

**February 28, 2014**

Secretariat  
Financial Stability Board  
Bank for International Settlements (BIS)  
Centralbahnplatz 2  
CH-4002 Basel  
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**RE: Consultation Paper: feasibility study on approaches to aggregate OTC derivatives data**

**Dear Secretariat,**

On behalf of our members, ISDA<sup>1</sup> appreciates the opportunity to respond to this consultation, with the goal of contributing to robust and stable financial markets. The emergence of multiple trade repositories in various jurisdictions for different asset classes creates a set of specific issues with regards to data aggregation to allow regulators globally to fulfil their various responsibilities. ISDA is focused on aspects related to data quality, data standardization and data access while building a cost effective reporting infrastructure that allows regulators to monitor systemic risk globally. We recognize that by its very nature, the aggregation of data in various Trade Repositories (TRs) will have a more direct effect upon the structure and workings of those same repositories.

We applaud the AFSG for the thoroughness of the draft consultation paper and the extensive consultation through the workshop and the public comment period. In our response we would like to first describe and emphasize the importance of work done to date by the industry on unique identifiers and data standardization and then address the different options for data aggregation models, proposing a hybrid approach to address the legal and operational challenges.

When considering the three proposed options, different factors need to be considered. First, the feasibility and time to market of the proposed options depend strongly on compatibility with the existing legal restrictions and with the current infrastructure<sup>2</sup>. Second, cost of building and maintaining a particular option should be a primary concern. In order to reduce the cost and limit the time to market it is important to consider leveraging existing OTC derivatives infrastructure in the broad sense, including existing data standards such as FpML.

To provide context to the size of the aggregation task and what has already been achieved from a data standards perspective we refer to the following snap shot figures provided by DTCC, which operates TRs in multiple jurisdictions. Following the start of reporting in Europe, DTCC reports that

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<sup>1</sup> Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 62 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: [www.isda.org](http://www.isda.org).

<sup>2</sup> ISDA has been a proponent of the one Trade Repository (TR) per asset class approach since early on. While conceptually we believe this is the best approach, avoiding some of the data aggregation issues raised in the paper, the FSB analysis is rightfully based on the current TR reporting infrastructure developed in different jurisdictions to satisfy local regulatory demands.

they have 26 million open positions globally and an estimated daily message volume of 30 million messages. Total daily message volume, including non-DTCC volume, is estimated currently at between 35 million and 40 million.

The 30 million daily messages are either in FpML format or CSV format. From a data standardization viewpoint, the CSV format is based on the FpML standard: different structure, but same underlying data values. We note that, in addition to DTCC, other TRs use the FpML format or have standardized on the basis of FpML.

While multiple TRs exist in different jurisdictions and data aggregation across TRs has become a necessity, a data aggregation solution should not lead either to a further unlimited proliferation of TRs, or a new process that is unduly burdensome and costly to the existing TRs or their multiple users including the government agencies that draw their data from the TRs. The establishment of additional TRs should be considered carefully and while the implementation might become easier when data standards are put in place, there are additional costs for industry and regulators which should be weighed against the benefits.

To evaluate the different options and levels of data aggregation it would be useful to provide a more detailed specification than the one provided in the “Access Report”, and referred to in the paper, of the different tasks regulators seek to fulfil as part of the G20 requirements as well as the level of detail versus aggregated data they see as necessary for these tasks.

### *Identifiers*

#### *Unique Trade Identifier (UTI)*

A global UTI is a critical component to ensure data quality and prevent double counting once data aggregation takes place, irrespective of the option chosen. In order to allow for an effective UTI approach on a global basis, agreement needs to be reached on the following aspects:

- UTI construction
- UTI generation and initial exchange
- UTI workflows

To date the approach to UTI has been mostly jurisdictional and focused on UTI construction and the generation and exchange. While this ensures uniqueness within the jurisdiction of a particular regulator, the lack of a global solution will hamper data aggregation from TRs in multiple jurisdictions. ISDA, through its data and reporting regulatory implementation committee, has proposed a global solution<sup>3</sup> taking into account existing requirements such as the need for a Unique Swap Identifier (USI) for CFTC reporting. The recently published ESMA Q&A around UTI<sup>4</sup> has highlighted the shortcomings of a regional approach to Trade Identification from the perspective of global data aggregation.

We urge the FSB to prioritize the development of an international approach for UTI. The benefits to data quality will accrue irrespective of the path to data aggregation chosen. An understanding of the UTI workflows and harmonization where possible will greatly facilitate the task of data aggregation.

