). The permission set forth in the preceding paragraph shall not be refused, except in cases pertaining to the conditions and procedures provided for by law or by Cabinet Orders. The provisions of the preceding three paragraphs shall not apply where information is requested by the National Personnel Authority during an investigation or hearing conducted by the National Personnel Authority"*.

---

<sup>584</sup> More information available at: [www.boj.or.jp/en/about/boj\\_law/index.htm/](http://www.boj.or.jp/en/about/boj_law/index.htm/).

<sup>585</sup> More information available at: [ssl.jinji.go.jp/en/recomme/rl\\_npsa.pdf](http://ssl.jinji.go.jp/en/recomme/rl_npsa.pdf).

### **Rules of conduct on the use of inside information**

Employees are prohibited from making use of inside information for private/personal purposes.

#### **3.4.7.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Staff members are subject to restrictions in dealing in and holding financial instruments. However, no further information in this regard has been provided, nor is publicly available.

##### **Rules of conduct on record-keeping**

Employees must keep record of holdings of, and transactions in, financial instruments. The Special Rules Pertaining to Financial Transactions by the Officers and Special Rules Pertaining to Financial Transactions by Employees stipulate the circumstances under which officers or employees are required to report their financial transactions to the BoJ.

High ranking officials, including the deputy director general, must submit an annual report on share dealings and the acquisition or transfer of share certificates<sup>586</sup> executed in the previous year describing the type, names, numbers, and amounts of consideration pertaining to the share dealings, and the dates of the share dealings, to the heads of each ministry and agency, or to a person who is delegated by them, from 1 to 31 March. A copy of the report on such share dealings is then sent to the National Public Service Ethics Board (Article 7, *National Public Service Ethics Act*).<sup>587</sup>

#### **3.4.7.3.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

Employees are bound by a general duty of independence, impartiality and integrity while performing their tasks for the bank.

An officer of the Bank of Japan (excluding counsellors) may not conduct any of the following acts during his/her term of office: "(i) *Becoming a candidate for the Diet, for any local council, or for any elected public office*; (ii) *Becoming an officer of any political body including a political party or actively engaging in political activities*; (iii) *Engaging in other work that brings remuneration (excluding work that the Board finds as meeting the requirements specified by the rules on service prescribed in Article 32 as the standards of work that does not interfere with the proper execution of his/her duties as an officer)*; (iv) *Carrying out commercial business or other business for the purpose of pecuniary gain*. If an officer of the Bank of Japan becomes a candidate for the Diet, for any local council, or for any elected public office, he/she shall be deemed to have resigned as an officer of the Bank" (Article 26, *Bank of Japan Act*).

Staff members are urged to always make a proper distinction between public and private interests, and must not use their duties or positions for the advancement of private interests of their own or of an organisation to which they belong. In exercising the authority granted by laws, staff members must not conduct any acts that may bring about suspicion or distrust from the citizens such as receiving any gifts, from any person

---

<sup>586</sup> This refers to share certificates, certificates of share options or certificates of bond with share options, and in case the share certificates, certificates of share options or certificates of bond with share options are not issued, the rights to be indicated for them are referred to as if they had been issued.

<sup>587</sup> More information available at: [www.cas.go.jp/jp/seisaku/hourei/data/npsea.pdf](http://www.cas.go.jp/jp/seisaku/hourei/data/npsea.pdf).



upon whom the staff members exercise their authority (Article 3, *National Public Service Ethics Act*).

When staff members serving as assistant directors or directors of higher ranking, receive money or benefits, or an entertainment or a gift from business operators, or when they receive the payment of a reward provided for in the National Public Service Ethics Code as the reward for a personal service offered and based on a relationship between the business operators and the duties performed by the staff members,<sup>588</sup> they must submit a report on such benefits, describing the following items to the heads of each ministry and agency, or to a person who is delegated by them within 14 days from the first day of the quarter following the current quarter, with quarters being divided as January through March, April through June, July through September and October through December:

- (i) The profit received through the gifts or the value of the reward received in payment
- (ii) The date of receipt of profit by the gifts or payment of the reward and the motivation behind it
- (iii) Name and address of the business operators who made the gifts or paid the reward
- (iv) The additional elements provided for in the National Public Service Ethics Code

A copy of the report on gifts is then handed over to the National Public Service Ethics Board (Article 6, *National Public Service Ethics Act*).

Further, Article 103 of the National Public Service Act provides that *"No official shall concurrently hold the position of an officer, advisor or councillor in a [profit-making enterprise], nor shall he/she operate, on his/her own account, any profit-making enterprise. Officials shall not, for a period of two years after separation from the service, accept or assume a position with a profit-making enterprise with a close connection to any agency of the State defined by rules of the National Personnel Authority, any specified independent administrative institution or the Japan Post, with which such persons were formerly employed within five years prior to separation from the service"*.

Additionally, according to Article 102 of the National Public service Act, with respect to company or any other organisation established for the purpose of operating a commercial, industrial, financial or other for-profit private enterprise, hereinafter referred to as "profit-making enterprise", when an official is in a position in which he/she is able to participate in the management of the said enterprise because of his/her holding of shares therein or because of other relationships with it, the National Personnel Authority may call upon such an official to submit a report regarding his/her holdings of shares and other relationships, pursuant to the provision of rules of the National Personnel Authority. When the National Personnel Authority, based on the report set forth in the preceding paragraph, finds that the continuance of the employee's relationship with the enterprise, in its entirety or in part, is inappropriate with respect to the performance of his/her duties, it may order the said official to divest himself/herself of the relationships with that enterprise entirely or in part, or relinquish his/her government position within the period provided for by rules of the National Personnel Authority.

### **Rules of conduct on conflicts of interest**

The governor or the deputy governors may not represent BOJ with regard to matters for which their interests and the interest of the Bank of Japan are in conflict. In this case, the court must appoint a special agent, upon a request from an interested person or a public prosecutor (Article 22-3, *Bank of Japan Act*).

---

<sup>588</sup> Provided they were staff members when they received the gifts or the payment of the reward and that the profit received through the gifts or the value of the reward exceeds ¥5,000.

### **3.4.7.3.6 Application of rules of conduct**

#### **Ethics officer**

Application of the internal rules is managed by the Personnel and Corporate Affairs Department, with an Executive Director in charge of the department.

The National Public Service Ethics Board is established within the National Personnel Authority. According to Article 11 of the National Public Service Ethics Act, the affairs under the jurisdiction and authority of the National Public Service Ethics Board are: "(i) offering opinion to the Cabinet concerning the establishment, revision or abolition of the National Public Service Ethics Act; (ii) establishing and changing standards for disciplinary actions; (iii) conducting research and study on and planning matters concerning the maintenance of ethics pertaining the duties of officials; (iv) planning comprehensively and adjusting matters concerning training for the maintenance of ethics pertaining to the duties of officials; (v) providing guidance and advice to the heads of each ministry and agency, etc. concerning arrangement of system for observance of the National Public Service Ethics Act; (vi) examining reports of gifts, etc., reports of share dealings, etc., and reports of income, etc.; (vii) requesting the appointers to investigate acts that violate this Act or orders pursuant to this Act, requesting them to report the process of the investigation and stating its opinions thereon, approving the disciplinary actions to be taken by them, and stating its opinions on the publication of outlines of the disciplinary actions; (viii) conducting investigations; (ix) Requesting the appointers to take necessary measures for supervision to maintain ethics pertaining to the duties of officials; (x) initiating disciplinary proceedings".

#### **Disciplinary actions and enforcement**

According to Article 82 of the National Public Service Act, when a public official has violated the National Public Service Act, the National Public Service Ethics Act or orders issued pursuant to these laws, he or she may, as disciplinary action, be dismissed, suspended from duty, suffer reduction in pay or be admonished.

Article 4 of the National Public Service Ethics Act requires the government annually submit to the Diet a report on the state of the maintenance of ethics pertaining to the duties of officials and the measures taken concerning the maintenance of ethics pertaining to the duties of officials.

### **3.4.7.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the BoJ. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. Although criminal penalties are less severe compared to other jurisdictions, they seem to be dissuasive enough to exert deterrence. Staff members of the national CB are subject to all relevant rules and penalties.
- Unlike in the EU, the national CB is not formally exempt from the rules on insider dealing, unlawful disclosure of inside information or market manipulation. Likewise, no exemption is provided for third-country CBs.

- No information about the application of risk management standards by the CB in undertaking its operations is publicly available or has been disclosed.
- Staff members are subject to a duty of professional secrecy, which lasts for life. Staff members are prohibited from making use of inside information for private purposes.
- Staff members are restricted from dealing in financial instruments but no further information about the nature and extent of such restrictions has been provided via questionnaire. High ranking officials must submit an annual report on their investments in financial instruments.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions to carry out remunerated activities without exception and the obligation to disclose acceptance of benefits (such as gifts) from third parties. The handling of conflict of interest situations is limited to a prohibition on the governor and deputy governors from representing the institution in case of conflict of interest.
- A central authority, the National Public Service Ethics Board, is entrusted with advising on changes to the national ethics framework for public employees, providing guidance, advice and training on ethics issues, setting forth standards for disciplinary actions, conducting investigations and initiating disciplinary proceedings.
- Depending on the severity of the misconduct, disciplinary actions may vary from warning and pay cut to termination of employment.

#### **3.4.7.4 Debt management office framework (Ministry of Finance Japan)**

##### **3.4.7.4.1 Exemption from market abuse rules**

No information regarding exemptions for the national DMO and/or third-country DMOs from rules on insider dealing or unlawful disclosure of insider information is publicly available or has been provided via questionnaire.

##### **3.4.7.4.2 Risk management standards**

No information in respect of the application by the DMO of risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is publicly available or has been provided via questionnaire.

##### **3.4.7.4.3 Use of confidential information by staff members**

###### **Rules of conduct on professional secrecy**

Ministry of Finance (MF) staff members are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to MF and classified as confidential, and/or over inside information.

Article 100 of the National Public Service Act requires that public employees do *"not divulge any secret which may have come to his/her knowledge in the course of his/her duties. This shall also be applied after he/she has left his/her position. In order for an official to make a statement concerning any secret in the course of his/her duties as a witness, an expert witness or in other capacities provided for by laws and regulations, he/she shall require the permission of the head of the government agency employing him/her (or in the case of a person who has left government position, the head of the government agency having jurisdiction over the government position he/she held at the*

*time of his/her leaving of government position or any government position equivalent thereto). The permission set forth in the preceding paragraph shall not be refused, except in cases pertaining to the conditions and procedures provided for by law or by Cabinet Orders. The provisions of the preceding three paragraphs shall not apply where information is requested by the National Personnel Authority during an investigation or hearing conducted by the National Personnel Authority”.*

#### **Rules of conduct on the use of inside information**

Based on the applicable internal procedures, MF staff members are prohibited from undertaking financial transactions by taking advantage of any confidential information which may have come to their knowledge in the course of fulfilling their duties.

#### **3.4.7.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

According to the National Public Service Act, National Public Service Ethics Act and Internal notices, MF staff members are subject to limitations in dealing in, receiving as gifts or inheritances, and holding financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

MF staff members are not allowed to undertake financial transactions that take advantage of inside information which may have come to their knowledge in fulfilling their duties. Another internal rule, which applies to employees engaged in exchange rate policy, prohibits transactions in financial instruments denominated in foreign currencies, unless a prior permission is granted.

MF staff members are not allowed to undertake transactions in Japan Government Bonds (excluding JGBs dedicated to retail investors) for a year after the employment contract has ceased. MF staff members who engaged in foreign exchange policy related transactions cannot undertake financial transactions that are denominated in foreign currencies for a year after they are transferred to other divisions.

##### **Rules of conduct on record-keeping**

High ranking officials, including the deputy director general, must submit an annual report on share dealings and the acquisition or transfer of share certificates<sup>589</sup> executed in the previous year describing the type, names, numbers, and amounts of consideration pertaining to the share dealings, and the dates of the share dealings, to the heads of each ministry and agency, or to a person who is delegated by them, from 1 to 31 March. A copy of the report on such dealings is then handed over to the National Public Service Ethics Board (Article 7, *National Public Service Ethics Act*).

#### **3.4.7.4.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

MF staff members are bound by a general duty of independence while performing their tasks under the Constitution of Japan, the National Public Service Act and National Public Service Ethics Act.

---

<sup>589</sup> This refers to share certificates, certificates of share options or certificates of bond with share options, and in case the share certificates, certificates of share options or certificates of bond with share options are not issued, the rights to be indicated for them are referred to as if they had been issued.

Staff members are urged to always make a proper distinction between public and private interests, and must not use their duties or positions for the advancement of private interests of their own or of an organisation to which they belong. In exercising the authority granted by laws, staff members must not conduct any acts that may bring about suspicion or distrust from the citizens such as receiving any gifts from any person upon whom the staff members exercise their authority (Article 3, *National Public Service Ethics Act*).

When staff members serving as assistant directors or directors of higher ranking receive money or benefits or an entertainment or a gift from business operators, or when they receive the payment of a reward provided for in the National Public Service Ethics Act as the reward for a personal service offered and based on a relationship between the business operators and the duties performed by the staff members,<sup>590</sup> the officials must submit a report of gifts, describing the following items to the heads of each ministry and agency, or to a person who is delegated by them within 14 days from the first day of the quarter following the current quarter, with quarters being divided as January through March, April through June, July through September and October through December:

- (i) The profit received through the gifts or the value of the reward received in payment
- (ii) The date of receipt of profit by the gifts or payment of the reward and the motivation behind it
- (iii) Name and address of the business operators who made the gifts or paid the reward
- (iv) The additional elements provided for in the National Public Service Ethics Act

A copy of the report on gifts is then sent to the National Public Service Ethics Board (Article 6, *National Public Service Ethics Act*).

Moreover, according to Article 103 of the National Public Service Act, no official is allowed to hold at the same time the position of an officer, advisor or councillor in a profit-making enterprise, nor is he/she allowed to operate, on his/her own account, any profit-making enterprise. Officials shall not, for a period of two years after ceasing from the service, accept or assume a position with a profit-making enterprise with a close connection to any agency of the State defined by rules of the National Personnel Authority, any specified independent administrative institution or the Japan Post, with which such persons were formerly employed for five years prior to ceasing from the service.

Lastly, according to Article 102 of the National Public service Act, with respect to a company or any other organisation established for the purpose of operating a commercial, industrial, financial or other for-profit private enterprise, hereinafter referred to as "profit-making enterprise", when an official is in a position in which he/she is able to participate in the management of the said enterprise because of his/her holding of shares therein or because of other relationships with it, the National Personnel Authority may call upon such an official to submit a report regarding his/her holdings of shares and other relationships, pursuant to the provision of rules of the National Personnel Authority. When the National Personnel Authority, based on the report set forth in the preceding paragraph, finds that the continuance of the employee's relationship with the enterprise, in its entirety or in part, is inappropriate with respect to the performance of his/her duties, it may order the said official to divest himself/herself of the relationships with that enterprise entirely or in part, or relinquish his/her government position within the period provided for by rules of the National Personnel Authority.

---

<sup>590</sup> Provided they were staff members when they received the gifts or the payment of the reward and that the profit received through the gifts or the value of the reward exceeds ¥5,000.

## **Rules of conduct on conflicts of interest**

Staff members must always distinguish between public and private interests and must not use their duties or positions for furthering private interests.

### **3.4.7.4.6 Application of rules of conduct**

#### **Ethics officer**

MF has no dedicated, separate unit entrusted with monitoring the application of the internal rules of conduct. However, breaches of the ethics regulation are investigated by the Personnel Inspector.

MF members must report actual or suspected breaches of the internal rules of conduct to the director of their division and to the Personnel Inspector.

The training of MF staff members includes learning about the content and application of the ethics framework. They also receive internal communications in case of modifications and/or additions to said framework.

Additionally, under Article 11 of the National Public Service Ethics Act, the National Public Service Ethics Board is entrusted with: *"(i) offering opinion to the Cabinet concerning the establishment, revision or abolition of the National Public Service Ethics Act with a draw; (ii) establishing and changing standards for disciplinary actions; (iii) conducting research and study on and planning matters concerning the maintenance of ethics pertaining the duties of officials; (iv) planning comprehensively and adjusting matters concerning training for the maintenance of ethics pertaining to the duties of officials; (v) providing guidance and advice to the heads of each ministry and agency, etc. concerning arrangement of system for observance of the National Public Service Ethics Act; (vi) examining reports of gifts, etc., reports of share dealings, etc., and reports of income, etc.; (vii) requesting the appointers to investigate acts that violate this Act or orders pursuant to this Act, requesting them to report the process of the investigation and stating its opinions thereon, approving the disciplinary actions to be taken by them, and stating its opinions on the publication of outlines of the disciplinary actions; (viii) conducting investigations; (ix) Requesting the appointers to take necessary measures for supervision to maintain ethics pertaining to the duties of officials; (x) initiating disciplinary proceedings"*.

#### **Disciplinary actions and enforcement**

According to Article 82 of the National Public Service Act, when a public official has violated the National Public Service Act, the National Public Service Ethics Act or orders issued pursuant to these laws, he or she may be dismissed, suspended from duty, suffer a pay reduction or be admonished.

### **3.4.7.4.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Ministry of Finance. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative

sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. While criminal penalties are less severe than elsewhere, they are dissuasive enough to exert deterrence. Staff members of the national DMO are subject to all relevant rules and penalties.

- No information is available about the granting of an exemption from the rules on insider dealing, unlawful disclosure of inside information or market manipulation to the national DMO and/or third-country DMOs.
- No information about the application of risk management standards by the DMO in undertaking its operations is publicly available or has been disclosed.
- Staff members are subject to a duty of professional secrecy, which lasts for life. Staff members are prohibited from making use of inside information for private purposes.
- Staff members are restricted from dealing in government bonds and, if employed in the foreign exchange policy department, also from dealing in foreign-denominated financial instruments until after they have left the DMO. High ranking officials must submit an annual report on their investments in financial instruments.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions to carry out remunerated activities without exception and the obligation to disclose acceptance of benefits (such as gifts) from third parties. No specific provision deals with conflict of interest situations except for the general obligation to solely further the interests of the institution.
- A central authority, the National Public Service Ethics Board, is entrusted with advising on changes to the national ethics framework for all public employees, providing guidance, advice and training on ethics issues, setting forth standards for disciplinary actions, conducting investigations and initiating disciplinary proceedings. Although there is no separate, internal unit in charge of overseeing compliance with staff rules of conduct, breaches of the ethics framework are investigated by the personnel inspector.
- Depending on the severity of the misconduct, disciplinary actions may vary from warning and pay cut to termination of employment.

### **3.4.8 Mexico**

#### **3.4.8.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is based on the *Ley del Mercado de Valores* of 2005 ("Securities Law").

According to Article 362 of the Securities Law, knowledge of relevant events which have not been disclosed to the public by the issuer through the stock exchange on which its securities are listed is considered inside information for the purposes of the law. For information to qualify as "inside" there is no need that all the elements of the relevant event are known to the insider, provided that the element of the event he/she has knowledge of might affect the trading or the price of the securities of the issuer if it were known to the public.

Article 364 of the Securities Law prohibits insider dealing and unlawful disclosure of inside information by requiring that insiders who possess inside information do not: *"I. Perform or instruct others to perform, directly or indirectly, any kind of operation on listed securities issued by an issuer or credit instruments that represent them, the price of which can be influenced by such information insofar as such information is privileged. The same restriction shall also apply to warrants or derivative financial instruments underlying such securities; II. Provide or transmit information to another or others, unless by reason of their employment, fee or commission, the person to whom it is*

*transmitted or provided should know of it; III. Make recommendations on any class of securities issued by an issuer or credit instruments that represent them, the price of which or price can be influenced by such information as insofar as such information is privileged. Investment firms who have inside information may perform tasks with respect to the securities to which that information relates in behalf of clients not related to them, provided that the order and specific operating conditions come from the client without the advice or recommendation by the investment firms itself and subject to violations of the law, if any, the client may commit".*

Violation of the rules on insider dealing and unlawful disclosure of inside information is a criminal offence subject to severe penalties.

In particular, with regard to unlawful disclosure of inside information, Article 380 provides that a person who, despite his being legally or contractually obliged to maintain confidentiality or secrecy, provides by any means or transmits inside information to another person or persons is punished with imprisonment of 3 to 15 years. The same penalty applies to anyone who, despite being legally or contractually obliged to maintain confidentiality or secrecy, issues or makes recommendations based on privileged information regarding securities or derivative financial instruments, the price of which may be affected by such information.

With regard to insider dealing, Article 381 states that whoever makes use of information in undertaking or instructing others to undertake transactions in securities or derivatives, the price of which may be influenced by such information, and obtains a benefit for himself or for a third party is subject to imprisonment from two to six years, when the benefit does not exceed 100,000 times the minimum daily wage applicable in the Federal District at the time the transaction is effected; or imprisonment from 4 to 12, when the benefit exceeds 100,000 times the minimum daily wage applicable in the Federal District at the time the transaction is effected.<sup>591</sup>

Staff member of the central bank and the debt management office are subject to these rules.

### **3.4.8.2 Market manipulation rules**

The regulatory framework on market manipulation is likewise based on the *Ley del Mercado de Valores* of 2005 ("Securities Law").

Article 368 prohibits information-based market manipulation that consists of disseminating false or misleading information about securities as well as the financial, administrative, economic, operational or legal status of an issuer through prospectuses, brochures, reports, other informational documents and, in general, any means of communication.<sup>592</sup> Under Article 369, the same prohibition applies to market intermediaries, their agents and investment advisors.

Trade-based and action-based market manipulation is forbidden by Article 370(2), according to which those who participate or intervene, directly or indirectly, in acts or transactions on stock markets are prohibited from: *"I. Manipulating the market. II. Creating the fictitious appearance of volumes or prices of securities; III. Distorting the proper functioning of the trading system or the electronic system of the stock exchange and/or of the companies in charge of facilitating transactions in securities; IV. Taking*

---

<sup>591</sup> For the purpose of this Article "benefit" means obtaining a gain or avoiding a loss.

<sup>592</sup> Unless proved otherwise, dissemination of misleading information occurs *"when prospectuses, brochures, reports, and other informational documents made by the issuer, market intermediaries, investment advisors, external auditors, independent experts, providers of prices of securities, rating agencies in the area of competence, have omitted to communicate, either totally or partially, relevant information or have included misinformation"*.



*part in transactions in conflict of interest; V. Contravening sound market practices; VI. Executing securities transactions for their own benefit or that of third parties, knowing the existence of one or more instructions issued by another or other clients of a brokerage firm about the same security with a view to anticipating the execution thereof*".<sup>593</sup> For purposes of the Securities Law, any act by one or more persons may give rise to market manipulation when it interferes or influences the supply and demand so as to modify artificially the volume or price of securities, in order to obtain a benefit themselves or a third party.

Under Article 382, the persons involved directly or indirectly in acts of market manipulation within the meaning of Article 370(2), who obtain a benefit for themselves or a third party, are subject to following criminal sanctions: imprisonment from two to six years, when the benefit is lower than 100,000 times the minimum daily wage applicable in the Federal District at the time the transaction is effected; imprisonment from 4 to 12 years, when the benefit exceeds 100,000 times the minimum daily wage applicable in the Federal District at the time the transaction is affected.<sup>594</sup>

Information-based market manipulation is punished under Article 383, which subjects to imprisonment from five to ten years those who: "*I. Spread, directly or indirectly, false information on securities or on the financial, administrative, economic or legal condition of an issuer through a prospectus, supplement, brochure, report, other informational document or any other means of communication; II. Conceal or omit to disclose relevant information or events, which in terms of the legal system must be disclosed to the public or the shareholders or holders of securities, unless the disclosure of it has been deferred under this law.*"

These rules also apply to staff members of the central bank and the debt management office.

### **3.4.8.3 Central bank framework (Bank of Mexico)**

#### **3.4.8.3.1 Exemption from market abuse rules**

An exemption for the national CB from rules on insider dealing, unlawful disclosure of inside information and market manipulation with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies without prejudice to the application of market abuse rules to its staff members.

In particular, members of the Board of Governors and the bank's personnel are considered public servants by constitutional provision, and as such, they are subject to the legal regime on obligations, responsibilities and liabilities of public servants, most of which are included in the Federal Law of Administrative Liabilities of Public Servants and the Federal Criminal Code. Under such statutes, all public servants are prohibited from obtaining or attempting to obtain for themselves, their relatives, or other associates, any benefit in excess of the payments or remuneration offered by the State in connection with the respective jobs or public offices. Public servants are also obliged to comply with a duty of confidentiality in relation to all information they obtain as part of their work. In addition, they must avoid and prevent any unwarranted use of such information.

In addition to being prohibited by the Securities Law, all acts of insider dealing and market manipulation would be considered undutiful performance or abuse of power. Such practices are prohibited by the Federal Law of Administrative Liabilities of Public Servants.

---

<sup>593</sup> Any act or practice that is in conflict with the purposes of securities law or that impairs any value legally protected by it is considered counteractive to sound market practices.

<sup>594</sup> For the purpose of this Article "benefit" means obtaining a gain or avoiding a loss.

Therefore, although the CB, as a financial and monetary authority, is not subject to the provisions of the Securities Law that apply to private financial entities, it is prohibited from engaging in any insider dealing activity under its special legal regime and the rules applicable to public servants.

With regard to certain transactions the CB is authorised to carry out (such as placement of government securities in primary markets and conducting financial transactions on behalf of the federal government), the central bank may use non-public information to the extent that such use is directly linked with such transactions.

To the contrary, no exemption from market abuse rules is provided for the benefit of third-country CBs.

### **3.4.8.3.2 Risk management standards**

The CB applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

Each domestic operation conducted by the CB is executed based on the Operational Procedures Manual, which is updated on a yearly basis and audited by the Internal Control Department. In addition, domestic operations are carried out through the CB's proprietary systems.

Any breach of the tasks and responsibilities set forth in the Operational Procedures Manual would be subject to disciplinary actions.

### **3.4.8.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Every staff member must safeguard and care for any documents and information that by reason of his/her job, office or commission are laid under his responsibility, and to prevent or avoid their undue use, loss, destruction, concealment or impairment (Article 8, V, *Federal Law of Administrative Liabilities of Public Officers*).<sup>595</sup>

In addition to the general obligation imposed on all public servants to abstain from any unwarranted use of information, pursuant to Article 58 of the Law of Banco de México,<sup>596</sup> the bank, all members of its Board of Governors, and its employees must abide by the same bank and trust secrets obligations imposed on all commercial banks. Furthermore, according to Article 7-II of the Code of Ethics of Banco de México,<sup>597</sup> all employees are bound by a duty of professional secrecy over information acquired in the context of their office.

Bank secrecy information may only be disclosed to competent authorities in the fulfilment of their duties.

The public officer who leaves his/her job, office or commission is prohibited from using for his/her own profit or for third parties, any information or documents to which he/she has had access to by reason of his/her job, office or commission and that are not in the public domain, for up to a year after he/she has ceased his duties (Article 9, (b), *Federal*

---

<sup>595</sup> More information available at: [www.banxico.org.mx/disposiciones/circulares/leyes/%7B65D50D3F-E527-8E37-9EA0-360A530C0F57%7D.pdf](http://www.banxico.org.mx/disposiciones/circulares/leyes/%7B65D50D3F-E527-8E37-9EA0-360A530C0F57%7D.pdf).

<sup>596</sup> More information available at: [www.banxico.org.mx/disposiciones/marco-juridico/ley-del-banco-de-mexico/%7B74481036-5967-73EE-18B1-602D30C646E2%7D.pdf](http://www.banxico.org.mx/disposiciones/marco-juridico/ley-del-banco-de-mexico/%7B74481036-5967-73EE-18B1-602D30C646E2%7D.pdf).

<sup>597</sup> More information available at: [www.banxico.org.mx/acerca-del-banco-de-mexico/%7B3EF42834-B264-BA79-0CB9-DEFF014F3E4C%7D.pdf](http://www.banxico.org.mx/acerca-del-banco-de-mexico/%7B3EF42834-B264-BA79-0CB9-DEFF014F3E4C%7D.pdf).

*Law of Administrative Liabilities of Public Officers*). Nevertheless, Banco de México may enter into a confidentiality agreement with its employees for the time it considers appropriate.

#### **Rules of conduct on the use of inside information**

In general, Article 97 of the Credit Institutions Law (*Ley de Instituciones de Crédito*) mandates that Mexican financial authorities (including Banco de México) exchange information with the purpose of preserving financial stability, avoiding interruption or alteration in the performance of the financial system or payments systems, and facilitating the adequate fulfilment of their duties, subject to information exchange agreements that must define the scope of confidentiality or classification. In terms of the bank's Internal Regulations, officials within the scope of their duties have sufficient powers and authority to provide and publish information among themselves, other authorities, and media or with other individuals they deem convenient in order to fulfil their corresponding duties.

As explained above, under federal law applicable to public servants, all staff members must avoid and prevent any unwarranted use of the information obtained as part of their duties and, in general, they must not obtain or seek to obtain any benefit other than the payments and remuneration offered by the State as part of their job. Also, under Article 6-IV of the Code of Ethics, they are forbidden to use information acquired in the context of their office for their own benefit or that of any third party.

#### **3.4.8.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Every public officer must "*abstain from acquiring for himself or for the persons referred in Section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers, any real estate property that may increase its value or that, in general, may improve its conditions, as a result of the undertaking of works or public or private investments, that he shall have authorized or of which he has knowledge, by virtue of his job, office or commission. This restriction is applicable for up to a year after the public officer has withdrawn from the job, office or commission*" (Article 8, XXIII, *Federal Law of Administrative Liabilities of Public Officers*).

In accordance with the Investments for Public Servants Regulation, and the Code of Ethics of Banco de México, CB employees must abstain from dealing in financial instruments at prices notoriously below the fair market price. In addition, employees that have relevant financial information must abstain from dealing, by themselves or through any third person, in any fixed or variable income securities, as well as in interest rate or exchange rate investments, five business days prior to the date on which the Board of Governors of Banco de México publicly discloses monetary policy decisions. Finally, staff members must abstain from investing in any fixed or variable income securities when the income is notoriously different to that offered to the public.

##### **Rules of conduct on record-keeping**

The Secretariat of Government Services must hold a register and follow up on the evolution in the status of the assets of public officers of government agencies and entities (Article 35, *Federal Law of Administrative Liabilities of Public Officers*).

In accordance with the Federal Law of Administrative Liabilities of Public Servants, Banco de México Law, and its Internal Regulations, staff members must keep records of their investments in any financial instrument, in order to file their annual tax statement. In addition, staff members that hold a position as a deputy manager or higher (officials of

the bank) should keep such records in order to file their annual property status statement.

### **3.4.8.3.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Every public officer must *"abstain, during the performance of his duties, from requesting, accepting or receiving by himself, or through any third person, any money, personal property or real estate through a sale at prices notoriously inferior to the fair market price, or any donations, services, jobs, offices or commissions for himself or for the persons referred in section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers, which are granted by any individual or corporate person which professional, business or industrial activities are directly linked, regulated or supervised by such public officer, in the performance of his job, office or commission and which implies a conflict of interests. This prevention is applicable for up to a year after the public officer has withdrawn from the job, office or commission. There is a conflict of interests when the personal, family or business interests of the public officer may affect the impartial performance of his job, office or commission"* (Article 8, XII, Federal Law of Administrative Liabilities of Public Officers).

Every public officer must also *"abstain from intervening or participating unduly in the selection, appointment, designation, engagement, promotion, suspension, withdrawal, termination, rescission of contract, or penalization of any public officer, when he has any personal, family or business interest in the case, or when any advantage or benefit may result for him or for the persons referred in section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers"* (Article 8, XIV, Federal Law of Administrative Liabilities of Public Officers).

Furthermore, every public officer must *"abstain from using the position that his job, office or commission confers on him to induce other public officer to make, delay or omit the performance of any action within his competent jurisdiction, which would provide to him any benefit, profit or advantage for himself or for any of the persons referred in section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers"* (Article 8, XXII, Federal Law of Administrative Liabilities of Public Officers).

Lastly, Banco de México Law provides that all of its staff members may only hold a position or commission in representation of the bank or at educational, scientific, cultural or charitable organisations; and Banco de México Internal Regulations establish that employees may only exercise other remunerated or non-remunerated activities as long as they do not interfere with the performances of their duties and their office schedule. In any of these cases, staff members must obtain prior authorisation from the corresponding administrative unit of Banco de México.

#### **Rules of conduct on conflicts of interest**

Every public officer must abstain from *"intervening in any manner, by virtue of his office, in the attention, processing or decision of issues where he has any personal, family or business interest, including any cases that may result in a benefit for him, his spouse, blood or family relatives up to the fourth level, or any civil relatives or for third parties with whom he has professional, work or business relations or for partners or corporations where the public officer or any of the persons referred hereinbefore, participate or have participated"* (Article 8, XI, Federal Law of Administrative Liabilities of Public Officers).

