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By email: otcd@asic.gov.au

15 March 2021

Dear Craig,

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

The Australian Financial Markets Association (AFMA)[1], the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA)[2] and the International Swaps and Derivatives Association (ISDA)[3] (collectively, the Associations or "We") appreciate the opportunity to provide this joint response to the Australian Securities and Investments Commission's (ASIC) Consultation Paper 334: Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation (CP 334).

We take this opportunity to thank ASIC for an extraordinarily detailed consultation paper, which clearly demonstrates that it has meticulously analysed its own reporting regime, those of other jurisdictions and supranational efforts to harmonise regulatory reporting, and has clearly understood and reflected many of the long-standing concerns of the industry with regard to the processes for regulatory reporting and the robustness of reported data. We strongly believe that

[1] AFMA represents the interests of over 110 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

[2] The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 24 global foreign exchange (FX) market participants, collectively representing the majority of the FX inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

[3] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of 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, such as exchanges, intermediaries, clearing houses 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 website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

ASIC's line-by-line analysis of global reporting frameworks establishes the best foundation to identify exactly where potential problems, inconsistencies, conflicts and gaps arise.

In terms of the structure of this response, we first take the opportunity to make a number of overarching comments, before outlining the industry's general feedback to each section of CP 334, following which we respond to the specific questions contained within those sections. Throughout our feedback, we have identified areas where further clarity is required on the proposals, where additional guidance should be incorporated into the reporting framework and where we challenge the cost-benefit value of proposed changes.

At the outset, and with more than a decade of industry experience in global reporting, it is critical to note that as ASIC, the global regulatory community and the industry now stand at the precipice of implementing revamped, modernised, refined, more fit-for-purpose, future-state reporting regimes, the lessons learned since derivatives reporting began, and the consequential opportunities for improvement, must also be grasped and catalysed. Experience that has shown that misaligned, inconsistent, unharmonised and/or differing requirements across reporting regimes directly undermine the quality of reported data, and detract from the G20's original objectives in implementing the over-the-counter (OTC) derivative reforms for what is, by its very nature, a global, cross-border market. Therefore, every step must be taken to minimise and ideally eliminate such circumstances.

There are a number of paradigms that underlie this. The future state of reporting must be maximally harmonised, consistent, adaptable, digital, flexible and efficient. Rules need to be easy to read, interpret and code. Definitions, formats and values need to be aligned, and the perimeter of the regime needs to be clearly demarcated. Harmonisation should be true to the spirit of the word, and not subject to incremental jurisdictional add-ons or deviations. Technological developments since the inception of reporting mean that a digital overlay to the way the regime is written, complied with and administered will ensure the most robust, efficient and economical implementation.

The Impact of Global Benchmark Reforms on Reporting

Benchmark reform is perhaps the most massive change to the overall industry landscape that has been experienced to date. With hundreds of trillions of dollars of contracts affected in notional terms, the global implications cannot be understated. Regulators around the world have also been considering what, if any, impact these reforms may have on post-trade processes such as central clearing, the exchange of margin for non-centrally cleared derivatives and regulatory reporting, with clarity in some areas and uncertainty remaining in others. It is also important to note that each firm's transition to using risk-free rates may take different and varied forms, potentially on both a mandatory and voluntary basis, depending on the nature of its portfolio, counterparties and trading circumstances.

With specific regard to the potential impact of the benchmark reforms on reporting for existing transactions, two main circumstances have been identified: the incorporation of fallback risk-free rates within contractual documentation between counterparties, and those fallbacks becoming effective after the cessation of a previous benchmark. In making any decision as to whether any of these circumstances would give rise to an obligation to modify an existing transaction report, we also identify two important yet distinct considerations: the importance of

implementing a consistent, global approach across jurisdictions (and regulatory reporting stakeholders), and the importance of consistency with regulatory decisions regarding the impact of benchmark reforms on other G20 requirements such as central clearing, the exchange of margin for non-centrally cleared derivatives and other risk mitigation requirements.

In any case, we consider that ASIC's ultimate approach to this issue will be most successful if it includes clear and comprehensive guidance which covers a range of benchmark transition scenarios, which can be updated in short order if new transition scenarios or other relevant circumstances arise. Some members further advise that they have already commenced their benchmark transition programmes, and therefore note the increasing time urgency of this issue. We encourage ASIC, as well as any other regulators which are yet to formally communicate their position on this issue, to give timely and pressing consideration to whether a reporting obligation should arise with respect to any aspect of benchmark transition.

Digital Regulatory Reporting

The complex policy and technical nature of CP 334 and its associated future implementation means that ensuring all reporting stakeholders interpret, apply and implement regulatory requirements consistently is of paramount importance. Indeed, ASIC is clear that the intent of the consultation process for updating the *ASIC Derivative Transaction Rules (Reporting) 2013* (the Rules) is to arrive at a regime that is more fit-for-purpose, results in better harmonisation and minimises complexity.

All regulatory reporting stakeholders – reporting entities, regulators, infrastructures and service providers – are now presented with an unprecedented opportunity to reflect on the original implementations of reporting requirements many years ago, learn lessons about what can be done more efficiently, and apply them as they collectively look ahead to the comprehensive changes across all major G20 reporting jurisdictions. Regulators around the globe are in the process of updating their regulatory requirements to give effect to the supranational objectives of harmonisation, standardisation and consistency, and these objectives are exactly what the ISDA Common Domain Model (CDM)[4] was designed to achieve, through human-readable and machine-executable logic.

The CDM presents an unparalleled opportunity to apply its Digital Regulatory Reporting (DRR) capabilities to the Australian and other G20 reporting regimes. By creating a single, common, digital representation of events, best practices and processes that occur throughout the derivatives trade lifecycle and applying the CDM's common code to execute the reporting requirements, market participants can achieve uniformity and consistency in the interpretation and implementation of complex rules.

DRR has enormous potential to realise efficiencies and cost savings across the derivatives market, and has already demonstrated that it can improve the accuracy and consistency of reporting. Last year, ISDA and fintech firm REGnosys developed a DRR pilot that enables firms to access an executable code version of the Monetary Authority of Singapore's (MAS) reporting regulations – a project that won the Regulatory Reporting category of the G20

[4] https://www.isda.org/2019/10/14/isda-common-domain-model/

TechSprint in October[5]. This follows earlier work on the DRR pilot with the Bank of England and the UK Financial Conduct Authority[6].

