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Submitted by email: otcd@asic.gov.au

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Re: ASIC Consultation Paper 334: Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation

Dear Craig,

IHS Markit (NYSE:INFO) is a world leader in critical information, analytics and solutions for the major industries and markets that drive economies worldwide. Employing 15,000 people in 35 countries, the company delivers next-generation information, analytics and solutions to customers in business, finance and government, improving their operational efficiency and providing deep insights that lead to well-informed, confident decisions. IHS Markit has more than 50,000 key business and government customers, including 80 percent of the Fortune Global 500 and the world's leading financial institutions.

A subsidiary of IHS Markit, MarkitSERV provides end-to-end multi-asset trade processing and workflow solutions that support all participants in OTC trading from post-trade notices of execution, trade confirmation and allocations to clearing and reporting. This helps market participants minimise cost and complexity by integrating processes along the OTC transaction lifecycle from post-trade notification and confirmation, to allocations and clearing and regulatory reporting. On 11 January 2021, IHS Markit acquired Cappitech, a compliance technology provider, to expand its suite of global, multi-asset class transaction regulatory reporting offerings to the financial industry.

IHS Markit has been a strong supporter of the international effort to introduce standards and consistency in the use of Unique Transaction Identifiers (UTI) and to avoid proliferation of multiple trade identifiers for individual transactions. We, therefore, welcome the opportunity to comment on the ASIC's first consultation on 'Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting)'.¹

We support ASIC's proposals to simplify reporting rules consistently with developments in other jurisdictions and supranational harmonization initiatives. We also support the clear stance to align rules to international CPMI IOSCO standards and its works within the Committee on Derivative Identifiers and Data Elements (CDIDE). Furthermore, we welcome ASIC's call for participants to raise concrete issues around UTI decision tree to improve the global approach for UTI.

¹ <https://download.asic.gov.au/media/5984831/cp334-published-27-november-2020-updated-22-february-2021.pdf>

Detailed answers to the questions in the consultation are set out below (covering . However, we would like to highlight the following main points concern UTI generation and sharing:

- In line with the expectations of international standard setters,² it should be made clear to market participants that confirmation platforms (such as MarkitWire, DSMatch and TradeSERV) should take precedence for UTI generation over any bilateral agreements in place between counterparties; and
- Regulatory guidance on UTI generation on how to share UTIs and related data for transactions conducted without financial market infrastructure (CCPs, trading venues, confirmation platforms) would be useful. This would bring clarity and consistency on how UTIs are exchanged and support electronic exchange to ensure a high degree of automation for accuracy and speed of processing.

We hope this and the detailed answers to the questions below are helpful for ASIC. We would be very happy to discuss any aspect with you.

Yours sincerely,



Executive Director, Regulatory Affairs
IHS Markit



² For example, CPMI/BIS Technical Guidance on the Harmonisation of the Unique Transaction Identifier - <https://www.bis.org/cpmi/publ/d158.pdf>

Section C – The Unique Transaction Identifier (UTI)

Proposal C1

C1Q1

We agree with the proposal to set out a technical specification for the UTI structure in alignment with CPMI IOSCO guidance and other industry recommendations.³ Technical specification of the UTIs format would support global harmonization of the UTI and would help clear and unique identification of the same transaction across jurisdictions.

We welcome ASIC's intention to include in its UTI guidance elements regarding life cycle events impact on the UTI. Some guidance could be provided via a table of most common business events mapping to regulatory reporting life cycle action types, including reference to benchmark rate transition and its impact on UTI.⁴

C1Q2

We would draw attention to uncertainties related to life cycle events. In the scenario of uninterrupted continuation of the contractual relationship, the UTI must remain unchanged. Changes corresponding to early termination of a contract and its replacement with a new contract could occur where the parties would have expressly pre-agreed the approach, for example in alignment with the confirmation if the latter exists.

