

Members feedback on ASIC's key proposed responses sent on 18 August 2022

1. Consolidate to a single go live date

Members are supportive of the proposal to consolidate into one go live date. This is consistent with our previous feedback which raised concerns about the costs, risks and complexity of the original two-staged approach. As the new Rules involve a comprehensive change from existing ASIC Rules, we recommend an implementation period of at least 18 months between the publication of the final rules and the go-live date to allow adequate time to review the rules, implement the required processes, control framework and system changes. Member prefer the new rules to be implemented separately with CFTC and EMIR and to have at least 6 months elapsed after the CFTC and EMIR implementation. This is to reduce the risk of a global big-bang approach and allow sufficient time to complete the warranty of the previous implementation and incorporate the resolutions to the new implementation.

2. Switch to T+2 for all reportable transactions

Members are supportive of the switch to T+2 for all reportable transactions. This will have the benefit of aligning ASIC with other regulators in APAC, notably MAS and HKMA, and mitigate the challenges associated with the time difference between the Australia end of day and the global end of day. It will also reduce the regulatory burden of the new rules for reporting entities and is consistent with the stated aims of the Consultation Paper which is to simplify the Rules and reduce costs and complexity for the industry.

3. Not require renewed LEI for certain entities

Members are supportive of this proposal as it better aligns with the requirements globally and reduces the operational burden on reporting entities. As having renewed LEI would be important to help to maintain reporting data quality generally and be useful in other instances such as payments, we suggest that ASIC could support separate efforts to encourage LEI renewal amongst Australian entities.

4. Require non-UPI underliers as 'one of' ID types

Members are supportive of ASIC's approach.

A broader range of identifiers in the UPI for underliers, and better coverage generally, should over time reduce the need for non-UPI underlier identifier fields. ASIC, as a ROC member, could encourage the DSB UPI Issuer service to ensure that relevant identifiers and related reference data is included in the UPI going forward. The range of underlier ID types supported in the UPI needs to be expanded so that it also includes the identifiers mentioned in the joint response, and those applicable to the non-UPI underlier identifier options. The allowable set of ID types should also include those mentioned in the recent joint response, including FIGI etc.

On ASIC's point on encouraging ISDA to work on expanding the commodity reference price dataset without delay, we would like to share that this has already been carried out. We will work on publishing the updated commodity definitions with expanded references soon.

5. Re-reporting legacy trades excluding ex-system information

Members are supportive of this proposal.

Members would appreciate it if there could be further guidance from ASIC in an updated regulatory guide to illustrate the re-reporting requirements better, and the fields that would be optional vs mandatory for purpose of re-reporting of legacy trades.

As stated in last paragraph under point 5 - ‘information that is not so held in electronic form in source systems need not be reported’, we would interpret that data not stored in electronic form, e.g. paper confirmation, would not be required to be backfilled and re-reported. We would also like to confirm if UTI would be one of the ‘problem’ data elements because UTI was not captured, determined and agreed upfront when executed, it would require substantial operational effort to backfill.

As mentioned in the response to CP 361, we appreciate if ASIC could grant a 6-month relief period for re-reporting of legacy live trades given the potential complication, complexity and hence implementation risk.

6. Reporting packages

Members agree with ASIC that there needs to be a common international approach, and are supportive of ASIC’s approach to prescribe the field in the new rules, but leave the definition and treatment of packages, and related expectations about package elements for reporting purposes in a later guidance when there is international alignment.

Members expressed that there would be no issues/comments with respect to using a Package Identifier to identify if two transactions are reported separately, if relevant for the firm (this aligns with other reporting regimes). However, if reporting firms were to report packaged transactions as either a single transaction or decomposed transactions, as described in the 4th paragraph, there would either be a mismatch in UTI between the two sides or a deviation from the principal of UTI being unique for the side reporting decomposed transactions. Whilst the flexibility offered appears to be useful, we request ASIC provide guidance as to how the UTI should be applied in this scenario. There were suggestions for ASIC to not require UTI matching for packages due to the possibility of one firm reporting a different number of transactions from another.

7. Loosen the UTI rule

Members are supportive of these proposals.

However, we would request ASIC to further align the UTI rule globally with its peer regulators. At this stage, we note that there has yet to be a common international alignment on UTI, and cross-border discussion amongst the regulators and industry would be necessary to address the challenges as identified in our response to CP 361.

As such, we would suggest ASIC to consider adopting a similar approach as item 6, by prescribing the UTI data field in the rules and leaving the specific UTI generating entity determination waterfall framework in a separate regulatory guide when there is international agreement. This would give ASIC more optionality and flexibility to align the UTI rules with other regulators as opposed to the current approach of prescribing the waterfall framework in the legislation. We understand that MAS intends to adopt such an approach too.

In relation to the specific proposals:

- Further loosen the need for full knowledge of counterparty's reporting; Reporting Entities only responsible for UTI compliance with its own foreign jurisdictional reporting; and Waterfall of items 1-to-5, else by one of items 6, 7 and 8
Members are supportive of these proposals as it will substantially reduce the operational burdens associated with UTI reporting. Members commented that the adjusted waterfall framework appears to be flexible enough to accommodate most reporting scenarios.
- Rephrase 'have an agreement' to just 'agree'
Members are supportive of this proposal.
- A TR's 'reasonable requirements' so that the TR may generate a UTI
Members have no objections to this proposal, however, some members still opine that TR should not be a UTI generating entity in the waterfall.
- Replace the 'give UTI' deadline with 'give as soon as practicable'
Members are supportive of this proposal as it allows some flexibility in case there are any technical issues.
- Reporting an updated UTI from a temporary UTI is not late reporting
Members are supportive of this proposal.
- Set T+4 as the reporting deadline for a structured trade
Members are supportive as it will be beneficial in relation to UTI sharing and report production (where firms implement reporting for structured trades in a less automated manner).