ISDA is now working with regulators, market participants and trade repositories to take this work forward, including through a CDM DRR working group which will convert reporting rules into machine-readable and executable code in the CDM, and engage with regulators on implementation. Using the CDM to support regulatory reporting will give greater confidence to both market participants and regulators, enabling a faster, cheaper and more reliable implementation than was possible a decade ago. Ultimately, it will also enable regulators to issue new rules directly in the CDM in addition to legal text, allowing updates to be implemented far more efficiently.

The industry thanks ASIC for its interest and constructive engagement on DRR to date, and stands ready to work with ASIC on the digital implementation of its updated reporting regime. Consistently-interpreted requirements, data elements and processes through the CDM and DRR will give it the highest chance of success.

Implementation Timeframe

Members note that there are many aspects of the proposed Rules which have not been fully mapped out, and dependencies on global alignment which have not been finalised. With respect to supranational data harmonisation initiatives, the industry notes that while the target timeframe for implementation is Q3 2022, a number of time-critical uncertainties and risks remain, and need resolution through global fora before resource deployment, business analysis and implementation can begin. Without greater certainty regarding the ultimate form of the local and international reporting landscape, it is challenging at this stage to form a comprehensive view on the updated regime, and make an informed assessment of its full impact, costs and benefits. Preliminary reviews, however, suggest that the implementation cost and time is likely to be significant.

We respectfully request that ASIC allows some time in the implementation timeframe for industry consultation on the draft proposed Rules, once ASIC has decided on the changes that need to be made to the Rules. The experience of members in implementing and complying with the existing Rules is that while the regulatory objectives may be clear, there is often complexity in the drafting of the obligations that has implications for complying parties. Considering CP 334's proposals imply comprehensive, wholesale updates and additions to the existing Rules, members consider that a transition period of 24 months from the publication of the final Rules and any associated ancillary documentation may be more appropriate to implement the required processes and system changes. We would also encourage ASIC to consider offering a 'soft' go-live date for compliance with the new Rules, to enable reporting entities the opportunity to report in a live test environment and address any issues before the official commencement date. Finally, we would sincerely welcome the opportunity to consider and engage with ASIC on the form of draft proposed Rules at the relevant time.

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[5] https://www.isda.org/2020/10/06/isda-and-regnosys-win-g-20-techsprint-for-regulatory-reporting/#:~:text=ISDA%20and%20REGnosys%20Win%20G%2D20%20TechSprint%20For%20Regulatory%20Reporting,-Tags%3A&text=ISDA%20and%20fintech%20firm%20REGnosys,for%20International%20Settlements%20Innovation%20Hub.

[6] https://www.isda.org/2019/05/21/isda-cdm-deployed-to-help-deliver-uk-digital-regulatory-reporting-pilot/

Other General Comments

Members note references to the European Securities and Markets Authority's (ESMA) reporting requirements throughout CP 334, however also note that there are instances of difference in interpretation of those requirements. Members therefore request that ASIC clearly articulate in the next round of consultation whether the ESMA definitions can be fully relied upon when implementing the changes.

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Section C – The Unique Transaction Identifier (UTI)

General Comments

First Principles

Most stakeholders would have to agree that since regulatory reporting requirements were first implemented many years ago, discussions and efforts on the UTI have been slow, protracted, and in some instances with respect to generator determination, subject to over-engineering. Many different types of entities have made noble attempts to solve the issues that have beset the industry, however usually with the unfortunate, unintended result of introducing further complexity and uncertainty.

It is at this juncture, looking back on the UTI experience since regulatory reporting began, and looking ahead to apply the lessons learned from history to the future-state reporting regime, that stakeholders must stop to remind themselves that the UTI is meant to be no more than an unintelligent code which identifies the two sides of a derivative transaction report. With this in mind, the first and foremost principles of efficiency, simplicity, implementation ease and cost minimisation simply must take absolute priority, in an approach which is purely focused on arriving at the ultimate required outcome of a UTI being generated and communicated. The industry strongly supports ASIC's efforts and participation within the Committee on Derivative Identifiers and Data Elements (CDIDE), and strongly encourages the CDIDE to have the utmost regard for these principles.

Bilateral Agreement

Perhaps the single, most consistent point of feedback from members is that while centralised infrastructures (including trading platforms, CCPs and confirmation platforms) should take priority for UTI generation wherever possible and therefore remain at the top of the generation logic, immediately following that, counterparties should be able to agree how to exchange UTIs in the manner that is most efficient for them. The purpose of the generation logic should be to act as a fallback that can be referred to in case counterparties cannot agree.

At a high level, this is simply because rather than going through a complex, cumbersome and unresolved generation logic – potentially on a trade-by-trade basis – which may not even produce the ultimate required outcome, many counterparties would find it vastly simpler to rely

on an existing or future bilateral agreement - at the counterparty level – which stipulates that one party will always be the UTI generator, to achieve the same outcome with lower cost, greater certainty and improved efficiency. This clean and simple way to achieve the ultimate required outcome discussed above should be respected as much as possible.

We also note that there are precedents for promoting bilateral agreement as high within the generation logic as possible, such as within the January 2020 ESMA Guidelines on Reporting under Articles 4 and 12 SFTR[7]. In order to align as far as practicable with other global regulations, ASIC should promote further opportunities to harmonise this use of UTI generation by counterparty agreement with other jurisdictions.

Implementation Timing and Interdependencies with Other Jurisdictions

UTI implementation is viewed by the industry in a holistic way, not only for one jurisdiction. As ASIC notes in paragraph 50 of CP 334:

"the UTI proposals and/or rules of other jurisdictions may include a number of uncertainties as to their interpretation and/or practical operation. These uncertainties may make it difficult to implement UTI rules within the ASIC Rules that do not conflict with other jurisdictions' rules and are without unintended consequences."

Members fully agree with this statement, and would note that there are in fact two issues at play here: uncertainties and interdependencies. Addressing implementation uncertainties first, members strongly encourage ASIC to continue to address and forge global consensus on all remaining uncertainties before finalising the updated Rules. Implementation of the Rules without much-needed resolution on key points such as the inconsistency of rules between different jurisdictions may create confusion and uncertainty in the market, and add additional, unnecessary costs for reporting entities.