Differences in booking models and in reporting level could also impact the UTI. Examples include whether a party reports different multiple trades instead of a single for the other counterparty, different corporate actions processing interpretations or reporting at the master fund level instead of underlying fund level. In such circumstances, reference to the contractual agreement and the confirmation should prevail.

Furthermore, a prior-UTI from the predecessor transaction may not always be relevant. We would highlight the following:

- For anonymous SEF trades (No Name Give Up – NNGU), we would request that reporting of alpha and termination (exit) of alpha was not required for the ASIC regime. This would align with the recent EMIR Q&A⁵ update that indicates firms can now choose not to report such trades if there is a plan to clear them on the same day, which you always have for SEF anonymous trades. No changes are requested regarding the reporting of Beta and Gamma cleared trades.
- There are also other instances where reporting the predecessor UTI would involve additional burden and reporting complexities without significant benefit to regulatory oversight. For example, where

³ <http://www.bis.org/cpmi/publ/d158.htm>. See also [Best practice recommendation](#) example 'If the UTI does not come from a platform, it could be suggested the UTI consists of (1) the LEI of the party generating the UTI, followed by (2) the date of execution of the transaction in the format YYYYMMDD followed by (3) three or more letters selected by the generating party'

⁴ Cf Table 6 - https://www.esma.europa.eu/sites/default/files/library/esma70-151-2838_guidelines_on_reporting_under_sfr.pdf

⁵ <https://www.esma.europa.eu/file/111332/download?token=e2grKOhe>

trades are meant to be immediately novated to the CCP and where the initial bilateral trade is totally contingent to an immediate same-day novation to the CCP as per the contract with the CCP. In this example, the obligation to report the initial bilateral trade sending the prior 'alpha' trade with a UTI followed by a cancel of initial trade 'erroring' the initial UTI could be operationally burdensome.

Proposal C2

C2Q1

Overall, we are supportive of ASIC's proposal on UTI guidance. We have some specific comments set out below:

- Financial market infrastructure (such as CCP, trading venues or confirmation-matching platforms) must take precedence in UTI generation and should be able to generate and share the UTI in an easily accessible way to users.
- In line with the expectations of international standard setters, it should be made clear to market participants that confirmation platforms (such as MarkitWire, DSMatch and TradeSERV) should take precedence for UTI generation over any bilateral agreements in place between counterparties;
- Where one or neither of the parties use a CCP, trading venue or confirmation platform, reference to the bilateral agreement is an efficient way for UTI generation, avoiding parties having to go through a complex algorithm for UTI generation.⁶

It should be noted that in other regimes such as EU SFTR⁷, the bilateral agreement for UTI exchange by counterparty is placed at the top of the ESMA decision tree to allow parties to use the agreement as a convenient 'opt-in' fallback without having to go through complex UTI generation algorithm. We observe for SFTR, the bilateral agreement works well in practice in the absence of financial market infrastructure. We, therefore, believe regulatory guidance on UTI generation, on how to share UTIs and related data for transactions conducted without financial market infrastructure (CCPs, trading venues, confirmation platforms) would be useful. This would bring clarity and consistency on how UTIs are exchanged and support electronic exchange to ensure a high degree of automation for accuracy and speed of processing

C2Q2

In the case of cross-jurisdictional transactions, it is operationally complex to require firms to be informed about the other counterparty's jurisdictional reporting requirements to satisfy current step 4 of CPMI IOSCO

⁶ Current technical guidance requires to know upfront the reporting obligations, the registration status, the nature of the other counterpart and referring to rules concerning sooner deadlines for reporting before being able to action a simple bilateral agreement with the other counterparty.

⁷ https://www.esma.europa.eu/sites/default/files/library/esma70-151-2838_guidelines_on_reporting_under_sftr.pdf. ESMA lays out the UTI Generation flowchart in their Guidelines of January 2020 and the Final Report of March 2017 : where parties cannot reach a bilateral agreement on who should generate the UTI, it is expected that a financial market infrastructure such as central clearing house, a trading venue or a confirmation platform is used

technical guidance.⁸ We believe that confirmation platforms and then the bilateral agreement should take precedence over checking cross jurisdictional obligations or rules referring to the nature of counterparties (status-based approach).