Whenever they cannot abstain from participating, employees have to disclose this to their immediate superior. In addition, all employees are required to inform their superiors of any presumed breach of this obligation by any employee. Finally, employees

that work in the Operations Department or in the Comptroller and Risk Management Department must comply with the Operational Manuals and specific Codes of Conduct issued by each of these units. These two codes oblige the employees to use the information to which they have access only for institutional purposes, to avoid and report to the superiors any conflict of interests including any personal operation, and to refrain from abusing their position for their own benefit.

Additionally, any public officer who leaves his/her job, office or commission is prohibited from profiting from his influence or obtaining any advantage by virtue of the duties he/she performed, neither for himself or for third parties, for up to a year after he/she has ceased his/her duties (Article 9, (a), *Federal Law of Administrative Liabilities of Public Officers*).

### **3.4.8.3.6 Application of rules of conduct**

#### **Ethics officer**

For purposes of supervising the application of the internal rules of conduct, the CB has established an articulated function comprised of a Liabilities Committee, an Internal Control Department, an Auditing Department, an Auditing Committee, and an Ethics Committee.

The Liabilities Committee is made up by a member of the Board of Governors, the General Counsel, and Comptroller and Chief Risk Office. It is responsible for verifying if employees comply with the administrative rules.

The Internal Control Department supervises the application of internal rules issued by the departments of Banco de México. Also, it is responsible for receiving complaints and reports against employees for breaches of their duties according to the Federal Law of Administrative Liabilities of Public Servants, the Federal Anti-corruption Law for Government Procurement or the Code of Ethics, among others, and handing them over to the competent unit within Banco de México or to the outside competent authorities.

The Auditing Department evaluates, through audits and administrative investigations, the conduct of all employees in the performance of their duties. In addition, it investigates any possible breach. If an employee committed a breach in his performance, this department, together with the Comptroller and Risk Management Department, determines the applicable penalty. It also investigates the cases arising out of Federal Anti-corruption Law for Government Procurement, and hands the files over to the competent authority.

The Auditing Committee approves the annual auditing programme submitted by the Auditing Department. Once approved, the Auditing Department submits it to the Board of Governors to obtain its authorisation. The Auditing Committee also analyses the results arising from the audits performed.

The Ethics Committee is a consultation body in charge of updating every three years the provisions of the Code of Ethics, establishing the strategies for the implementation of the Code of Ethics, gathering compliance statistics, approving the Codes of Ethics issued by the departments of the CB, reporting to the Governor relevant issues regarding the Code of Ethics, analysing comments, suggestions, doubts and complaints filed by the employees.

At the beginning of their employment, the employees receive a brief explanation about the contents and the application of the Code of Conduct. After the introductory meeting, the new employees sign their commitment to comply with the terms and conditions of the code. In addition, every two months the Internal Control Department test employees' knowledge of the content of the Code of Conduct via the bank's internal

website. In addition, Banco de México organises workshops to explain to its employees the content and application of the Code of Ethics. Finally, every two years employees must reaffirm their commitment to the terms and conditions laid down in the Code of Ethics.

Employees are alerted about modifications and additions to the Code of Ethics by way of e-mail and through the bank's intranet.

### **Disciplinary actions and enforcement**

Staff members must report to their superiors any presumed misconduct or suspected breach by other employees. The superiors or the employees will then report in writing such breach to the Liabilities Commission or to the Internal Control Department. In the report, employees should include data or evidence that might help to prove any possible breach by the other employee.

According to the Federal Law of Administrative Liabilities of Public Servants, the Federal Criminal Code, and the Federal Civil Code, employees that breach the applicable rules of conduct will be subject to administrative sanctions. The penalties for administrative defaults may be any of the following depending on the seriousness of the case: "(i) *Public or private warning*; (ii) *Suspension from the job, office or commission for a period of no less than three days nor more than one year*; (iii) *Discharge from office or job*; (iv) *Monetary penalty*, and (v) *Temporary disqualification to hold jobs, offices or commissions in public service. When no damages or lost profits have been caused, and when there is no benefit or profit, the disqualification shall be from six months to one year. When the disqualification is imposed as a consequence of an act or omission that implies a benefit or profit, or when it causes damages or lost profits, it shall be from one year for up to ten years if the amount does not exceed of two hundred times the monthly general minimum wage in force in the Federal District, and from ten to twenty years if it exceeds such limit. This last disqualification term shall also be applicable for serious misconduct by public officers. In case of serious infractions, the penalty of discharge from office shall also be imposed*" (Article 13, *Federal Law of Administrative Liabilities of Public Officers*).

In addition, under the Law of Banco de México (Article 43(V)), members of the Board of Governors may be removed from their offices as a result of misusing confidential information available to them for their own benefit or that of third parties.

Administrative offences may also qualify as criminal offenses under the Federal Penal Code. There is a separate chapter in this code that regulates criminal offences committed by public officers. The Liabilities Commission and the Internal Control Department are obliged to report to the competent authorities any criminal offences they become aware of.

Additionally, a tort may arise when an employee causes any damage or injury to a third party. In those cases, the employee is liable for the ensuing damages. Banco de México is also liable to indemnify any private individuals or entities for the damages caused to them by its members due to any wrongdoing in the performance of their tasks.

### **3.4.8.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Bank of Mexico. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited as criminal offences subject to the penalty of imprisonment. Rules on market abuse also apply to staff members of the CB.
- Like in the EU, the national CB is formally exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. No exemption is provided for third-country CBs.
- The CB applies risk management standards in undertaking its operations and its means of implementation have sufficiently been disclosed.
- Staff members are subject to a duty of professional secrecy over information acquired while working for the CB. Additionally, such duty continues beyond the term of employment. Staff members must avoid and prevent any unwarranted use of the information obtained in fulfilling their duties.
- Rules exist that explicitly prevent staff members from dealing in financial instruments for a price openly uncorrelated to the fair market price of said financial instruments. Staff members are also restricted from dealing in financial instruments around the time the board of the CB meets. The requirement for staff members to keep records and report their investments comes from the obligation to file the annual tax return.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out conflicting remunerated and non-remunerated activities unless previously authorised and from accepting improper benefits (such as gifts) from third parties without exception. Staff members must also avoid conflict of interest and in case of unavoidable conflict of interest, staff members must disclose it to their immediate superior and abstain from taking part in decisions in relation to which they are conflicted.
- The internal function in charge of supervising compliance with the internal rules of conduct is articulated in several committees and departments, each of which plays a role in receiving complaints and reports, investigating instances of misconduct, alerting outside authorities and administering disciplinary measures. Staff members are made aware of the existence and applicability of an internal code of ethics upon recruitment and are examined on a continuous basis of the knowledge they have of it.
- Depending on the severity of the misconduct, disciplinary actions may vary from warning and suspension from office to removal from office and temporary disqualification from holding analogous positions elsewhere.

### **3.4.8.4 Debt management office framework (Ministry of Finance and Public Credit of Mexico)**

#### **3.4.8.4.1 Exemption from market abuse rules**

No exemption for the national DMO and/or third-country DMOs with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies.

Article 8 of the Federal Law of the Administrative Responsibilities of the Public Officers and Article 364 of the Securities Law established restrictions and sanctions on any person, including governmental officers, who possess privileged information. Also, the institution has a Code of Conduct which broadly prohibits the misuse of information.

#### **3.4.8.4.2 Risk management standards**

The DMO applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. It carries out periodic risk management analyses published in the Annual Borrowing Plan

which are mostly based on financial considerations of portfolio structure (domestic component, maturity, interest rates, etc.).

The internal Code of Conduct, internal regulations and the Federal Law of Administrative Responsibilities of Public Officers established the disciplinary actions to take when there is a breach of information confidentiality.

#### **3.4.8.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

The Federal Law of Administrative Liabilities of Public Officers establishes the secrecy over information acquired in the context of their work. Internally, the Code of Conduct of the Ministry of Finance and Public Credit establishes the duty of professional secrecy and also the rules concerning the interaction between the employees. The information acquired should be disclosed only when a human rights, electoral, controller or judicial authority request such information.

Every staff member must also *"safeguard and care for any documents and information that by reason of his job, office or commission is laid under his responsibility, and to prevent or avoid their undue use, subtraction, destruction, concealment or impairment"* (Article 8, V, *Federal Law of Administrative Liabilities of Public Officers*).

##### **Rules of conduct on the use of inside information**

Staff members are not allowed to use information related to the institution for their own interest.

Once the staff member has ceased to hold his office, he may not use for his own profit or for third parties any information or documents to which he had access, and which are not in the public domain, for up to a year after he has concluded his duties (Article 9, (b), *Federal Law of Administrative Liabilities of Public Officers*).

#### **3.4.8.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

The National Audit Office (*Auditoría Superior de la Federación*) is in charge of auditing all the financial transactions (income and expenditure) of public employees, whose misconduct is monitored, investigated and sanctioned by the Ministry of Public Administration.

Among others, every public employee must *"abstain from acquiring for himself or for the persons referred in Section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers, any real estate property that may increase its value or that, in general, may improve its conditions, as a result of the undertaking of works or public or private investments, that he shall have authorized or of which he has knowledge, by virtue of his job, office or commission. This restriction is applicable for up to a year after the public officer has withdrawn from the job, office or commission"* (Article 8, XXIII, *Federal Law of Administrative Liabilities of Public Officers*).

The Secretariat of Government Services keeps a registry and follows up on the evolution in the status of the assets of public employees of government agencies and entities (Article 35, *Federal Law of Administrative Liabilities of Public Officers*).



### **Rules of conduct on record-keeping**

Article 36 of the Federal Law of the Administrative Liabilities of Public Officers sets forth the obligation of public employees to provide annually information about their investments, including details on their composition.

### **3.4.8.4.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

The Code of Conduct establishes that staff members are bound by a general duty of independence and impartiality.

More specifically, every staff member must *"abstain, during the performance of his duties, from requesting, accepting or receiving by himself, or through any third person, any money, personal property or real estate through a sale at prices notoriously inferior to the fair market price, or any donations, services, jobs, offices or commissions for himself or for the persons referred in section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers, which are granted by any individual or corporate person professional, business or industrial activities of whom are directly linked, regulated or supervised by such public officer, in the performance of his job, office or commission and which implies a conflict of interests"*. This prohibition continues to apply for up to a year after the public officer has withdrawn from the job, office or commission. For purposes of this provision, a conflict of interests exists *"when the personal, family or business interests of the public officer may affect the impartial performance of his job, office or commission"* (Article 8, XII, Federal Law of Administrative Liabilities of Public Officers).

Additionally, every public officer is obliged to *"abstain from using the position that his job, office or commission confers on him to induce other public officer to make, delay or omit the performance of any action within his competent jurisdiction, which would provide to him any benefit, profit or advantage for himself or for any of the persons referred in section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers"* (Article 8, XXII, Federal Law of Administrative Liabilities of Public Officers).

#### **Rules of conduct on conflicts of interest**

The Code of Conduct governs disclosure and management of conflicts of interest.

In greater detail, every public officer must refrain from *"intervening in any manner, by virtue of his office, in the attention, processing or decision of issues where he has any personal, family or business interest, including any cases that may result in a benefit for him, his spouse, blood or family relatives up to the fourth level, or any civil relatives or for third parties with whom he has professional, work or business relations or for partners or corporations where the public officer or any of the persons referred hereinbefore, participate or have participated"* (Article 8, XI, Federal Law of Administrative Liabilities of Public Officers). The public employee must report in writing to his immediate superior whenever a conflict of interest arises and must abide by the instructions on how to handle the issue provided to him whenever such public officer cannot abstain from intervening therein (Article 8, XI, Federal Law of Administrative Liabilities of Public Officers).

Once the public officer has ceased from holding office, he is forbidden from profiting from his influence or obtaining any advantage by virtue of the duties he had performed, either for himself or for the persons referred to in Section XI, Article 8 of Federal Law of Administrative Liabilities of Public Officers, for up to a year after he has concluded his duties (Article 9, (a), Federal Law of Administrative Liabilities of Public Officers).

### **3.4.8.4.6 Application of rules of conduct**

#### **Ethics officer**

The Ethics Committee is the internal function entrusted with monitoring and applying the Code of Conduct. No learning activity about the contents and application of the Code of Conduct is required for their staff members. An internal announcement on the homepage of the institution would be available or sent by email to make public officers promptly aware of modifications and/or additions to the Code of Conduct.

#### **Disciplinary actions and enforcement**

Every public officer must report in writing to the Secretariat or the in-house comptrollership any acts or omissions of which he has knowledge, by virtue of the performance of his duties, regarding any public officer that may constitute an administrative or criminal offence as set forth by the law and other applicable provisions (Article 8, XVIII, *Federal Law of Administrative Liabilities of Public Officers*).

Claims and complaints, which must contain data or evidence showing the alleged breach in which a public officer has engaged, may be filed by any interested person (Article 10, *Federal Law of Administrative Liabilities of Public Officers*).

Depending on the seriousness of the case, the penalties for administrative defaults may be any of the following: "(i) *Public or private warning*; (ii) *Suspension from the job, office or commission for a period of no less than three days nor more than one year*; (iii) *Discharge from office or job*; (iv) *Monetary penalty*, and (v) *Temporary disqualification to hold jobs, offices or commissions in public service*. When no damages or lost profits have been caused, and when there is no benefit or profit, the disqualification shall be from six months to one year. When the disqualification is imposed as a consequence of an act or omission that implies a benefit or profit, or when it causes damages or lost profits, it shall be from one year for up to ten years if the amount does not exceed of two hundred times the monthly general minimum wage in force in the Federal District, and from ten to twenty years if it exceeds such limit. This last disqualification term shall also be applicable for serious misconduct by public officers. In case of serious infractions, the penalty of discharge from office shall also be imposed" (Article 13, *Federal Law of Administrative Liabilities of Public Officers*).

### **3.4.8.4.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Public Debt Department of the Ministry of Finance. The assessment relies on the following findings:

- Staff members of the DMO are subject to the rules on insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) and relevant criminal penalties, which are severe enough to exert deterrence.
- Unlike in the EU, no exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is provided for the national DMO. Nor are third-country DMOs exempt from such rules.
- The DMO applies risk management standards to its operations. Such standards are periodically published and based on financial portfolio structure.

- Staff members are subject to a duty of professional secrecy and are prohibited from making use of inside information for private purposes with no exception. Such duties continue to apply until one year after leaving office.
- Although all public employees face restrictions in purchasing real estate properties, no specific rules prevent staff members from trading in financial instruments issued by the DMO. However, staff members are obliged to report their investments annually and such investments may be periodically checked for abuses.
- Staff members are subject to a general duty to preserve their independence from third-party interests, which is strengthened by prohibitions to receive benefits from third parties connected with the exercise of their duties. Staff members must also avoid conflicts of interest, inform their superiors when the conflict is unavoidable, and abstain from participating in the decision-making process or otherwise follow the instructions provided by their superiors.
- An ethics committee is in charge of the application of the internal rules of conduct. Staff members are required to report actual or suspected breach of the internal rules of conduct to the internal compliance.
- Depending on the severity of the misconduct, disciplinary actions may vary from warning to discharge from office and temporary disqualification from holding offices in the public sector.

### **3.4.9 Singapore**

#### **3.4.9.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework is based on the Securities and Futures Act of 2001 ("Securities Act").

Insider dealing is generally prohibited by Section 281(1) and (2) of Division 3 of the Securities Act, while unlawful disclosure of inside information is prohibited by Section 281(1) and (3) of Division 3.

According to Section 218(1) and (2), Division 3, where "(a) a person who is connected to a corporation possesses information concerning that corporation that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation; and (b) the connected person knows or ought reasonably to know that (i) the information is not generally available; and (ii) if it were generally available, it might have a material effect on the price or value of those securities of that corporation",<sup>598, 599, 600</sup> such person "must not (whether as principal or agent) (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities" or

---

<sup>598</sup> "Information" is defined in Section 213 as follows: "(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; (b) matters relating to the intentions, or the likely intentions, of a person; (c) matters relating to negotiations or proposals with respect to (i) commercial dealings; (ii) dealing in securities; or (iii) trading in futures contract; (d) information relating to the financial performance of a corporation or business trust, or otherwise; (e) information that a person proposes to enter into, or had previously entered into one or more transactions or agreements in relation to securities or has prepared or proposes to issue a statement relating to such securities; and (f) matters relating to the future".

<sup>599</sup> Under Section 215, information is generally available if "(a) it consists of readily observable matter; (b) without limiting the generality of paragraph (a) (i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information; and (ii) since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or (c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following: (i) information referred to in paragraph (a); (ii) information made known as referred to in paragraph (b)(i)".

<sup>600</sup> Under Section 216, a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe to, buy or sell the first-mentioned securities.

*"procure another person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities".*

Pursuant to Section 281(3), the connected person as defined above *"must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the connected person knows, or ought reasonably to know, that the other person would or would be likely to (a) subscribe for, purchase or sell, or enter into an agreement to subscribe for, purchase or sell, any such securities; or (b) procure a third person to subscribe for, purchase or sell, or to enter into an agreement to subscribe for, purchase or sell, any such securities"*.

Such prohibitions also apply to any person other than a connected person if such a person possesses information *"that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities; and (b) the insider knows that (i) the information is not generally available; and (ii) if it were generally available, it might have a material effect on the price or value of those securities"* (Section 219(1)).

#### **3.4.9.1.1 Criminal offences and penalties**

Section 221(1) provides that: *"(1) A person who contravenes section 218 or 219, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both"*.<sup>601</sup>

#### **3.4.9.1.2 Administrative offences and sanctions**

Under Section 232(1), whenever it appears to the Authority that any person has contravened any of the above provisions, *"[T]he Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention. (2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum (a) not exceeding 3 times (i) the amount of the profit that the person gained; or (ii) the amount of the loss that he avoided, as a result of the contravention; or (b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation, whichever is the greater. (3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million"*.

Staff members of the central bank, which in Singapore also performs the functions of debt management office, are subject to the above-mentioned rules.

#### **3.4.9.2 Market manipulation rules**

The regulatory framework is likewise based on the Securities and Futures Act of 2001 ("Securities Act"). Division 1 of the Securities Act provides for prohibited conduct in relation to securities. Division 2 of the Securities Act similarly provides for prohibited conduct in relation to futures contracts and leveraged foreign exchange trading.

---

<sup>601</sup> Sections 224 and 225 make clear that such penalties do not apply where the purchase of securities or the communication of information occurs pursuant to a requirement imposed by the government, a statutory body or any regulatory authority, or any requirement imposed under any written law or court order.

Trade-based and action-based market manipulations are prohibited by Sections 197, 198 and 201 of the Securities Act, respectively.

Section 197 provides that *"no person shall do anything, cause anything to be done or engage in any course of conduct, if his purpose, or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, is to create a false or misleading appearance (a) of active trading in any securities on a securities market; or (b) with respect to the market for, or the price of, such securities"; and "[n]o person shall, by means of any purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities"*.

Section 198(1) adds that *"no person shall effect, take part in, be concerned in or carry out, directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of securities of the corporation on a securities market, with intent to induce other persons to subscribe for, purchase or sell securities of the corporation or of a related corporation"*.

Furthermore, according to Section 201, *"[N]o person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities (a) employ any device, scheme or artifice to defraud; (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person; (c) make any statement he knows to be false in a material particular; or (d) omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."*

Information-based market manipulation is prohibited by Section 199, according to which *"no person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely (a) to induce other persons to subscribe for securities; (b) to induce the sale or purchase of securities by other persons; or (c) to have the effect of raising, lowering, maintaining or stabilising the market price of securities, if, when he makes the statement or disseminates the information (i) he does not care whether the statement or information is true or false; or (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular"*.

Additionally, Section 202 supplements Section 199 above by stating, *"[N]o person shall circulate or disseminate, or authorise or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a corporation or any securities of a business trust will, or is likely, to rise or fall or be maintained by reason of any transaction entered into or to be entered into or other act or thing done or to be done in relation to securities of that corporation, or of a corporation that is related to that corporation, or securities of that business trust, as the case may be, which to his knowledge, was entered into or done in contravention of section 197, 198, 199, 200 or 201 or if entered into or done would be in contravention of section 197, 198, 199, 200 or 201 if (a) the person, or a person associated with the person, has entered into or purports to enter into any such transaction or has done or purports to do any such act or thing; or (b) the person, or a person associated with the person, has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination, the statement or information."*

#### **3.4.9.2.1 Criminal offences and penalties**

Under Section 204(1), “[A]ny person who contravenes any of the provisions of this Division shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding 7 years or to both” unless that person has already been ordered to pay an administrative sanction of the type described below.

#### **3.4.9.2.2 Administrative offences and sanctions**

Pursuant to Section 232(1), whenever it appears to the Authority that any person has contravened any provision in Part (1), “the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention. (2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which resulted in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum (a) not exceeding 3 times (i) the amount of the profit that the person gained; or (ii) the amount of the loss that he avoided, as a result of the contravention; or (b) equal to \$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation, whichever is the greater. (3) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.”

These rules also apply to staff members of the central bank.

### **3.4.9.3 Central bank framework (Monetary Authority of Singapore)**

#### **3.4.9.3.1 Exemption from market abuse rules**

There is no specific provision formally exempting from rules on insider dealing, unlawful disclosure of inside information or market manipulation the Monetary Authority of Singapore (MAS) with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

However, the conditions for granting a formal exemption are substantially reached by the blanket immunity of MAS and its officers which is provided for under Section 22 of the Monetary Authority of Singapore Act, Chapter 186 (“MAS Act”) for anything done (including any statement made) or omitted to be done in good faith and in the course of, or in connection with, the exercise of powers under the law, the performance of any function or duty under the law or compliance with any law.

No such exemption or immunity applies to third-country CBs or DMOs.

#### **3.4.9.3.2 Risk management standards**

MAS applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

In particular, staff members who carry out transactions in financial instruments on behalf of MAS are required to observe the requirements set out in internal operational procedures manuals, guidelines and Code of Conduct.

Furthermore, MAS has an Internal Audit Department which carries out audits on compliance with the internal operational rules and practices. The Internal Audit

Department reports directly to the Managing Director of MAS to maintain utmost independence and avoid any possible undue influence over the audits.

#### **3.4.9.3.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

As part of their internal guidelines, staff members are required to treat with care all official documents and information received. This includes also information accessed via the government intranet, internal forums (including online platforms) and training courses. It also includes information intended for public release until its disclosure.

Staff members must not, either during or after their service, copy, extract or translate documents for unofficial use, or allow others to do so, or directly or indirectly disclose, publish or communicate them to the press or to individuals in any form whatsoever, except as part of their official duties, or with the written permission of the Managing Director.

##### **Rules of conduct on the use of inside information**

Inside information may be disclosed only to parties authorised to receive the information and only on a "need-to-know" basis.

In addition, internal guidelines state that an employee should not disseminate publicly confidential information, as communication of such information outside the Authority might compromise the Authority's professional standards as well as damage its work effectiveness; nor information on the Authority's events, as this could potentially be misinterpreted out of context by the public and thereby damage the reputation of the Authority or the Public Service, except when prior authorisation is given.

#### **3.4.9.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Staff members, their financially dependent family members and nominees, are not permitted to hold:

- i. unlisted shares, warrants and other securities in financial institutions under MAS supervision and companies which have business dealings with the staff or his department; and
- ii. listed shares, warrants and other securities offered to them on a private placement basis

Also, they must disclose investment transactions in listed shares, warrants and other securities in the institutions and companies mentioned in paragraph (a) above.

Staff members should also disclose investment transactions in areas where their department has official dealings. In addition, staff members in some areas are not permitted to make specific investments. For example, staff members in the financial supervision group and legal department must not deal in securities of institutions that are licensed, regulated or otherwise supervised by MAS. These would also include institutions that are special purpose vehicles in securitisation type arrangements where the originator is an institution that is licensed, regulated or otherwise supervised by MAS.

In addition, staff members must not make investments and/or enter into transactions that may give rise to a conflict between their functional responsibility in MAS and their

own personal interests. This is achieved through a combination of outright prohibitions, as well as pre-clearance and declaration of certain transactions.

#### **Rules of conduct on record-keeping**

Staff members are not required to keep records of holdings of, and transactions in, financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

Reports are to be made under specific circumstances only, i.e. when transactions are undertaken.

### **3.4.9.3.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Staff must abide by the following principles:

- (i) Staff members are expected to maintain high standards of integrity and conduct at all times. They are to avoid situations that may give rise to questions of whether they have acted in the best interests of the Authority
- (ii) Even if there is no conflict with MAS's interests, staff members must refrain from taking advantage of their position in MAS or information obtained in the course of their employment for personal gain or gain for any other persons
- (iii) It is the staff member's responsibility to report to his Department Head and the Human Resources Department (HRD) Head situations in which potential conflict of interest may arise
- (iv) Staff members should not trade actively

Staff members are not allowed to take up other gainful employment or to assume directorships of private organisations except for: giving private tuition, teaching in reputable institutions, helping in a family business, or when the staff's family is under financial hardship.

For tuition and teaching services, no approval is required but Department Head and HRD Head must be informed. Request for approval for the other activities must be supported by the Department Head and approved by the HRD Head. In supporting the request, the Department Head must ensure that: (a) there is no conflict of interest; (b) it would not lead to neglect of the employee's official work; and (c) it does not tarnish the image of the Authority.

Internal guidelines state that staff members should not accept gifts, services, entertainment or remuneration of any kind from members of the public with whom they have official dealings, where it may impair their ability to act in the best interests of the Authority, and should ensure that their family members do not do so as well. In circumstances where it is impractical or inappropriate to refuse, staff members may accept the gift, services or entertainment. In this case, the staff shall report the gifts/services/entertainment received to the respective Group/Department Head and declare all gifts.

#### **Rules of conduct on conflicts of interest**

To prevent possible conflict of interest, staff members are not allowed to deal with the organisation in which they have private/personal interest.



### **3.4.9.3.6 Application of rules of conduct**

#### **Ethics officer**

The internal function entrusted with the monitoring of application of the internal rules of conduct is exercised by the MAS management itself, in addition to the Human Resources Department, Risk Management Department and Corporate Services function.

It is the duty of every staff member to report any act or reasonable concern of improper conduct and alleged offences to the Department Head, who should then refer to the HRD Head or the Managing Director.

All new staff members are debriefed on MAS's Code of Conduct but they are not tested on knowledge of the code. An ethics course will also be introduced in August 2015. When revisions are made, staff is informed.

#### **Disciplinary actions and enforcement**

Where there are alleged breaches of the internal guidelines and/or Code of Conduct, the Managing Director may appoint members of MAS Management Committee to oversee the investigation.

The range of action that can be taken depends on the severity of the case: oral reprimand, written warning, suspension (without salary) from work, freezing of salary, deduction of salary, demotion, dismissal (with forfeiture of all outstanding leave), referral for investigation or prosecution by the relevant agencies or authorities under the relevant acts.

### **3.4.9.3.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The MAS is responsible for the conduct of monetary policy, but also serves as DMO, acting on behalf of the Singapore Government. The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the MAS. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. Both administrative sanctions and criminal penalties are dissuasive enough. Staff members of the national CB are subject to all relevant rules and penalties.
- Like in the EU, the national CB is substantially exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. No exemption is provided for third-country CBs and DMOs.
- The CB applies risk management standards in undertaking its operations and compliance with such standards is monitored by periodic audits. However, the contents of such standards are not publicly available, nor have they been disclosed in detail.
- Staff members are subject to a duty of professional secrecy under the applicable internal code of conduct and are prohibited from making private use of inside information.

- Staff members and their families are not allowed to hold financial instruments issued by regulated entities or buy listed financial instruments outside public markets. They cannot undertake transactions that would give rise to conflicts of interest and must always disclose their investments in areas in which the CB deals, although there is no requirement for staff members to keep records and report their investments. Active trading in financial instruments is discouraged, too.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out other remunerated activities except for limited exceptions and accepting benefits (such as gifts) from third parties unless their acceptance is necessary and disclosed to the head of the department. Conflicts of interest, too, must be disclosed to the head of the department.
- The CB management, together with the human resources and risk management departments, supervise the application of the internal code of conduct and debrief new staff members about it. No examination is administered to staff members to check their knowledge of the code.
- Disciplinary actions are taken by the CB management and, depending on the severity of the misconduct, they may range from oral reprimand to termination of employment. Furthermore, competent authorities are notified of the act or fact that might constitute an offence for proper investigations.

### **3.4.10 South Korea**

#### **3.4.10.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework is based on the Financial Investment Business and Capital Markets Act (Act No. 8635, 3 August 2007) ("Securities Law").

Article 174(1) prohibits insider dealing and unlawful disclosure of inside information as criminal offences. It states that direct and indirect use of any material non-public information<sup>602</sup> related to the business of a listed corporation,<sup>603</sup> or trading or any other transaction involving other securities based on material non-public information, is prohibited for any person who falls into any of the following categories (including a person in whose case one year has not passed since he/she no longer fell into categories 1 and 2):

1. *"The corporation (including its affiliated companies) or its executive, employee, or agent, who becomes aware of the material non-public information in the course of performance of the business"*
2. *A significant shareholder of the corporation, who becomes aware of the material non-public information in the course of exercising his/her rights;*
3. *A person, having authority to grant permission or authorization, give an instruction, or supervise the corporation or any other power pursuant to a relevant Act and subordinate statute, who becomes aware of the material non-public information in the course of exercising such authority or power;*
4. *A person who has entered into a contract with the corporation or is under contract negotiation with the corporation, and who becomes aware of the material non-public information in the course of entering into, negotiating, or performing such contract;*

---

<sup>602</sup> Which is defined as "any information that may produce a significant impact on investors' investment judgment, and that has not been disclosed yet to a multiple number of unspecified people in a manner prescribed by Presidential Decree".

<sup>603</sup> Including "a corporation which will be listed within six months or an unlisted corporation having the effect of being listed within six months through means of merger with a listed corporation, all-inclusive exchange of stocks, or other methods of corporate combination".

5. *An agent of a person falling under any of subparagraphs 2 through 4 (including executives, employees, and agents if the principal falling hereunder is a corporation), or a servant or employee of such person (or an executive, employee, or agent of a corporation if the person falling under any of subparagraphs 2 through 4 is the corporation), who becomes aware of the material non-public information in connection with his/her job;*
6. *A person who received the material non-public information from a person falling under any of numbers 1 through 5 (including a person in whose case one year has not passed since the day on which he/she no longer fell under any of numbers 1 through 5)."*

Article 443(1) provides that if a person belonging to any of the categories listed above uses, or allows another person to use, non-public information, such person is *"punished by imprisonment for up to 10 years or by a fine equivalent to one to three times of the profit accrued or the loss avoided by a violation: Provided that where the amount equivalent to three times the profit accrued or the loss avoided by a violation is 500 million won or less, the upper limit of the fine shall be 500 million won"*. Moreover, a punishment by imprisonment may be added depending on the amount of profits accruing to, or amount of losses avoided by, the perpetrator of the crime. In particular, according to Article 443(2), *"Such a person shall be sentenced to imprisonment for life or for no less than five years, if the profit or avoided amount of loss is five billion won or more"* and *"shall be sentenced to imprisonment for no less than three years, if the profit or avoided amount of loss is no less than 500 million won, but less than five billion won"*.

These rules also apply to staff members of the central bank and debt management office.

### **3.4.10.2 Market manipulation rules**

The regulatory framework on market manipulation is likewise based on the Financial Investment Business and Capital Markets Act (Act No. 8635, Aug. 3, 2007) ("Securities Law").

Trade-based and action-based market manipulations are forbidden as criminal offences by Articles 176 and 178 of the Securities Law.

First of all, no one may mislead any person or cause a misunderstanding that the trading of listed securities or exchange-traded derivatives is significantly increasing, or commit any of the following acts with an intention to mislead another person into making a wrong judgment:

- 1) *"Selling securities or exchange-traded derivatives under a conspiracy with another person to sell the securities or exchange-traded derivatives at the same price as his/her, or at an agreed value at the same time as he/she sells them;*
- 2) *Purchasing securities or exchange-traded derivatives under a conspiracy with another person according to which the other person sells the securities or exchange-traded derivatives at the same price as he/she purchases them at the same time as he purchases them;*
- 3) *Appearing to trade securities or exchange-traded derivatives without an intention to transfer the interest or right therein;*
- 4) *Entrusting or being entrusted with an act set forth in numbers 1 through 3;*
- 5) *Misleading someone to cause a misunderstanding that the trading of such securities or derivatives is significantly increasing, or selling or purchasing, or*

*entrusting or being entrusted with the sale or purchase of, such securities or derivatives in order to cause a fluctuation in the market price;*<sup>604</sup>

- 6) *Disseminating a rumour that fluctuations in the market price for such securities or derivatives are being caused by his/her or another person's market manipulation;*
- 7) *Making a false or misleading representation concerning a material fact in trading such securities or exchange-traded derivatives;*
- 8) *Engaging in a series of purchases or sales in connection with listed securities or exchange-traded derivatives or entrusting others or be entrusted by others with such engaging, with an intention to fix or stabilize the market price of the listed securities or exchange-traded derivatives (Article 176 of Securities Law)."*

Also, the following acts are prohibited in connection with trading (including public offering, private placement, and sale in case of securities) financial instruments:

- 1) *"Utilizing an unfair means, scheme, or trick;*
- 2) *Attempting to earn money or any interest in property, by using a document containing a false description or representation of a material fact, or an omission of a description or representation of a material fact necessary for preventing others from being misled, or any other description or representation; 3.*
- 3) *Using an inaccurate market price with an intention to attract another to trade or make any other transaction in financial investment instruments (Article 178 of the Securities Law).*

Information-based market manipulation is also tackled by Article 178(2) to the extent it provides that "[n]o one shall disseminate a rumour, use a deceptive scheme, or make a threat, with an intention to trade or make any other transaction in financial investment securities or attempt to cause a fluctuation in the market price".