Turning to the second issue of interdependencies, members also strongly recommend that the actual ASIC UTI go-live date is aligned, as far as practicable, with those in other jurisdictions such as the EU, UK and US, i.e. a 'big bang' approach. ISDA addressed the potential consequences of differing UTI go-live dates per jurisdiction in its May 2020 joint response to the CFTC's proposed amendments to its swap data reporting rules:

"Not only will the industry be forced to build multiple sets of logic due to the variations discussed earlier, but market infrastructures, reporting parties, trade repositories, and other impacted parties will have to go back to adjust their reporting infrastructure flows to layer in the differing generation logic whenever there is a new jurisdictional UTI compliance date. Parties will each need time to rebuild, test and implement each approach and carefully coordinate a transition to avoid gaps or duplication in UTI generation. This 'build, wait, adjust build, wait, readjust, build, wait, etc.' approach will need to be repeated over and over until the last reporting regime's UTI compliance date, because the particular waterfall each jurisdiction adopts may not be known to industry participants at the time of the earliest UTI compliance date." [8]

[7] https://www.esma.europa.eu/sites/default/files/library/esma70-151-2838_guidelines_on_reporting_under_sftr.pdf
[8] https://www.isda.org/a/AFbTE/ISDA-SIFMA_Response_CFTC_P43_P45_P49-_22May2020_Final.pdf

Application of UTI Requirements

Members would like to take this opportunity to restate their long-standing view that implementation of future UTI requirements should apply on a forward-looking basis to new transactions only, and therefore not apply to any existing transaction, due to the extraordinarily complex remedial work which would be required across the globe otherwise.

"Able, Willing and Permitted"

Members note that this remains an inherently ambiguous concept, which would have the practical effect of requiring members to make a determination at an individual infrastructure level as to whether that particular infrastructure is 'able, willing and permitted' to generate the UTI. This in practice means a table of static data which will constantly need to be updated, disseminated, understood and re-implemented.

Members also agree with the concerns ASIC lays out in paragraph 70 of CP 334 regarding the lack of a standardised, harmonised, well-understood definition of a 'trading platform', trading platforms not ordinarily being subject to derivative transaction rules in most jurisdictions, and uncertainty regarding the robustness of approaches of the home regulators of trading platforms to oblige them to generate UTIs. Additionally, trading platforms may also only be regulated or recognised in one jurisdiction but have trading members from multiple jurisdictions. Therefore, members also strongly believe that the UTI should be communicated by the trading platform to the counterparties to the contract immediately upon execution to ensure that different reporting deadlines are respected, and that the UTI should be used for reporting in all jurisdictions where that transaction needs to be reported.

Accordingly, we strongly support ASIC's efforts within the CDIDE to encourage discussion and resolution of these critical uncertainties. Globally common recognition of which CCPs, trading platforms and confirmation platforms are UTI generators is of paramount importance, and any uncertainty in this regard may impact both reporting completeness and timeliness.

Impact on the Buyside

Buyside members remain concerned that the impact of the added complexity proposed to be introduced will be disproportionate across the market. For a sellside firm, it may be practically far more feasible to operationalise the UTI requirements where end-to-end flows (including data flows and data storage) are managed internally. On the buyside, where many institutions rely on multiple investment managers (who are potentially reporting delegates & report makers) to trade on their behalf, and utilise the services of one or more external custodians, there is fragmentation of data such that key trading data will likely be stored externally and key static data may need to be stored by multiple institutions. Furthermore, access to and sharing of this data is not a current market practice or agreed service function.

Members believe that UTI generation and sharing should form part of critical trade matching criteria to assist in meeting regulatory reporting objectives, and that this could be best supported through uplift and inclusion of UTI within standard market messaging. As discussed earlier, efficient sharing of UTIs and related data requires a digital medium and the use of a common format for messages. We therefore agree with ASIC's intention noted in Table 32 of CP 334 to consult in the future on whether to specify a common messaging standard such as ISO 20022.

Finally, before addressing the specific UTI proposals within CP 334, with respect to the steps within the CPMI-IOSCO TG UTI waterfall, we note that many of the concerns outlined in pages 12-16 of the 2017 joint ISDA-GFMA response to the FSB's Proposed Governance Arrangements for the Unique Transaction Identifier (UTI) – Consultation Document[9] (Joint Response) remain outstanding today. In particular, the issues raised with respect to each factor to consider within the CPMI-IOSCO UTI TG have strong correlations with the issues, uncertainties and questions ASIC has raised in CP 334, and are therefore directly applicable to our specific feedback below.

PROPOSAL C1

Question C1Q1

Members are supportive of this proposal, agree that a technical specification is a desirable inclusion, and agree that the approach aligns with that taken in other jurisdictions.

Regarding the UTI rules for transaction events within the Rules, given the complexity of different lifecycle and transaction events, a comprehensive, detailed, scenario-by-scenario specification, detailing the UTI requirements for each (i.e. retain the existing UTI or generate a new UTI, report the Prior UTI or not) would be the best way to ensure consistent, industry-wide implementation, and may also have a positive effect on transaction matching rates. We would also encourage ASIC to retain the flexibility to add new scenarios quickly and on an ongoing basis, as and when required.

Question C1Q2

Members view the risk of differing UTI implementation go-lives per jurisdiction as the largest uncertainty. Please refer to our general comments regarding implementation timing.

We would also refer ASIC to our general comments above regarding the impact of benchmark reforms on reporting and the application of UTI requirements. Any potential characterisation

[9] https://www.isda.org/a/qZiDE/fsb-uti-governance-response-5-may-2017-public.pdf

of a fallback rate becoming effective as a reportable event may already have significant operational implications for reporting, and therefore there should be no additional UTI overlay.

PROPOSAL C2

Question C2Q1

While members agree on an in-principle basis with the proposal, there remain a number of practical issues, as highlighted within the 2017 Joint Response and elaborated on below.

Members also believe that there are reasons why a confirmation platform should be considered within the 'globally common' stream, and therefore Step 4 in the overall waterfall. As centralised infrastructures which help counterparties to manage risk, confirmation platforms are more akin to trading platforms and CCPs. Members would support any and all action to ensure that market conventions and client service imperatives do act as compelling factors in confirmation platforms' decisions to be able and willing to generate a UTI. Members would also be grateful for clarification around whether affirmation platforms such as Markitwire would be considered a confirmation platform.

For the scenario in which a trade is executed on a single dealer platform such that one of the counterparties to the trade is affiliated with the platform on which the trade was executed, members also seek guidance as to whether for the purposes of UTI generator determination, the single dealer platform would be considered a trading platform. This is but one example of the general concerns regarding a definition of 'trading platform', as discussed in our general comments above.

Question C2Q2

We agree with ASIC that the same uncertainties apply to clearing members as UTI generators as apply to CCPs as UTI generators - that is, globally common recognition of a clearing member as a UTI generator and potential rules implementation timing differences. However, as per our comments above with respect to the characterisation of centralised infrastructures, we also believe that the same uncertainties arise with respect to confirmation platforms.