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<sup>3</sup><http://www2.isda.org/attachment/NjI3MQ==/2013%20Dec%2010%20UTI%20Workflow%20v8.7.8b%20clean.pdf>

<sup>4</sup><http://www.esma.europa.eu/content/QA-VI-EMIR-Implementation>

### *Unique Product Identifier (UPI)*

Most jurisdictions require the reporting of a UPI. ISDA has developed the OTC derivatives taxonomy and taxonomy governance<sup>5</sup>, and the ISDA taxonomy is currently used as UPI in several jurisdictions. ISDA is chairing the ISO CFI subgroup on derivatives, looking at harmonization of the ISDA taxonomy and CFI. To be most effective one product classification and UPI generation mechanism should be considered and this requires international collaboration. A further development of UPI requires regulatory input to understand the intended use cases for UPI. UPI should not be seen as a solution for the lack of data harmonization between TRs. Further development of UPI, and data harmonization should happen in parallel. Nor should UPI be seen as a solution for gaps in regulatory requirements as this risks being jurisdiction specific.

### *Data Standards/technical standardization – FpML*

The paper rightly points out that the requirements for data standards do not influence the aggregation model. Data standardization and harmonization will be required in any case to allow for meaningful data aggregation.

Financial products Markup Language (FpML)<sup>6</sup> is used for reporting in multiple jurisdictions. The FpML Standards Committee early on took the decision to focus on reporting from reporting parties to the TR, and where needed has expanded the product coverage to ensure the ability to report all transaction details for vanilla transactions<sup>7</sup>. FpML also maps to the ISDA taxonomy to ensure consistent reporting of transactions under a specific taxonomy node. One of the unique strengths of FpML is its close link with the ISDA legal documentation; it is the legal documentation that gives a consistent and unambiguous meaning to each of the data elements reported. The vast majority of OTC trades globally use the ISDA legal documentation as their legal framework.

As part of the data harmonization work at the standards level we map the reporting requirements in each jurisdiction to FpML, which helps ensure completeness of the coverage and allows us to detect areas where the meaning intended by a particular regulator might be different from, or more restrictive than, the meaning given to a similarly named element by the industry.

The current version of this mapping is available at: <http://www.fpml.org/documents/FpML-global-regulatory-reporting-mapping-2014-draft.xlsx>

We note that a subset of the OTC derivative trades, generally referred to as “complex and bespoke transactions” (classified as “Exotic” in the taxonomy) do not have a fully standardized trade representation. For certain of these products the frequency of trading increases over time and they will be put on the industry roadmap to standardization which will lead to full product coverage in FpML. We have developed a generic product representation that provides a harmonized way to represent the main data elements of complex and bespoke products<sup>8</sup>.

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<sup>5</sup> Taxonomy:

<http://www2.isda.org/attachment/NTQzOQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202012-10-22.xls>

Rules of Operation: <http://www2.isda.org/attachment/NTQzNA==/ISDA%20OTC%20Taxonomies%20ROO-%20Dec%2020%202011.pdf>

<sup>6</sup> [www.fpml.org](http://www.fpml.org)

<sup>7</sup> FpML roadmap: <http://www.fpml.org/roadmap/roadmap.pdf>

<sup>8</sup> [http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/tac\\_121311\\_workingpaper.pdf](http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/tac_121311_workingpaper.pdf)

*Legal and operational considerations – a hybrid approach*

ISDA believes that the Consultation Paper’s analysis of the legal and operational considerations generally covers the key issues. However, the FSB’s consideration of an alternative “combined approach” would help to mitigate some of the issues highlighted in the Consultation Paper. Data privacy and confidentiality are key issues that arise when considering an aggregation model for OTC derivatives data and the disparate laws across jurisdictions further complicate these issues. Legal barriers and differences in legal requirements can make it impossible for certain authorities to fully implement option 1 and 2 currently. Because of the importance of the data privacy and confidentiality issues and the complexity associated with them, we find that the only effective long term solution requires changes to law or regulation, rather than additional requirements on reporting parties such as consent from counterparties. We note that in this regard the European Market Infrastructure Regulation provisions trump all other blocking laws within the EU, and a similar approach could be adopted in other jurisdictions following agreement at a global level. Further, we support the Consultation Paper’s recognition that the legal responsibility for transmission of the data to an aggregation mechanism and/or relevant authorities remains with the TRs. In addition, TRs should be the source of the data considered for aggregation, and there should not be a duplicate reporting requirement on any reporting party.

We believe that the legal issues presented in the Consultation Paper can be mitigated to a degree by employing a combined approach whereby trade data is provided by local TRs to an aggregation mechanism which would provide only aggregate-level data in an anonymized form to the relevant authorities and, if the relevant authorities sought specific, non-anonymized data, they would need to obtain that data from a local TR or the local regulator. Such a combined approach will also reduce the timeframe and costs for implementation of an aggregation mechanism while still providing the relevant authorities with useful data to analyze for systemic risk, market depth and other purposes.

Specifically, we recommend an approach that combines either Option 1 or Option 2 with Option 3. Such a combined model would allow for regulators to obtain aggregated anonymized data from an aggregation mechanism<sup>9</sup>, while regulators would need to collect raw non-anonymized data from local TR databases and then aggregate such data themselves within their own systems (Option 3). In other words, local TRs would transmit or make available non-anonymized data to an aggregator mechanism, the aggregator mechanism would aggregate such data, anonymize such data and make only the anonymized, aggregated data available to regulators. If the regulators sought to obtain non-anonymized data (e.g., counterparty specific data), they would need to obtain such data from the local TR and rely on arrangements (e.g., MoUs) with the jurisdiction in which the TR is located. A combination of these options balances legal restrictions with cost and time to market considerations.