Under Article 443, violation of the prohibitions listed above is "punished by imprisonment for up to 10 years or by a fine equivalent to one to three times of the profit accrued or the loss avoided by a violation: Provided, that where the amount equivalent to three times the profit accrued or the loss avoided by a violation is 500 million won or less, the upper limit of the fine shall be 500 million won". Such punishment is further aggravated up to imprisonment for life or for no less than five years "if the profit or avoided amount of loss is five billion won or more" and for no less than three years, "if the profit or avoided amount of loss is no less than 500 million won, but less than five billion won".

These rules also apply to staff members of the central bank and debt management office.

### **3.4.10.3 Central bank framework (Bank of Korea)**

#### **3.4.10.3.1 Exemption from market abuse rules**

No exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is provided for the benefit of the national CB and/or third-country CBs with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

---

<sup>604</sup> Referring to the market price formed in the securities market or the derivatives market, the market price formed in the course of intermediating the trading of listed stocks by a multilateral-trade contracting company, or other market price prescribed by Presidential Decree.

### **3.4.10.3.2 Risk management standards**

The Bank of Korea (hereinafter, BoK) applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

In particular, the Reserve Management Code of Conduct stipulates operational standards with regard to financial transactions by staff members of the bank's Reserve Management Division. Also, staff members of the BoK's International Department must observe its own Regulations on Domestic Operations of Foreign Reserves and Code of Conduct, which provide general principles guiding the carrying out of foreign exchange transactions on behalf of the BoK.

### **3.4.10.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

In accordance with the BoK's Code of Conduct, staff members must not disclose any confidential information obtained in the context of their work without prior permission or approval by the BoK.

The general code of employment strictly forbids employees from revealing any type of confidential information. Information sharing with government and other financial regulatory bodies for policy coordination can only be carried out in accordance with due procedure which has been established under memorandums between the BoK and such counterparties.

#### **Rules of conduct on the use of inside information**

Staff members are prohibited from using confidential information for their private interest or any interest other than those of the BoK.

### **3.4.10.3.4 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Restrictions for staff members who have access to the Financial Analysis Information Retrieval System (FAIRS) or the Financial Information Sharing System of Financial Supervisory Service (FISS) apply. However, no further information in this regard has been provided via questionnaire or is publicly available.

#### **Rules of conduct on record-keeping**

Staff members who have access to FAIRS or FISS are required to keep and report their records of holdings and transactions in financial instruments on their own account.

In addition, the Code of Conduct stipulates that staff members who can access undisclosed financial information about private companies must keep records of their financial investments. Other employees have no duties of keeping records of their financial investments.

### **3.4.10.3.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

There is no specific list of prohibited remunerated activities. As to remunerated activities, such as engaging in or delivering contributions, publications, seminars, forums, public hearings or lectures, relevant staff members are required to report details of the activity to the bank.

Staff members are allowed to receive a gift or service only if it meets one or more of the following criteria:

- (i) Commonly exchanged gifts under the value of ₦30,000
- (ii) Meal or transportation provided in connection with participation in an official event
- (iii) Souvenir or advertisement products distributed to the general public
- (iv) Publicly provided aid for victims of a natural disaster
- (v) Other gifts approved for receipt by the Governor

#### **Rules of conduct on conflicts of interest**

Staff members are advised to consult with a compliance officer whenever a potential conflict of interest arises. The BoK is committed to excluding any staff with private/personal interest in the matters from participating in the decision-making process.

### **3.4.10.3.6 Application of rules of conduct**

#### **Ethics officer**

There is an Ethics and Compliance Officer in place, who is responsible for staff training on the Code of Conduct by means of face-to-face or online lectures held a number of times during the year and monitoring regularly staff activities in relation to observance of the code.

Staff members are not examined on their knowledge of the Code of Conduct. However, they are notified of any revisions or changes made to the Code of Conduct or relevant rules through the intranet message board.

Any actual breaches or suspected breaches of the law or the Code of Conduct must be reported to the Ethics and Compliance Officer, who will then report them to the Governor. Any illegal activities or breach of the code of conduct by the staff members will then be reported to the Anti-Corruption & Civil Rights Commission.

No explicit incentives for staff to report breaches or suspected breaches of the Code of Conduct have been provided for to date. However, the BoK is planning to introduce such incentives in some form by the end of this year.

#### **Disciplinary actions and enforcement**

According to the Code of Conduct, the Governor is able to take any necessary actions, including disciplinary actions, against violations of the Code of Conduct.

Possible disciplinary actions include dismissal, suspension, financial penalty and/or warning, depending on seriousness of the breach or violation.

### **3.4.10.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the BoK. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. South Korea distinguishes itself amongst the jurisdictions surveyed herein as the only one that provides for life imprisonment for the most serious cases of market abuse.
- Unlike in the EU, the national CB is not formally exempt from the rules on insider dealing, unlawful disclosure of inside information or market manipulation. Likewise, no exemption is provided for third-country CBs.
- The CB applies risk management standards in undertaking its operations. They are contained in operational manuals that provide guidance for the management of domestic and foreign reserves.
- Staff members are subject to a duty of professional secrecy, which may be waived for purposes of information sharing with other authorities, and may not use inside information for private purposes.
- Restrictions in dealing in financial instruments only apply to staff members who have access to critical information about the CB's operations, but the degree of such restrictions has not been illustrated in detail. The requirement for staff members to keep records and report their holdings and transactions in financial instruments only applies to staff members who have access to critical information about the CB's operations.
- Staff members are subject to a duty to preserve their independence from third-party interests but there are no specific prohibitions to exercise external activities provided that they are disclosed to the CB. Acceptance of gifts and other benefits of limited value is allowed. Staff members must consult with the compliance officer should a conflict of interest arise. The CB is committed to excluding staff members with personal interests involved from participating in the decision-making process.
- There is an Ethics and Compliance Officer in place, which is responsible for staff training on the Code of Conduct and monitoring compliance with it by staff members. Actual or suspected breaches of the Code of Conduct must be reported to the compliance officer, who then reports to the Governor. The opportunity to introduce incentives for reporting breaches by staff members is currently being assessed.
- Depending on the seriousness of the misconduct, disciplinary actions may be up to or even result in the termination of employment. Furthermore, outside competent authorities are notified of illegal activities or breach of the code.

### **3.4.10.4 Debt management office framework (Ministry of Strategy and Finance)**

#### **3.4.10.4.1 Exemption from market abuse rules**

No exemption from rules on insider dealing, unlawful disclosure of inside information for the national DMO or third-country DMOs with regard to transactions, orders or

behaviour, in pursuit of monetary, exchange rate or public debt management policy applies.

#### **3.4.10.4.2 Risk management standards**

No information about the applicability of risk management standards by the DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is publicly available; nor has it been provided via questionnaire.

#### **3.4.10.4.3 Use of confidential information by staff members**

No information in this regard is publicly available; nor has it been provided via questionnaire.

#### **3.4.10.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

According to Article 12 of the Code of Conduct for Public Officers (Presidential Decree no. 21238),<sup>605</sup> which also applies to staff members of the DMO, a public official “*shall not get involved in transactions of or make investment in marketable securities, real estate and other financial instruments by using information he or she obtained in the course of performing his or her public duties; nor shall he or she give such information to any other person in order to help them make such financial transactions or investment*”. The Agency Head draws up a detailed set of standards for restricting the use of duty-related information for financial transactions, depending on specific area of public duty.

##### **Rules of conduct on record-keeping**

No information in this regard is publicly available; nor has it been provided via questionnaire.

#### **3.4.10.4.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

Article 4 of the Code of Conduct for Public Officers states, “*If and when a public official gives his or her subordinate the instructions that may hamper fair performance of public duties in order to pursue his or her own private interests or the interests of any third party, the subordinate public official may refuse to follow the instructions by communicating the reason to the superior official or consult with the officer in charge of the Code of Conduct for Public Officials designated by the provisions of Article 23*”. If a public official is repeatedly asked to fulfil the same wrongful instruction notwithstanding his or her refusal, he or she must immediately consult with the Code of Conduct Officer.

Public officers are also prohibited from asking “*any third party to solicit a public officer who handles affairs on his or her appointment, promotion, job transfer and any other personnel management for the purpose of getting personal benefits. A public officer shall not use his or her public position to unduly influence the decisions on personnel management for other public officials, especially decisions on their appointment, promotion and job transfer*” (Article 9, Code of Conduct for Public Officers).

---

<sup>605</sup> Available at: [www.moleg.go.kr/english/korLawEng?pstSeq=52699](http://www.moleg.go.kr/english/korLawEng?pstSeq=52699).



Moreover, public officers are forbidden from receiving money, valuables, real estate, gifts or gifts of entertainment (hereinafter referred to as "money or other valuables") unless they consist of: "1. Money or other articles provided by a lawful ground of claim such as the payment of debt; 2. Foods or convenience provided within the scope of conventional practices; 3. Transportation, accommodation or foods uniformly provided by a sponsor to all participants in an official event related to duties; 4. Souvenirs or promotional goods distributed to many and unspecified persons; 5. Money or other valuables publicly provided to a public officer in need who is afflicted with a disease or suffers other kind of disaster; and 6. Money or other valuables provided to a public officer to facilitate the performance of his or her duties within the limit set by the Agency Head." A public officer is never allowed to receive money or other valuables from an individual who was a duty-related party or a duty-related public official in connection with his or her current public duties. A public officer must also prevent his/her spouse or lineal ascendants/descendants from receiving money or other prohibited valuables (Article 14, *Code of Conduct for Public Officers*).

Lastly, public officers may "not borrow money from, lend money to or rent real estate from a duty-related party or a duty-related public official (excluding a relative within the third degree) without compensation (including cases where such compensation is insignificant compared to the market value or customary transaction value). Provided, however, this shall not apply when a loan is made on ordinary terms and conditions from a financial institution under Article 2 of the Act on Real Name Financial Transactions and Guarantee of Secrecy. A public official, who intends to borrow money from, lend money to or rent real estate from a duty-related party or a duty-related public official without any compensation for unavoidable reasons, shall give notification to the head of his/her agency" (Article 16, *Code of Conduct for Public Officers*).

### **Rules of conduct on conflicts of interest**

A public officer may "not directly use his or her public position to benefit him/herself or other people" (Article 10, *Code of Conduct for Public Officers*).

After consulting with the immediate senior official, a public officer may be disqualified from participating in a matter in respect of which he/she has a personal interest if any of the following circumstances occurs: "(a) Where the duty concerned is directly related to the public official's own financial interests; or those of certain other persons, such as his/her lineal ascendants/descendants and spouse; and the spouse's lineal ascendants/descendants; (b) Where a duty-related party is his/her relative within the relationship of third degree (defined by Article 767 of the Civil Act, hereinafter the same shall apply); (c) Where a duty-related party is the agency or the representative of the agency for which he or she used to work within the past 2 years; and (d) Where a duty-related party is defined by the Agency Head as a person with whom a public official may not perform his/her duties in an impartial manner. The immediate senior official or the Code of Conduct Officer, who received a request for consultation, shall give notification to the head of the agency concerned if it is deemed inappropriate that the public official concerned continues to perform the duties; provided, however, that the senior official may temporarily reassign the public official to other duties without giving notification to the head of the agency if he or she has the authority to do so. The head of the agency who received notification shall take necessary measures to ensure fair performance of duties, including, but not limited to, the reassignment of duties" (Article 5, *Code of Conduct for Public Officers*).

### **3.4.10.4.6 Application of rules of conduct**

#### **Ethics officer**

Compliance with the applicable rules of conduct by public employees is supervised by the head of the agency to which the public officer belongs, the code of conduct officer of that agency or the Anti-Corruption and Civil Rights Commission.

*Under Article 19 of the Code of Conduct for Public Officers, "Anyone who should become aware that a public official violates the Code of Conduct may report such fact to the head of the agency to which the public official belongs, the code of conduct officer in that agency or the Anti-Corruption and Civil Rights Commission. The person who files a report shall specify in the report the personal details of him/herself as well as of the violator including name, address, etc., and the details of violation. The head of agency to which the public officer in question belongs or the code of conduct officer at the agency will guarantee the confidentiality for the informant and the report details and shall take necessary measures so that the informant may not receive any detrimental treatment due to the report. The code of conduct officer shall confirm the violation reported and then report it to the head of the relevant agency, attaching a vindication submitted by the public officer concerned".*

#### **Disciplinary actions and enforcement**

The head of the agency, should he or she has received a report under Article 19(4) of the Code of Conduct, may take all necessary measures including disciplinary actions against the public officer concerned (Article 20, *Code of Conduct for Public Officials*).

### **3.4.10.4.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Ministry of Strategy and Finance and Treasury Bureau. The assessment relies on the following findings:

- Staff members of the DMO are subject to the rules on insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) and relevant administrative and criminal penalties, the latter of which distinguish themselves for their harshness.
- Unlike in the EU, no exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is provided for the national DMO. Nor are third-country DMOs exempt from such rules.
- No public information about the application of risk management standards is available or has been provided.
- Likewise, no public information in respect of the existence of general prohibitions on use of confidential information by staff members is publicly available or has been provided. However, staff members are explicitly prohibited from undertaking transactions in financial instruments or real estate on the basis of inside information.
- Staff members are subject to a general duty to preserve their independence from third-party interests, which is strengthened by prohibitions from receiving benefits from third parties connected with the exercise of their duties. Staff members must also avoid conflicts of interest, inform their superiors when the

conflict is unavoidable, and abstain from participating in the decision-making process or otherwise follow the instructions provided by their superiors.

- A compliance officer is in charge of the application of the internal rules of conduct. Staff members may report actual or suspected breach of the internal rules of conduct to the internal compliance.
- Depending on the seriousness of the case, all disciplinary actions up to and including termination of employment may be taken against the staff member charged with a breach of internal rules of conduct.

### **3.4.11 Switzerland**

#### **3.4.11.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is to be found in the Stock Exchange and Securities Trading Act of 1995 (SESTA) and in the accompanying Stock Exchange and Securities Trading Ordinance of the Swiss Federal Council (SESTO).

##### **3.4.11.1.1 Administrative offences and sanctions**

Insider dealing and unlawful disclosure of inside information are prohibited as administrative offences by Article 33e, paragraph 1, of SESTA, according to which whoever has information which they know or must know is inside information<sup>606</sup> commits an offence if he or she: *"a) exploits it to acquire or sell securities admitted to trading on a stock exchange or an institution which is similar to a stock exchange in Switzerland or to use financial instruments derived from such securities; b) discloses it to another; c) exploits it to recommend to another to acquire or sell securities admitted to trading on a stock exchange or an institution which is similar to a stock exchange in Switzerland or to use financial instruments derived from such securities"*.<sup>607</sup>

However, according to Article 55(f) of SESTO, the following securities transactions are permitted even if they fall under Article 33e(1), lett. a), of SESTA: *"a) securities transactions implementing an own decision to make a securities transaction, in particular the purchase of securities of an offeree company by a potential offeror with regard to the publication of a public offer, provided that the decision was not the result of insider information; b) securities transactions of the Confederation, cantons, communes and the Swiss National Bank (SNB) within the scope of their public functions, provided that such transactions are not made for investment purposes"*.

Article 33e is an administrative law rule that is enforced by the Swiss Financial Market Supervisory Authority (FINMA) and applies to all market participants, irrespective of any intent or financial benefit on the part of any person involved.<sup>608</sup> In case of violation of Article 33e, FINMA may confiscate any profit or amount of money equivalent to the loss avoided resulting from the unlawful behaviour (see Article 34 of SESTA and Article 35 of the Financial Market Supervision Act of 2007, FINMASA).

---

<sup>606</sup> For purposes of the rules on insider dealing, "inside information" means any confidential information whose disclosure may substantially influence the value of securities admitted to trading on a stock exchange or an institution which is similar to a stock exchange in Switzerland (Article 2(f) of SESTA).

<sup>607</sup> However, Article 55g of SESTO makes clear that the communication of inside information to a person does not fall under Article 33e, paragraph 1, let. b) of SESTA, if: *"a. this person requires the inside information in order to fulfill his or her legal or contractual obligations; or b. the communication is required with regard to the conclusion of a contract and the holder of information: 1. tells the receiver of the information that the inside information may not be exploited, and 2. documents the disclosure of inside information and the instruction pursuant to subparagraph 1."*

<sup>608</sup> Further details are set out in the circular 2013/8 "Market Conduct Rules" issued by FINMA.

### **3.4.11.1.2 Criminal offences and penalties**

Insider dealing and unlawful disclosure of inside information are also punished as criminal offences. In particular, under Article 40(1) of SESTA, whoever in his/her capacity as a body or a member of a managing or supervisory body of an issuer or of a company controlling or controlled by him or her, or as a person who due to his or her holding or activity has legitimate access to inside information, is liable to imprisonment of up to three years or a fine if he or she gains a pecuniary advantage for him- or herself or for another with inside information by: *"a. exploiting it to acquire, sell securities admitted to trading on a stock exchange or an institution which is similar to an exchange in Switzerland or to use financial instruments derived from such securities; b. disclosing it to another; c. exploiting it to recommend to another to acquire or sell securities admitted to trading on a stock exchange or an institution which is similar to an exchange in Switzerland or to use financial instruments derived from such securities."* Under Article 40(2), the penalty is raised to imprisonment of up to five years or a fine if in committing the acts detailed above the perpetrator gains a pecuniary advantage of more than CHF1 million.

Additionally, under Article 40(3), whoever gains a pecuniary advantage for him- or herself or for another by exploiting inside information disclosed to them by a person as detailed in Article 40(1), or acquired through a crime or an offence in order to acquire or sell securities admitted to trading on a stock exchange or an institution which is similar to an exchange in Switzerland or to use financial instruments derived from such securities is liable to a imprisonment of up to one year or a fine.

Lastly, under Article 40(4), whosoever does not belong to the persons referred to in paragraphs 1 to 3 of Article 40 and yet gains a pecuniary advantage for him- or herself or for another by exploiting insider information in order to acquire or sell securities admitted to trading on a stock exchange or an institution which is similar to an exchange in Switzerland or to use financial instruments derived from such securities is liable to a fine.

As the offences punished under Article 40 are criminal, they are prosecuted by the Swiss federal prosecutor and brought before the Swiss Federal Criminal Court. Any breach of criminal law provisions on insider dealing and unlawful disclosure of inside information requires that the offender acted with intent. Accordingly, an offender cannot be punished under Article 40 of SESTA if he acted only negligently. In such a case he may nevertheless face sanctions under Article 33e (see above) or civil liability. The same applies for purposes of the aggravated penalty if the condition of obtaining a pecuniary advantage is not fulfilled.

These rules also apply to staff members of the central bank and debt management office.

### **3.4.11.2 Market manipulation rules**

The regulatory framework on market manipulation is likewise to be found in the Stock Exchange and Securities Trading Act of 1995 (SESTA) and in the accompanying Stock Exchange and Securities Trading Ordinance of the Swiss Federal Council (SESTO).

#### **3.4.11.2.1 Administrative offences and sanctions**

Article 33f of SESTA prohibits information-based market manipulation under the letter a) thereof as well as all forms of trade-based and action-based market manipulations under the letter b) thereof. In greater detail, it stipulates that a person commits an offence if he or she: *"a) publicly disseminates information which he or she knows or must know*

*gives false or misleading signals regarding the supply, demand or price of securities admitted to trading on a stock exchange or an institution which is similar to a stock exchange in Switzerland; b) carries out transactions or purchase or sales orders which he or she knows or must know gives false or misleading signals regarding the supply, demand or price of securities admitted to trading on a stock exchange or an institution which is similar to a stock exchange in Switzerland”<sup>609</sup>*

However, according to Article 55(f) of SESTO, the following securities transactions are permitted even if they fall under Article 33f(1) of SESTA: “a) *securities transactions implementing an own decision to make a securities transaction, in particular the purchase of securities of an offeree company by a potential offeror with regard to the publication of a public offer, provided that the decision was not the result of insider information; b) securities transactions of the Confederation, cantons, communes and the Swiss National Bank (SNB) within the scope of their public functions, provided that such transactions are not made for investment purposes.*”

Article 33f is an administrative law provision that is enforced by FINMA and applies to all market participants, irrespective of any intent or financial benefit on the part of any person involved. In case of violation of Article 33f, FINMA may confiscate any profit or amount of money equivalent to the loss avoided resulting from the unlawful behaviour (see Article 34 of SESTA and Article 35 of FINMASA).

### **3.4.11.2.2 Criminal offences and penalties**

All forms of market manipulation are also punished as criminal offences.

Pursuant to Article 40a(1), whosoever substantially influences the price of securities admitted to trading on a Swiss stock exchange or similar institution which is similar to an exchange in Switzerland with the intention of gaining a pecuniary advantage for him- or herself or for another is liable to a imprisonment of up to three years or a fine if he or she: “a) *disseminate false or misleading information against their better knowledge; b) effects purchases and sales of such securities directly or indirectly for the benefit of the same person or persons connected for this purpose.*” Under Article 40a(2), if the pecuniary advantage is over CHF1 million, imprisonment of up to five years or a fine apply.

As the offences established under Article 40a are criminal, they are prosecuted by the Swiss federal prosecutor and brought before the Swiss Federal Criminal Court. Any breach of these rules requires that the offender acted with intent. Accordingly, an offender cannot be punished under Article 40 of SESTA if he acted only negligently. In such a case he may nevertheless face sanctions under Article 33e (see above) or civil liability. The same applies for purposes of the aggravated penalty if the condition of gaining a pecuniary advantage is not fulfilled.

All of the above mentioned rules also apply to staff members of the central bank and debt management office.

### **3.4.11.3 Central bank framework (Swiss National Bank)**

#### **3.4.11.3.1 Exemption from market abuse rules**

Section 55f of SESTO provides that securities transactions of the Confederation, Cantons, municipalities and the Swiss National Bank (SNB) within the scope of their public duties are permitted, even if they fall within the rules on insider dealing, unlawful

---

<sup>609</sup> Ibid.

disclosure of inside information and market manipulation, provided that such transactions are not made for investment purposes.

Moreover, the Federal Council is authorised to issue rules regarding the admissible use of inside information (Article 33e SESTA) and admissible behaviour with regard to market manipulation (Article 33f SESTA). Based on these provisions, the Federal Council has exempted the SNB and is currently evaluating whether to grant of an exemption to third-country CBs.

### **3.4.11.3.2 Risk management standards**

The CB applies risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. Execution of transactions for the disposal of financial instruments is governed by a set of internal regulations and procedures, the breach of which may lead to the dismissal of the employee. However, no further information about the contents of such regulations and procedures has been provided via questionnaire or is publicly available.

### **3.4.11.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Members of the Swiss National Bank Council are bound by official and professional secrecy, in accordance with Article 49 paragraph 1 of the National Bank Act. *"Consequently, they shall treat as confidential any information and documentation which they receive in their capacity as members of the Bank Council. They are prohibited from passing on such information and documentation to external third parties. Official and professional secrecy shall also be observed after membership on the Bank Council has expired. Upon expiry of their term of office, members of the Bank Council shall voluntarily surrender to the SNB all data storage devices, documentation and equipment received"* (Article 7, Code of Conduct for members of the Bank Council).<sup>610</sup>

Staff members, too, are *"bound to observe complete secrecy on SNB affairs, and on its installations and equipment. Divulging confidential information may be punishable as a violation of official or professional secrecy"* (Article 5.1, Code of Conduct).<sup>611</sup> *"The duty of secrecy also applies with respect to staff members who do not require a particular item of information in order to carry out their professional tasks ('need to know' principle). In addition, they have to beware of unintentionally 'leaking' information at social gatherings"* (Article 5.1, Code of Conduct).<sup>612</sup>

The misuse or divulging of confidential information may be punished under Article 161 of the Swiss Penal Code (Article 4.2, Code of Conduct).

---

<sup>610</sup> Available at:

[www.snb.ch/en/mmr/reference/Verhaltenscodex%20Bankrat/source/snb\\_legal\\_Verhaltenscodex%20Bankrat.en.pdf](http://www.snb.ch/en/mmr/reference/Verhaltenscodex%20Bankrat/source/snb_legal_Verhaltenscodex%20Bankrat.en.pdf).

<sup>611</sup> Available at: [www.snb.ch/en/mmr/reference/Verhaltenscodex/source/snb\\_legal\\_Verhaltenscodex\\_en.pdf](http://www.snb.ch/en/mmr/reference/Verhaltenscodex/source/snb_legal_Verhaltenscodex_en.pdf).

<sup>612</sup> Everything that is *"not explicitly intended to be passed on to third parties or to the general public should be kept in-house. In the case of documents, the most important factor to pay attention to is their classification"* (Article 5.1, Code of Conduct). Staff members pay special attention to ensuring that confidentiality is maintained when dispatching documents by fax or e-mail. They have to make sure that they have the correct telephone number or address for the recipient. Staff members must also avoid leaving behind confidential documents. When they leave the office, they may not leave them lying on their desk. If confidential documents inadvertently fall into the hands of unauthorised third parties, or if staff members find confidential documents, they must inform their supervisor (Article 5.1, Code of Conduct).

### **Rules of conduct on the use of inside information**

Staff members *"may not exploit information they obtain in the course of their professional activities, but which is not accessible to the public (privileged information), to derive an advantage for themselves or any third party"* (Article 4.2, Code of Conduct).

Privileged information may include: *"(i) information on monetary policy activities; (ii) information on central bank transactions, or SNB customers or counterparties; (iii) information obtained by the SNB within the context of its oversight activities"* (Article 4.2, Code of Conduct).

### **3.4.11.3.4 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Members of the Bank Council must *"not use, either for their own benefit or for the benefit of third parties, any information which is not accessible to the public and which is obtained by virtue of their membership on the Bank Council. In particular, members of the Bank Council are prohibited from engaging in own account transactions, or from advising or discouraging third parties with regard to such transactions, on the basis of such information. In cases of doubt, members shall consult the President of the Bank Council. Members of the Bank Council shall not hold shares in the SNB"* (Article 5, Code of Conduct for members of the Bank Council).

Staff members may, in principle, undertake *"stock exchange transactions when managing their own private assets. The Directive on private financial investments and financial transactions (Directive no. 184) lists which transactions are allowed"*. However, *"foreign exchange transactions exceeding CHF 20,000 per transaction must be approved by Compliance"* (Article 4.2, Code of Conduct).

#### **Rules of conduct on record-keeping**

According to Article 4.2 of the Code of Conduct, *"Compliance monitors adherence to Directive on private financial investments and financial transactions (Directive 184) on a spot check basis. It has the right to demand comprehensive disclosure of private financial investments and financial transactions"*.

### **3.4.11.3.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Members of the Bank Council are required to act in the interest of the SNB at all times. *"In the performance of the powers, tasks and duties conferred upon them, they may neither request nor receive instructions"* (Article 3, Code of Conduct for members of the Bank Council).

They must *"exercise the utmost restraint in accepting gifts and invitations which are recognisably motivated by their membership on the Bank Council. They shall not accept any gift whose value exceeds CHF 200"* (Article 6, Code of Conduct for members of the Bank Council).

Staff members, too, must ensure that the SNB's independence is not compromised in any way (Article 4.1, Code of Conduct).

External or complementary employment by staff members *"may not impair their work performance or the interests, in particular the independence, of the SNB. Such employment must be disclosed and is generally subject to authorisation"* (Article 4.3, Code of Conduct). Before entering into any external or complementary employment,

staff members must report it to their supervisor and Human Resources. Moreover, they need to obtain prior permission from their top management in the following cases: *"i. paid work for a third party – including work in the family business – where the annual payment exceeds the amount of CHF 5,000; ii. political office in a municipality, canton or for the federal government, irrespective of whether they are paid or not; iii. academic or professional activity (e.g. teaching), where this has a direct relationship to the SNB's legal mandate"* (Article 4.3, Code of Conduct).

Staff members must in any case consult their supervisor in advance before publishing articles or essays or giving speeches that have any bearing on the SNB's legal mandate (Article 4.3, Code of Conduct). They *"may accept gifts from business partners or other third parties as long as the value of such gifts is inconsequential. As a rule, if the cash value is less than CHF 200, a gift can be considered inconsequential. Acceptance of gifts or invitations on the part of a member of staff may not, under any circumstances, impair his or her objectivity or freedom of action in business matters or give the impression that he or she can be bribed. Furthermore, the acceptance of pecuniary advantages may be punishable as bribery"* (Article 4.4, Code of Conduct).

In any case, staff members may not accept any gifts or invitations: *"i. offered before or immediately after orders are placed or contracts concluded; ii. offered with the clear intention of obtaining a service in return for a favour; iii. offered in the form of cash or cash equivalents (e.g. gift vouchers). Acceptance of remuneration or fees (e.g. for speeches or publications) is admissible only where this is disclosed/authorised as outside employment"*. Repeated gifts – even if they are small – are discouraged as they may create the impression of an inappropriate relationship being established (Article 4.4, Code of Conduct). More generally, accepting and giving pecuniary advantage in connection with the recipient's professional activities is prohibited (Article 8, Code of Conduct).

### **Rules of conduct on conflicts of interest**

Members of the Bank Council must avoid *"situations which might give rise to conflicts of interest, or the appearance thereof. Conflicts of interest arise when members of the Bank Council have private or public interests which might impair the impartial and objective performance of their duties, or create the appearance of impairment. Unavoidable conflicts of interest shall be disclosed to the Bank Council. If necessary, the member concerned shall abstain"* (Article 4, Code of Conduct for members of the Bank Council).

Staff members, too, are required to protect the interests of the SNB in their professional activities. Therefore, they must avoid any conflict between their private interests and those of the SNB. If such conflicts cannot be avoided, they must be disclosed and, depending on the circumstances, the employee may be disqualified from participating in the decision-making process (Article 4.1, Code of Conduct). Such conflicts may, for instance, arise in the following situations: *"i. when procuring goods or services from suppliers in whom staff members, their relatives or friends have an interest; ii. when staff members engage in stock exchange transactions on their own account; iii. when staff members take on outside or complementary employment"* (Article 4.1, Code of Conduct).

Staff members should avoid creating even the appearance of a conflict of interest and must report any potential conflict of interest to their supervisor or to Compliance immediately (Article 4.1, Code of Conduct).

### **3.4.11.3.6 Application of rules of conduct**

The Code of Conduct applies to all staff, including temporary staff. The Code of Conduct for members of the Bank Council applies to all its members, to the extent that they act,



or obtain information, by virtue of their membership on the Bank Council (Article 2, *Code of Conduct for members of the Bank Council*).

### **Ethics officer**

There is a Compliance Department in place, which is responsible for assessing compliance risks, policy-making, advisory, training, investigation, monitoring and reporting as regards compliance-related topics. It also manages the internal “whistleblowing” procedure. Staff members are encouraged to report breaches or suspected breaches of the Code of Conduct or internal regulations, whereas members of the management are obliged to do so.

Staff members are tested on their knowledge of the internal rules once a year. Modification and additions to the rules are properly communicated.

### **Disciplinary actions and enforcement**

Serious infringements against principles laid down in the Code of Conduct may lead to disciplinary action, including dismissal, in case where staff members have acted intentionally or with gross negligence (Article 10, *Code of Conduct*).

### **3.4.11.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the SNB. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. While administrative offences are lenient, criminal penalties are severe enough to exert deterrence. Staff members of the national CB are subject to all relevant rules and penalties.
- Like in the EU, the national CB is formally exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. No exemption is granted to third-country CBs.
- The CB applies risk management standards in undertaking its operations but the contents of such standards are not publicly available, nor have they been sufficiently disclosed.
- Staff members are subject to a duty of professional secrecy under the applicable internal code of conduct and members of the Bank Council are held to it beyond the term of employment. Violation of the duty of professional secrecy may constitute a criminal offence. Private use of inside information is prohibited with no exceptions.
- Staff members are prohibited from trading in financial instruments on the basis of inside information and entering into foreign exchange transactions exceeding certain monetary threshold unless previously authorised. Although there is no formal requirement for staff members to keep records of their investments, the compliance function may always request disclosure of private financial investments and financial transactions.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out conflicting remunerated and non-remunerated activities unless they are previously

authorised and accepting improper benefits (such as gifts) from third parties (the acceptance of which might amount to bribery) unless they are of limited value. Staff members must also avoid conflicts of interest. In case of unavoidable conflict of interest, staff members must disclose it and are disqualified from taking part in decisions in relation to which they are conflicted.

- The compliance department presides over the application of the internal Code of Conduct and is responsible for advisory, training, investigation, monitoring, and reporting. Staff members are encouraged to report breaches and are examined annually on their knowledge of the internal rules of conduct.
- In case of intentional misconduct or gross negligence, disciplinary actions may be up to and even include termination of employment.