With respect to the uncertainty about whether all jurisdictions will recognise the same set of CCPs as being UTI generators in paragraph 59 of CP 334, we note a potential additional complication for CCPs which have reporting obligations in a jurisdiction through exemptive order or no-action relief. As stated in the Joint Response, members believe such CCPs should also be obliged to generate a UTI under Step 1.

Question C2Q3

Members believe that it would be very beneficial, particularly at the outset of the UTI regime, for ASIC to make provisions to address scenarios where the reporting entity does not receive a UTI in time for any reason.

Similarly, where temporary exemptions are made, members encourage ASIC to give sufficient notice to stakeholders before the exemptions are removed, to avoid any uncertainty and to ensure there is adequate time for stakeholders to adapt.

PROPOSAL C3

Question C3Q1

While an intent to align with the final EU rules would demonstrate foresight and seem entirely reasonable, members would strongly caution against introducing any UTI waterfall test which requires determinations of a counterparty's reporting obligations. There are significant, known challenges with such tests globally, which are exacerbated in the Asia-Pacific region due to 'nexus' reporting requirements. An entity will not know, and cannot reasonably be expected to know, which jurisdiction's reporting rules do (and do not) apply to their counterparty in a transaction. For example, if ASIC were to align with the final ESMA rules for single jurisdiction transactions, industry systems would need to differentiate between single-jurisdiction and cross-jurisdiction transactions at the very onset (i.e. at the proposed Step 4).

We highlight these concerns in the context of our general comments above regarding bilateral agreement, and the inherent difficulty, if not impossibility, of determining the reportability of a transaction on a trade-by-trade basis. Promoting the ability to bilaterally agree UTI generation preferences at the counterparty level above this difficult determination obviates the need to determine whether one of the counterparties has a reporting obligation.

Question C3Q2

Please refer to our feedback to the previous question. Bilateral agreement between counterparties is the most efficient, robust way to ensure that UTI generation determination requirements are met in a consistent, ongoing manner.

Question C3Q3

Members strongly believe that bilateral UTI generation agreement between counterparties should be in a step within the UTI rules, and should immediately follow the centralised infrastructures in the waterfall, as referred to in our general comments.

It is important to note that members do not see an inconsistency between the above feedback regarding bilateral agreement, and the ISDA submission referred to in paragraph 95 of CP 334. Rather, as the global UTI landscape has remained relatively unclear and industry discussions have evolved (including in relation to CP 334), the importance of operational simplicity, cost minimisation and ease of implementation have similarly evolved to be at the forefront of industry considerations.

Question C3Q4

Although members do not have any specific new developments or jurisdictions to suggest greater focus on at this time, they take this opportunity to reiterate that developments in the EU, UK and US, among other jurisdictions, will certainly impact and create more interdependencies with the ASIC UTI regime, and therefore a successful 'big-bang' implementation of the UTI will be reliant on a coordinated regulatory and industry approach across jurisdictions.

Question C3Q5

Members believe that by adding bilateral agreement within the waterfall as recommended, there would no need to determine the types of counterparties.

PROPOSAL C4

Question C4Q1

Members generally believe the concept of making a determination based on the inherent information conveyed to each other could be ambiguous and confusing, and question how such a determination would work in practice. With respect to paragraph 104 of CP 334, members note that there is no standardised manner in which entities identify themselves to their counterparties, nor is there any guarantee that an entity will identify as having a relevant status that would overarchingly (or equally, tangentially) impact on a UTI generator determination.

Corporate structures and names of entities may also be ambiguous and not result in clear-cut identifications to the counterparty, and members further note that the 'disregarding' stipulations in paragraphs 105-106 may have the practical result of introducing required jurisdiction-specific exceptions to UTI logic with potentially unintended consequences, which both ASIC and the industry would seek to avoid wherever possible.

Members therefore again recommend that ASIC does not introduce tests that require determinations based on counterparties' reporting obligations, and suggest that ASIC works with its peers, the CDIDE and industry associations to address the challenges identified to date with the existing IOSCO UTI TG generation party logic. As a baseline, a more simplified (and therefore robust) UTI generation waterfall may be able to be implemented based on information and/or data already available within existing reporting processes, stacks and/or identifications. Here, as previously, the principles of utilising central infrastructures first and relying on bilateral agreement second remain fundamental.

Question C4Q2

Members believe that in the absence of a globally standardised definition of 'status information that would overarchingly impact on a UTI generator determination', this may in practice prove to be a difficult objective to achieve.

Question C4Q3

Members would also caution against any cross-jurisdictional UTI test which may have the practical effect of requiring information relevant to UTI generation to be exchanged at the time of trading. Care must be taken to distinguish between the pricing, risk management and client facilitation imperatives of traders and salespersons in dynamic markets, and the operational requirements related to regulatory reporting which are traditionally handled by middle and back offices.

Question C4Q4

Members note that one of the most significant impediments with respect to capacity information would be the inherent obligation to accurately track and maintain the capacity information of the counterparty and any subsequent changes (including when changes are not communicated by the counterparty). Ongoing reference data maintenance and system updates would be required to retain such information and feed it into a reporting engine to determine the UTI generator on a real-time basis. Therefore, this proposal may have the unintended result of introducing nuances, complications and cost.

PROPOSAL C5

Question C5Q1

Members agree that there is uncertainty in how the UTI TG's 'sooner deadline for reporting' test is or should be interpreted. The uncertainty is in large part caused by correctly identifying and recording (with dynamic reference data) the test for 'sooner of' based in part on the counterparty's reporting obligations. This requires an interpretive element and/or a burden to proactively determine (via correspondence for example) what the reporting deadline is, both of which, as discussed before, are fraught with complexity.

Members suggest that one possible workaround for these issues, at least in part, may be Proposal C10, which would allow reporting entities to report their own UTI when they do not receive the UTI from the UTI generator, and to re-report using that second UTI when it is received, if the counterparty is determined to have the sooner reporting deadline.

Question C5Q3

We take this opportunity to again note that bilateral agreement between counterparties regarding UTI generation preferences may help to alleviate many of the issues outlined. There was no clear member consensus on a preferred interpretation. Nevertheless, in the interest of completeness, members also raise the following themes and concerns with respect to each:

<u>Semantic Interpretation</u>

There are known issues with implementing the semantic 'T+1' interpretation for cross-jurisdictional trades. Nexus reporting requirements across the Asia-Pacific region, combined

with different reporting deadlines, may mean that a counterparty's jurisdictional requirements to report on a T+1 basis may not be known. Members further advise that a semantic interpretation may also practically result in using the Follow the Sun approach, but on a T+1 basis.