We agree on the temporary exemption in the ASIC Rules from the requirement to report a UTI generated by a CCP that is not subject to UTI generation obligations in its home jurisdiction CCP-generated. Note that if the CCP is not required to generate a UTI in its home jurisdiction, it could be because the other party cannot have a UTI and has to use the UTI generated as per a bilateral agreement.

C2Q3

As stated above, we would strongly recommend ASIC to provide regulatory guidance on UTI sharing requirements to improve accuracy and lower burden. Specifically, the guidance should outline:

- The use of digital medium for UTI exchange (avoiding faxes and manual processes);
- A preference for automated workflows from booking to reporting;
- That UTI and its related data should be shared in a common format;
- The exchange of transaction minimum fields⁹ alongside the UTI to facilitate identification of the transaction and facilitate pairing.

Proposal C3

C3Q1

We welcome ASIC's intention to seek alignment with EU rules. However, we would stress that US and other Asia rules should also be considered in ASIC's approach. We do not think those rules are incompatible.

C3Q2

Option 1 relying on 'Buy/Sell indicator' (counterparty that is the 'seller' or the 'payer of leg 1' in the transaction) for UTI generation criteria could be challenging in some instances for some products. Having a simple straightforward rule fallback in the absence of financial market infrastructure and a bilateral agreement would be more efficient.

We, therefore, prefer option 2 with option 2a bilateral agreement between the counterparties, otherwise option 2b 'reverse LEI sorting'. After sorting the LEIs of the counterparties with the characters of the identifiers reversed, the counterparty that comes first in this sort sequence would be the UTI generator. If one of the parties does not have an LEI, the other party should be the generating party. If none of the parties have an LEI, reference could be made to the first letters of the legal name of the counterparty sorted in alphabetical order.

⁸ CPMI IOSCO Technical guidance step 4: Is the transaction cross jurisdictional?
Step 5: do both counterparties have reporting obligations?

⁹ cf. minimum fields example of CFTC [Interim Final Rule and request for comment to Portfolio Reconciliation Requirements for Swap Dealers and Major Swap Participants—Revision of "Material Terms" Definition](#)

C3Q3

Beyond UTI generation logic, we would stress again the importance of regulatory guidance around UTI sharing. We have set out below a few examples where going through the medium of an automated bilateral agreement with the counterparty would be more efficient:

- Where the trading venue is out of scope for the regime in question,
- When the CCP is out of scope for the regime question,
- Agency trades where the subsequent allocation happens after/outside the venue/ platform or is potentially reallocated after initial execution.

C3Q4

Global harmonization should be regulators' key objective. We would, therefore, encourage ASIC to align not only with EU rules but also US and other APAC jurisdictions. We understand there have been some discussions on UTI share and pair between ASIC, HKMA and MAS. Any commonalities from those meetings should be raised with other regulators to ensure global harmonization. We would welcome further discussion around such scenarios, including in the second round of ASIC consultation.

Proposal C4

C4Q1

Upfront cross jurisdictional testing at the point of trading would be very challenging to implement and should not take precedence over confirmation platforms and bilateral agreement for UTI generation. Any rules requiring the anticipation of the counterparty reporting obligation are very challenging to implement and prone to errors.

Proposal C5

C5Q1

While we understand the rationale for the proposal around the 'sooner' deadline of reporting, we think this could be challenging in some instances. We know by experience that smaller financial institutions who are using paper confirmations will find it challenging to meet that short deadline. A 'follow the sun' model would also be problematic for smaller Australia and APAC firms compared to larger institutions such as global brokers and dealers based in North America or Europe.

Proposal C6

C6Q1

As mentioned in C3Q3 and C4Q1, a higher place for bilateral counterparty agreement would obviate the need for a complex, multi-step determination logic when a transaction is cross-jurisdictional. The bilateral agreement is considered as a fallback allowing flexibility to cover scenarios initially not planned for.