### **3.4.11.4 Debt management office framework (Swiss Federal Department of Finance)**

#### **3.4.11.4.1 Exemption from market abuse rules**

An exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the national DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy applies.

However, such an exemption is not provided for the benefit of third-country DMOs.

#### **3.4.11.4.2 Risk management standards**

No specific information about the application of risk management standards with regard to transactions, orders or behaviour in pursuit of monetary, exchange rate or public debt management policy is publicly available; nor has it been provided via questionnaire.

#### **3.4.11.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Federal Finance Administration (FFA) members are bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to FFA and classified as confidential, and/or over any other inside information (see Article 22, *Loi sur le personnel de la Confédération*, 24/3/2000;<sup>613</sup> Article 94, *Ordonnance sur le personnel de la Confédération*, 3/7/2001;<sup>614</sup> and Article 4, *Verhaltenskodex Bundesverwaltung*<sup>615</sup>). The duty of professional secrecy continues to apply until after staff members have left FFA (Article 94, *Ordonnance sur le personnel de la Confédération*, 3/7/2001).

Internal rules of conduct concerning the interaction of FFA members with other FFA members, authorities and public officials in general, the media or interest groups are in place in order to prevent undue circulation and/or disclosure of inside information (see Article 22, *Loi sur le personnel de la Confédération*, 24/3/2000; Article 94, *Ordonnance sur le personnel de la Confédération*, 3/7/2001; Article 4, *Verhaltenskodex Bundesverwaltung*).

---

<sup>613</sup> Available at: [www.admin.ch/opc/fr/classified-compilation/20000738/index.html](http://www.admin.ch/opc/fr/classified-compilation/20000738/index.html).

<sup>614</sup> Available at: [www.admin.ch/opc/fr/classified-compilation/20011178/index.html](http://www.admin.ch/opc/fr/classified-compilation/20011178/index.html).

<sup>615</sup> Available at: [www.admin.ch/opc/de/federal-gazette/2012/7873.pdf](http://www.admin.ch/opc/de/federal-gazette/2012/7873.pdf).

### **Rules of conduct on the use of inside information**

FFA members are not allowed to make use of inside information for private/personal purposes, i.e. for their own interest or for the interest of third parties (Article 94 (c), *Ordonnance sur le personnel de la Confederacion*, 3/7/2001).

#### **3.4.11.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

FFA members are subject to limitations in dealing in, receiving as gifts or inheritances, and holding financial instruments, including for these purposes public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles (see Article 94 (c), *Ordonnance sur le personnel de la Confederacion*, 3/7/2001; *Instructions relatives au comportement du personnel de l'Administration fédérale des finances*).

##### **Rules of conduct on record-keeping**

FFA members must keep records of holdings of, and transactions in, financial instruments, including public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles.

In particular, they must keep records of bank accounts, securities or stockbroker accounts, custody accounts (in their own name or shared) and their statements, dealings with mortgages, pension or retirement plans, sales or purchases of instruments or rights (by them or in their account), as well as authorisations (by means of power of attorney or otherwise) and/or instructions or guidelines given by or to them for the holding and/or management of the above accounts, products or instruments.

In addition, FFA members must report and/or disclose to FFA the records referred above upon request.

#### **3.4.11.4.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

FFA members are bound by a general duty of independence while performing their tasks (Article 94 (a), *Ordonnance sur le personnel de la Confederation*, 3/7/2001).

Remunerated and non-remunerated activities, which staff members are prohibited from exercising, are not free to exercise or allowed to exercise subject to prior authorisation, are provided for in Article 2.1 and Article 3.2 of *Instructions relatives au comportement du personnel de l'Administration fédérale des finances*.

Rules concerning the acceptance of gifts, gratuities, awards and/or fees from outside individuals and/or entities by FFA members related to the performance of their tasks state that gifts of limited value are acceptable provided that they do not consist of cash and fees (see Article 5, *Instructions relatives au comportement du personnel de l'Administration fédérale des finances*; Article 93, *Ordonnance sur le personnel de la Confederation*, 3/7/2001).

##### **Rules of conduct on conflicts of interest**

Internal rules and/or policies aiming at identifying, disclosing and managing conflicts of interest provide that FFA members must avoid conflicts of interest and are forbidden from participating in the decision (including policy decisions) when they have a

private/personal interest in the preparation or outcome of that decision (Article 94 (a), *Ordonnance sur le personnel de la Confederation*, 3/7/2001).

#### **3.4.11.4.6 Application of rules of conduct**

##### **Ethics officer**

Line managers are entrusted with the monitoring of application of the internal rules of conduct.

The training of FFA members includes learning about the content and application of the rules of conduct for new employees and existing employees.

FFA staff members receive an internal specific communication that makes them promptly aware of modifications and/or additions to the applicable rules of conduct.

##### **Disciplinary actions and enforcement**

FFA staff members must report breaches or suspected breaches of rules of conduct to the line manager. In qualified cases, a breach of the internal Code of Conduct may be a tort or a criminal or administrative offence. In this case, the line manager is obliged to alert competent authorities through institution's managing director and legal department.

Disciplinary actions, such as written warnings, change of job, change of employment contract, fine, dismissal, are provided in case of abuses, misconduct and/or breach of internal rules (see Article 8, *Instructions relatives au comportement du personnel de l'Administration fédérale des finances*; Article 99, *Ordonnance sur le personnel de la Confederation*, 3/7/2001).

#### **3.4.11.4.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Federal Finance Administration. The assessment relies on the following findings:

- Staff members of the DMO are subject to the rules on insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) and relevant administrative and criminal offences. While administrative sanctions are lenient, criminal penalties are severe enough to exert deterrence.
- Like in the EU, an exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is granted to the national DMO. However, third-country DMOs are not exempt from such rules.
- No details about contents and implementation of risk management standards is publicly available or has been provided via questionnaire.
- Staff members are subject to a stringent duty of professional secrecy, which continues beyond the term of employment. They are also prohibited from making use of inside information for private purposes with no exception.
- There are rules that place restrictions on the transactions in financial instruments by staff members, who are obliged to keep records and report their investments upon request.
- Staff members are subject to a general duty to preserve their independence from third-party interests, which is strengthened by conditions under which outside

activities may be exercised and gifts and other benefits from third parties may be accepted. Staff members must also avoid conflicts of interest and, should the conflict of interest be unavoidable, staff members are disqualified from participating in the decision-making process.

- The task of presiding over the application of the internal rules of conduct, the knowledge of which is part of the learning activity of staff members, is entrusted to line managers. Staff members are required to report actual or suspected breach of the internal rules of conduct.
- Depending on the seriousness of the case, disciplinary actions may be up to and even include dismissal. External competent authorities may be notified for other proper actions.

### **3.4.12 Turkey**

#### **3.4.12.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is based on the Capital Market Law no. 6362 of 6 December 2012 and the regulations thereunder issued by the Capital Markets Board of Turkey.

##### **3.4.12.1.1 Administrative offences and sanctions**

In general, according to Article 104 of Capital Market Law, actions and transactions which cannot be explained with a reasonable economic or financial justification and are capable of disrupting the orderly functioning of exchanges and other organised markets in terms of security, openness and stability, are regarded as market abuse actions, provided that they do not constitute a crime. An administrative fine ranging from YTL20,000 to YTL500,000 must be paid by those who are found responsible for market abuse actions. However, if a benefit has been procured by these means, the amount of the administrative fine cannot be less than twice the benefit achieved.

The Market Abuse Communiqué issued in 2014 by the Capital Markets Board of Turkey under Article 104 specifies the legal framework for purposes of application of these administrative sanctions.

Article 4 of the Market Abuse Communiqué prohibits insider dealing and unlawful disclosure of inside information by providing that persons having inside information or periodic information<sup>616</sup> are required to preserve secrecy of such information up until public disclosure is made in accordance with applicable laws. Persons who directly or indirectly have inside information or periodic information commit a market abuse if, before public disclosure has been made, they *share* inside information or periodic information with other persons or deal in securities.<sup>617</sup>

---

<sup>616</sup> Article 3(1) clarifies that the notion of "inside information" refers to "information, events and developments which may affect the value, price of capital market instruments or the investment decisions of investors" (paragraph (c)), while that of "persons having inside information or periodic information" refers to: "1) Managers of issuers or their subsidiaries or their controlling corporations; 2) Persons having inside information or periodic information by holding shares in issuers' corporation or in their subsidiaries or controlling corporations; 3) Persons having inside information or periodic information due to performing their jobs, professions and tasks; 4) Persons who obtained inside information or periodic information by committing crimes; 5) Persons who know that the information they possess is inside information or periodic information or that should know when proven" (paragraph(c)).

<sup>617</sup> Trading the relevant capital market instruments by persons who have inside information or periodic information or by the spouse, children or cohabitants of those informed persons during the period from the day immediately after the end of the accounting period of financial statements and reports of issuers, or of independent audit reports, to the date of disclosure of those statements and reports to the public in accordance with legislation, is considered and treated as a market abuse action. Trading the relevant capital market

### **3.4.12.1.2 Criminal offences and penalties**

Article 106 of the Capital Market Law provides that:

- (i) *"managers of issuers or those of their subsidiaries or their controlling companies,*
- (ii) *persons who possess this information by holding a shareholding in the issuers, their subsidiaries or controlling companies,*
- (iii) *persons who possess this information due to their jobs, professions and tasks,*
- (iv) *persons who obtained this information by committing crimes, and*
- (v) *persons who know that the information they possess is of the nature mentioned in this paragraph or that should know it is of this nature, who give purchase or sale orders for securities or change the orders they have given or cancel them and thus provide a benefit to themselves or someone else based on information concerning directly or indirectly securities or their issuers which can affect the prices of said securities, their values or the decisions of investors and which has not yet been disclosed to the public, are sentenced to imprisonment from 2 years up to five years or are punished by a judicial fine, which cannot be less than two times the value of the benefit obtained."*<sup>618</sup>

These rules also apply to staff members of the central bank and debt management office.

### **3.4.12.2 Market manipulation rules**

The regulatory framework is likewise based on the Capital Market Law no. 6362 dated 6 December 2012 and the regulations thereunder issued by the Capital Markets Board.

#### **3.4.12.2.1 Administrative offences and sanctions**

According to Article 104, actions and transactions which cannot be explained with a reasonable economic or financial justification and may disrupt the functioning of

---

instruments by persons who have inside information or periodic information or by the spouse, children or cohabitants of those informed persons, during the period from the date when inside information or periodic information is finalised to the date of disclosure of that information to the public in accordance with legislation, is considered and treated as a market abuse action.

<sup>618</sup> The Communiqué on obligation of notification regarding insider trading and manipulation crimes issued in 2014 by the Capital Markets Board strengthens the framework by imposing specific obligations on investment firms. In particular, Article 6 thereof provides that: "(1) Investment firms are obliged to notify the suspicious transactions to the Board in written form within five business days at the latest. (2) If any knowledge or doubt on an insider trading crime exists, it is required to be notified together with all kinds of information, certificates, documents, identification data, call recordings, and other evidences kept in accordance with the legislation, which indicate the inside information and periodic information related to issuer, and trades based on such information, and persons involved in those trades. (3) If any knowledge or doubt on a manipulation crime exists, it is required to be notified together with all kinds of information, certificates, documents, identification data, call recording and other evidences kept in accordance with the legislation, which indicate the trades executed, shares traded, persons acting in collaboration, accounts used, persons using the accounts, and relations between such persons. (4) The fact that a suspicious transaction is notified or will be notified does not prevent the execution of such trades. (5) A notification made in the context of the Law and this Communiqué shall not eliminate the obligation of notification imposed by the Law no. 5549 and by the legislation enacted based on this law". In addition, under Article 7, "(1) the investment firm is finally responsible for notification of suspicious transactions regarding insider trading or manipulation crimes in accordance with the provisions of this communiqué. Board of directors of the investment firm, as the obligor of such notification, appoints an adequate number of personnel having capital markets advanced level licenses among senior executives of internal audit or inspection departments established in accordance with the legislation, and checks whether such personnel effectively and efficiently perform their duties and responsibilities arising from this Communiqué. Board of directors may explicitly delegate its aforementioned duty of control to one or more directors through a written decision. (2) Investment firms provide the Board with information (name, surname, date of recruitment, job position, and other duties and functions, if any) regarding their personnel assigned for the obligation of notification arising from Article 102 of the Law and this Communiqué, and keep the Board informed regarding the changes in that information".

exchanges and other organised markets in security, openness and stability, are regarded as market abuse actions, provided that they do not constitute a crime. An administrative sanction from YTL20,000 to YTL500,000 is applied to those who engaged in market abuse actions. When a benefit has been obtained by means of the market abuse action, the amount of the administrative sanction cannot be less than two times the value of the benefit obtained.

Article 5(1) of the Market Abuse Communiqué of 2014, which was issued by the Capital Markets Board under Article 104 above and specifies the legal framework for purposes of such administrative sanctions, describes actions that constitute market abuse by way of orders and trades as follows: *"Acts, actions and behaviour of those persons acting alone or acting together on an exchange or other organized markets, which are accepted and deemed to be material or effective and related to modus operandi of capital markets or to determination of prices of capital market instruments, such as prices of capital market instruments, price variations, trading volumes, trading amounts, trading rates, order amounts, order rates, order cancellation amounts, order cancellation rates or order execution rates, distorting the confident, open and stable functioning of exchange and other organized markets, or creating wrong impression or misimpression regarding the prices, price variations, supply and demand of capital market instruments, or preventing formation of fair or convenient trading environment, or obstructing the proper formation of prices in a competitive setting: (a) by trading, or making transfers, or giving orders, or cancelling or changing orders; or (b) by issuing orders at different price levels; or (c) by giving reverse orders within the time period less than one minute such as a sell order at a price equal to or lower than the best purchase price in the market or a buy order at a price equal to or higher than the best sale price; or (ç) by executing Wash Sales or Wash Sales A-B-A; or (d) by executing transactions aimed at affecting the opening or closing prices; or (e) by executing transactions aimed at affecting the end-of-day or end-of-maturity settlement prices; or (f) by executing transactions aimed at increasing the price, lowering the price, or keeping the price fixed; or (g) by exceeding the position limits set for all accounts associated with a registry or on market basis in the futures and options market; or (h) by executing transactions in the same direction with transactions executed in the relevant underlying asset market in the futures and options market are considered and treated as market abuse actions".*<sup>619</sup>

Moreover, Article 7 prohibits other instances of market abuse as follows: *"(1) Prior to issue orders to investment companies, relevant exchange or other organized markets of a size that may influence the price or value of capital market instruments, to give orders to trade the capital market instrument or other relevant capital market instruments with advance knowledge of order information of investors, or to change or cancel such orders, or to transfer to third parties the information related to those orders are all considered as front running; (2) In exchange or other organized markets, without an authorization through a notary-certified power of attorney: (a) to issue orders, execute transactions or make transfer by using the account of another person; or (b) to allow other person to issue orders, execute transactions or make transfer by letting others to use his/her account; (4) If a person prohibited from trading by a decision of the Board trades in exchange or other organized markets by using his/her own account or the account of other person(s) during the period of prohibition period".*

Based on the foregoing, all instances of trade-based and action-based market manipulation are prohibited.

---

<sup>619</sup> A "Wash Sale" refers to any transaction which is executed in exchanges and other organised markets by a person on his own accounts by being at the same time buyer and seller and therefore which does not result in any change of ownership of the securities, while a "Wash Sale A-B-A" refers to any transaction in securities which is executed in exchanges and other organised markets by persons acting in concert as buyer and seller and which results in a change of ownership of the securities just between the persons acting in concert.

Besides, Article 6 prohibits all types of information-based market manipulation by making it illegal: *"(1) To give false, wrong or misleading information or rumour or, to inform, make material public disclosures, make comments or prepare reports in such manner to affect the prices, values of capital market instruments or the decisions of investors, or with respect to market indicators that may affect them; (2) Spreading of the information referred to in the preceding first paragraph by persons who know or are required to know that they are false, wrong or misleading; (3) Non-disclosure of information which is required to be disclosed pursuant to the regulations of the Board pertaining to public disclosure of material events and may affect the prices, values of capital market instruments or the decisions of investors; (4) To sell a capital market instrument in spite of giving an advice of buy or hold, or to buy a capital market instrument in spite of giving an advice of sell, after making comments or giving advices about such capital market instrument by using newspapers, television, internet or similar other mass media, until the date of revising such comment or advice or in any case within 5 business days thereafter"*.

### **3.4.12.2.2 Criminal offences and penalties**

Article 107(1) of Capital Market Law punishes trade-based and action-based market manipulation as criminal offences by providing that *"[t]hose who make purchases and sales, give orders, cancel orders, change orders or realise account activities with the purpose of creating a wrong or deceptive impression on the prices of capital market instruments, their price changes, their supplies and demands, shall be sentenced to imprisonment from two years up to five years and be punished with a judicial fine from five thousand days up to ten thousand days. The amount of the judicial fine to be imposed cannot be less than the benefit obtained by committing the crime"*.

Information-based market manipulation is likewise made a criminal offence pursuant to Article 107(2), which states: *"Those who give false, wrong or deceptive information, tell rumours, give notices, make comments or prepare reports or distribute them in order to affect the prices of capital market instruments, their values or the decisions of investors, shall be sentenced to imprisonment from two years up to five years and be punished by a judicial fine up to five thousand days"*. However, in the event that the person who has committed such a criminal offence *"displays remorse and pays to the Treasury an amount which is two times the benefit he/she has obtained or has caused to be obtained"*, the judicial fine will be reduced provided that it is *"not less than five hundred thousand Turkish Liras"*. Additionally, Article 107 releases the perpetrator from any penalty if the payment has been made before the investigation starts; and it reduces the penalty by half if the payment is made in the course of the investigation and by one-third if the payment is made before the judgment has been entered.

These rules also apply to staff members of the central bank and debt management office.

### **3.4.12.3 Central bank framework (Central Bank of Republic of Turkey)**

#### **3.4.12.3.1 Exemption from market abuse rules**

An exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the benefit of the national CB with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is provided for in Article 108, paragraph 1, letter a) of the Capital Markets Law, which makes clear that *"[a]pplying policies of money, foreign exchange rate, public debt management or undertaking transactions aimed at providing financial stability by the Central Bank of the Republic of Turkey or another authorised official institution or*



*persons acting on behalf of them*" may never give rise to abuse of information or market fraud.

However, no such exemption is extended for the benefit of third-country CBs.

### **3.4.12.3.2 Risk management standards**

The Central Bank of the Republic of Turkey (CBRT) applies no specific risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, but the contents of such risk management standards have not been disclosed in detail, nor are they publicly available.

There exists an Audit Department, which has the duty and authority to conduct audits, examinations and research; to carry out investigations and offer consulting services when needed in the units, branches and representative offices of the CBRT and also at institutions and organisations other than the CBRT that fall within the scope of authorities and duties of the bank as well as other related legislations, instructions and directives.

### **3.4.12.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Duties, obligations, and responsibilities of the CBRT staff are detailed in the Regulation on Bank Employees and the Disciplinary and Reward Regulation. The Regulation on Bank Employees bars staff members from disclosing information from confidential documents. The Law on the Central Bank of the Republic of Turkey of 14 January 1970<sup>620</sup> also places on staff members the obligation *"to observe the secrecy of matters pertaining to the Bank or to persons and institutions dealing with the Bank which they acquire within their official capacities and due to their duties, and not to disclose these secrets, in any manner whatsoever, to those other than the authorities entitled by law"* (Article 35). This obligation continues to apply until after they have left the bank.

#### **Rules of conduct on the use of inside information**

According to the Regulation on Bank Employees, employees may not divulge to a third party, in any manner whatsoever, any confidential information obtained in the course of or by virtue of their employment, unless required by law or ordered by the courts. The prohibition to use the knowledge acquired in the course of and by virtue of the position within the bank for personal interests continues to apply beyond the term of employment.

Employees may not publish papers in print, give press, radio and TV interviews about the bank and its duties or disclose to any third parties such information, unless authorised by the Governor of the Bank.

In addition, delivering speeches at meetings and conferences based on information acquired in the course of and by virtue of his/her employment in the bank, which concern either the affairs of the bank itself, the banking sector in the country and any matters relating to the general economic situation of the country, or any other person, company or organisation, is subject to the prior approval of the Governor.

#### **3.4.12.3.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

Staff members are subject to limitations in dealing in and holding financial instruments. In particular, according to the Regulation on Bank Employees, CBRT employees cannot participate in the auctions of the government securities to be held by the CBRT on behalf of the Treasury.

##### **Rules of conduct on record-keeping**

Rules that place on staff members an obligation to keep records of their holdings of financial instruments and reporting such holdings upon request do not exist.

#### **3.4.12.3.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

According to the Regulation on Bank Employees, CBRT employees must be loyal to the Constitution and the Laws of the Republic of Turkey. They cannot accept gifts or borrow money directly or indirectly from the entities the bank deals with, and cannot engage in commerce or in paid and unpaid work for private/personal purposes outside working hours.

##### **Rules of conduct on conflicts of interest**

In case of conflict of interest staff members must abstain from participating in the matter in relation to which they are conflicted. However, no detailed reference to any specific rule or standard of behaviour in this regard has been provided.

#### **3.4.12.3.6 Application of rules of conduct**

##### **Ethics officer**

The unit in charge of applying the internal rules of conduct is the Audit Department, which conducts audits, examinations and studies, and carries out investigations and offer consulting services when needed in the units, branches and representative offices of the bank.

##### **Disciplinary actions and enforcement**

Staff members are liable to the bank for any damages they cause in connection with their duties. In such a case, the Code of Obligations would apply (Article 35, Law on the Central Bank of the Republic of Turkey).

Breach of the obligation to preserve professional secrecy is punished by *"a penalty of imprisonment for a term of one to three years and a judicial fine which shall not be less than hundred days. Any staff member of the Bank who discloses confidential information in order to obtain benefits for himself or other persons shall be sentenced to a penalty of imprisonment for three to five years and a judicial fine of one thousand to ten thousand days"* (Article 68, II-a, *The Law on the Central Bank of the Republic of Turkey*).

Additionally, according to the Turkish Criminal Code, any public officer who neglects or delays to notify competent authorities of an offence, despite his/her being aware of such offence, is punished by imprisonment of six months to two years.

Moreover, in case of breach of internal rules of conduct, the Disciplinary and Award Regulation of the CBRT provides for disciplinary actions, including termination of employment.

### **3.4.12.3.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the CBRT. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. Both types of penalties are severe enough to exert deterrence. Staff members of the national CB are subject to all relevant rules and penalties.
- Like in the EU, the national CB is formally exempt from the rules on insider dealing, unlawful disclosure of inside information or market manipulation. However, no exemption is provided for third-country CBs.
- The CB applies risk management standards in undertaking its operations and the implementation of such standards is subject to auditing, but the contents of said standards are not publicly available, nor have they been sufficiently disclosed.
- Staff members are subject to a duty of professional secrecy, the violation of which constitutes a criminal offence. Likewise, staff members are prohibited from making personal use of inside information.
- Staff members are prevented from participating in auctions of government bonds. However, there is no requirement for staff members to keep records and report their financial investments.
- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by outright prohibitions from carrying out external activities and accepting improper benefits (such as gifts) from third parties with no exception. As to conflicts of interest, staff members must abstain from taking part in decisions in relation to which they are conflicted.
- The unit in charge of applying the internal rules of conduct is the audit department, which conducts audits, examination and studies, carries out investigations and offer consulting services. Staff members must report actual or suspect breaches. Violation of this duty constitutes a criminal offence itself.
- Depending on the severity of the misconduct, disciplinary actions may be up to and even include termination of employment.

### **3.4.12.4 Debt management office framework (Undersecretariat of Treasury of the Republic of Turkey)**

#### **3.4.12.4.1 Exemption from market abuse rules**

An exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation for the national DMO (Turkish Treasury, General Directorate of Public Finance Domestic Debt Management) or third-country DMOs with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy is not provided for.

#### **3.4.12.4.2 Risk management standards**

The applicable risk management standards with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy are identified by the Debt and Risk Management Committee. However, the contents of these risk management standards are not publicly available, nor have they been illustrated via questionnaire.

#### **3.4.12.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Article 14 of the Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour of 13 April 2005<sup>621</sup> provides that “[c]ivil servants cannot use official or confidential information that they obtain during conducting their public duty or as a result of their duty for providing direct or indirect economic, political or social benefit for themselves, relatives or any other third party. They cannot transfer these documents to any other institution, establishment or persons other than authorized offices during and after their mission”.

##### **Rules of conduct on inside information**

Civil servants cannot obtain benefits for themselves, their relatives or third persons by using their position, title or authority and may not intercede in favour of, or otherwise provide advantages to their relatives, friends and fellow townsmen, nor may they perform political or any kind of nepotism, or discrimination.

Whether on duty or not, they may not use official or confidential information they acquired during performance of their duty or as a result of it in order to derive economic, political or social benefits for themselves, their relatives or third persons directly or indirectly.

#### **3.4.12.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

The staff members of Undersecretariat of Treasury of the Republic of Turkey are subject to limitations in dealing in and holding financial instruments. However, the contents of such limitations are not publicly available, nor have they been illustrated in detail.

##### **Rules of conduct on record-keeping**

Civil servants must keep records of holdings of, and transactions in, financial instruments.

In particular, public officials must keep records of bank accounts, securities or stockbroker accounts, custody accounts (in their own name, or shared) and their statements, dealings with mortgages, pension or retirement plans, sales or purchases of instruments or rights (by them or in their account), as well as authorisations (by means of power of attorney or otherwise) and/or instructions or guidelines given by or to them for the holding and/or management of the above accounts, products or instruments. The

---

<sup>621</sup> Available at:

[https://publicofficialsfinancialdisclosure.worldbank.org/%2fsites%2ffdl%2ffiles%2fassets%2flaw-library-files%2fTurkey\\_Civil%2520Servants%2520Ethical%2520Behavior%2520Principles\\_2005\\_en.pdf](https://publicofficialsfinancialdisclosure.worldbank.org/%2fsites%2ffdl%2ffiles%2fassets%2flaw-library-files%2fTurkey_Civil%2520Servants%2520Ethical%2520Behavior%2520Principles_2005_en.pdf).

staff members of the Undersecretariat of Treasury of the Republic of Turkey must report and/or disclose to TT such records within five-year periods starting from the years ending with "0" and "5", when the increase in personal wealth is above a certain amount of wage.

Civil servants must report information about the assets that belong to them as well as their spouses and their children, including any moveable and immoveable properties, any loans or credit accounts in accordance with Law No. 3628 on Declaration of Assets, Combating Corruption and Bribery. The Civil Servants Ethical Board has the power to inspect the declaration of assets if it believes it is necessary. Related persons or institutions (including banks and private financial companies) are obliged to provide the information requested by the Civil Servants Ethical Board within 30 days in order to verify the validity of the declaration of assets (Article 22, *Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour*).

### **3.4.12.4.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

Article 15 of the Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour Principle sets forth prohibitions and restrictions concerning the acceptance of gifts, gratuities, awards and/or fees from outside individuals and/or entities by public officials related to the performance of their tasks: *"All kinds of materials and benefits that affect or that may affect the neutrality, performance, decision or mission, that may or may not have an economic value, that are directly or indirectly presented are considered as gifts. It is a fundamental principle that civil servants cannot receive gifts, cannot be offered to receive a gift and cannot gain profits due to their duty. Civil servants cannot directly or indirectly receive gifts or provide interest for themselves, relatives or any other third party or institution from real or artificial persons that are related to their duty"*. The items listed below are included in the ban: *"a) Farewell or courtesy gifts, scholarships, travel, free accommodation and gift vouchers from those who are involved in work, service or benefit relation with the institution; b) Unreasonable discounts according to the market price during buying, selling or renting of moveable or immoveable properties; c) All kinds of goods, clothing, and jewellery or food gifts received from those whose will benefit from public service; d) Loans or credits from a company that is in a service or work relation with the institution."* In accordance with courtesy and protocol rules of the international relations, gifts of limited value received from foreigners and foreign institutions may be accepted but must be declared.

#### **Rules of conduct on conflicts of interest**

Civil servants cannot benefit themselves, relatives or any other third party from using their mission, office or authority (Article 14, *Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour Principle*). They are made responsible for taking care of potential or real conflicts of interest<sup>622</sup> by acting cautiously and taking the necessary steps to avoid them. Whenever they find themselves in such a situation, they must inform their superiors, refrain from taking advantage of the circumstances of the case and abstain from participating in the decision-making process (see Article 13, *Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour Principle*).

---

<sup>622</sup> For purposes of this regulation, conflict of interest refers to circumstances that might affect or seem to affect the neutrality and objectivity of the actions undertaken by the civil servant to the extent a personal benefit or benefits to their relatives or friends are involved.

#### **3.4.12.4.6 Application of rules of conduct**

##### **Ethics officer**

An ethics commission consisting of at least three people from the institution is established by the top management in order to develop an ethical culture, to give advice on the problems staff members face in complying with the principles of ethical behaviour, and to evaluate ethical practices.

Staff members at all levels are informed about the principles of ethical behaviour and the awareness of the responsibilities arising from these principles is made part of the employment conditions.

They receive an announcement from the government that makes them promptly aware of modifications and/or additions and/or modes of application of the principles of ethical behaviour and the responsibility related to these principles.

##### **Disciplinary actions and enforcement**

In case of knowledge of acts against the principles of ethical behaviour that are laid down in the Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour or of illegal transactions or actions, public officials must notify the competent authorities. Supervisors must keep secret the identity of these public officials and take necessary steps in order to avoid any harm.

The Council of the Bank discusses the report on breaches of internal rules of conduct. On condition that the claim has merit, the public official under investigation has the right to defend himself, within 10 days following the date of notification. Private institutions and organisations from which information is requested must submit it and any documents to the Council. The Council should complete its investigation within three months and make a decision by absolute majority of its members (see Article 28, *Regulation on Procedure and Basis of Application of the Civil Servants Ethical Behaviour*).

In case abuses, misconduct and/or breach of internal rules and depending on the seriousness of the wrongdoing and its impacts, the Council determines the kind of disciplinary action that applies to the staff member. The disciplinary measure may also consist of his/her dismissal.

#### **3.4.12.4.7 Appropriateness and necessity assessment of an exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Turkish Treasury. The assessment relies on the following findings:

- Staff members of the DMO are subject to the rules on insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) and relevant administrative and criminal offences. Both types of penalties are severe enough to exert deterrence.
- Unlike in the EU, no exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation is provided for the national DMO. Nor are third-country DMOs exempt from such rules.
- In the pursuit of the debt management policy of the DMO, staff members are bounded by risk management standards. However, no detail about the contents of these standards is publicly available or has been provided via questionnaire.

- Staff members are subject to a stringent duty of professional secrecy and are prohibited from making use of inside information for private purposes with no exception, even though none of these duties continue beyond the term of employment.
- Staff members are restricted from trading in financial instruments and must report information about the assets they and their family own. Declaration of assets may be subject to inspections.
- Staff members are subject to a general duty to preserve their independence from third-party interests, which is strengthened by the prohibition from accepting gifts and other benefits from third parties related to the exercise of their tasks. Staff members must also avoid conflicts of interest and, should the conflict of interest be unavoidable, staff members must disclose it to their superiors and abstain from participating in the decision in respect of which they are conflicted.
- An ethics commission nominated by the DMO management is in place in order to develop an ethical culture, provide advice and monitor behaviours. Instances of misconduct are investigated by the Council of the Bank and, where applicable, competent authorities must be notified.
- Depending on the severity of the misconduct, the Council of the Bank may apply a series of disciplinary actions up to and even resulting in dismissal.

### **3.4.13 The United States**

#### **3.4.13.1 Insider dealing and unlawful disclosure of inside information rules**

The regulatory framework on insider dealing and unlawful disclosure of inside information is based on a few statutory provisions contained in federal laws and the Securities and Exchange Commission (SEC) rules and regulations thereunder, and a large body of case law arising out of decisions of the US Supreme Court and Federal Courts.

To begin with, it is noteworthy that under US law there is no specific statutory provision that prohibits insider dealing and unlawful disclosure of inside information. However, such activities or actions are deemed unlawful based on Section 10(b) of the Securities Exchange Act of 1934 (15 U.S. Code § 78j(b)), according to which it is *"unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement, any manipulative or deceptive device or contrivance in contravention of such rules and regulations the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors"*.<sup>623</sup> On the basis of the broad language used therein, Section 10(b) is commonly construed as prohibiting both insider dealing and unlawful disclosure of inside information.

In application of said federal law provision, Subsection 240.10b-5 of the SEC Rules, provides that it is *"unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange: (a) To employ any device, scheme, or artifice to defraud,*

---

<sup>623</sup> Rules promulgated under Subsection 10(b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) of this section and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under Section 77q (a) and Sections 78i, 78o, 78p, 78t, and 78u-1 of Title 15 of the U.S. Code, and judicial precedents decided under applicable rules promulgated under such sections, likewise apply to security-based swap agreements to the same extent as they apply to securities.