Follow the Sun Interpretation

Similar issues with respect to nexus reporting arise under this interpretation. Moreover, this approach may also put additional pressure on reporting processes in Australia and other Asia-Pacific jurisdictions, as their deadlines would always be 'sooner'.

Execution Clock Interpretation

In terms of aligning clocks between counterparties in an efficient manner, an Execution Clock interpretation from the point of trade booking may be the clearest reporting approach when accounting for global time differences, however further investigation is necessary.

Irrespective of the approach that is adopted, it should be unambiguous, globally consistent and followed by all regimes and all reporting entities. The technical feasibility of these interpretations and associated implementation would require further industry discussions, with multiple use cases and scenarios. It would create significant confusion in the market if different jurisdictions were to adopt different approaches.

PROPOSAL C6

Question C6Q1

While recognising the need to address the potential for cross-jurisdictional timing differences and how this factors into the assessment of UTI generation, members do not support this proposal, for the same reasons discussed earlier with respect to creating an obligation to understand the cross-jurisdictional nuances of a counterparty's reporting obligations – something which is practically very difficult, if not impossible.

Members remain of the strong view that bilateral counterparty agreement would obviate the need not only for a complex, multi-step determination logic when a transaction is cross-jurisdictional, but also for ASIC and other regulators to make the regulatory adjustments outlined in paragraph 135.

Question QC6Q3

Members agree that this is a potential distorted outcome, and point to bilateral agreement as a way to overcome it.

Question C6Q4

Members note that more information needs to be known across jurisdictions in terms of UTI implementation, following which a detailed analysis would need to be completed across all

applicable jurisdictions to determine if there are any other gaps, including with jurisdictions besides the EU.

PROPOSAL C7

Question C7Q1

Members agree with ASIC's sentiments in paragraph 139 that it is not clear that "such a unilateral 'special purpose' provision in the ASIC Rules would not be unintentionally complex or conflict with other jurisdictions' rules", for the same reasons of complexity in determining a counterparty's reporting obligations and applying this to UTI generation. Members suggest that to the extent this issue needs to be addressed, it should be done through the CDIDE.

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

Question C7Q3

Although members do not have formal suggestions for 'special purpose' rules at this time, one notes that the concept may potentially be useful in any considerations regarding the interpretations discussed in Question C5Q3, such as to reduce complexities due to daylight saving. However, in adopting any special purpose rules, ASIC should ensure that it does not create further complexity and confusion in a cross-jurisdictional scenario.

PROPOSAL C8

Question C8Q1

Members note that this proposal would require an entity to know where its counterparty has reported or intends to report its side of the transaction, giving rise to the same concerns outlined previously regarding determining a counterparty's reporting obligations and arrangements.

Members agree that the UTI generator would be determined without invoking the ultimate determinant step, and similarly that there has to be an ultimate determinant to ensure completeness. In the situation where a counterparty does not have an LEI, members assume that the party that does have the LEI will need to be the UTI generator by default. We would be grateful for ASIC's consideration of this, including whether this should be added to the ultimate determinant.

PROPOSAL C9

Question C9Q1

Most members agree with this proposal, noting however that the obligation of timeliness should be reasonable, given there may be a small number edge case scenarios (e.g. highly structured,

complex transactions) where communication of a UTI may not be achieved in as timely a manner as intended. Members would also value further clarification from ASIC on how this proposed requirement would be governed, managed and tracked.

Question C9Q2

Members are unanimous in their recommendation that the obligation of timeliness should refer to an amount of time after transaction execution. Members also believe that the obligation should be reasonable, as on one side, there may be limited edge cases where this timeliness requirement cannot strictly be observed, and on the other, time is also needed for the UTI receiver to update and report within the reporting deadline.

Views are slightly more mixed as to the exact amount of time itself, and therefore we unable to express a view at this time.

Question C9Q3

We regret that we are unable to express a consolidated member view at this stage.

PROPOSAL C10

Question C10Q1

Many members do agree with this proposal, as this is an approach used currently and would ensure the timely reporting of transactions, while others have raised some practical nuances for further consideration.

The first relates to the actual process for 're-reporting', as whether the data field for reporting the UTI is amendable or not will determine the ease of doing so. If the UTI data field is not amendable, reporting entities may need to cancel the transaction report entirely, and resubmit it with the new UTI. This may not only be a more complicated process than a simple amendment or modification, but also may present complications if the resubmitted report is mistakenly regarded as having being reported late. Members suggest that some flexibility may be useful to allow transactions to be reported without a UTI on the trade date when the reporting entity is the UTI consumer, and supplemented as an amendment upon UTI receipt from the counterparty by the T+1 reporting deadline.

Another member notes that retro-fitting a UTI to a transaction report may be particularly problematic for investment managers acting for multiple different entities.

Finally, for trades reported using an entity's own UTI within the T+1 deadline, the industry would be grateful for ASIC's views on whether that transaction report would be deemed to have met the requirement of timeliness, completeness and accuracy.

For the scenario in which an entity (who is not deemed to be the UTI generator) generates and reports a UTI prior to the receipt of the UTI from the counterparty who is deemed the UTI

generator, members seek guidance as to the action required with respect to the original UTI that has been reported – specifically, whether a record of that original UTI should be persisted in the trade message when the official UTI is reported, and if so, which CDE field should be used to support this.

Section D – The Unique Product Identifier (UPI)

UPI General Comments

Members are fully supportive of ASIC's approach and intentions with respect to the UPI.

Section E – The Critical Data Elements (CDE)

General Comments

The industry considers implementation of the CPMI-IOSCO CDE Guidance to be of critical importance to realising the objectives of consistent, accurate reporting of transaction data across jurisdictions, and therefore is strongly supportive of these harmonisation efforts. Further, the industry again commends ASIC for its extraordinarily detailed analysis and cross-referencing of the CDE data elements against those of other regimes, which enables a much more targeted comparison and discussion.

Members are equally of a strong view, however, that ASIC CDE rules and data elements should follow the CDE Guidance data elements as closely as possible, and ideally, mirror them without deviation. The CDE Guidance and its related data elements are the result of a significant, multi-year, global harmonisation effort to identify and ringfence all the data elements needed across jurisdictions, and therefore any data element that is unique to a particular jurisdiction or requires a definition that varies from the definition in the CDE Guidance will, by its nature, be non-CDE and therefore undermine the entire harmonisation initiative. This has been a consistent refrain of our members, across all jurisdictions and regions.