We do note that identifying information can be broader than just name or LEI of the counterparty, in particular in less liquid markets, and this needs to be considered appropriately. The combined approach still requires access to the identifying information by the aggregator to allow proper data aggregation, but once the data is aggregated this information should not be kept nor shared with any of the regulatory authorities.

While this proposed combined approach will not remove the possibility of legal challenges surrounding data privacy, confidentiality, access and governance, we believe that such an approach will help to mitigate these concerns. For example, only anonymized data would be provided to relevant authorities under this approach which should ease certain tensions regarding data privacy and confidentiality. The local TRs would not need to know at the point of transmission to the aggregation mechanism which authorities seek access to the data and for what purposes, since only anonymous,

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<sup>9</sup> This could be either a physically centralized aggregation mechanism (Option 1) or a federated aggregation mechanism (Option 2).

aggregated data would be transmitted from the aggregation mechanism. Accordingly, this approach should ease concerns regarding a TR's application of access controls.

Of course, the industry will need to determine whether existing consents to comply with local derivatives regulations (including those consents provisions found in various ISDA Protocols) are sufficient to allow for transmission of data from a local TR to an aggregation mechanism and we reiterate that the only effective long term solution includes appropriate changes to law or regulation. We recognize that even in light of consents, privacy laws and blocking/secretcy laws may still pose impediments to a TR providing non-anonymized data to the aggregator mechanism in certain jurisdictions, and that a breach of such privacy or blocking/secretcy laws may expose TRs to liability<sup>10</sup>. We believe that the anonymous, aggregated disclosure by the aggregator mechanism in the proposed combined approach should help to mitigate the obstacles associated with overcoming privacy and blocking/secretcy laws in certain jurisdictions.

Even under the proposed combined approach, the questions surrounding governance of the aggregation mechanism that are highlighted in the Consultation Paper with respect to Options 1 or 2 still remain: (i) which entity would operate the aggregation mechanism; (ii) how would the aggregation mechanism be managed/overseen; and (iii) access rules. However, the proposed combined approach would ease these governance concerns, particularly with respect to access rules, as only anonymized data will be transmitted to authorities from the aggregation mechanism and Option 3 would be used for authorities to obtain non-anonymized data. Access for relevant authorities under the combined approach would be significantly less of a concern if they will only have access to anonymous, aggregated data. Issues such as modalities of access, permitted uses, etc. would still need to be addressed, but the concerns are greatly mitigated. Similarly, the management of the aggregation mechanism would be less onerous given that the aggregation mechanism would not be transmitting confidential data to authorities (i.e. it would only be receiving the confidential data). In order to address these governance issues for Options 1 or 2, we believe that the global governance framework of the LEI initiative, as a public-private partnership, is a good example to consider for implementing an aggregation mechanism, and in particular for implementing the proposed combined approach discussed herein. However the task of aggregating derivatives data from multiple repositories, with different access requirements from regulators, is much more complex than the global assignment of a unique counterparty identifier with all data publicly available. The timeframes for the LEI framework can be seen as minimum timeframes to put a more complex structure in place, even having the benefit of the LEI experience. From an implementation perspective, one could consider an implementation with the G20 jurisdictions first and then moving to jurisdictions outside the G20 in a next phase.

We do support the assumption in the paper that personal data should not be included in the aggregation mechanism as it is not relevant for systemic risk management or other uses of aggregated data. We also note that, while the analysis in the paper of the legal considerations focuses on data that is reported on a mandatory basis, the boundary between mandatory and voluntary reporting might not always be that clear, in particular when there is uncertainty around the precise product scope that needs to be reported. Either the study should be broadened to include issues related to voluntary reporting to cover these cases; or the right filters and checks need to be put in place to ensure that only clearly mandatorily reported trades will be taken into account for any data aggregation.

Finally, while we strongly believe that work on a global level in certain areas such as identifiers should start as soon as possible, and we welcome the speed at which the working group is working to bring forward its recommendations, we believe that at the same time valuable experiences can be

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<sup>10</sup> We note that this exposure exists because the legal obligation with respect to the reporting of such data is that of the TR.

drawn from the current reporting to multiple repositories in the U.S. and Europe and the work regulators are doing to aggregate the information reported in their jurisdiction<sup>11</sup>. These experiences might influence and lead to a better global solution and we urge the working group and FSB to allow for a phased approach that takes this into account.

We have pleasure in submitting our response, and look forward to staying very much engaged with FSB as regards future initiatives on this topic.

Yours faithfully,



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<sup>11</sup> <http://www.cftc.gov/PressRoom/PressReleases/pr6837-14>