*(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security”.*

Subsection 240.10b5-1 of the SEC Rules then defines when a purchase or sale constitutes trading on the basis of material non-public information in insider trading cases brought under Section 10(b) of the Act and Rule 10b-5 thereunder. At the same time, such provision makes clear that the law of insider trading is additionally defined by judicial opinions construing Rule 10b-5, and Rule 10b5-1 does not modify the scope of insider trading law in any other respect.

In greater detail, Subsection 240.10b5-1(a) first of all clarifies that the “manipulative and deceptive devices” prohibited by Section 10(b) of the Act and Subsection 240.10b-5 thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material non-public information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material non-public information. Secondly, according to Subsection 240.10b5-1(b) a purchase or sale of a security of an issuer is “on the basis of” material non-public information about that security or issuer if the person making the purchase or sale was aware of the material non-public information when the person made the purchase or sale. Additionally, Subsection 240.10b5-2 provides a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the “misappropriation” theory of insider trading under Section 10(b) of the Act and Rule 10b-5 and it applies to any violation of Section 10(b) of the Act (15 U.S.C. 78j(b)) and Subsection 40.10b-5 thereunder that is based on the purchase or sale of securities on the basis of, or the communication of, material non-public information misappropriated in breach of a duty of trust or confidence<sup>624</sup>.

As regards to case law, it has given rise to three main legal theories based on Subsection 10(b) of the Securities Exchange Act of 1934 and the Rule 240.10b-5 thereunder.

Under the so-called ‘equal access theory’, initially predicated in *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2<sup>nd</sup> Cir. 1968) and backed by the SEC ever since its sentence of *Cady, Roberts & Co.*, 40 S.E.C. 907 (1961), any possession of relevant, material, non-public information gives rise to a duty to disclose or abstain from trading. According to this view, all traders owe a duty to the market to disclose or refrain from trading on non-public, price-sensitive information. No information unknown to the public can be exploited against the public itself by means of trades, no matter how that informational advantage has been acquired. However, the equal access theory was opposed by the U.S. Supreme Court in *Chiarella v. United States*, 445 U.S. 222 (1980), and in *Dirks v. SEC*, 463 U.S. 646 (1983), where the Supreme Court established the “fiduciary duty

---

<sup>624</sup> According to provision 240.10b5-2 (b), for purposes of Section 10b-5, a “duty of trust or confidence” exists in the following circumstances, among others: “(1) Whenever a person agrees to maintain information in confidence; (2) Whenever the person communicating the material non-public information and the person to whom it is communicated have a history, pattern, or practice of sharing confidences, such that the recipient of the information knows or reasonably should know that the person communicating the material non-public information expects that the recipient will maintain its confidentiality; or (3) Whenever a person receives or obtains material non-public information from his or her spouse, parent, child, or sibling; provided, however, that the person receiving or obtaining the information may demonstrate that no duty of trust or confidence existed with respect to the information, by establishing that he or she neither knew nor reasonably should have known that the person who was the source of the information expected that the person would keep the information confidential, because of the parties’ history, pattern, or practice of sharing and maintaining confidences, and because there was no agreement or understanding to maintain the confidentiality of the information.”



theory”, according to which for a Rule 10b-5 liability to arise it is necessary that the person in possession of the material, non-public information breaches a pre-existing fiduciary duty to abstain from trading on that information until it is properly disclosed. Therefore, unless a fiduciary duty based on a fiduciary relationship construed otherwise than on Rule 10b-5 itself is owed to the owner of the information, the exploitation of inside information by “outsiders” does not give rise to any liability.

Later, the fiduciary duty theory was expanded in order to cover some outsiders, too, and was redefined under the label of “misappropriation theory” in *United States v. O’Hagan*, 521 U.S. 642 (1997). According to this opinion, which is the latest underpinning of insider trading law in the US, a person commits fraud in connection with a securities transaction, and thereby violates Section 10(b) and Rule 10b-5 thereunder, when he/she misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information. Unlike the classical fiduciary duty theory, such a theory outlaws trading on the basis of non-public information by any outsider in breach of a duty not owed to the trading party, but to the source of the information. *“Like the equal access theory, the misappropriation theory can reach almost all forms of insider trading that are commonly condemned, regardless of whether they involve traditional insiders”* (for this account and quotation, see Allen-Kraakman-Subramanian, 2012).

#### **3.4.13.1.1 Administrative offences and sanctions**

Section 78u-1(a)(2), Title 15, of the U.S. Code allows courts to impose a sanction of up to three times the profit gained or loss avoided as a result of the unlawful purchase, sale, or communication in violation of the rules on insider dealing or unlawful disclosure of inside information.

#### **3.4.13.1.2 Criminal offences and penalties**

Section 78ff(a), Title 15, of the U.S. Code provides that any person who wilfully violates any of the above provisions, or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required may be fined up to, but not more than, \$5 million or imprisoned up to, but not more than, 20 years, or both.

All of the foregoing rules also apply to staff members of the banks that are members of the Federal Reserve Bank System and staff members of the debt management office.

#### **3.4.13.2 Market manipulation rules**

Subsection 9(a) of the Securities Exchange Act of 1934 (15 U.S. Code 78i(a)) extensively prohibits trade-based market manipulation by providing that: *“It is unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange: (1) For the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties; (2) To effect, alone or*

*with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others; (3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security; (4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading; (5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security; (6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security other than a government security for the purpose of pegging, fixing, or stabilizing the price of such security in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”*

By the same token, the following actions and/or market practices are prohibited: manipulative short sales of any security (Subsection 9(d) of the Securities Exchange Act of 1934 (15 U.S. Code 78i(d))); any transaction in or attempt to induce the purchase or sale of any security-based swap, in connection with which a person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person (Subsection 9(j)).

Action-based market manipulation is tackled by Section 10 of the Securities Exchange Act (15 U.S. Code 78j), according to which: *“It is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange: (a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; (2) Paragraph (1) of this subsection shall not apply to security futures products; (b) To use or employ, in connection with the purchase or sale*

*of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; (c) (1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors".*<sup>625</sup>

Lastly, information-based market manipulation is addressed by Subsection 240.10b-5 of the SEC Rules, which makes it *"unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange: (a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."*

### **3.4.13.2.1 Criminal offences and penalties**

Section 1348 of the U.S. Code, Title 18, subjects all types of securities frauds and manipulations to criminal liability and relevant penalties by stating: *"Whoever knowingly executes, or attempts to execute, a scheme or artifice: (1) to defraud any person in connection with any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S. Code 78l); or (2) to obtain, by means of false or fraudulent pretences, representations, or promises, any money or property in connection with the purchase or sale of any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) shall be fined under title 18, or imprisoned not more than 25 years, or both".*

All of the foregoing rules also apply to staff members of the banks that are members of the Federal Reserve Bank System and staff members of the debt management office.

### **3.4.13.3 Central bank framework (US Federal Reserve System)**

#### **3.4.13.3.1 Exemption from market abuse rules**

The US Federal Reserve Banks belonging to the Federal Reserve System benefit from an exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy.

Securities and commodities laws do not contain explicit exemptions for foreign CBs. The Foreign Sovereign Immunity Act (28 U.S. Code 1602 et seq.), however, may grant

---

<sup>625</sup> Rules promulgated under Subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) of this section and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 77q (a) and sections 78i, 78o, 78p, 78t, and 78u-1 of Title 15 of the U.S. Code, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

central banks, as instrumentalities of their foreign states, immunity from the jurisdiction of US courts and/or from the remedies of attachment or execution for alleged violations of these laws.

Whether immunity would apply in any specific instance would depend on the facts and circumstances of the matter being considered.

### **3.4.13.3.2 Risk management standards**

In the disposal/acquisition of financial instruments in pursuit of monetary, exchange rate or public debt management policy, the Federal Reserve Bank of New York (FRBNY) is guided by the federal law, the Federal Reserve Administrative Manual (FRAM), FRBNY policies and specific business area procedures. Bank business areas are subject to review by both Internal Audit, the Federal Reserve Board's Division of Reserve Bank Operations and Payment Systems, and the Risk Group and Compliance Function.

### **3.4.13.3.3 Use of confidential information by staff members**

#### **Rules of conduct on professional secrecy**

Members of the Board of Governors of the Federal Reserve System and presidents and first vice presidents of the Federal Reserve Banks are under the obligation to "*maintain the integrity, dignity, and reputation of the System*". Accordingly, they must "*scrupulously avoid conduct that might in any way tend to embarrass the System or impair the effectiveness of its operations*" (Section 2-026.1(1), *Federal Reserve Administrative Manual*).<sup>626</sup>

To this end, their personal financial dealings must "*be above reproach*", and information obtained by them as officials of the System may "*never be used for personal gain*" (Section 2-026.1(2), *Federal Reserve Administrative Manual*). They must "*strictly preserve the confidentiality of System information that, if revealed, could benefit any person or impair the effectiveness of System operations and policies*" (Section 2-026.1(5), *Federal Reserve Administrative Manual*).

In particular, on the occasion of public speeches and relations with news media, senior officials are required to "*avoid statements that might suggest the nature of any monetary policy action that has not yet been officially disclosed or that might confuse or mislead the public with respect to the monetary or other policies of the System*" (Section 2-026.1(7), *Federal Reserve Administrative Manual*). They are free to express their personal views concerning questions about the System's actions or public interest, but they are urged to "*carefully consider whether their remarks might create public misunderstanding of the System's actions, or impair the effective formulation and implementation of System policies or lessen the prestige of the System*" (Section 2-026.1(8), *Federal Reserve Administrative Manual*).

#### **Additional rules for staff members of the Federal Reserve Bank of New York**

The bank's non-public information<sup>627</sup> may be released or used only as authorised by bank policy. Bank examination and other bank or bank holding company supervisory

---

<sup>626</sup> Available at [www.federalreserve.gov/monetarypolicy/files/FRAM2-026-1.pdf](http://www.federalreserve.gov/monetarypolicy/files/FRAM2-026-1.pdf).

<sup>627</sup> Non-public information is information that "*the employee knows, or reasonably should know and: (a) Has not been made available to the general public; (b) Is designated as confidential, private or proprietary; (c) Is routinely treated by the Bank as confidential. This may include information related to the Bank, the System, the Federal Open Market Committee ('FOMC'), or another person or institution (such as a banking organization, a vendor, an employee or former employee of the Bank, or a federal agency). An employee must strictly*

information is deemed to be the property of the Board of Governors of the Federal Reserve System ("Board") and may be disclosed only in accordance with Board procedures.

### **Rules of conduct on the use of inside information**

Pursuant to Section 1905, Title 18, U.S. Code (Disclosure of confidential information), *"Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law"* is subject to a fine or may be imprisoned up to, but not more than, one year, or both; additionally, he/she may be removed from office or employment.

### ***Additional rules for staff members of the Federal Reserve Bank of New York***

An employee is prohibited from using non-public information for any purpose other than Bank business. In particular, an employee may not engage, directly or indirectly, in any financial transaction as a result of, or in reliance on, non-public information, whether such information relates to the bank or any other person or institution. An employee may not make improper use of such non-public information to further the employee's own private interest or that of another person, whether through advice, recommendation, or a knowing, unauthorised disclosure.

An employee's duty to maintain the confidentiality of non-public information continues after his or her employment ends. An employee must leave all bank documents, files, computer diskettes, reports and records containing non-public information, and all copies of such information, with the bank when his or her employment ends (Article 8.2, *Federal Reserve Bank of New York Code of Conduct*).

### ***Additional rules for Federal Open Market Committee (FOMC) members***

In all communications with the public regarding monetary policy issues, members of the Federal Reserve staff must *"refrain from publicly expressing their own personal opinions or predictions regarding prospective monetary policy decisions"*. In explaining the rationale for announced FOMC decisions, staff must *"draw on Committee communications, the Chairman's press conference remarks, and other published materials as appropriate"*. Whenever staff make public comments on monetary policy, they are required to *"clearly indicate that those comments are solely their own responsibility and should not be interpreted as necessarily representing the views of the FOMC, its principals, or any other person associated with the Federal Reserve System"* (see *FOMC Policy on External Communications of Federal Reserve System Staff*).<sup>628</sup>

Additionally, staff members are required to *"safeguard all confidential FOMC information. No confidential information may be released except pursuant to Committee instructions or with written authorization from the Chairman and prompt notification to the*

---

*preserve the confidentiality of such information. It can be disclosed only as required for Bank purposes and only as authorized"* (Article 3.2, *Federal Reserve Bank of New York Code of Conduct*, available at: [www.newyorkfed.org/aboutthefed/ob43.pdf](http://www.newyorkfed.org/aboutthefed/ob43.pdf)).

<sup>628</sup> Available at [www.federalreserve.gov/monetarypolicy/files/FOMC\\_ExtCommunicationStaff.pdf](http://www.federalreserve.gov/monetarypolicy/files/FOMC_ExtCommunicationStaff.pdf).

Committee". Unless the information has been made widely available to the public, Federal Reserve staff members must *"refrain from disseminating information outside the Federal Reserve System, such as information about economic and financial conditions or about the methods and tools that are used to assess those conditions that might allow an individual, firm, or organization to profit financially"* (see *FOMC Policy on External Communications of Federal Reserve System Staff*).

### **3.4.13.3.4 Transactions in assets and financial instruments by staff members**

#### **Rules of conduct on trading in assets**

Section 2635.703(a) of the Code of Federal Regulations (C.F.R.) provides that *"[a]n employee shall not engage in a financial transaction using non-public information, nor allow the improper use of non-public information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure".*<sup>629</sup>

Section 2-026.1(3) of the Federal Reserve Administrative Manual additionally provides that *"[i]n order to avoid even the appearance of acting on confidential information, employees should not knowingly purchase or sell any security (including any interest in the Thrift Plan for Employees of the Federal Reserve System, but not including shares of a money market mutual fund) during the seven-calendar-day period prior to and the day(s) of a meeting of the Federal Open Market Committee. This restriction does not apply if the investment decision is made before the seven-day period (in the case of a rollover, for example). They also should not knowingly hold any security for less than 30 days, other than shares of a money market mutual fund. They should make every effort to ensure that their spouses' and dependent children's financial transactions comply with these guidelines. In unusual circumstances, after consultation with the ethics officer, these restrictions may be waived"*. Beyond these guidelines, they must *"carefully avoid engaging in any financial transaction the timing of which could create the appearance of acting on inside information concerning Federal Reserve deliberations and actions"* (Section 2-026.1(3) *Federal Reserve Administrative Manual*).

In general terms, staff members should be careful to avoid any dealings or other conduct that might convey even an appearance of conflict between their personal interests, the interests of the System, and the public interest. They may invest in United States government securities only under the following conditions: *"they may purchase (in a non-competitive tender) or hold United States Treasury bills with maturities of one year or less, but must hold them to maturity, except in unusual circumstances after consultation with their respective ethics officer. They may purchase or hold United States Treasury bonds or notes (including shares of mutual funds whose investments are concentrated in such bonds or notes) having a total market value of no more than \$50,000. These longer-term government securities or mutual fund shares should be bought only with the intent to hold them as long-term investments and should not be sold while the individual is employed by the Federal Reserve System, except in unusual circumstances and after consultation with the ethics officer. They may own, without limitations, United States savings bonds. They may own, without limitation, shares of a money market mutual fund concentrating in United States government securities if the*

---

<sup>629</sup> For purposes of this section, non-public information is *"information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know: (1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation; (2) Is designated as confidential by an agency; or (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request"* (Section 2635.703(b), C.F.R.).

*net asset value of the fund remains constant"* (Section 2-026.1(4) *Federal Reserve Administrative Manual*).

### ***Additional rules for staff members of the Federal Reserve Bank of New York (FRBNY)***

An employee with access to Class I FOMC information must avoid engaging in any financial transaction the timing of which could create the appearance of acting on inside information concerning Federal Reserve deliberations and actions. In order to avoid even the appearance of acting on confidential information, an employee authorised to have regular and ongoing access to Class I FOMC information should not knowingly: "a) *Purchase or sell any security (including any interest in the Thrift Plan for Employees of the Federal Reserve System, but not including shares of a money market mutual fund) during the seven calendar day period prior to and the day (s) of a meeting of the FOMC; b) Hold any security for less than 30 days, other than shares of a money market mutual fund. This purchase or sale restriction does not apply if the investment decision is made before the seven day period*". An employee authorised to have regular and ongoing access to Class I FOMC information also should "make every effort to ensure that the financial transactions of his or her spouse and dependent children comply with these restrictions. In unusual circumstances, after consultation with the Ethics Officer, these restrictions may be waived" (Article 3.3, *Federal Reserve Bank of New York Code of Conduct*).

### **Rules of conduct on record-keeping**

The rules on the executive branch financial disclosure, i.e. rules applicable to public officials belonging to the Federal Government in general, distinguish between high-level officials and low-level officials. High-level employees are held to public financial disclosure whereas low-level employees are held to confidential financial disclosure (Provision 2634.104(a), *C.F.R.*). Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programmes and providing counselling to employees (Provision 2634.104(b), *C.F.R.*).

*High-level employees.* Employees must file a financial disclosure report that includes a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. Each item of real and personal property must be disclosed separately. For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment (Provision 2634.301(a), *C.F.R.*).<sup>630, 631</sup>

---

<sup>630</sup> Examples of the types of property required to be reported include but are not limited to: "(1) *Real estate; (2) Stocks, bonds, securities, and futures contracts; (3) Livestock owned for commercial purposes; (4) Commercial crops, either standing or held in storage; (5) Antiques or art held for resale or investment; (6) Beneficial interests in trusts and estates; (7) Deposits in banks or other financial institutions; (8) Pensions and annuities; (9) Mutual funds; (10) Accounts or other funds receivable; and (11) Capital accounts or other asset ownership in a business*" (Provision 2634.301(b), *C.F.R.*).

<sup>631</sup> The following property interests are exempt from the reporting requirements: "(1) *Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child; (2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund; (3) A personal residence of the filer or spouse, as defined in 2634.105(l); and (4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act*" (Provision 2634.301(c), *C.F.R.*).

In addition, each financial disclosure report must disclose the source, type, and the actual amount or value, of earned or other non-investment income in excess of \$200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including: "(1) *Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment); (2) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security); (3) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and (4) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness*" (Provision 2634.302(a), C.F.R).

Furthermore, each financial disclosure report must disclose: "(1) *The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds, which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts; (2) The source, type, and the actual amount or value of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed \$200 from any one source*" (Provision 2634.302(b), C.F.R). "Each financial disclosure report shall also include a brief description, the date and value of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000: (1) *Of real property, other than a personal residence of the filer or spouse; and (2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities*" (Provision 2634.303, C.F.R).

Each financial disclosure report shall contain the identity of the source, a brief description, and the value of all gifts aggregating more than \$375 in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, a travel itinerary, dates, and nature of expenses must be provided (Provision 2634.304(a), C.F.R). Each financial disclosure report filed pursuant to this subpart shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and the value of any travel-related reimbursements aggregating more than \$375 in value, which are received by the filer during the reporting period from any one source (Provision 2634.304(b), C.F.R). Each financial disclosure report shall identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed (Provision 2634.305, C.F.R).

Each financial disclosure report shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to: "(a) *Future employment; (b) A leave of absence from employment during the period of the reporting individual's Government service; (c) Continuation of payments by a former employer other than the United States Government; and (d) Continuing participation in an employee welfare or benefit plan maintained by a former employer*" (Provision 2634.306, C.F.R).

Each financial disclosure report must identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any non-profit organisation, any labour organisation, or any educational or other institution other than the United States (Provision 2634.307, C.F.R).



Each financial disclosure report filed pursuant to the provisions above must include on the standard form prescribed by the Office of Government Ethics in accordance with instructions issued by that office a full and complete statement of the information required to be reported for the preceding calendar year (Provision 2634.308(a), C.F.R.). The reporting individual must file financial disclosure reports required under this part with the designated agency ethics official or his delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which he will serve (Provision 2634.602(a), C.F.R.).

The designated agency ethics official normally serves as the reviewing official for reports submitted to his agency. All reports are reviewed within 60 days after the date of filing (Provision 2634.605(a), C.F.R.). If the reviewing official determines that the report meets the requirements, he shall certify it by signature and date.

If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations, the official shall: *"(i) Notify the filer of that conclusion; (ii) Afford the filer a reasonable opportunity for an oral or written response; and (iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations. If the reviewing official concludes that the report does fulfil the requirements, he shall sign and date the report. If he determines that it does not, he shall: (A) Notify the filer of the conclusion; B) Afford the filer an opportunity for personal consultation if practicable; (C) Determine what remedial action should be taken to bring the report into compliance with the requirements of this section; and (D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken"* (Provision 2634.605(b)(4), C.F.R.). Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed no later than three months from the date on which the filer received notice that the action is required. Remedial action may include, as appropriate: *"(A) Divestiture of a conflicting interest; (B) Resignation from a position with a non-Federal business or other entity; (C) Restitution; (D) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part; (E) Procurement of a waiver; (F) Preparation of a written instrument of recusal (disqualification); or (G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation"* (Provision 2634.605(b)(5), C.F.R.).

For low-level employees, a confidential financial reporting system is provided for in order to complement the public reporting system established above for high-level officials in the executive branch. It is equally deemed important that in order to guarantee the efficient and honest operation of the government, other, less senior, executive branch employees, whose duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics programme and counselling its employees. Such reports are filed on a confidential basis. The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and programme-related restrictions (Provision 2634.901, C.F.R.).

Each financial disclosure report must disclose the source of earned or other non-investment income in excess of \$200 received by the filer from any one source or which has accrued to the filer's benefit during the reporting period, including: *"1. Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment); 2. Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and 3. Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness"* (Provision 2634.907, C.F.R.).

Each financial disclosure report shall disclose separately: "(1) *Each item of real and personal property having a fair market value in excess of \$1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, including but not limited to: (i) Real estate; (ii) Stocks, bonds, securities, and futures contracts; (iii) Livestock owned for commercial purposes; (iv) Commercial crops, either standing or held in storage; (v) Antiques or art held for resale or investment; (vi) Vested beneficial interests in trusts and estates; (vii) Pensions and annuities; (viii) Sector mutual funds; (ix) Accounts or other funds receivable; and (x) Capital accounts or other asset ownership in businesses;* (2) *The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds, which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source, including but not limited to income derived from: (i) Real estate; (ii) Collectible items; (iii) Stocks, bonds, and notes; (iv) Copyrights; (v) Vested beneficial interests in trusts and estates; (vi) Pensions; (vii) Sector mutual funds; (viii) The investment portion of life insurance contracts; (ix) Loans; (x) Gross income from a business; (xi) Distributive share of a partnership; (xii) Joint business venture income; and (xiii) Payments from an estate or an annuity or endowment contract"* (Provision 2634.907, C.F.R.).

Each financial disclosure report must also "*identify liabilities in excess of \$10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed*" and "*all positions held at any time by the filer during the reporting period, other than with the United States, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any non-profit organization, any labour organization, or any educational or other institution*". Each financial disclosure report shall identify the parties to, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to: "*1. Future employment (including the date on which the filer entered into the agreement for future employment), 2. A leave of absence from employment during the period of the filer's Government service, 3. Continuation of payments by a former employer other than the United States Government; and 4. Continuing participation in an employee welfare or benefit plan maintained by a former employer*" (Provision 2634.907, C.F.R.).

Each annual financial disclosure report must "*contain a brief description of all gifts aggregating more than \$375 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source. For in-kind travel-related gifts, the report shall include a travel itinerary, the dates, and the nature of expenses provided. Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description (including a travel itinerary, dates, and the nature of expenses provided) of any travel-related reimbursements aggregating more than \$375 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source. Each confidential financial disclosure report shall disclose the same information above with regard to the spouse or a dependent child of the filer*" (Provision 2634.907, C.F.R.).

With the regard to the application of these rules, the head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, must refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has wilfully failed to file a public report or information required on such a report, or has wilfully falsified any information (public or confidential) required to be reported. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and wilfully falsifies or who knowingly and wilfully fails to file or report any information required by filers of public reports. The court in which the action is brought may assess against the individual a civil monetary penalty. An individual may also be prosecuted

under criminal statutes for supplying false information on any financial disclosure report. The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information (Provision 2634.701, C.F.R.).

### **3.4.13.3.5 Staff independence and conflicts of interest**

#### **Rules of conduct on independence**

With regard to gifts and other benefits, employees are not allowed, directly or indirectly, to solicit or accept a gift: *"(1) From a prohibited source; or (2) Given because of the employee's official position"*<sup>632</sup>, <sup>633</sup> (Provision 2635.202, C.F.R.). They *"may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year"* but this exception *"does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit"* (Provision 2635.203(a), C.F.R.).

In respect of prospective employment, unless the employee's participation is authorised in accordance, an employee may *"not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within. Disqualification is accomplished by not participating in the particular matter"* (Provision 2635.604, C.F.R.).

Moreover, an employee may *"not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties: (a) If it is prohibited by statute or by an agency supplemental regulation; or (b) If, under the standards set forth in 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired"* (Provision 2635.802, C.F.R.).

#### **Additional standards for members and other employees of the Board of Governors of the Federal Reserve System**

Except as permitted, an employee, or an employee's spouse or minor child, shall not own or control, directly or indirectly, any debt or equity interest in: *"(1) A depository institution or any of its affiliates; or (2) A primary government securities dealer or any of its affiliates, if such employee has regular, ongoing access to Class I Federal Open Market Committee information"* (Provision 6801.103(a), C.F.R.).<sup>634</sup>

---

<sup>632</sup> "Prohibited source" means any person who: *"(1) Is seeking official action by the employee's agency; (2) Does business or seeks to do business with the employee's agency; (3) Conducts activities regulated by the employee's agency; (4) Has interests that may be substantially affected by performance or non-performance of the employee's official duties; or (5) Is an organization a majority of whose members are described in paragraphs (1) through (4)"* (Provision 2635.203(d), C.F.R.).

<sup>633</sup> A gift is solicited or accepted because of the employee's official position *"if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position"* (Provision 2635.203(e), C.F.R.).

<sup>634</sup> The prohibition in paragraph (a) does not apply to the ownership or control of a debt or equity interest in the following: *"(1) Nonbanking holding companies, i.e. a publicly traded holding company that: (i) Owns a bank and either the holding company or the bank is exempt under the Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., (for example, a credit card bank, a nonbank bank or a grandfathered bank holding company), and the holding company's predominant activity is not the ownership or operation of banks and thrifts; (ii) Owns a thrift and its predominant activity is not the ownership or operation of banks and thrifts; or*

An employee may “not accept a loan from, or enter into any other financial relationship with, an institution regulated by the Board, if the loan or financial relationship is governed by terms more favourable than would be available in like circumstances to members of the public” (Provision 6801.105 C.F.R.); nor may he/she, “on his or her own behalf, or on behalf of his or her spouse or child or anyone else (including any business or non-profit organization), seek or accept credit from, or renew or renegotiate credit with, a depository institution or any of its affiliates if the institution or affiliate is a party to an application, enforcement action, investigation, or other particular matter involving specific parties pending before the Board and: (i) The supervisory employee is assigned to the matter; or ii) The supervisory employee is aware of the pendency of the matter and knows that he or she will participate in the matter by action, advice or recommendation. The prohibition also applies for three months after the supervisory employee's participation in the matter has ended” (Provision 6801.106, C.F.R.).

An employee must “obtain prior written approval from his or her Division director (or the Division director's designee) and the concurrence of the Board's Designated Agency Ethics Official before engaging in compensated outside employment. Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation. For purposes of this section, the term compensated outside employment means any form of compensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker” (Provision 6801.109, C.F.R.).

#### ***Additional rules for staff members of the Federal Reserve Bank of New York***

An employee is generally not restricted from borrowing from any entity, including one for which the System is the primary supervisor. However, an employee may not, on his or her own behalf, or on behalf of anyone else, seek or accept a loan from, or renew or renegotiate a loan with, an institution or any affiliate if the covered employee is working on or knows he or she will be assigned a supervisory matter which involves the institution or any affiliate.

Furthermore, an employee must disqualify himself or herself from handling a supervisory matter involving an institution or any affiliate if the employee learns that his or her spouse or dependent child or a related entity is seeking or has sought or accepted a loan from, or has renewed or renegotiated a loan with the institution or any affiliate while the matter is pending before the bank or the Board. The foregoing prohibitions continue for three months after the covered employee's participation in the matter ends.

An employee may not participate in any supervisory matter involving an institution or any affiliate if the employee, his or her spouse or dependent child or a related entity is indebted to the institution or any affiliate. An employee may not participate in any supervisory matter involving an institution or any affiliate if the employee, his or her spouse or dependent child or a related entity is indebted to the institution or any

---

(iii) Owns a primary government securities dealer and its predominant activity is not the ownership or operation of banks, thrifts or securities firms; (2) Mutual funds, i.e. a publicly traded or publicly available mutual fund or other collective investment fund if: (i) The fund does not have a stated policy of concentration in the financial services industry; and (ii) Neither the employee nor the employee's spouse exercises or has the ability to exercise control over the financial interests held by the fund or their selection; (3) Pension plans, i.e. a widely held, diversified pension or other retirement fund that is administered by an independent trustee” (Provision 6801.103(b), C.F.R.). If an employee or an employee's spouse or minor child holds an interest in an entity under paragraph (b)(1) or (c) of this section, the employee must consult the Designated Agency Ethics Official in order to determine whether the employee must be disqualified from participating in any particular matter involving that entity or affiliate under the conflicts of interest rules of the Office of Government Ethics (Provision 6801.103(d), C.F.R.).

affiliate. An employee may not participate in a supervisory matter involving an institution or any affiliate if the covered employee was employed by the institution within the preceding 12 months. The covered employee's supervising officer, in consultation with the bank's Ethics Officer, may determine that recusal should be required for a longer period (see Appendix B, Particle II, Section 1, *Federal Reserve Bank of New York Code of Conduct*).

### **Rules of conduct on conflicts of interest**

An employee is prohibited by criminal statute (18 U.S.C. 208(a)), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.<sup>635</sup> In all cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter or obtain a waiver or determine that an exemption applies (6835.402(a), C.F.R.).

An employee who is authorised to participate in the particular matter by virtue of a waiver or exemption or because the interest has been divested must *"disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter"* (Provision 6835.402(c), C.F.R.).

### ***Additional standards for members and other employees of the Board of Governors of the Federal Reserve System***

A supervisory employee may not participate by action, advice or recommendation in any application, enforcement action, investigation, or other particular matter involving specific parties to which a depository institution or its affiliate is a party *"if any of the following are indebted to the depository institution or any of its affiliates: (1) The employee; (2) The spouse or dependent child of the employee; (3) A company or business if the employee or the employee's spouse or dependent child owns or controls more than 10 percent of its equity; or (4) A partnership if the employee or the employee's spouse or dependent child is a general partner"* (Provision 6801.107, C.F.R.). Moreover, a supervisory employee *"may not participate in any particular matter to which a depository institution or its affiliate is a party if the depository institution or affiliate employs his or her spouse, child, parent or sibling unless the supervising officer, with the concurrence of the Board's Designated Agency Ethics Official, has authorized the employee to participate in the matter using the authorization process set forth in the Office of Government Ethics' Standards of Ethical Conduct"* (Provision 6801.108, C.F.R.).

### ***Additional rules for staff members of the Federal Reserve Bank of New York***

An employee must *"avoid any situation that might give rise to an actual conflict of interest or even the appearance of a conflict of interest. An employee who routinely represents the Bank in dealing with the public must be particularly careful in this regard. Where the circumstances might cause a reasonable person to question the employee's*

---

<sup>635</sup> A particular matter has a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter has no direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart. A particular matter has a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, for the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

*impartiality or otherwise give rise to an appearance of a conflict of interest, the employee should not participate in a matter unless he or she has informed the Bank of the situation and received authorization from the Bank's Ethics Officer" (Article 5.1, Federal Reserve Bank of New York Code of Conduct).*

*Additionally, an employee "may not participate personally and substantially in an official capacity in any particular matter in which, to the employee's knowledge, the employee or close related parties have a financial interest if the particular matter will have a direct and predictable effect on that interest. Participation in a particular matter includes making a decision or recommendation, providing advice, or taking part in an investigation" (Article 5.2, Federal Reserve Bank of New York Code of Conduct).*

Furthermore, an employee "may not own or control, directly or indirectly, any debt or equity interest in a depository institution or an affiliate of a depository institution"; nor may she own or control, directly or indirectly, any debt or equity interest in a primary government securities dealer or an entity that directly or indirectly controls a primary dealer if she is an employee with regular and ongoing access to Class I FOMC information and members of the Markets Group (Article 5.3, *Federal Reserve Bank of New York Code of Conduct*). In order to obtain information about circumstances that might constitute an actual or potential conflict of interest or a violation of applicable bank policy or law, employees are required to file a disclosure statement as prescribed by the bank at least annually (Article 9, *Federal Reserve Bank of New York Code of Conduct*).

Unless the employee is authorised to participate in the particular matter by virtue of a waiver or because the interest has been divested, an employee "*must disqualify himself or herself from participating in a particular matter in which, to the employee's knowledge, he or she, or a person whose interests are imputed to the employee, has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter*" (see Appendix A, Part I, Section 3, *Federal Reserve Bank of New York Code of Conduct*).