While it is appreciated that ASIC has sought to minimise the data elements that are unique to the ASIC Rules, ASIC does state in paragraph 173 that the CDE "is intended to be the universe of data elements from which regulators can draw to form their individual datasets". Accordingly, members do not support ASIC's approach of taking a 'superset' of the CDE, CFTC, ESMA and other data elements of ASIC's choosing, as to do so would go beyond the perimeter of this universe. Members further note that despite a data element being reportable to the CFTC or ESMA, it is not necessarily a simple matter to report the same field to ASIC, as reporting each new data element to a new jurisdiction represents an additional cost for initial setup and ongoing maintenance.

In practice, instead of having one commonly-understood, global set of data elements for the global derivatives market, reporting entities, infrastructures, service providers, and other market stakeholders would need to account for each nuanced data element, in each jurisdiction, for

each transaction reporting scenario. Members strongly believe that this would not be in line with the objective of harmonisation, and indeed would go further to actually undermine it.

Members have also observed that the CDE Guidance offers different ways to report a value (e.g. as either a decimal or a percentage). In such cases, members urge ASIC and its peers to agree on a common format, noting current examples where EMIR and CFTC do not align.

PROPOSAL E1

Question E1Q1

Members are generally in agreement with this proposal, subject to the comments regarding Effective Date under Question E1Q2.

Question E1Q2

Members agree that clarification on the effective date would be beneficial, particularly in the following circumstances:

- FX Forwards: Paragraph 194 states that FX Forwards do not have an 'effective date' included within the confirmation; then paragraph 196(b) explains 'effective date' as relating to "future cashflows or payouts…such as the accrual of interest amounts or the fixing of reference rates or prices". We would therefore welcome confirmation that, where a trade has no separate effective date from the execution timestamp (as with FX Forwards), only the latter is required and that the Effective Date field should be left blank. If the effective date is required for all products (as per the new CFTC rules), it would be duplicative with the execution timestamp in many cases.
- Swaptions: One member requests clarification on whether the effective date should be the date of swaption execution or the future start date of the underlying swap.
- Novations: Members believe that the effective date of the novation should be the date when the novation (including clearing) takes effect, and not the original effective date of the transaction before novation.
- Members report mixed approaches to reporting transactions which do not have a determinable effective date, with some currently reporting the execution timestamp and some proposing that the data element be left blank.

Question E1Q3

Members agree, and note that current processes already capture both date and time information.

Question E1Q4

One member has noted that there appear to be two Reporting Timestamp data elements, one in Table 7 and the other in Table 27, and would be grateful for clarification on whether this is intended, and if so, how the two data elements are intended to interact with and be distinct from one another.

For timestamp elements in general (event timestamp, execution timestamp, etc), members would be grateful for clarification as to the timestamp that should be reported across different execution / booking scenarios (e.g. venue-executed trades that are straight-through-processed ('STP') into booking systems with the venue's execution timestamp, versus trades executed via voice / chat which are manually booked).

Furthermore, for date elements including Effective Date, Expiration Date and Final Contractual Settlement Date, members seek clarification on the reason ASIC has specified them to be the "unadjusted date". There may be concerns around calculating unadjusted dates from a systems perspective, as dates are usually adjusted for currency holidays and public holidays.

PROPOSAL E2

Question E2Q1

With our general comments above regarding non-CDE data elements in mind, some members do not support the proposal to incorporate ESMA data elements such as the Country of counterparty 2 for natural persons into the ASIC Rules. The unique geography of the EU and its many different jurisdictions within mean that the rationale for requiring this data element for natural persons in a single jurisdiction such as Australia seems less clear.

Members also note that there may be significant uplift work required to remediate the reporting of transactions with counterparties which only have an AVID or BIC, if an LEI requirement becomes effective.

Question E2Q2

In relation to the Nature of counterparty 2 field, members feel strongly that ASIC's approach should be revisited. Please refer to our general comments above regarding unintentionally undermining the many years of efforts of regulators and market stakeholders across the globe to agree a globally common set of data elements.

We note that similar initiatives have been proposed by regulators in other jurisdictions, met with the same level of industry objection. The underlying issue is that a jurisdiction-by-jurisdiction approach to counterparty classification using bespoke schema merely results in multiple classifications which provide little to no standardisation nor regulatory benefit in a cross-border market. Classifying a counterparty is not a simple matter and may involve some level of interpretation or representation. Additionally, this is not already existing information, potentially necessitating multiple outreaches to counterparties each time a new schema is finalised in a jurisdiction.

What is needed is a global, cross-border regulatory approach to arrive at a standard schema which can be applied across all jurisdictions. Members stand ready to assist with this.

Question E2Q3

A majority of members agree that the reporting entity should be reported in all circumstances, consistent with the present day.

PROPOSAL E3

Question E3Q1

Members note that data elements related to direction continue to be problematic for certain products, particularly FX. Similarly, GFXD also highlights the need for clarity at the global level for FX, and ideally to use the GFXD FX Cash Rule, as discussed in the response to Question E3Q2.

Question E3Q2

GFXD would like to raise a key issue with the payer identifier and receiver identifier fields for FX products such as FX Forwards, which are typified by the exchange of two currencies, meaning that each party is both a payer and receiver.

For instance, in a typical USD-AUD trade, one counterparty will be selling (paying) USD and buying (receiving) AUD and the other counterparty to the trade will be buying (receiving) USD and selling (paying) AUD. This exchange of currencies occurs as part of a single transaction, and unlike interest rate swaps, there is no concept of 'legs' in FX transactions. For interest rate swaps, there is a clear differentiation between payers of fixed and floating coupons, and these CDE data elements are actively used in the reporting of these transactions. If the two currency movements of an FX transaction were to be considered as separate legs, there is no market convention as to which currency is considered the base and counter currencies.

ASIC is asked to note that we have previously escalated this concern that the payer/receiver concept does not work for FX transactions to the CPMI group responsible for the CDE. Further, this will also impact the UTI generation logic if the buyer/seller determination is used as a tie breaker. We believe that the CDE field will therefore need to be complemented by the FX Cash Rule[10] to ensure that it is clear who the payer is and who the receiver is for the purposes of the report.