Proposal C7

C7Q1

This issue may be better addressed by counterparties themselves, within the terms of their bilateral agreements.

As mentioned previously, the sooner jurisdiction among the jurisdictions to a cross-jurisdictional transaction could encounter operational issues: we would suggest the adoption of a simple rule such as ‘reverse LEI sorting’ acting as a fallback where no financial market infrastructure or bilateral agreement between parties is used.

Proposal C8

C8Q1

We believe bilateral agreement could cater for most remaining cases. Should there be any conflicting rules, the default fallback based on ‘reverse LEI sorting’ would be a simple rule to follow. The key point is to have a simple rule that everyone could follow, avoiding differentiated implementations.

Proposal C9

C9Q1

We would highlight that the obligation of timeliness for UTI may lead parties to send a temporary UTI with ongoing re-reporting, with cancel and re-reporting with subsequent errors on trades and potentially invalidating the UTI for the other parties in some instances such as in dual sided reporting. We believe an amendment to the initial trade should be allowed in those instances.

C9Q2

We consider that the transaction reporting deadline should not refer to a fixed timeline. Rather the obligation of timeliness should refer to an amount of time after transaction execution, such as T+1 for trades.

For cross jurisdictional trades (for example, a buy side in Asia trading with swap dealer in the US), there could

be a benefit to have automated UTI exchange media which would support a 'global UTI' across jurisdictions. Please note that collateral reporting deadline could also be settlement date +1 in some instances.

Potentially, the concept of 'Event date' could also be referred to for setting a reporting timeline with appropriate global coordination.

Proposal C10

C10Q1

We welcome ASIC's intention to propose guidance for scenarios where, for any reason, the reporting entity does not receive a UTI in time. We also support ASIC considering uncertainties about rules implementation timing differences, which will occur with cross jurisdictional transactions.

C10Q2

In the event that the responsible party fails to generate and share a UTI on time, we see different options being taken by counterparties including delaying reporting until the accurate UTI is received or sending a 'temporary' UTI in order to demonstrate timeliness and readiness to report.

Potentially ASIC could consider a cut off time. The proposal of the simple fallback solution such as proposed option 2b 'reverse LEI sorting' could be considered.

In the case where ASIC set requirements on reporting entities to report their own UTI when they do not receive the UTI from the other party, we would recommend regulatory guidance on the following points:

- upfront communication to counterparties that within a certain pre-defined timeline a UTI would have to be generated,
- the use of electronic digital medium for parties to send and receive the UTI,
- controls/alerts put in place to get accurate UTI generated on time,
- robust processes to cancel or exit a previous UTI and re-report the correct UTI once received.

The latter workflow could be complex and should be discussed in the second round of consultation.

Section E – The Critical Data Elements (CDE)

Proposal E2

E2Q1

We agree with ASIC's analysis on the field execution agent of counterparty 1 missing in CDE, CFTC, ESMA and ASIC data elements (sections 217 – 218). There should be a requirement to identify the execution agent which is not a party to the trades itself.

There are scenarios where not identifying the investment manager/execution agent could impact either reporting to the correct Trade Repository¹⁰ or the pairing process, especially in the case of multi-managed funds and assisted/delegated reporting.

We would also stress that any additional field should be reviewed in light with the ISO 20022 schema message across jurisdictions.

Also, please note the existence of a field named 'agent lender' in ESMA SFTR that could be renamed as agent. That intermediary field should also be used in the collateral reporting key from an SFTR standpoint.

Furthermore, while the fields Trade Party 1 - Execution Agent ID and ID Type, Trade Party 2 - Execution Agent ID and ID Type are not present in ASIC official rules, they are available in the ASIC specifications of DDRS, the only licensed trade repository for ASIC regime.

¹⁰ Investment manager is a key part of reporting eligibility for EMIR in some instances