### **3.4.13.3.6 Application of rules of conduct**

#### **Ethics officer**

The rules for staff members of the Federal Reserve Bank of New York (FRBNY) state that the Ethics Officer, a senior officer of the bank reporting to the President and First Vice President, is responsible for implementing the bank's programme for maintaining the highest standards of honesty, integrity, and impartiality in the conduct of the bank's activities. The Ethics Officer is available to employees and officers alike.

The Ethics Officer annually distributes the code to all officers and employee and annually distributes a financial disclosure form to all officers and to employees with supervisory, procurement, or policymaking responsibilities.

An employee or officer may consult, orally or in writing, with the Ethics Officer about the application of the code in a particular situation. The Ethics Officer provides counsel and guidance to the employee or officer about the conduct that the Ethics Officer considers appropriate under the code. An officer or employee may also raise questions with his or her supervising officer, a Human Resources Officer, the General Counsel, the First Vice President, or the President.

The Ethics Officer shall consult with the bank's General Counsel, as appropriate, about matters involving interpretations of the code or the application of statutes and regulations to bank staff.

The Ethics Officer may file in the confidential files of the Ethics Office a succinct report on guidance given to an employee or officer. From time-to-time the Ethics Officer may release to the entire bank staff compilations of guidance given to employees of officers after deleting all information identifying the particular employee or officer.

The Ethics Officer may from time-to-time prepare educational material about the bank's ethics programme and distribute it to all bank staff or to areas that would find that information helpful. The Ethics Officer consults with the President and First Vice President about broad issues concerning the bank's ethics programme and may recommend revisions to policies or new areas to be covered by policies.

The Ethics Officer has such additional responsibilities with regard to the bank's ethics programme as the President or First Vice President may specify (Appendix C to the *Federal Reserve Bank of New York Code of Conduct*).

### **Disciplinary actions and enforcement**

Rules for staff members of the FRBNY's employees state that any employee who violates any provision of the Code of Conduct is subject to disciplinary action up to and including termination of employment (Article 10.2, *Federal Reserve Bank of New York Code of Conduct*).

### **3.4.13.3.7 Appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Federal Reserve System. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. Both administrative sanctions and criminal penalties are particularly severe. Staff members of the national CB are subject to all relevant rules and penalties.
- Like in the EU, the national CB is formally exempt from the rules on insider dealing, unlawful disclosure of inside information and market manipulation. No exemption is provided for third-country CBs, although depending on the circumstances, third-country CBs may benefit from sovereign immunity.
- The CB applies risk management standards in undertaking its operations. Such standards are established in operational manuals as well as policies and specific business area procedures.
- Staff members are subject to a stringent duty of professional secrecy under several legal provisions and the applicable internal Code of Conduct. Violation of such duty, which continues beyond the term of employment, constitutes a criminal offence. Staff members may never use inside information for their personal benefit.
- Rules exist that explicitly prevent or restrict staff members from trading in financial instruments on the basis of inside information around the time the Federal Open Market Committee gathers and from investing in the U.S. Government Securities. Staff members with access to high-level classified information are further restricted in dealing with financial instruments. Staff members are subject to extensive and heavily-detailed rules on financial

disclosure, which distinguish between low-level employees and high-level employees.

- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out conflicting activities and accepting gifts and other benefits from third-parties, excepted for gifts of limited value which are not related to the performance of own duties. Staff members must also guard against conflicts of interest. In case of unavoidable conflict of interest, staff members must disclose it and are disqualified from taking part in decisions in relation to which they are conflicted.
- An ethics officer, who is a senior officer of the bank reporting to the President and the Vice President, is responsible for implementing the bank's programme for maintaining the highest standards of honesty, integrity and impartiality in the conduct of bank's activities. He/she provides guidance and may also occasionally prepare educational material for staff members.
- Depending on the severity of the misconduct, staff members are subject disciplinary action up to and even resulting in termination of employment.

### **3.4.13.4 Debt management office framework (U.S. Department of the Treasury)**

#### **3.4.13.4.1 Exemption from market abuse rules**

No information is publicly available about the existence of an exemption from rules on insider dealing, unlawful disclosure of inside information and market manipulation for the national and third-country DMOs with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy; nor has such information been provided via questionnaire.

The Foreign Sovereign Immunity Act, 28 U.S.C. 1602 et seq., however, may grant third-country DMOs, as instrumentalities of their foreign States, immunity from the jurisdiction of the United States courts and/or from the remedies of attachment or execution for alleged violations of these laws. Whether immunity would apply in any specific instance would depend on the facts and circumstances of the matter being considered.

#### **3.4.13.4.2 Risk management standards**

No information is publicly available about the application of risk management standards by the DMO with regard to transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy. Nor has it been provided via questionnaire.

#### **3.4.13.4.3 Use of confidential information by staff members**

##### **Rules of conduct on professional secrecy**

Employees must not disclose official information without proper authority, pursuant to Department or bureau regulation (Provision 0.206, Title 31, C.F.R.).

##### **Rules of conduct on the use of inside information**

Pursuant to Section 1905, Title 18, U.S. Code, "*Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns*



*or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law” is subject to a fine or may be imprisoned up to, but not more than, one year, or both; additionally, he/she may be removed from office or employment.*

#### **3.4.13.4.4 Transactions in assets and financial instruments by staff members**

##### **Rules of conduct on trading in assets**

No employee of the Department of the Treasury may “*purchase, directly or indirectly, property: (1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or (2) Sold under the direction or incident to the functions of the employee's bureau*” (Provision 3101.103, C.F.R.).<sup>636</sup>

Employees may hold the following financial interests without violating 18 U.S.C. 208(a): *(1) The stocks or bonds of a publicly traded corporation with a value of \$1000 or less; and (2) The stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested* (Provision 0.217, Title 31, C.F.R.).

##### **Rules of conduct on record-keeping**

The same rules of conduct on financial disclosure seen above under the corresponding section dedicated to the Federal Reserve Bank System apply to staff members of the DMO.

#### **3.4.13.4.5 Staff independence and conflicts of interest**

##### **Rules of conduct on independence**

The same rules of conduct aimed at safeguarding the independence seen above under the corresponding section dedicated to the Federal Reserve Bank System apply to staff members of the DMO.

##### **Rules of conduct on conflicts of interest**

The same rules of conduct aimed at safeguarding the independence seen above under the corresponding section dedicated to the Federal Reserve Bank System apply to staff members of the DMO.

---

<sup>636</sup> This prohibition does not apply to the purchase of government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department. An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee’s duties.

### **3.4.13.4.6 Application of rules of conduct**

#### **Ethics officer**

The Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO). The DAEO is responsible for managing the Department's ethics programme, including coordinating ethics counselling and interpreting questions of conflicts of interest and other matters that arise under the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules. The Senior Counsel for Ethics is the Alternate Designated Agency Ethics Official (Provision 0.104, Title 31, C.F.R.).

The Chief Counsel or Legal Counsel for a bureau, or a designee, is the Deputy Ethics Official for that bureau. The Legal Counsel for the Financial Crimes Enforcement Network is the Deputy Ethics Official for that organisation. It is the responsibility of the Deputy Ethics Official to give authoritative advice and guidance on conflicts of interest and other matters arising under the Executive Branch-wide Standards, Treasury Supplemental Standards, and the Rules (Provision 0.105, Title 31, C.F.R.).

Bureau heads or designees are required to: *"(a) Provide all employees with a copy of Executive Order 12674, as amended by Executive Order 12731, the Executive Branch-wide Standards, the Treasury Supplemental Standards and the Rules; provide all new employees with an explanation of the contents and application of the Executive Branch-wide Standards, Treasury Supplemental Standards and the Rules; and provide all departing employees with an explanation of the applicable post-employment restrictions contained in 18 U.S.C. 207 and 5 C.F.R. part 2641 and any other applicable law or regulation. (b) Provide guidance and assistance to supervisors and employees in implementing and adhering to the rules and procedures included in the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules; obtain any necessary legal advice or interpretation from the Designated Agency Ethics Official or a Deputy Ethics Official; and inform employees as to how and from whom they may obtain additional clarification or interpretation of the Executive Branch-wide Standards, Treasury Supplemental Standards, Rules, and any other relevant law, rule or regulation. (c) Take appropriate corrective or disciplinary action against an employee who violates the Executive Branch-wide Standards, Treasury Supplemental Standards or Rules, or any other applicable law, rule or regulation, and against a supervisor who fails to carry out his responsibilities in taking or recommending corrective or disciplinary action when appropriate against an employee who has committed an offense"* (Provision 0.106, Title 31, C.F.R.).

Employees are required to: *"(1) Read and follow the rules and procedures contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, and Rules; (2) Request clarification or interpretation from a supervisor or ethics official if the application of a rule contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, or Rules is not clear; (3) Report to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, or Secret Service, any information indicating that an employee, former employee, contractor, subcontractor, or potential contractor engaged in criminal conduct or that an employee or former employee violated the Executive Branch-wide Standards or the Treasury Supplemental Standards or Rules. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the appropriate Chief or Legal Counsel or the Deputy General Counsel, who shall report such information to the Inspector General or appropriate internal affairs office; and (4) Report to the Inspector General information defined in paragraph (a)(3) of this section relating to foreign intelligence or national security, as covered in Executive Order 12356. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the Deputy General Counsel, who shall report such information to the Inspector General"* (Provision 0.107, Title 31, C.F.R.).

The confidentiality of the source of the information reported to the Inspector General or the internal affairs office under this section is maintained to the extent appropriate under the circumstances.

### **Disciplinary actions and enforcement**

All employees and officials of the Department are required to follow the rules of conduct and procedure contained in the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards of Ethical Conduct, the Employee Responsibilities and Conduct (5 CFR part [735](#)), and any bureau-issued rules. Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be instructed to take remedial or corrective action to eliminate the conflict. Remedial action may include, but is not limited to: "(1) *Reassignment of work duties*; (2) *Disqualification from a particular assignment*; (3) *Divestment of a conflicting interest*; or (4) *Other appropriate action*".

Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule "*may be disciplined in proportion to the gravity of the offense committed, including removal. Disciplinary action will be taken in accordance with applicable laws and regulations and after consideration of the employee's explanation and any mitigating factors. Further, disciplinary action may include any additional penalty prescribed by law*" (Provision 0.102, Title 31, C.F.R.).

### **3.4.13.4.7 Appropriateness and necessity of the exemption under Article 6(1) and 6(5) of MAR**

The existing regulatory framework on insider dealing, unlawful disclosure of inside information and market manipulation supports the appropriateness and necessity of the exemption under Articles 6(1) and 6(5) of MAR. Internal rules of conduct, enforcement mechanisms and the domestic regulatory framework overall are sufficiently effective in preventing, deterring and punishing market abuse by staff members of the Department of the Treasury. The assessment relies on the following findings:

- Insider dealing, unlawful disclosure of inside information, all forms of market manipulation (trade-based, action-based and information-based) are prohibited and constitute both administrative offences, subject to monetary administrative sanctions, and criminal offences, subject to criminal penalties in the form of a fine and/or imprisonment. Both administrative sanctions and criminal penalties are particularly severe. Staff members of the national DMO are subject to all relevant rules and penalties.
- No specific information is publicly available or has been provided in regard to the granting of an exemption from rules on insider dealing, unlawful disclosure of inside information or market manipulation to the national DMO and/or third-country DMOs. However, depending on the circumstances, third-country DMOs could benefit from sovereign immunity.
- No information is publicly available or has been provided with regard to the implementation of risk management standards by the DMO in undertaking its operations.
- Staff members are subject to a stringent duty of professional secrecy. Violation of such duty, which continues beyond the term of employment, constitutes a criminal offence. Staff members may never use inside information for their personal benefit.
- Staff members are subject to restrictions in purchasing assets and holding financial instruments and are subject to extensive and heavily-detailed rules on financial disclosure, which distinguish between low-level employees and high-level employees.

- Staff members are subject to a duty to preserve their independence from third-party interests, which is strengthened by prohibitions from carrying out conflicting activities and accepting gifts and other benefits from third-parties, excepted for gifts of limited value which are not related to the performance of own duties. Staff members must also guard against conflicts of interest. In case of unavoidable conflict of interest, staff members must disclose it and are disqualified from taking part in decisions in relation to which they are conflicted.
- The Deputy General Counsel is the Department's Designated Agency Ethics Official and is responsible for managing and coordinating the ethics programme, counselling and interpreting questions of conflicts of interest and other matters arising under the applicable internal rules of conduct. Employees are made aware of the internal rules of conduct by means of transmission of the relevant documentary materials and must report actual or suspected breaches of the law and/or internal rules of conduct.
- Heads of Bureau take appropriate corrective and disciplinary actions in case of misconduct up to and even resulting in the termination of employment.

## 4 Glossary

|                |                                                             |
|----------------|-------------------------------------------------------------|
| <b>ABSPP</b>   | Asset-backed securities purchase programme                  |
| <b>ACPP</b>    | Personal and Professional Conduct Agreement                 |
| <b>ADR</b>     | Asset Development Reserve                                   |
| <b>APP</b>     | Asset Purchase Program                                      |
| <b>APS</b>     | Australian Public Service                                   |
| <b>Banxico</b> | Bank of Mexico                                              |
| <b>BCB</b>     | Banco Central do Brasil                                     |
| <b>BIS</b>     | Bank for International Settlements                          |
| <b>BNT</b>     | Brazilian National Treasury                                 |
| <b>BoC</b>     | Bank of Canada                                              |
| <b>BoJ</b>     | Bank of Japan                                               |
| <b>BOJ-NET</b> | Bank of Japan Financial Network System                      |
| <b>BoK</b>     | Bank of Korea                                               |
| <b>BQS</b>     | Bond Quotation System                                       |
| <b>BW</b>      | Bonds with warrants                                         |
| <b>CARS</b>    | Communication, Auction and Reporting System                 |
| <b>CB</b>      | Convertible bonds                                           |
| <b>CBCA</b>    | Border Collateral Arrangements                              |
| <b>CBPPP</b>   | Covered Bond Purchase Programme                             |
| <b>CBRT</b>    | Central Bank of the Republic of Turkey                      |
| <b>CEBCB</b>   | Ethics Committee of the Banco Central do Brasil             |
| <b>CEP</b>     | Public Ethics Commission                                    |
| <b>CFETS</b>   | China Foreign Exchange Trade System                         |
| <b>CFTC</b>    | US Commodity Futures Trading Commission                     |
| <b>CGRA</b>    | Currency and Gold Revaluation Account                       |
| <b>CGSDTC</b>  | Government Securities Depository Trust & Clearing Co., Ltd. |
| <b>CGU</b>     | Legislative and the General Comptroller's Office            |
| <b>CHATS</b>   | Clearing House Automated Transfer System                    |
| <b>CMN</b>     | National Monetary Council                                   |
| <b>CMU</b>     | Central Money Markets Unit                                  |
| <b>COPOM</b>   | Monetary Policy Committee                                   |
| <b>CPA</b>     | Canadian Payments Association                               |
| <b>CPIA</b>    | Federal Act on Currency and Payment Instruments             |
| <b>CR</b>      | Contingency Reserve                                         |
| <b>CRR</b>     | Cash Reserve Ratio                                          |
| <b>CU</b>      | Convertibility Undertakings                                 |
| <b>CVM</b>     | Securities and Exchange Commission of Brazil)               |
| <b>DE</b>      | Direct entry                                                |
| <b>DEBAN</b>   | Department of Banking Operations and Payment Systems        |
| <b>DEMAB</b>   | Open Market Operations Department                           |
| <b>DMO</b>     | Debt management office                                      |
| <b>EAPP</b>    | Expanded asset purchase programme                           |
| <b>EB</b>      | Exchangeable bonds                                          |
| <b>EE</b>      | Emerging economies                                          |
| <b>EFA</b>     | Exchange Fund Account                                       |
| <b>EFAC</b>    | Exchange Fund Advisory Committee                            |
| <b>EFBN</b>    | Exchange Fund Bills and Notes                               |
| <b>EFO</b>     | Exchange Fund Ordinance                                     |
| <b>ELB</b>     | Effective lower bound                                       |
| <b>EM</b>      | Emerging markets                                            |
| <b>ES</b>      | Exchange Settlement                                         |
| <b>ESMA</b>    | European Securities Markets Authority                       |
| <b>ETF</b>     | Exchange-traded funds                                       |
| <b>EU</b>      | European Union                                              |
| <b>FCVA</b>    | Foreign Exchange Forward Contracts Valuation Account        |
| <b>FIBCA</b>   | Financial Investment Business and Capital Markets Act       |
| <b>FINRA</b>   | Financial Industry Regulatory Authority                     |
| <b>FMIA</b>    | Draft Act on Financial Market Infrastructure                |
| <b>FOIA</b>    | Freedom of Information Act                                  |
| <b>FOMC</b>    | Federal Open Market Committee                               |

|                |                                                                   |
|----------------|-------------------------------------------------------------------|
| <b>FRBNY</b>   | Federal Reserve Bank of New York                                  |
| <b>FS</b>      | Financial Secretary                                               |
| <b>FSC</b>     | Financial Supervisory Commission                                  |
| <b>FX</b>      | Foreign Currency                                                  |
| <b>GB</b>      | Government Bond                                                   |
| <b>GDP</b>     | Gross Domestic Product                                            |
| <b>GMRA</b>    | Global Master Repurchase Agreement                                |
| <b>GoC</b>     | Government of Canada                                              |
| <b>GSE</b>     | Government-Sponsored Enterprise                                   |
| <b>HICP</b>    | Harmonised Index of Consumer Prices                               |
| <b>HKEX</b>    | Hong Kong Stock Exchanges and Clearing                            |
| <b>HKICL</b>   | Hong Kong Interbank Clearing Limited                              |
| <b>HKMA</b>    | Hong Kong Monetary Authority                                      |
| <b>IDLF</b>    | Intra-day liquidity facility                                      |
| <b>INFINET</b> | Indian Financial Network                                          |
| <b>IPCA</b>    | Broad National Consumer Price Index                               |
| <b>IRA</b>     | Investment Revaluation Account                                    |
| <b>ISE</b>     | Istanbul Stock Exchange                                           |
| <b>JGS</b>     | Japanese Government Securities                                    |
| <b>J-REIT</b>  | Japan real estate investment trusts                               |
| <b>KDIC</b>    | Korea Deposit Insurance Corporation                               |
| <b>KOFIA</b>   | The Korea Financial Investment Association                        |
| <b>KRX</b>     | Korea Exchange                                                    |
| <b>KDS</b>     | Korea Securities Depository                                       |
| <b>KTB</b>     | Korean Treasury Bonds                                             |
| <b>KTS</b>     | Korea Exchange Trading System                                     |
| <b>LAF</b>     | Liquidity adjustment facility                                     |
| <b>LEERS</b>   | Linked Exchange Rate System                                       |
| <b>LoLR</b>    | Lender of Last Resort                                             |
| <b>LSAP</b>    | Large-scale asset purchase programme                              |
| <b>LTGP</b>    | Long-Term Growth Portfolio                                        |
| <b>LTN</b>     | National Treasury Bills                                           |
| <b>LVTS</b>    | Large Value Transfer System                                       |
| <b>MSF</b>     | Marginal Standing Facility                                        |
| <b>MSS</b>     | Market Stabilisation Scheme                                       |
| <b>MAS</b>     | Monetary Authority of Singapore                                   |
| <b>MDD</b>     | Monetary and Domestic Markets Management Department               |
| <b>MTLF</b>    | Medium-term Lending Facility                                      |
| <b>MEPS</b>    | Electronic Payment System                                         |
| <b>MLF</b>     | Medium-term Liquidity Facility                                    |
| <b>MM</b>      | Market Makers                                                     |
| <b>MPMs</b>    | Monetary Policy Meetings                                          |
| <b>MPOG</b>    | Ministry of Planning, Budgets and Management                      |
| <b>MPS</b>     | Monetary Policy Statement Member State                            |
| <b>MSA</b>     | Monetary Stabilization Account                                    |
| <b>MSB</b>     | Monetary Stabilization Bonds                                      |
| <b>MSF</b>     | Marginal Standing Facility                                        |
| <b>MSS</b>     | Market stabilisation scheme                                       |
| <b>MTF</b>     | Multilateral trading facility                                     |
| <b>NAFMII</b>  | National Association of Financial markets Institutional Investors |
| <b>NBFC</b>    | Non-banking finance companies                                     |
| <b>NCB</b>     | National Central Banks                                            |
| <b>NDS</b>     | Negotiated Dealing System                                         |
| <b>NDS-OM</b>  | Negotiated Dealing System – Order Matching                        |
| <b>NTN</b>     | National Treasury Notes                                           |
| <b>OFR</b>     | Official foreign reserves                                         |
| <b>OMO</b>     | Open Market Operation                                             |
| <b>OTC</b>     | Over-the-counter                                                  |
| <b>OTF</b>     | Organised trading facilities                                      |
| <b>PBOC</b>    | People's Bank of China                                            |
| <b>PCE</b>     | Price index for personal consumption expenditures                 |
| <b>PD</b>      | Primary dealers                                                   |
| <b>PDM</b>     | Public debt management                                            |

|                           |                                                                                           |
|---------------------------|-------------------------------------------------------------------------------------------|
| <b>QQE</b>                | Quantitative and Qualitative Monetary Easing                                              |
| <b>RBA</b>                | Reserve Bank of Australia                                                                 |
| <b>RBI</b>                | Reserve Bank of India                                                                     |
| <b>RD</b>                 | Recognised Dealer                                                                         |
| <b>RFCA</b>               | Revaluation of Forward Contracts Account                                                  |
| <b>RITS</b>               | Reserve Bank Information and Transfer System                                              |
| <b>RTGS</b>               | Real-Time Gross Settlement                                                                |
| <b>SAFE</b>               | Chinese State Administration of Foreign Exchange                                          |
| <b>SDR</b>                | Special Drawing Rights                                                                    |
| <b>SES</b>                | Senior Executive Service                                                                  |
| <b>SESTA</b>              | Stock Exchanges and Securities Trading Act                                                |
| <b>SESTO-<br/>FINMASF</b> | Swiss Financial Market Supervisory Authority on Stock Exchanges<br>and Securities Trading |
| <b>SFC</b>                | Standing Facilities                                                                       |
| <b>SFCO</b>               | Securities and Futures Commission                                                         |
| <b>SFN</b>                | Securities and Futures Commission Ordinance                                               |
| <b>SFO</b>                | National Financial System                                                                 |
| <b>SGL</b>                | HK Securities and Futures Ordinance                                                       |
| <b>SGS</b>                | Subsidiary General Ledger                                                                 |
| <b>SLF</b>                | Singapore Government Securities                                                           |
| <b>SLF</b>                | Short-term Liquidity Facility                                                             |
| <b>SLO</b>                | Standing Lending Facility                                                                 |
| <b>SLR</b>                | Short-term Liquidity Operations                                                           |
| <b>SMP</b>                | Statutory Liquidity Ratio                                                                 |
| <b>SNB</b>                | Securities Markets Programme                                                              |
| <b>SOMA</b>               | Swiss National Bank                                                                       |
| <b>SPB</b>                | System of Open Market Accounts                                                            |
| <b>SPRA</b>               | Sistema de Pagamento Brasileiro                                                           |
| <b>SPEI</b>               | Special Purchase and Resale Agreements                                                    |
| <b>SPRA</b>               | Sistema de Pagos Electrónicos Interbancarios                                              |
| <b>SRA</b>                | Special Purchase and Resale Agreements                                                    |
| <b>STN</b>                | National Treasury Secretariat                                                             |
| <b>TCU</b>                | Federal Court of Accounts                                                                 |
| <b>TFEU</b>               | Treaty on the Functioning of the European Union                                           |
| <b>TIPS</b>               | U.S. government securities linked to inflation                                            |
| <b>TRACE</b>              | Trade Reporting and Compliance Engine                                                     |

## **5 Annexes**

### **5.1 Questionnaire-based survey**

For the purpose of the questionnaire-based survey, the contractor was required to cover the following jurisdictions: Australia, Brazil, Canada, China, Hong Kong SAR, India, Japan, Mexico, Singapore, South Korea, Switzerland, Turkey and USA, as well as the BIS for purposes of first part of the study (MiFIR).

The contractor ran a survey based on two questionnaires, referred to as MiFIR and MAR questionnaires, vetted by the contracting authority prior to their release on December 23<sup>rd</sup>, 2014, under the terms of a confidential consultation. The MiFIR questionnaire was addressed only to central banks from third-country jurisdictions (including BIS) while the MAR questionnaire was addressed to both central banks and public bodies charged with, or intervening in, public debt management, from third country jurisdictions. In addition, the MAR questionnaire was sent out to EU central banks and debt management offices to gather information that would feed into establishing a European benchmark.

The questionnaires were accompanied by a letter of introduction from the contracting authority, a confidentiality letter signed by the project manager. The initial deadline was set for January 29<sup>th</sup>, 2015. It was subsequently extended to February 5, 2015. Separate non-disclosure agreements were signed with several central banks at their request.

During the consultation period, the contractor followed up regularly by email or by phone with the contact persons, provided assistance and answered promptly to their questions, in close cooperation with the contracting authority. In addition, a Frequently Asked Questions (FAQ) was circulated so that it could be easily accessible to the staff in charge of answering to the questionnaires.

The respondents informed the contractors that the participation at the consultation required a significant cross-departmental, sometimes even a cross-organizational effort, and approval from many lines of authority for submitting the final answers. All the answers were consolidated in an excel file which could be made available to the contracting authority, if necessary.

#### **Response rate**

- ✓ All central banks submitted their answers to the MiFIR and MAR questionnaire.
- ✓ 4 DMOs declined the invitation to participate at the consultation.

Most answers could be ranked as complete, clear and concise. However, most central banks provided little, if any, information in the section 5: the disclosure requirements of the MiFIR questionnaire. On a case by case basis, the contractors sent additional questions to the central banks in bilateral communication.



**Table 26. MiFIR questionnaire (situation as of April 28<sup>th</sup>, 2015)**

| <b>Country</b>       | <b>CBs<br/>(MiFIR and MAR)</b> | <b>DMOs<br/>(MAR)</b> |
|----------------------|--------------------------------|-----------------------|
| <b>Australia</b>     | submitted                      | submitted             |
| <b>Brazil</b>        | submitted                      | submitted             |
| <b>Canada</b>        | submitted                      | submitted             |
| <b>China</b>         | submitted                      | declined              |
| <b>Hong Kong SAR</b> | submitted                      | declined              |
| <b>India</b>         | submitted                      | submitted             |
| <b>Japan</b>         | submitted                      | submitted             |
| <b>Mexico</b>        | submitted                      | submitted             |
| <b>Singapore</b>     | submitted                      | submitted             |
| <b>South Korea</b>   | submitted                      | declined              |
| <b>Switzerland</b>   | submitted                      | submitted             |
| <b>Turkey</b>        | submitted                      | submitted             |
| <b>USA</b>           | submitted                      | declined              |
| <b>BIS</b>           | submitted (only MiFIR)         |                       |

**Table 27. MAR questionnaire (situation as of April 28<sup>th</sup>, 2015)**

| <b>Jurisdiction</b>  | <b>Central bank</b>                | <b>Questionnaire</b> | <b>Debt Management Office</b>                                                                                                       | <b>Questionnaire</b> | <b>Remarks</b>                                                                                                                                                                                                                                                                            |
|----------------------|------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Australia</b>     | Reserve Bank of Australia          | submitted            | Australian Office of Financial Management                                                                                           | submitted            |                                                                                                                                                                                                                                                                                           |
| <b>Brazil</b>        | Central Bank of Brazil             | submitted            | Brazilian National Treasury                                                                                                         | submitted            |                                                                                                                                                                                                                                                                                           |
| <b>Canada</b>        | Bank of Canada                     | submitted            | Bank of Canada and Department of Finance Canada                                                                                     | submitted            | BoC executes public debt management transactions as fiscal agent for the Government of Canada. All public debt management operations must be in accordance with the applicable terms established by the Minister of Finance.                                                              |
| <b>China</b>         | People's Bank of China             | submitted            | People's Bank of China and Ministry of Finance                                                                                      | declined             | Shared responsibility for PDM, PBoC acting as fiscal agent for the State Treasury.                                                                                                                                                                                                        |
| <b>Hong Kong SAR</b> | Hong Kong Monetary Authority       | submitted            | Financial Services and the Treasury Bureau of Hong Kong                                                                             | declined             | HKMA, as representative of the HK Government in the implementation of the Government Bond Programme, is tasked to co-ordinate the offering of government bonds and to manage the investment of the sums raised.                                                                           |
| <b>India</b>         | Reserve Bank of India              | submitted            | Reserve Bank of India                                                                                                               | submitted            | The PDM operations in the RBI are carried out by the Internal Debt Management Department (IDMD). Government of India set up the Middle Office (MO) in Ministry of Finance, primarily to facilitate the transition towards a full-fledged DMO following its budget (2007-08) announcement. |
| <b>Japan</b>         | Bank of Japan                      | submitted            | Ministry of Finance Japan (Office of Debt Management and JGB Investor Relations, Debt Management Policy Division, Financial Bureau) | submitted            | BoJ offers custody of securities acquired by or submitted to the government, services related to the issuance of, and principal and interest payment on, JGSs, and operations relating to its role as the book-entry transfer institution in the JGB book-entry system.                   |
| <b>Mexico</b>        | Central Bank of Mexico             | submitted            | Ministry of Finance and Public Credit of Mexico (Public Debt Department)                                                            | submitted            | Banxico is the financial agent for the Federal Government. It is responsible for placing their debt securities by implementing auctions among different financial intermediaries                                                                                                          |
| <b>Singapore</b>     | Monetary Authority of Singapore    | submitted            | Monetary Authority of Singapore                                                                                                     | submitted            | In its capacity as the Government's fiscal agent, MAS is responsible for the issuance and management of SGS.                                                                                                                                                                              |
| <b>South Korea</b>   | Bank of Korea                      | submitted            | Ministry of Strategy and Finance (Treasury Bureau, Government Bond Policy Division)                                                 | submitted            | BoK is fiscal agent for the Government, in charge of issuance operations of Treasury bonds and Treasury bills according to governmental fiscal policy.                                                                                                                                    |
| <b>Switzerland</b>   | Swiss National Bank                | submitted            | Swiss Federal Department of Finance FDF                                                                                             | submitted            | MAR questionnaire completed by the Federal Department of Finance FDF (State Secretariat for International Financial Matters SIF and Federal Finance Administration FFA).                                                                                                                  |
| <b>Turkey</b>        | Central Bank of Republic of Turkey | submitted            | Undersecretariat of Treasury of the Republic of Turkey (DG Public Finance - Domestic Debt)                                          | submitted            | The CBRT is responsible for conducting auctions on behalf of the Treasury, in its capacity of the financial agent.                                                                                                                                                                        |
| <b>USA</b>           | Federal Reserve Bank of New York   | submitted            | U.S. Department of the Treasury                                                                                                     | declined             |                                                                                                                                                                                                                                                                                           |

**Table 28. MAR questionnaire – EU CBs and DMOs (situation as of April 28<sup>th</sup>, 2015)**

| EU                    | CBs       | DMOs      |
|-----------------------|-----------|-----------|
| <b>Austria</b>        | no        | no        |
| <b>Belgium</b>        |           | submitted |
| <b>Czech Republic</b> | submitted | submitted |
| <b>Denmark</b>        | submitted | submitted |
| <b>Estonia</b>        |           | no        |
| <b>Finland</b>        |           | no        |
| <b>France</b>         |           | submitted |
| <b>Germany</b>        | submitted | submitted |
| <b>Greece</b>         |           | no        |
| <b>Ireland</b>        |           | no        |
| <b>Italy</b>          | no        | submitted |
| <b>Luxemburg</b>      |           | no        |
| <b>Netherlands</b>    | no        | submitted |
| <b>Poland</b>         | submitted | no        |
| <b>Portugal</b>       |           | submitted |
| <b>Romania</b>        |           | no        |
| <b>Spain</b>          | submitted | no        |
| <b>Sweden</b>         | submitted | submitted |
| <b>United Kingdom</b> | submitted | submitted |

The MAR questionnaire was sent to all public institutions in charge of PDM at member state level, except for Cyprus, Malta, Slovenia, Slovakia, Bulgaria, Hungary, Latvia and Lithuania. Three criteria were considered: general government gross debt - annual data (EUR mn) as of December 2013, geographical representation and accession date.

The EU central banks and public institutions that contributed to the consultation are listed below:

**EU CBs:** European Central Bank, Bank of England, Danmarks Nationalbank, Sveriges Riksbank, Narodowy Bank Polski, Czech National Bank, Banco de España, Deutsche Bundesbank.

**EU DMOs:** Belgian Debt Agency, Ministry of Finance of CZ, Danish DMO located in the CB, Agence France Trésor, Deutsche-Finanzagentur, Ministero dell'Economia e delle Finanze, Portuguese Treasury and Debt Management Agency, Dutch State Treasury Agency, The Swedish National Debt Office, UK DMO.