The FX Cash Rule is an industry convention which states that the payer (or sell side, or short position) would be determined by the party that is selling risk in the currency which is first when sorted alphabetically by ISO code. For example, in a USD-AUD FX forward trade, it

[10] https://www.gfma.org/wp-content/uploads/uploadedFiles/Initiatives/Foreign_Exchange_(FX)/FX%20Trade%20Side%20201209%20v0%201.pdf

would be each party's position relevant to the AUD that will determine the payer (sell) or receiver (buy) position.

Finally, we would recommend caution in mandating these fields without adopting the FX Cash Rule. While it may be possible for ASIC to reconcile the two counterparty reports of a trade even where the payer and receiver have been determined differently (e.g. where counterparty 1 reports a trade as AUD-USD and counterparty 2 reports the same trade as USD-AUD), this is not the case for all jurisdictions, especially those where dual-sided reporting exists. Given the CDE were designed to support a single, globally consistent reporting standard, we urge ASIC to take this into account and consider implementing the FX Cash Rule as a tool for determining the direction of a trade.

A member would also appreciate clarification on the data elements 'Direction 2—Leg 1 and 'Direction 2— Leg 2' in the case of multi-leg interest rate derivatives, querying whether the determination of how to select and report the respective legs will be left to reporting entities' discretion, or whether ASIC is considering any specific proposals in this respect.

PROPOSAL E4

Question E4Q1

Members report mixed levels of agreement with this proposal, for the reasons outlined below.

Question E4Q2

Members would appreciate clarification on the allowable values for the 'Platform identifier' data element, in particular whether this will be aligned with the CDE Guidance of only an ISO 10383 Market Identifier Code (MIC). Similarly, it will be important to specify the allowable values for the other data elements within Table 11.

Some members also note potential issues with the 'Settlement location—Leg 1' and 'Settlement location—Leg 2' data elements, noting that these are not captured in current booking processes, and may be challenging and/or costly to source. One member further notes that a more robust, long-term solution which may negate the need for these data elements would be the incorporation of offshore currencies into ISO 4217, however it is acknowledged that this is an issue that goes beyond the realm of derivative transaction reporting.

PROPOSAL E5

Question E5Q1

Most members are in agreement with this proposal, and agree that with respect to paragraph 232, the 'frequency period' and the 'frequency period multiplier' data elements are currently reported separately in other jurisdictions.

PROPOSAL E6

Question E6Q1

Although some members agree that ASIC should consider a proposal to include these data elements in the second consultation, other members do not agree, on the basis that the granularity of the new detail required would simply add more data elements, complexity and build for a very infrequently traded type of product.

Question E6Q2

Members unanimously note that the incidence of this type of transaction is infrequent and minimal.

Members suggest not to rely on other data elements such as 'payment frequency' to infer the 'floating rate reset frequency'. These are two separate data elements, and there is a possibility that they may not be same. Current operational processes are for firms to determine for themselves whether the same value is applicable for both data elements, and members suggest that approach continue.

PROPOSAL E7

Question E7Q1

Members are largely in agreement with this proposal.

Question E7Q2

Members do not foresee particular interpretation or implementation issues, although one member notes that this comfort is predicated on the existing data elements related to valuation in the current Rules which are not proposed in CP 334 being retired.

Members also note that 'Valuation timestamp' is defined as the "Date and time of the last valuation marked to market", and would appreciate clarification on whether this element needs to also be reported for mark-to-model valuations.

PROPOSAL E8

Question E8Q1

Members are in broad agreement with the proposal, however also note that there will challenges in application, and major changes to collateral reporting mechanisms may be required. Some members may also have different views which they may express separately to ASIC.

With respect to paragraphs 248-249, one member agrees on the need for more than one collateral portfolio, however suggests the limit should be up to three portfolio codes to allow

for real market scenarios where the legacy portfolio is also included in the initial margin (IM) / variation margin (VM) process.

Question E8Q2

Members note that challenges with IM reporting implementation in Australia include:

- matching timeframes not being comparable across jurisdictions;
- the effect of global time zones when IM is reported;
- sourcing and collection of data for IM when it is being managed by a third party (e.g. a client of an investment manager's collateral manager in a delegated reporting scenario);
- securities valuation; and
- collateral aggregation in a portfolio with different currencies and required conversion to AUD.

Further, there are inherent differences between IM and VM exchanges, and therefore clear guidance would be needed as to how IM reporting is required versus VM.

Members also query the relative value of the 'Collateral portfolio indicator' data element. When a portfolio code is reported (either for IM or VM), this would seem to negate the need for it.

PROPOSAL E9

Question E9Q1

All members agree with this proposal.

PROPOSAL E10

Question E10Q1

Most members are broadly in support of the proposal, however one member is opposed on the basis that the relative benefit versus the increased new data point access issues and complexity does not appear to be present.

Question E10Q2

A member notes that some of these data elements (e.g. spread details), where there are multiple ways to capture spreads, will prove difficult to validate in delegated reporting circumstances, and are not currently shared between investment managers, fund administrators and custodians.

PROPOSAL E11

E11Q1

Some members are not in agreement with the proposal as the required data elements are viewed as particularly complex to administer and report, and note that instances of such transactions requiring the proposed data elements relating to price are very rare.

Further, members advise that price schedules may not always available in internal systems, and there may be challenges in sourcing this information. To manage this effectively, they suggest that prices within a schedule only be reported if they are available at the time of reporting.

More broadly, members generally agree that since the incidence of such transactions is rare, each of the parties in the transaction reporting arrangements would need to ensure that their data handling arrangements accommodate these data elements, even if they are not applicable.

Question E11Q2

Members report that instances of these transactions with schedules would be very rare.

With respect to sub-question (b), member views are mixed, with some preferring one option and others preferring the flexibility to choose the method of reporting which is most appropriate for the transaction, asset and trading scenario in question.

Question E11Q3

Members generally report that instances of these types of transactions are minimal.

Question E11Q4

Members note that implementation issues would be prevalent. Much of this information would be difficult to oversee, supervise and validate, and does not represent currently shared information between entities in investment management scenarios.

New processes would need to be developed across the industry to facilitate the consistent and accurate sharing of these forms of data elements across the market for a small, rare subset of transactions.

Separately, members also are operating on the understanding that whether the ‘Price schedule’ data element or the ‘Strike price schedule’ data element is reported will depend on the particular product in question.

PROPOSAL E12

Question E12Q1

Members note that these additional proposed data elements carry significant information sharing and accuracy implementation risks and ongoing compliance risks, particularly for buyside operational structures and reporting structures. Issues with accessing, sharing, reporting and validating the information will therefore be of primary concern. As an example, one member has concerns with the proposal to include the data element 'Delta', as it is not currently available in internal systems and could be challenging and/or costly to source.