**Table 29. General government gross debt - annual data (EUR mn)**

|                       | <b>2013</b> |
|-----------------------|-------------|
| <b>Germany</b>        | 2,159,468   |
| <b>Italy</b>          | 2,069,841   |
| <b>France</b>         | 1,949,475   |
| <b>United Kingdom</b> | 1,792,797   |
| <b>Spain</b>          | 966,181     |
| <b>Netherlands</b>    | 441,039     |
| <b>Belgium</b>        | 413,246     |
| <b>Greece</b>         | 319,133     |
| <b>Austria</b>        | 261,978     |
| <b>Poland</b>         | 222,926     |
| <b>Portugal</b>       | 219,225     |
| <b>Ireland</b>        | 215,550     |
| <b>Sweden</b>         | 164,420     |
| <b>Denmark</b>        | 114,099     |
| <b>Finland</b>        | 112,664     |
| <b>Hungary</b>        | 77,717      |
| <b>Czech Republic</b> | 68,152      |
| <b>Romania</b>        | 54,170      |
| <b>Slovakia</b>       | 40,178      |
| <b>Croatia</b>        | 32,759      |
| <b>Slovenia</b>       | 25,428      |
| <b>Cyprus</b>         | 18,519      |
| <b>Lithuania</b>      | 13,637      |
| <b>Luxembourg</b>     | 10,669      |
| <b>Latvia</b>         | 8,876       |
| <b>Bulgaria</b>       | 7,532       |
| <b>Malta</b>          | 5,241       |
| <b>Estonia</b>        | 1,888       |

*Source: Eurostat.*

### **5.1.1 Data gathering**

Please, see section 1.3.1.

## 5.1.2 Sample questionnaires

### 5.1.2.1 MiFIR questionnaire

#### SECTION 1. PURPOSE

The Regulation 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (so called MiFIR) imposes under Art. 8, 10, 18 and 21 an entirely new transparency regime for a wide range of non-equity instruments (i.e. bonds, structured finance products and derivatives) with different intensity depending on whether or not there is a liquid market in those instruments. Market operators and investment firms operating a trading venue will have to make public current bid and offer prices and the depth of trading interests. The disclosure shall be calibrated to different trading systems, including continuous auction order book, quote-driven, periodic auction trading, request-for-quote and voice trading systems. In addition, investment firms must make public firm quotes in respect to non-equity instruments traded on a systematic internaliser and for which there is a liquid market. Post-trade transparency rules require market operators and investment firms to make public the price, volume and time at which the transactions were concluded.

Article 1(6) of MiFIR exempts regulated markets, market operators and investment firms from pre- and post-trade transparency requirements in respect of transactions in non-equity instruments (Art. 8, 10, 18) where: i) the counterparty is a member of the European System of Central Banks (ESCB), ii) the transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that member of the ESCB is legally empowered to pursue and iii) that member has given prior notification to the operator of the trading venue/counterparty that the transaction is exempt, e.g. in the form of legal documentation or contractual or regulatory arrangements. The purpose of the exemption is to ensure that members of the ESCB can carry out their monetary, foreign exchange and financial stability policy operations without those policy operations being within the transparency requirements set by MiFIR. The issue arises because while the members of the ESCB are excluded from transparency provisions in MiFIR, investment firms that are counterparties to transactions with a member of the ESCB are not. Article 1(7) of MiFIR provides that this exemption should not apply in respect of transactions entered into by any member of the ESCB in performance of their investment operations. This should include operations conducted for administrative purposes or for the staff of the member of the ESCB which include transactions conducted in the capacity as an administrator of a pension scheme.<sup>637</sup>

The purpose of this questionnaire is to assess the respective situation for third-country central banks *inter alia* taking into account the statutory tasks and the regulatory environment in terms of possible transparency requirements towards the public.

---

<sup>637</sup> ESMA (European Securities and Markets Authority), Consultation on MiFID II/MiFIR, 19 December 2014. For detailed information, please see: 3.9. *Exemptions from transparency requirements in respect of transactions executed by a member of the ESCB*, available at: [http://www.esma.europa.eu/system/files/2014-1570\\_cp\\_mifid\\_ii.pdf](http://www.esma.europa.eu/system/files/2014-1570_cp_mifid_ii.pdf) (pages 318-320); RTS 9: *Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives*, available at [http://www.esma.europa.eu/system/files/2014-1570\\_cp\\_mifid\\_ii\\_part\\_2.pdf](http://www.esma.europa.eu/system/files/2014-1570_cp_mifid_ii_part_2.pdf) (Recitals 7, 8, 9, 10, pages 132-133, and Articles 12 and 13, pages 143-144).

For the identification of the statutory tasks and procedures, the questionnaire will collect information to: (a) identify provisions applicable in the country of the institution on regulatory disclosures for the transactions undertaken by the institution and (b) assess the potential impact that regulatory disclosure requirements in the Union may have on the transactions of the institution. The information flow will inform the potential decision, according to article 1(9) of MiFIR for an exemption of the central bank from the disclosure requirements under articles 8, 10, 18 and 21 of MiFIR.

## **SECTION 2. DEFINITIONS**

*"Addressee institution" or "institution"*, means your institution.

*"Addressee institution's members or staff"*, means all those individuals that are linked to the addressee institution by means of an employment relationship, as members of its governing or advisory bodies, or in any other capacity that make them privy to inside information pertaining to the addressee institution.

*"Financial instruments"*, means any instrument as defined by Annex 1 Section C of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014. For the purpose of this questionnaire, only transactions in financial instruments other than equity or equity-like (such as ETFs) shall be considered.

This includes:

1. Transferable securities;
2. Money-market instruments;
3. Units in collective investment undertakings;
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;<sup>638</sup>
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
8. Derivative instruments for the transfer of credit risk;
9. Financial contracts for differences;

---

<sup>638</sup> Regulated Markets (RMs), Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs) are official European trading venues. No OTF is currently in operation.

10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;
11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme). *"Financial stability policies"*, means policies (transactions) to increase the foreseeability and the absorption capacity of the financial system against spillover effects of systemic risk.<sup>639</sup> This includes operations to provide liquidity (direct ownership or emergency lending facilities) to a financial institution under the prospects of a potential bank run and so impairment of the transmission channel of monetary policies.

*"Foreign exchange policies"*, means any FX central bank policies (transactions), including those to contain currency volatility, prevent exchange rate misalignment, reverse exchange rate trends (appreciation versus depreciation), set a path/target for the exchange rate level, counter disorderly FX markets, manage FX reserves, provide reserve management services to central banks in other countries.

*"Internalisation"*, means the execution of an order that takes place against the firm's own inventory (including proprietary capital).

*"Investment operations"*, means policies (transactions) with the objective to manage the central bank's own funds or to minimise risk exposure of the central bank, as done by private actors in the market.

*"Monetary policies"*, means "price stability" policies (transactions) for the stability of consumer or asset prices, and policies (transactions) for "output or employment growth policies".

*"Pre-trade transparency"*, means the disclosure to the public on a continuous basis during normal trading hours of buying and selling interests (e.g. firm bid and ask prices or indications of interest) advertised through the trading engine of a trading venue (without prejudice to the possibility for transparency waivers for transactions beyond a certain size and nature).

*"Post-trade transparency"*, means the disclosure to the public as close to real-time as is technically possible of the price, volume and time of the transactions executed in the trading system (without prejudice to the possibility for deferral, aggregation, and /or volume masking or similar mechanisms for transactions beyond a certain size and nature).

*"Central bank policy operations"*, means central bank policies that are not pursued for investment purposes, i.e. monetary, foreign exchange and financial stability policies.

### **SECTION 3. MANDATE, POLICIES AND PROCEDURES**

#### ***Legal mandate***

---

<sup>639</sup> Where "systemic risk" is defined as "the propagation of an agent's economic distress to other agent linked to the agent through financial transactions" (Rochet & Tirole, 1996).

**Q. 1** What is the legal mandate of the institution? Please specify the objectives that are part of the mandate (you can select more than one): (1) price stability, (2) foreign exchange policies, (3) financial stability, (4) economic or employment growth, (5) investment, (6) other objectives/tasks [please specify].

***Policies and purposes***

**Q. 2** Does the institution distinguish between transactions that have a monetary purpose (monetary transactions), foreign-exchange purpose (foreign-exchange transactions), financial stability purpose (financial stability transactions), and investment purpose (investment transactions)?

**Q. 3** For which of the policies/purposes listed above are transactions in non-equity securities typically undertaken?

***Scope of market operations***

The objective of this section is to understand if the institution transacts with EU trading venues and/or with EU financial intermediaries that “internalise” orders (see above for a definition of “internalisation”) for the purpose of implementing *central bank policy operations* (i.e. monetary, foreign-exchange, financial stability policies, as defined above). Hence, it is important to determine whether the institution interacts with counterparties on EU trading venues, or through EU financial intermediaries that internalise orders (which means that transactions undertaken by the institutions may be affected by the new requirements under MIFID II).

**Q. 4** Does the institution, when implementing its *central bank policy operations*, execute transactions through EU trading venues (e.g. EU exchanges)?

Yes/No [provide explanation]

**Q. 5** Does the institution, when implementing its *central bank policy operations*, execute transactions with EU-domiciled financial intermediaries that internalize orders?

Yes/No [provide explanation]

**Q. 6** If the answer to previous questions is ‘yes’, where are those transactions usually executed (directly or via an agent/broker)?

- Direct bilateral execution with a counterparty that may internalise orders (see above for definition)  
*Less than 10%, 10% to 50%, 50% to 100%.*
- Direct bilateral execution with a counterparty that does not internalise (private transaction)  
*Less than 10%, 10% to 50%, 50% to 100%.*
- Trading venues with pre-trade & post-trade transparency  
*Less than 10%, 10% to 50%, 50% to 100%.*
- Trading venues with no pre-trade & post-trade transparency  
*Less than 10%, 10% to 50%, 50% to 100%.*
- Hybrid voice-brokered venue  
*Less than 10%, 10% to 50%, 50% to 100%.*
- Other [please, specify]  
*Less than 10%, 10% to 50%, 50% to 100%.*



## SECTION 4. VOLUMES OF OPERATIONS

This section will collect data (numbers of trades/transactions and total value of transactions) about the volumes of transactions for monetary, foreign-exchange rate, financial stability, investment or other purposes for the period 2009-2013.

**Q. 7** What is the percentage of total market operations that you execute with a European counterparty or in securities listed on a European venue?

*Less than 10%, 10% to 50%, 50% to 100%*

Please, fill in the following tables corresponding to two datasets defined below:

*Transactions in EU (non-equity) financial instruments.* This set includes data only on transactions in EU-listed (or admitted to trading) financial instruments that are executed on an EU trading venue (regulated market or multilateral trading facility) or bilaterally with an EU counterpart that internalizes orders. An EU counterpart is an EU domiciled firm, a non-EU (local) branch of an EU domiciled firm or an EU branch of a non-EU domiciled firm.

*Transactions in (non-equity) financial instruments with an EU counterpart.* This set includes bilateral transactions with all EU counterparts, with no distinction between EU-listed and non-EU listed financial instruments. An EU counterpart is an EU domiciled firm, a non-EU (local) branch of an EU domiciled firm or an EU branch of a non-EU domiciled firm.

### **Operations for monetary, foreign exchange and financial stability purposes**

Total number of transactions [Please, provide the number of contracts and/or single trades.]

|      | Fixed Income<br>(including securitised products) | Derivatives | Other instruments<br>(excluding equity and equity-like) |
|------|--------------------------------------------------|-------------|---------------------------------------------------------|
| 2009 |                                                  |             |                                                         |
| 2010 |                                                  |             |                                                         |
| 2011 |                                                  |             |                                                         |
| 2012 |                                                  |             |                                                         |
| 2013 |                                                  |             |                                                         |

Total value of transactions [For derivatives contracts, please use gross notional value. For other transactions, please use nominal value of transactions. Please express data in your own currency and specify unit of measure, e.g. million or billion.]

|      | Fixed Income<br>(including securitised products) | Derivatives | Other instruments<br>(excluding equity and equity-like) |
|------|--------------------------------------------------|-------------|---------------------------------------------------------|
| 2009 |                                                  |             |                                                         |
| 2010 |                                                  |             |                                                         |
| 2011 |                                                  |             |                                                         |
| 2012 |                                                  |             |                                                         |
| 2013 |                                                  |             |                                                         |

**Operations for (own-funds) investment or other purposes**

Total number of transactions [Please, provide the number of contracts and/or single trades.]

|      | Fixed Income<br>(including securitised products) | Derivatives | Other instruments<br>(excluding equity and equity-like) |
|------|--------------------------------------------------|-------------|---------------------------------------------------------|
| 2009 |                                                  |             |                                                         |
| 2010 |                                                  |             |                                                         |
| 2011 |                                                  |             |                                                         |
| 2012 |                                                  |             |                                                         |
| 2013 |                                                  |             |                                                         |

Total value of transactions [For derivatives contracts, please use gross notional value. For other transactions, please use nominal value of transactions. Please express data in your own currency and specify unit of measure, e.g. million or billion.]

|      | Fixed Income<br>(including securitised products) | Derivatives | Other instruments<br>(excluding equity and equity-like) |
|------|--------------------------------------------------|-------------|---------------------------------------------------------|
| 2009 |                                                  |             |                                                         |
| 2010 |                                                  |             |                                                         |
| 2011 |                                                  |             |                                                         |
| 2012 |                                                  |             |                                                         |
| 2013 |                                                  |             |                                                         |

**SECTION 5. DISCLOSURE REQUIREMENTS****General disclosure requirements and exemptions**Exemption of the institution

**Q. 8** What are the domestic provisions that contain the general requirements on public disclosure of information about the transaction? Please, provide reference.

**Q. 9** Do these provisions contain an exemption from transparency for the institution? If the answer is "yes", what is the scope of this exemption?

- The full transaction,
- The counterparties,
- The type of transaction (instrument, details about volumes & price, etc)
- Other [please specify]

Exemption to central banks and institutions from third countries

**Q. 10** Do domestic rules contain an exemption from transparency requirements for foreign central banks pursuing monetary, foreign exchange, or financial stability policies?

Yes/ No/Other [please specify]

#### Notification of the exemption

**Q. 11** Does the institution have in place a procedure to notify its counterparty that the transaction is exempted from transparency requirements?

Yes/No [provide explanation]

**Q. 12** If the answer to Q 11 is "yes", does this apply to transactions involving EU counterparties or instruments?

**Q. 13** If the answer to Q 11 is "no", is the institution or the competent regulator contemplating changes to introduce such notification in its general procedures, or the procedures involving EU counterparties (please specify for which transactions)?

Yes/No (provide explanation)

#### **Ex ante disclosure**

Disclosure before the transaction takes place. If the institution is subject to public disclosure requirements:

**Q. 14** What are the items that the institution makes public before a transaction takes place? Please, explain briefly.

**Q. 15** What are the mechanisms of disclosure that the institution employs? Please, explain briefly and provide reference.

**Q. 16** What is the average time frame between the moment when the information is made public, and the moment when the transaction takes place?

Few hours/half day/a day/ few days/ a week/ more than a week.

#### **Ex post disclosure**

Disclosure after the transaction takes place. If the institution is subject to public disclosure requirements:

**Q. 17** What are the items that the institution must make public once the transaction has been completed?

**Q. 18** How does the institution disclose this information? Website, Official journal, Other (please, specify).

**Q. 19** What is the average time frame between the moment when the transaction takes place and the information is disclosed?

Few hours/half day/a day/ few days/ a week/ more than a week.

**Q. 20** In what circumstances may this time vary? Please, explain briefly.

#### **Waiver**

**Q. 21** Under what circumstances may the institution waive ex ante or ex post disclosure requirements? Please, explain briefly.

### **5.1.2.2 MAR questionnaire**

#### **SECTION 1. PURPOSE**

The purpose of this questionnaire is to assess:

- The treatment of public bodies charged with, or intervening in, public debt management and of central banks in third countries (including the addressee institution) within the legal framework of their respective country;
- The risk management standards applicable to the transactions entered into by those bodies and central banks in those jurisdictions with regard to obligations and prohibitions of MAR;
- How the national legal frameworks of these third countries treat foreign institutions (i.e. another country's institution).

The questionnaire will collect information about:

- (a) The existence, applicability and enforcement of national rules and regulations that prevent, prohibit and sanction market abuse (as defined below) in general;
- (b) The grant of an exemption for national public bodies charged with, or intervening in, public debt management (hereinafter referred to as "debt management offices") and for the national central banks from the application of national rules and regulations referred to under the letter (a) above;
- (c) The grant of an exemption for third-country debt management offices and for third-country central banks from the application of national rules and regulations referred to under the letter (a) above; and
- (d) The existence and application within the addressee institution of internal codes of conduct, codes of ethics, and/or arrangements, systems and procedures that prevent, prohibit and sanction by means of disciplinary actions market abuse (as defined below) by members of the addressee institution (as defined below) when they act in their private capacity.

## **SECTION 2. DEFINITIONS**

*"Addressee institution" or "institution"*, means your institution.

*"Addressee institution's members or staff"*, means all those individuals that are linked to the addressee institution by means of an employment relationship, as members of its governing or advisory bodies, or in any other capacity that make them privy to inside information pertaining to the addressee institution.

*"Conflict of interest"*, means a set of circumstances affecting a member of the addressee institution that creates a risk that his/her professional judgement or actions in the pursuit of the interests of the addressee institution be unduly influenced by the occurrence of personal/private interests.

*"Debt management office"*, means a public body charged with, or intervening in, public debt management.

*"Inside information"*, means:

- (a) (1) Information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

(2) In relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;

(3) In relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;

(4) For persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments;

(5) Similar legal concepts having same regulatory objectives.

- (b) For the purposes of paragraph (a), information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.
- (c) An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this definition.
- (d) For the purposes of paragraph (a), information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

*"Insider dealing", means:*

- (a) Using inside information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which the information relates;
- (b) Using inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information;

- (c) Using inside information by recommending, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or inducing that person to make such an acquisition or disposal, or recommending, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or inducing that person to make such a cancellation or amendment<sup>640</sup>;
- (d) Similar legal concepts having same regulatory objectives.

*"Financial instruments"*, means any of the following:

- (a) (1) Transferable securities; (2) money-market instruments; (3) units in collective investment undertakings; (4) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash; (5) options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event; (6) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled; (7) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments; (8) derivative instruments for the transfer of credit risk; (9) financial contracts for differences; (10) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned before, which have the characteristics of other derivative financial instruments; (11) emission allowances.
- (b) So long as, and only to the extent that, (i) the financial instruments indicated under the letter (a) above are admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; (ii) the financial instruments indicated under the letter (a) above are traded on a multilateral trading facility, admitted to trading on an multilateral trading facility or for which a request for admission to trading on an multilateral trading has been made; (iii) the financial instruments indicated under the letter (a) above are traded on an organised trading facility or other trading venue; (iv) the financial instruments indicated under the letter (a) above are not covered by points (i), (ii) or (ii), but the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference; (v) types of financial instruments indicated under the letter (a) above where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments.

---

<sup>640</sup> The use of the recommendations or inducements referred under letter c) amounts to insider dealing within the meaning of this definition where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.



*"Market abuse"*, means insider dealing and/or unlawful disclosure of inside information and/or market manipulation.

*"Market abuse rules"*, means statutory or judge-made rules and/or regulations in place in order to prevent, prohibit and sanction market abuse.

*"Market manipulation"*, means:

- (a) Entering into a transaction, placing an order to trade or any other behaviour which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument; or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;
- (b) Entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments which employs a fictitious device or any other form of deception or contrivance;
- (c) Disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, or is likely to secure the price of one or several financial instruments at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;
- (d) Transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark<sup>641</sup>;
- (e) Similar legal concepts having same regulatory objectives.

---

<sup>641</sup> The following behaviour shall, inter alia, be considered as market manipulation:

- (a) the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;
- (b) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices;
- (c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in paragraph 1(a) or (b), by:
  - (i) disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;
  - (ii) making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or
  - (iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;
- (d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;
- (e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.



*"Unlawful disclosure of inside information", means:*

- (a) using inside information by disclosing that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties;
- (b) a similar legal concept having same regulatory objectives.

### **SECTION 3. EXISTENCE, APPLICABILITY AND ENFORCEMENT OF MARKET ABUSE RULES**

Does your institution operate under rules that prevent, prohibit and sanction insider dealing? If yes, please provide the reference.

**Q. 22** Does your institution operate under rules that prevent, prohibit and sanction market manipulation? If yes, please provide reference to them.

**Q. 23** If your answer to either Q. 1 or Q. 2 or both is 'yes', what is the legal status of those rules? Please specify whether they are: (i) constitutional provisions; (ii) statutory laws (i.e. acts, bills, decrees and the like) issued by Parliament or Government; (iii) judge-made law; (iv) regulations (i.e. ordinances, decrees) issued by regulatory/supervisory/market authorities.

**Q. 24** Are there mechanisms for public enforcement of the rules mentioned under either Q. 1 or Q. 2 or both? Please specify for each case whether the enforcement is regulatory enforcement (by a regulatory/supervisory authority), criminal enforcement, or civil enforcement (through an action of damages or otherwise).

### **SECTION 5. GRANT OF EXEMPTION FROM THE APPLICATION OF MARKET ABUSE RULES FOR THE ADDRESSEE INSTITUTION**

**Q. 25** Is the addressee institution exempted from the application of the national rules that prevent, prohibit and sanction insider dealing?

Yes (please provide reference)/No Other [please specify].

**Q. 26** Are the addressee institution's members exempted from the application of the national rules that prevent, prohibit and sanction insider dealing while they are acting in their capacity as addressee institution's members and for the sole purposes, in the name and on behalf of the addressee institution?

Yes (please provide reference)/ No/Other [please specify].

**Q. 27** Is the addressee institution itself exempted from the application of the national rules that prevent, prohibit and sanction market manipulation?

Yes (please provide reference)/No/Other [please specify].

**Q. 28** Are the addressee institution's members exempted from the application of the national rules that prevent, prohibit and sanction market manipulation while they are acting in their capacity as addressee institution's members and for the sole purposes, in the name and on behalf of the addressee institution?

Yes (please provide reference)/No/Other [please specify].

**Q. 29** Does the addressee institution have an internal operational rulebook (i.e., internal arrangements, systems and procedures) or a statement of practice disciplining how the addressee institution's members should carry out transactions for the disposal of financial instruments while they are acting in their capacity as addressee institution's members and for the sole purposes, in the name and on behalf of the addressee institution?

Yes (please provide reference)/No/Other [please specify].

**Q. 30** Is the addressee institution held to general and/or specific risk management standards when entering into transactions for the disposal of financial instruments?

**Q. 31** Is there an internal audit/monitoring function to verify compliance of the institution's members with such internal operational rulebook and/or statement of practice and/or risk management standards?

Yes (please provide reference)/No/Other [please specify].

**Q. 32** Do such internal operational rulebook and/or statement of practice and/or risk management standards provide for disciplinary actions against the institution's members for breach of the said rulebook or statement of practice?

Yes (please provide reference)/No/Other [please specify].

## **SECTION 6. GRANT OF EXEMPTION FROM THE APPLICATION OF MARKET ABUSE RULES FOR THE BENEFIT OF THIRD-COUNTRY CENTRAL BANKS AND/OR DEBT MANAGEMENT OFFICES**

**Q. 33** Are third-country central banks exempted from the application of the national rules that prevent, prohibit and sanction insider dealing?

Yes (please provide reference)/No/Other [please specify].

**Q. 34** Are third-country debt management offices exempted from the application of the national rules that prevent, prohibit and sanction insider dealing?

Yes (please provide reference)/No/Other [please specify].

**Q. 35** Are third-country central banks exempted from the application of the national rules that prevent, prohibit and sanction unlawful disclosure of inside information?

Yes (please provide reference)/No/Other [please specify].

**Q. 36** Are third-country debt management offices exempted from the application of the national rules that prevent, prohibit and sanction unlawful disclosure of inside information?

Yes (please provide reference)/No/Other [please specify].

**Q. 37** Are third-country central banks exempted from the application of the national rules that prevent, prohibit and sanction market manipulation?

Yes (please provide reference)/No/Other [please specify].

**Q. 38** Are third-country debt management offices exempted from the application of the national rules that prevent, prohibit and sanction market manipulation?

Yes (please provide reference)/No/Other [please specify].

**SECTION 6. EXISTENCE OF INTERNAL CODES OF CONDUCT OR ETHICS MADE APPLICABLE TO THE ADDRESSEE INSTITUTION'S MEMBERS**

***Existence of internal codes of conduct or ethics applicable to the addressee institution's members***

**Q. 39** Do an internal code of conduct and/or a code of ethics (or ethical regulation) and/or arrangements, systems or procedures exist that apply to the addressee institution's members and provide for duties, obligations, and responsibilities on the part of the addressee institution's members (Please provide reference and, if allowed to do so, an electronic copy of said internal codes and/or regulations).

**Q. 40** If you answered yes to Q. 19, what is the legal status of said code/s and/or arrangements, systems or procedures? Please specify whether they are established in or by: (i) the state; (ii) a regulatory/supervisory authority; (iii) the addressee institution itself. Please also specify whether they are: (i) sets of rules made applicable to all public employees in general; (ii) sets of rules made applicable to the addressee institution's members only. Further, please specify whether they are made applicable to the addressee institution's members by way of: (i) internal codes or regulations; and/or (ii) terms and conditions of the employment contract.

***Internal rules on professional secrecy by the addressee institution's members***

**Q. 41** Are the addressee institution's members bound by a duty of professional secrecy over information acquired in the context of their work, pertaining to the addressee institution and classified as confidential and/or over inside information (as defined above under Section 2)?

**Q. 42** What are the circumstances/limitations under which the addressee institution's members are allowed to disclose information referred to under Q. 21?

**Q. 43** Are there specific internal rules of conduct concerning the interaction of the addressee institution's members with other addressee institution's members, authorities and public officials in general, the media or interest groups in order to prevent undue circulation and/or disclosure of information referred to under Q. 21?

***Internal rules on use of information by the addressee institution's members***

**Q. 44** Are the addressee institution's members allowed/prohibited to make use of information referred to under Q. 20 for private/personal purposes, i.e. for their own interest or for the interest of their family?

**Q. 45** If they addressee institution's members are allowed to make use of information referred to under Q. 21 for private/personal purposes, to what extent does such permission apply?

***Internal rules on dealing in and holding financial instruments by the addressee institution's members***

**Q. 46** Are the addressee institution's members subject to limitations in dealing, receiving as gifts or inheritances, and holding financial instruments, including for these purposes public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles?

- Q. 47** What are the conditions under which the addressee institution's members may engage or are prohibited from engaging in the dealing of financial instruments on their own account and/or on the account of persons or entities (other than the addressee institution itself)? Please specify if there exist outright permissions and/or prohibitions for some or all transactions, or a pre-clearance mechanism, or a combination thereof.

***Internal rules on record-keeping and reporting of holdings and transactions in financial instruments and/or other relevant assets by the addressee institution's members***

- Q. 48** Must the addressee institution's members keep record of holdings of, and transactions in, financial instruments, including for these purposes public/private pension funds, investment funds or other individual and/or collective investment schemes or vehicles?
- Q. 49** Must the addressee institution's members keep record of bank accounts, securities or stockbroker accounts, custody accounts (in their own name, or shared) and their statements, dealings with mortgages, pension or retirement plans, sales or purchases of instruments or rights (by them or in their account), as well as authorizations (by means of power of attorney or otherwise) and/or instructions or guidelines given by them, or to them for the holding and/or management of the above accounts, products or instruments?
- Q. 50** Must the addressee institution's members report and/or disclose to the addressee institution the records referred to under Q. 28 and/or Q. 29? Please specify if the reporting obligation is made periodic or made applicable under specific circumstances only.

***Internal rules on independence of the addressee institution's members***

- Q. 51** Are the addressee institution's members bound by a general duty of independence and/or impartiality and/or integrity while performing their tasks for the addressee institution? Yes; No; Other (please specify).
- Q. 52** Is there a "black list" of prohibited remunerated or non-remunerated activities, a "white list" of permitted remunerated or non-remunerated activities, and/or a "grey list" of remunerated or non-remunerated activities subject to prior authorization, or a combination thereof, that the addressee institution's members are allowed or not allowed to carry out in the context of their work and outside their working hours? Yes; No; Other (please specify).
- Q. 53** Are there rules concerning the acceptance of gifts, gratuities, awards and/or fees from outside individuals and/or entities by the addressee institution's members related to the performance of their tasks for the addressee institution? Yes; No; Other (please specify).

***Internal rules on conflict of interest of the addressee institution's members***

- Q. 54** Are there specific internal rules and/or policies to identify, disclose and manage conflicts of interest affecting the addressee institution's members

Yes/ No/Other [please specify].

**Q. 55** Are the addressee institution's members allowed to engage, or prohibited from engaging in transactions for the purposes, in the name and on behalf of the institution when they have a private/personal interest in the transaction and/or the financial instruments or the issuer of said financial instruments involved in the transaction?

Yes/ No/Other [please specify].

**Q. 56** Are the addressee institution's members forbid from participating in the decision (including policy decisions) when they have a private/personal interest in the preparation or outcome of that decision?

Yes/ No/Other [please specify].

***Internal rules on ethics officers***

**Q. 57** Does the addressee institution have an internal function entrusted with the application and monitoring of the internal and/or a code of ethics (or ethical regulation) and/or arrangements, systems or procedures, such as an ethics officer, ethics adviser, line managers, etc?

Yes/ No/Other [please specify].

**Q. 58** What are the duties and responsibilities of the person responsible for that function? Please explain briefly.

**Q. 59** What are the powers of the person responsible for that function? Please explain briefly.

***Application of internal codes of conduct to the addressee institution's members***

**Q. 60** Must the addressee institution's members report breaches or suspected breaches of the internal code of conduct and/or code of ethics (or ethical regulation) and/or arrangements, systems or procedures to the ethics officer or line manager referred to under Q. 37?

**Q. 61** If you answered yes to Q. 40, how does the internal reporting mechanism function? Please explain briefly.

**Q. 62** When does a breach of the rules referred to under Q. 40 also qualify as a tort or a criminal or administrative offence?

**Q. 63** Are the ethics officer or line manager obliged to alert competent authorities?

Yes/ No/[Please specify].

**Q. 64** Do incentives (such as career benefits or the like) exist for the addressee institution's members that report breaches or suspected breaches of the rules referred to under Q. 40?

**Q. 65** Do the rules referred to under Q. 40 provide for disciplinary actions in case of, abuses, misconduct and/or breach of internal rules?

Yes/ No/Other [please specify].

**Q. 66** If you answered yes to Q. 45, what are these disciplinary actions? Please, explain briefly.

- Q. 67** If you answered yes to Q. 45, is the taking of disciplinary actions a common occurrence? Yes, frequently (monthly); Yes, but not so frequently (once or twice a year); No, rarely (less than once a year); No, never occurred.
- Q. 68** Do the rules referred to under Q. 40 apply to the addressee institution's members beyond their employment term? If yes, please specify how long former addressee institution's members remain subject to them.
- Q. 69** Does the training of the addressee institution's members include learning activity about the contents and application of the rules referred to under Q. 40? If yes, please specify whether addressee institution's members are also tested on their knowledge of these rules.
- Q. 70** If you answered yes to Q. 49, does the training on the contents and application of said rules take place only upon recruitment or periodically thereafter? If it takes place periodically, please specify the frequency, such as once every year or every two years or more.
- Q. 71** Do the addressee institution's members receive an internal newsletter, specific "alerts", or other kind of communication that make them promptly aware of modifications and/or additions and/or modes of application of the rules referred to under Q. 40?

Yes/ No/[Please specify].

## **5.2 Additional legal provisions**

### **5.2.1 BCB**

Article 62 of Law 6385 of 1976 Securities Markets Act:

*"The managing entity of an organized market shall disclose at least the following information referring to the markets under its management:*

*[...]*

*III – information on the transactions carried out and the corresponding prices;*

*[...]*

*V – in the opening of each trading day, the minimum price, the maximum price, the weighted average price, the reference price or adjustment price and closing price, as well as the quantities traded on the previous trading day; and*

*[...]*

*§1 The contents, means and frequency of the information to be provided publicly shall be adequate to the characteristics of each market, to the level of investors' knowledge and to the structure of several interests involved.*

*[...]*

*§2 CVM may request the change of the rules applicable to the disclosure of information when it perceives that they are not sufficient for the protection of investors."*

Article 105 CVM's Instruction 461, of 2007:

*"The managing entity of an organized over-the-counter shall make the information available on each business carried out, including the price, quantity and time.*

*§ 1 The information referred to in the introductory provisions may be disclosed or not in a continuous manner during the trading sessions, as well as in individualized form or grouped by sets of trade, with the entity's disclosure policy having been approved in advance by CVM, which may authorize a delayed*

*disclosure or a grouped disclosure of the information in question, depending on: I – of the organized over-the-counter market; II – of the standardization degree of the asset or contract traded; III – of the fact of being a market segment for large lots or not; and IV – the type of investor that has access to the segment or to the market.*

*§ 2 The summary of the transactions carried out in the organized over-the-counter market shall be stated in the daily information report, which will be made available on its homepage in the world wide web.*

*§ 3 In the case of a market where the transactions are subject to registration, the disclosure policy referred to in § 1 may provide on alternative disclosure forms and contents of the transactions which, at CVM's discretion, produce a similar effect to the ones described in this article."*

## **5.2.2 HKMA**

Sections 3 of the Exchange Fund Ordinance:

*"There shall be established a fund to be called "the Exchange Fund" which shall be under the control of the Financial Secretary and shall be used primarily for such purposes as the Financial Secretary thinks fit affecting, either directly or indirectly the exchange value of the currency of Hong Kong and for other purposes incidental thereto. The control of the Financial Secretary shall be exercised in consultation with an Exchange Fund Advisory Committee of which the Financial Secretary shall be ex officio chairman and of which the other members shall be appointed by the Chief Executive.*

*(1A) In addition to using the Fund for its primary purpose, the Financial Secretary may, with a view to maintaining Hong Kong as an international financial centre, use the Fund as he thinks fit to maintain the stability and the integrity of the monetary and financial systems of Hong Kong.*

*(1B) The Financial Secretary, in using the Fund for the purpose specified in subsection (1A), shall have regard to the primary purpose of the Fund.*

*(2) The Fund, or any part of it, may be held in Hong Kong currency or in foreign exchange or in gold or silver or may be invested by the Financial Secretary in such securities or other assets as he, after having consulted the Exchange Fund Advisory Committee, considers appropriate; and the Financial Secretary may for the account of the Fund*

*(a) buy or sell such currency, foreign exchange, gold, silver, securities or assets accordingly; and*

*(b) after having consulted the Exchange Fund Advisory Committee, enter into any financial arrangement that he considers appropriate for the prudent management of the Fund."*

Section 5A of the Exchange Fund Ordinance:

*"(1) The Financial Secretary shall appoint a person to be the Monetary Authority on such terms and conditions as he thinks fit.*

*(2) The Monetary Authority shall:-*

*(a) assist the Financial Secretary in the performance of his functions under this Ordinance;*

*(b) perform such functions as the Financial Secretary may direct; and*

*(c) perform functions imposed on or assigned to the Monetary Authority by any other Ordinance.*

*(3) The Financial Secretary may appoint, on such terms and conditions as he thinks fit, persons to assist the Monetary Authority in the performance of the functions of the Monetary Authority specified in subsection (2).*

- (4) Notwithstanding subsection (2)(b) and (c), the Monetary Authority and persons appointed to assist him under subsection (3) shall be regarded, for all purposes, as employed in connection with the purposes of the Fund.*
- (5) In this section "functions" includes powers and duties."*

Section 5B of the Exchange Fund Ordinance:

- "(1) The Financial Secretary may delegate to the Monetary Authority the powers and duties conferred or imposed on the Financial Secretary under this Ordinance.*
- (2) A delegation or a subdelegation under this section-*
- (a) shall not preclude the Financial Secretary from exercising the power or performing the duty;*
  - (b) may be conditional, qualified or limited as the Financial Secretary thinks fit;*
  - (c) may be to a person performing the functions of the Monetary Authority for the time being; and*
  - (d) may be amended by the Financial Secretary.*
- (3) The Financial Secretary may include in a delegation under this section power to subdelegate the powers and duties delegated on such terms and to such person or to any person of a class or description, as may be specified by him."*

### **5.2.3 BoJ**

Article 33 (Regular Business) of the Bank of Japan (BoJ) Act:

- "In order to achieve the purpose prescribed in Article 1, the Bank of Japan may conduct the following business:*
- (i) Discounting of commercial bills and other negotiable instruments;*
  - (ii) Making loans against collateral in the form of negotiable instruments, national government securities and other securities, or electronically recorded claims;*
  - (iii) Buying and selling of commercial bills and other negotiable instruments (including those drawn by the Bank of Japan in this item), national government securities and other bonds, or electronically recorded claims;*
  - (iv) Lending and borrowing of national government securities and other bonds against cash collateral;*
  - (v) Taking deposits;*
  - (vi) Conducting domestic funds transfers;*
  - (vii) Taking safe custody of securities and other instruments pertaining to property rights, or certificates;*
  - (viii) Buying and selling gold and silver bullion and carrying out business related to business set forth in the preceding items."*

### **5.2.4 Banxico**

Article 7 of the Bank of Mexico Law:

- "Banco de Mexico may perform the following activities:*
- I. Deal with securities;*
  - II. Grant credit to the Federal Government, to credit institutions and to the decentralized agency denominated Institute for the Protection of Banking Savings;*
  - III. Grant credit to the legal entities referred to in Article 3 Section VI,*
  - IV. Make deposits in either domestic or foreign credit institutions or security depository institutions;*
  - V. Purchase securities issued by international financial institutions or entities with foreign domiciles; from those provided for in Article 20 section II;*



VI. Issue monetary regulation bonds;  
 VII. Receive money bank deposits from the Federal Government, domestic and foreign financial institutions, public economic development trusts and those referred to in Section XI below, from the securities depository institutions, and entities of the federal public administration, when so established by law;  
 VIII. Receive money bank deposits from the legal entities referred to in Article 3 Section VI;  
 IX. Obtain credits from the legal entities referred to in Article 3 Section VI and from foreign financial institutions, with the sole purpose of foreign exchange regulation; as well as make guarantees in cash or with securities in regards to the financial transactions that it executes with said subjects pursuant to the present Law, derived from the international assets reserve administration.  
 X. Carry out transactions involving foreign currency, gold, and silver, including repurchase agreements; XI. Act as trustee when appointed by law or in regards to trusts whose aim is to contribute to the fulfilment of the Bank's own functions or that have been established by the Bank to fulfil its own labor-related obligations, and  
 XII. Receive deposits of titles or securities from the legal entities referred to in Sections VII and VIII above either for their safekeeping or for their administration. The Bank may also receive deposits of other financial instruments from the Federal Government.  
 The Bank may only perform the acts explicitly provided for in this Law or those related thereto”.

### **5.2.5 MAS**

Section 30Q (1) of the MAS Act ((Appointment as primary dealer):

“(1) The Authority may, on application, appoint as a primary dealer any financial institution which carries on or intends to carry on, or holds itself out as carrying on or willing to carry on, the business of either or both of the following:  
 (a) applying to the Authority to purchase securities issued by the Authority on behalf of another person in pursuance of any public invitation under section 30N;  
 (b) offering to redeem any securities issued by the Authority on behalf of another person in pursuance of any public invitation under section 30M or otherwise.  
 Therefore, the appointment is legally linked to the participation in “public” invitations.”

### **5.2.6 BoK**

Article 69 of Bank of Korea Act (BoK Act):

- (a) The Bank of Korea may, in accordance with the provisions of legislation and the Monetary Policy Committee, issue Bank of Korea Monetary Stabilization Bonds (hereinafter referred to as "Monetary Stabilization Bonds") in the open market.
- (b) The Bank of Korea may repurchase Monetary Stabilization Bonds in the open market or redeem them at par by lot before maturity.
- (c) The interest rates, maturities and repayment conditions of Monetary Stabilization Bonds shall be determined by the Monetary Policy Committee.
- (d) The redemption by lot provided for in Paragraph (2) may be executed only when the Monetary Policy Committee deems it necessary.

- (e) *The Bank of Korea shall immediately retire and cancel Monetary Stabilization Bonds repurchased or redeemed. This shall not apply, however, to purchases under the condition of resale.*
- (f) *The provisions of Article 50 shall apply to Monetary Stabilization Bonds held by the Bank of Korea. This shall not apply, however, to purchases under the condition of resale."*

Article 64 of the BoK Act:

"

- (1) *The Bank of Korea may conduct the following credit operations with banking institutions in such manner as may be determined by the Monetary Policy Committee:*
  - 1. *The re-discounting, discounting, buying and selling of promissory notes, bills of exchange, and other credit securities which banking institutions have acquired, provided that the instruments mature within one year from the date of their acquisition by the Bank of Korea, and*
  - 2. *The making of loans against the following kinds of collateral for fixed periods which shall not exceed one year:*
    - (a) *Credit securities specified in Clause 1;*
    - (b) *Negotiable securities representing obligations of, or obligations guaranteed by, the Government;*
    - (c) *Negotiable securities representing obligations of the Bank of Korea; or*
    - (d) *Other securities specified by the Monetary Policy Committee.*
- (2) *All credit securities re-discounted, discounted, bought or accepted as collateral in accordance with the provisions of Paragraph (1) shall bear the endorsement or be accompanied by a certificate of assignment of title from the banking institution from which they are received."*

Article 65 of the BoK Act (Emergency Credit to Banking Institutions):

*"The Bank of Korea may conduct emergency credit operations with banking institutions with at least four Members concurring in any of following cases. In these cases, the Bank of Korea may, in addition to the assets specified in Paragraph (1) of Article 64, qualify any assets of banking institutions as temporarily acceptable collateral.*

- 2. *Conducting emergency credit operations with banking institutions whose liquidity conditions have deteriorated due to imbalances between fund raising and use; or*
- 3. *Conducting credit operations temporarily with banking institutions which are expected to experience pronounced difficulty in carrying out their operations due to temporary shortages of funds for payment caused by a breakdown of an electronic information processing system or other accidental mishap."*

Article 80 (Credit to for-profit enterprises) of the BoK Act:

*"When severe impediments arise to obtaining funds from financial institutions including a severe contraction of credit or when there is a strong likelihood of their arising, the Bank of Korea may, with at least four Members concurring, render credit to any for-profit enterprise such as those engaged in financing business other than banking institutions."*

## **5.2.7 SNB**

Article 9 of the Swiss National Bank Act:

*"In performing its monetary tasks (...), the National Bank may:*  
*a. maintain interest-bearing and non-interest-bearing accounts for banks and other financial market participants, and take into custody assets;*  
*b. open accounts with banks and other financial market participants;*  
*c. buy and sell, in the financial markets, Swiss franc or foreign currency denominated receivables and securities as well as precious metals and claims on precious metals (spot or forward) or enter into lending operations therewith;*  
*d. issue and repurchase interest bearing bonds of its own (spot and forward) as well as create derivatives on receivables, securities and precious metals according to letter c;*  
*e. enter into credit transactions with banks and other financial market participants on condition that sufficient collateral is provided for the loans;*  
*f. hold and manage the assets designated in this Article."*

### **5.2.8 CBRT**

Article 4 of the Central Bank of the Republic of Turkey (CBRT) Law:

*"I- The fundamental duties of the Bank shall be:*  
*a) to carry out open market operations,*  
*b) to take necessary measures in order to protect the domestic and international value of the Turkish Lira and to establish the exchange rate regime to determine the parity of the Turkish Lira against gold and foreign currencies jointly with the Government, to execute spot and forward purchase and sale of foreign exchange and banknotes, foreign*  
*exchange swaps and other derivatives transactions in order to determine the value of the Turkish Lira against foreign currencies,*  
*c) to determine the procedures and principles of reserve requirements and liquidity requirement by taking into consideration the liabilities of banks and other financial institutions to be deemed appropriate by the Bank,*  
*d) to conduct rediscount and advance operations,*  
*e) to manage the gold and foreign exchange reserves of the country,*  
*f) (As amended by Law No. 6493 of June 20, 2013) to regulate the volume and circulation of the Turkish Lira, to establish payment, securities transfer and settlement*  
*systems, to ensure the uninterrupted operation and oversight of the systems established and to be established and to make the necessary regulations, to determine the methods and instruments including electronic environment that shall be used for payments, g) to take precautions for enhancing the stability in the financial system and to take regulatory measures with respect to money and foreign exchange markets,*  
*h) to monitor the financial markets,*  
*i) to determine the terms and types of deposits in banks and the terms of participation funds in special finance houses."*

Article 56 of the CBRT Law (prohibited activities):

*"The Bank may, with an aim to effectively regulate the money supply and the liquidity in the economy within the framework of monetary policy targets, conduct open market operations against the Turkish Lira such as outright purchase and sale of securities, repurchase and reverse repurchase, lending and borrowing securities and lending and borrowing of the Turkish Lira deposits, and act as an intermediary in these operations. The open market operations to be carried out by the Bank and their procedures and principles, and the instruments bearing high liquidity and low risk levels which shall be subject to open market operations shall be determined by the Bank."*

Article 53, paragraph 2, of the CBRT Law:

*"The Bank, within the scope of open market operations, may issue liquidity bills whose maturity shall not exceed 91 days, and that shall be tradable in the secondary markets, for its own account and behalf. However, the matters such as the prevention of the liquidity bills from being a permanent alternative investment tool, and the limitation of the issuance of the said bills merely with the aim to promote the effectiveness of open market operations shall be taken into consideration. The agreement period of repurchase, reverse repurchase and the Turkish Lira deposit transactions of the Bank shall not exceed 91 days; the initiation of the period shall be the value date of the transactions."*

Article 56, paragraph 4, of the CBRT Law (prohibited activities):

*"Open market operations shall be conducted only for monetary policy purposes and shall not be conducted to provide credit to the Treasury, to public establishments and institutions, or to other establishments and institutions."*

Article 45 of the CBRT Law:

*"The Bank may, within the scope of principles that it shall determine, accept commercial bills and documents to be presented by banks for rediscount, provided that they bear at least three signatures of solvent persons. The types of commercial bills to be accepted for rediscount together with the securities that may substitute for one of the signatures and other conditions shall be stipulated by the Bank. The maximum amount of loans to be extended in accordance with this article and their limits as per credit types shall be determined by the Bank by taking monetary policy principles into consideration. The Bank may also grant advances against the bills that it may accept for rediscount."*

Article 40 of the CBRT Law:

*"The Bank may, as the lender of last resort, provide intraday or end-of-day credit facilities to the system against collateral so as to eliminate the technical payment problems which may obstruct the efficient functioning of the financial markets, and the temporary liquidity shortages that may cause interruption in the payment system."*

*b) (Repealed by Law No. 5411 of October 19, 2005)*

*c) (As amended by Law No. 4651 of April 25, 2001) The Bank may extend credit to the banks that are the subject of uncertainty and lack of confidence in the event of acceleration of fund withdrawals and uncertainty and lack of confidence in the banking system, in the amount to cover the withdrawal of funds, the conditions of which shall be determined by the Bank. In the event of bankruptcy of banks to which the Bank extends credit in accordance with this provision, the Bank shall participate to the bankrupt's estate as a privileged creditor for the amount of the credit extended and the interest pertaining to it."*

Article 53 of the CBRT Law:

*"a) In order to determine the value of the Turkish Lira against foreign currencies, the Bank may, within the framework of its monetary policy, execute spot and forward purchase and sale of foreign exchange and banknotes, and may execute*

*foreign exchange swaps and other derivatives transactions provided that the conditions thereof shall be determined beforehand.*

*b) The Bank shall manage the gold and foreign exchange reserves of the country consistent with the monetary policy targets and practices. The Bank may, with this objective and in compliance with the procedures and principles that it shall determine, perform all kinds of banking activities in the domestic and international markets covering spot or forward purchase and sale of gold, foreign exchange, securities and derivatives products, as well as lending and borrowing operations, by taking into consideration the safety, liquidity and return priorities respectively."*

### **5.2.9 FED**

Paragraph (3) in Section 13 of the Federal Reserve Act:

" (...)

*A. In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d), of this Act, to discount for any participant in any program or facility with broad-based eligibility, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank: Provided, That before discounting any such note, draft, or bill of exchange, the Federal reserve bank shall obtain evidence that such participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions. All such discounts for any participant in any program or facility with broad-based eligibility shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.*

*B.*

- i. As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.*
- ii. The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the*

- certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding.
- iii. A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.
  - iv. The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.
- C. The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives--
- i. not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes--
    - I. the justification for the exercise of authority to provide such assistance;
    - II. the identity of the recipients of such assistance;
    - III. the date and amount of the assistance, and form in which the assistance was provided; and
    - IV. the material terms of the assistance, including--
      - (aa) duration;
      - (bb) collateral pledged and the value thereof;
      - (cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;
      - (dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and
      - (ee) the expected costs to the taxpayers of such assistance; and
  - ii. once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on--
    - I. the value of collateral;
    - II. the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and
    - III. the expected or final cost to the taxpayers of such assistance.
- D. The information required to be submitted to Congress under subparagraph (C) related to--
- i. the identity of the participants in an emergency lending program or facility commenced under this paragraph;
  - ii. the amounts borrowed by each participant in any such program or facility;
  - iii. identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,
- shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).
- E. If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section

*201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.*

*Subsection (s) to Section 11 of the Federal Reserve Act (Powers of Board of Governors of the Federal Reserve System of the Federal Reserve Act):*

*Federal Reserve Transparency And Release Of Information.*

- 1. In General. In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)--*
  - A. the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;*
  - B. the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;*
  - C. the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and*
  - D. information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.*
- 2. Mandatory Release Date. In the case of--*
  - A. a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and*
  - B. a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.*
- 3. Earlier Release Date Authorized. The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph (2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.*
- 4. Definitions. For purposes of this subsection, the following definitions shall apply:*
  - A. Credit Facility. The term "credit facility" has the same meaning as in section 714(f)(1)(A) of title 31, United States Code.*
  - B. Covered Transaction. The term "covered transaction" means--*
    - i. any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and*
    - ii. any advance made under section 10B after the date of enactment of that Act.*

5. *Termination Of Credit Facility By Operation Of Law.* A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.
6. *Consistent Treatment Of Information.* Except as provided in this subsection or section 13(3)(D), or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title, shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.
7. *Protection Of Personal Privacy.* This subsection and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.
8. *Study Of FOIA Exemption Impact.*
  - A. *Study.* The Inspector General of the Board of Governors of the Federal Reserve System shall--
    - i. conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and
    - ii. make any recommendations on whether the exemption described in clause (i) should remain in effect.
  - B. *Report.* Not later than 30 months after the date of enactment of this section, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.
9. *Rule Of Construction.* Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act."



Tables provided as responses to the questionnaire by the FRBNY.

DOMESTIC OPERATIONS EX ANTE and EX POST DISCLOSURE (Q 16-18 and Q 20-21):

I. Agency Mortgage Backed Securities operations

|               | Agency MBS Operations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planning      | <p>FOMC Announcements</p> <ul style="list-style-type: none"> <li>• Timing: as necessary</li> <li>• Contents: <ul style="list-style-type: none"> <li>◦ Program objectives</li> <li>◦ Purchase / sale pace</li> </ul> </li> </ul> <p>Desk FAQs: Agency MBS Reinvestment Purchases and Treasury Rollovers</p> <ul style="list-style-type: none"> <li>• Timing: as necessary, following FOMC announcements</li> <li>• Agency MBS purchases will likely be concentrated in newly-issued agency MBS in the To-Be-Announced (TBA) market</li> <li>• Reinvestments in agency MBS will be made as directed by the FOMC in its most recent statement <ul style="list-style-type: none"> <li>◦ Amount is subject to change should the FOMC alter its directive to the Desk during the month or if market conditions warrant</li> </ul> </li> <li>• Other terms and conditions</li> </ul> <p>Calendar</p> <ul style="list-style-type: none"> <li>• Contents of each calendar: <ul style="list-style-type: none"> <li>◦ Operation Date/ Time</li> <li>◦ Operation Type</li> <li>◦ Securities Included</li> <li>◦ Maximum Purchase (Sale) Amount</li> </ul> </li> <li>• Timing of each calendar release: <ul style="list-style-type: none"> <li>◦ Reinvestment only (current regime): every 8<sup>th</sup> and 18<sup>th</sup> business day of the month at 3PM</li> <li>◦ Additional Purchases (LSAP) and reinvestments: weekly on Friday at noon</li> <li>◦ Small Value Sales (ad-hoc): at least one day before operation</li> </ul> </li> </ul> <p>Reinvestment Amount</p> <ul style="list-style-type: none"> <li>• Desk's tentative agency MBS purchase amounts associated with the reinvestment of principal payments from agency debt and agency MBS in agency MBS</li> <li>• Timing: Eighth business day of each month at 3PM</li> </ul> |
| Announcements | <p>Announcement Page—Permanent OMOs: Agency MBS</p> <ul style="list-style-type: none"> <li>• Description of the purpose of purchases and small value sales</li> <li>• Timing: Populated as operation is opened</li> <li>• Displays open operations <ul style="list-style-type: none"> <li>◦ Operation Date</li> <li>◦ Operation Type</li> <li>◦ Auction Method</li> <li>◦ Release Time</li> <li>◦ Close Time</li> <li>◦ Settlement Date</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | <ul style="list-style-type: none"> <li>○ TBA Inclusions (security description)</li> <li>• Includes actual and small value operations</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Results                     | <p>Permanent OMOs: MBS Activity</p> <ul style="list-style-type: none"> <li>• Timing: following operation close</li> <li>• Contents: <ul style="list-style-type: none"> <li>○ Operation: (Purchase/Sale)</li> <li>○ Operation Type (i.e. TBA)</li> <li>○ Auction Method</li> <li>○ Close Time</li> <li>○ Settlement Date and Class</li> <li>○ Total Amount Accepted (\$million), par</li> <li>○ Total Amount Submitted (\$million), par</li> <li>○ Par amount accepted for each security description</li> </ul> </li> <li>• Includes actual and small value operations</li> </ul> <p>Agency MBS Historical Operational Results</p> <ul style="list-style-type: none"> <li>• The Desk publishes historical operational results, including information on the transaction prices in individual operations, at the end of each monthly period shown in a table with a corresponding excel file <ul style="list-style-type: none"> <li>○ Contents: <ul style="list-style-type: none"> <li>▪ Trade Date</li> <li>▪ Contractual Settlement Date</li> <li>▪ Trade Amount (current face value at the time of trade)</li> <li>▪ Agency</li> <li>▪ Coupon</li> <li>▪ Term</li> <li>▪ CUSIP</li> <li>▪ Transaction Category</li> <li>▪ Operation Type</li> <li>▪ Price</li> </ul> </li> </ul> </li> <li>• Includes actual and small value operations</li> </ul> <p>Agency MBS Transaction Summary</p> <ul style="list-style-type: none"> <li>• Timing: every Thursday at 2PM</li> <li>• Aggregated amount purchased or sold by maturity, coupon, settlement month and agency for the previous Wednesday through Thursday</li> <li>• Includes aggregated dollar roll activity</li> <li>• Small value operations excluded</li> </ul> |
| Disclosure (Bank-initiated) | <ul style="list-style-type: none"> <li>○ N/A</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Disclosure (DFA)            | <p>Open Market Operations: Transaction Data</p> <ul style="list-style-type: none"> <li>• Data is grouped by quarter/year</li> <li>• For the initial reporting period, the data reflect transactions conducted after the date of enactment of the Dodd-Frank Act, July 21, 2010, through September 30, 2010.</li> <li>• Information for subsequent periods will be published quarterly, approximately two years after the transaction was conducted.</li> <li>• Contents: <ul style="list-style-type: none"> <li>○ Trade date</li> <li>○ Settlement date</li> <li>○ Transaction category</li> <li>○ Operation Type</li> <li>○ Trade amount (in millions, USD)</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

|  |                                                                                                                                                                                                               |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <ul style="list-style-type: none"> <li>○ Agency</li> <li>○ Coupon</li> <li>○ Term</li> <li>○ CUSIP</li> <li>○ Price</li> <li>○ Total amount transferred (in millions, USD)</li> <li>○ Counterparty</li> </ul> |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### 5.2.10 BIS

Article 21 of the Statutes of the Bank of International Settlements:

*"The Board shall determine the nature of the operations to be undertaken by the Bank. The Bank may in particular:*

- (a) buy and sell gold coin or bullion for its own account or for the account of central banks;*
- (b) hold gold for its own account under earmark in central banks;*
- (c) accept the custody of gold for the account of central banks;*
- (d) make advances to or borrow from central banks against gold, bills of exchange and other short-term obligations of prime liquidity or other approved securities;*
- (e) discount, rediscount, purchase or sell with or without its endorsement bills of exchange, cheques and other short-term obligations of prime liquidity, including Treasury bills and other such government short-term securities as are currently marketable;*
- (f) buy and sell exchange for its own account or for the account of central banks;*
- (g) buy and sell negotiable securities other than shares for its own account or for the account of central banks;*
- (h) discount for central banks bills taken from their portfolio and rediscount with central banks bills taken from its own portfolio;*
- (i) open and maintain current or deposit accounts with central banks;*
- (j) accept:*
  - (i) deposits from central banks on current or deposit account;*
  - (ii) deposits in connection with trustee agreements that may be made between the Bank and Governments in connection with international settlements;*
  - (iii) such other deposits as in the opinion of the Board come within the scope of the Bank's functions.*

*The Bank may also:*

- (k) act as agent or correspondent of any central bank;*
- (l) arrange with any central bank for the latter to act as its agent or correspondent. If a central bank is unable or unwilling to act in this capacity, the Bank may make other arrangements, provided that the central bank concerned does not object. If in such circumstances it should be deemed advisable that the Bank should establish its own agency, the sanction of a two-thirds majority of the Board will be required;*
- (m) enter into agreements to act as trustee or agent in connection with international settlements, provided that such agreements shall not encroach on the obligations of the Bank towards third parties; and carry out the various operations laid down therein.*

*This is supplemented by article 23, which is specifically dedicated to the BIS' role as a settlement agent for central banks:*

*The Bank may enter into special agreements with central banks to facilitate the settlement of international transactions between them.*

*For this purpose it may arrange with central banks to have gold earmarked for their account and transferable on their order, to open accounts through which*

*central banks can transfer their assets from one currency to another and to take such other measures as the Board may think advisable within the limits of the powers granted by these Statutes. The principles and rules governing such accounts shall be fixed by the Board."*

Article 24 of the BIS Statutes:

*"The Bank may not:*

- (a) issue notes payable at sight to bearer;*
- (b) "accept" bills of exchange;*
- (c) make advances to Governments;*
- (d) open current accounts in the name of Governments;*
- (e) acquire a predominant interest in any business concern;*
- (f) except so far as is necessary for the conduct of its own business, remain the owner of real property for any longer period than is required in order to realise to proper advantage such real property as may come into the possession of the Bank in satisfaction of claims due to it."*

### **5.3 Selected list of references (theoretical background)**

- Anderson, P., Caputo Silva, A., Velandia-Rubiano, A. (2010). "Public debt management in emerging market economies: has this time been different?", World Bank Policy Research Working Papers, no. 5399.
- Mohanty, Madhusudan (2014). "The transmission of unconventional monetary policy to the emerging markets", BIS Papers No 78.
- Bayoumi, Tamim, Dell'Ariccia, Giovanni, Habermeier, Karl, Mancini-Griffoli, Tommaso, Valencia, Fabián (2014). "Monetary Policy in the New Normal", IMF Discussion Note, Research, Monetary and Capital Markets, and Strategy and Policy Review Departments, April.
- Basel Committee on Banking Supervision (June 2004), International Convergence of Capital Measurement and Capital Standards, Bank for International Settlements, available at <http://www.bis.org/publ/bcbs107.pdf>
- Basu, Kaushik, Aristomen, Varoudakis (2013). "How to Move the Exchange Rate If You Must. The Diverse Practice of Foreign Exchange Intervention by Central Banks and a Proposal for Doing It Better", Policy Research Working Paper 6460, World Bank.
- BIS (2009a), Markets Committee Compendium, Monetary policy frameworks and central bank market operations, Publication no 4, May.
- BIS (2009b), "Issues in the governance of central banks", A report from the central bank governance group, May.
- Borio, Claudio (2011). "Central banking post-crisis: What compass for uncharted waters?", BIS Working Papers, No 353.
- Chadha, Jagjit S., Turner, Philip, Zampolli, Philip (2013). "The ties that bind: monetary policy and government debt management", Oxford Review of Economic Policy, 29 (3): 548-581.
- CGFS (2011). Interactions of sovereign debt management with monetary conditions and financial stability, Committee on the Global Financial System, CGFS Papers, No 42, May 2011.
- Hannoun, Hervé (2012). Monetary policy in the crisis: testing the limits of monetary policy, Speech of Deputy General Manager of the BIS, at the 47th SEACEN Governors' Conference, Seoul, Korea, February 13-14.
- Eichengreen, Barry et al. (2011). "Rethinking Central Banking Report", Committee on International Economic Policy and Reform Report, Brookings, September.
- Ferguson, Roger W (2002). "Should Financial Stability Be an Explicit Central Bank Objective?", Paper presented to an International Monetary

- Fund conference on Challenges to Central Banking from Globalized Financial Markets, Washington, D.C., available at <https://www.imf.org/external/pubs/ft/seminar/2002/gfs/eng/ferguson.pdf>.
- Ghosh, Atish R., Ostry, Jonathan David and Qureshi, Mahvash S (2014). "Exchange Rate Management and Crisis Susceptibility: A Reassessment", IMF Working Paper.
  - Fawley, Brett W., Neely, Christopher J. (2013). "Four Stories of Quantitative Easing", Federal Reserve Bank of St. Louis Review, 95(1), 51-88, January/February.
  - IMF (2014). Revised Guidelines for Public Debt Management, prepared by IMF and World Bank staff, 26 March 2014.
  - Magnusson, Tomas, Prasad, Abha, Storkey, Ian (2010). "Guidance for Operational Risk Management in Government Debt Management", World Bank Policy Papers, Economic and Debt Policy Department.
  - Melecky, Martin (2012). "Formulation of Public Debt Management Strategies: An Empirical Study of Possible Drivers", Economic Systems, Vol. 36, No. 2; Melecky, Martin (2007). "A Cross-Country Analysis of Public Debt Management Strategies", World Bank, Policy Research Working Paper, no. 4287.
  - Mishkin, Frederic S (2011). "How Should Central Banks Respond to Asset-Price Bubbles? The 'Lean' versus 'Clean' Debate After the global financial crisis", Bulletin, Reserve Bank of Australia.
  - Mohanty, Madhusudan and Berger, Batelv (2014), "Central bank views on foreign exchange intervention", BIS Papers No 73.
  - Mohanty, Madhusudan (2012). "Fiscal policy, public debt and monetary policy in emerging market economies", BIS Papers No 67.
  - Moreno, Ramon (2005). "Motives for intervention", BIS Papers, No. 24, 4-18.
  - Neely, Christofer J. (2008). "Central bank authorities' beliefs about foreign exchange intervention", Journal of International Money and Finance, 27.
  - Nier, Erlend Walter (2010) , "Financial Stability Frameworks and the Role of Central Banks: Lessons from the Crisis", IMF Working Paper.
  - Ostry, Jonathan D, Ghosh, Atish R., Tsangarides, Charalambos G (2012). "Shifting Motives: Explaining the Buildup in Official Reserves in Emerging Markets since the 1980s, IMF Working Paper.
  - Orphanides, Athanasios (2014). "The need for a price stability mandate", Cato Journal, Vol. 34, No. 2.
  - Rochet, J. C., & Tirole, J. (1996), "Interbank lending and systemic risk", Journal of Money, credit and Banking, 733-762.
  - Shogo, Ishii et al. (2006). "Official Foreign Exchange Intervention", IMF Occasional Paper 249.
  - Tokaç, Hakan, Williams, Mike (2013). "Government Debt Management and Operational Risk", SIGMA Papers, No. 50, OECD Publishing.
  - White, William R (2013). "The Short and Long Term Effects of Ultra Easy Monetary Policy", Working Paper Series, 41st Economics Conference 2013, National Bank of Austria, September.
  - White, William R (2006) "Is price stability enough?", BIS Working Papers, No 205.
  - World Bank (2014), "Public debt management office: main functions and required skills".
  - Wolswijk, Guido & Jakob de Haan (2005). "Government debt management in the euro area - recent theoretical developments and changes in practices", Occasional Paper Series 25, European Central Bank.

## 5.4 Selected list of references (comparative analysis for MAR)

- Allen, T., Kraakman, R., Subramanian, G., *Commentaries and Cases on the Law of Business Organizations*, 4th ed., Wolters Kluwer (2012).
- Avgouleas, E., *The Mechanics and Regulation of Market Abuse. A Legal and Economic Analysis*, Oxford University Press (2005).
- Bhattacharya, U., and Daouk, H., *The World Price of Insider Trading*, 57 *Journal of Finance* 75 (2002).
- Enriques, L. and Gatti, M., *Is There a Uniform EU Securities Law After the Financial Services Action Plan?*, 14 *Stanford Journal of Law Business and Finance* 43.
- Financial Market Law Committee, Issue 154, *Market Abuse Directive* (2010)
- International Organization of Securities Commission (IOSCO), *Insider Trading. How Jurisdictions Regulate It* (2003).
- Langenbucher, K., *The "Use or Possession" Debated Revisited – Spector Photo Group and Insider Trading in Europe*, 5 *CMLJ* 542 (2010).
- Moloney, N., *EU Securities and Financial Markets Regulation*, Oxford EU Law University Press (2014).
- Nelemans, M., and Schouten, M., *Takeover Bids and Insider Trading*, in Bainbridge S. (ed.), *Research Handbook on Insider Trading*, Edward Elgar, 449 (2014)

**DOI : 10.2780/73005**

**ISBN : 978-92-79-43372-6**