A member further notes that section 2.74 of the CDE Guidance notes that with respect to 'Quantity unit of measure' fields, "A list of allowable values and their format will be provided to the CDE maintenance and governance framework, which will be developed by the CPMI and IOSCO". Pending this, the member proposes not to include these data elements for now.

Question E12Q2

Regarding the requirement to report Delta, one member queries how this information would be captured in an investment manager trading scenario.

Question E12Q3

Members largely agree that that the identification of which currency data elements are the call option/put option data elements in an FX option can and should be simplified by only specifying the call currency, however query how this would work in practice in the case of basket options which may consist of multiple calls and puts.

With respect to the note relating to the 'Call amount' in Table 20, a member also queries whether both the 'Notional amount' and 'Call/Put amount' data elements would need to be reported in the case of FX options, and has a similar query regarding the related currency fields.

PROPOSAL E13

Question E13Q1

While certain members are comfortable with this proposal, others are not, on the basis that such transaction types are of low volume, and would have a relatively high associated cost and complexity to support the reporting of these data elements.

Question E13Q2

Members generally the report the incidence of these transaction types as being low. Further, they believe it is possible to rely on the relationship between quantity, price and notional to infer a notional quantity schedule from a notional amount schedule, but would not recommend

amalgamating these data elements into the those in Table 21 at this time, as there may be certain FX products which may not follow a quantity schedule.

With respect to sub-question (c), member views are mixed and we are unable to present a consensus view at this time.

Question E13Q3

Please refer to our responses to the previous two questions.

PROPOSAL E14

Question E14Q1

Members are generally in agreement with this proposal.

PROPOSAL E15

Question E15Q1

Members generally agree with this proposal, subject to the comments below.

Question E15Q2

One member notes potential implementation issues in reporting the other payment types (excluding 'upfront' payment), as these are typically embedded within the booking price and will require system changes to distill the actual amount.

Members also feel that there may be scope to further clarify the scenarios in which these data elements would need to be reported.

PROPOSAL E16

Question E16Q1

Yes, members are in broad agreement with the adoption of the package data elements. We note in particular the importance of ensuring a globally consistent definition of 'package transaction', and support ASIC's adoption of the CDE definition in full.

Question E16Q2

Regarding the 'Prior UTI' data element, members would appreciate clarification on instances where there could be multiple novations and hence multiple UTIs generated. The current

understanding is that only the immediately preceding UTI would need to be reported in this field, not the original UTI (unless the preceding UTI was the original).

PROPOSAL E17

Question E17Q1

Member views on this proposal are mixed. While some members agree, others see greater value in aligning with the final CFTC rules, and others yet do not support the proposal on the basis that CDE implementation efforts in other regions are not sufficiently advanced nor harmonised to have certainty on a way forward.

Question E17Q2

Certain members note practical concerns regarding the inherent dependency on the structurer to generate and provide a valid 'Custom basket code' within a certain timeframe, and what issues may arise if this does not occur. Further, members note that this code will need to be ingested by the receiving counterparty and apply to all future transaction reports for the basket, which may present some logistical complications.

One member also requests clarification on whether the proposed data elements in Table 25 also apply to CDS index products.

PROPOSAL E18

Question E18Q1

Although certain members have no objections to this proposal, most are not supportive, advising that the identifiers of the basket constituents would already, if applying ISINs, capture how many underlying constituents (units) there are. Members also note that these fields are also not applicable for both the CFTC and ESMA reporting regimes.

PROPOSAL E19

Question E19Q1

Members have a number of comments with respect to these proposals, as detailed in our responses to the next question.

Question E19Q2

With respect to 'Action type', in the interests of certainty, members request that ASIC provide a comprehensive list of action types, as opposed to examples. Additionally and where relevant, clear guidance should define each action type (e.g. what constitutes a correct vs error). Members

also recommend aligning these action types as far as possible with those currently used for reporting to trade repositories.

With respect to 'Embedded option type', members are less clear on the regulatory benefits relative to the challenges of implementation, noting further that this is not a data element in the CDE Guidance and is not available in systems currently. It may present front office capture challenges, as it would likely have to be manually entered and selected by a trader, an effect which may be more pronounced in smaller institutions. There may also be interpretive difficulties to consistently ensure that the same values on either side are reported. Therefore, on balance, members would encourage ASIC to reconsider including this data element.

With respect to 'Event type', members appreciate the regulatory objective in requesting this data element, but note that this is not a current requirement, and therefore information may not be currently captured in a codified way. Exhaustive lists of values as opposed to examples will help to reduce instances of interpretation and bolster the potential for alignment between reporting entities, however members would still note that there could more than one event type that may apply to a transaction report. Therefore, members would benefit from further regulatory explanation and detail from ASIC regarding this data element.

With respect to 'Jurisdiction', members would encourage reconsideration of the regulatory benefits outlined in paragraph 319 against the potential challenges of implementation, noting that this is not a CDE Guidance data element. It is clear that the final CFTC rule regarding this data element is intended to primarily cover US transaction reporting scenarios, and consequently, ASIC's proposal ipso facto creates a second, different regime for this data element, which undermines the objective of global harmonisation of data elements and adds cost and complexity.

Members do not believe a formal proposal should be put forward with respect to this data element at this stage, and that there may be other more efficient and effective ways for ASIC to achieve the goals in paragraph 319. The 'Jurisdiction' concept should primarily be based on the inherent process by which trade repositories ensure that ASIC has access to the relevant transaction information, and therefore trade repositories and reporting entities may be best placed to manage this process within current market arrangements.

With respect to 'Reporting timestamp', please refer to our comments in Question E1Q4 regarding potential duplication of this data element and the two different definitions in each table. Members also note in practice, this data element may be derived from trade repository mapping based on its message receipt timestamp.

With respect to 'Report submitting entity ID', members would be grateful for ASIC's clarification as to whether any other values besides the LEI would be permitted.

With respect to the UTI, please refer to our comments in Section C of this response.

PROPOSAL E20

Question E20Q1

While the proposal for the 'Maturity date of the underlying' data element is supported by members, the 'Non-reported term indicator' is not. Members believe that existing industry taxonomies already account for the presence of non-standard terms through the reporting of "exotic" or "other" values, that existing data requirements already facilitate the determination of whether the terms of a particular swap are non-standard, and that the UPI may be able to account for non-standardised terms.

Question E20Q2

The greatest issue will be that of inconsistency in application, as members foresee potential interpretive differences between counterparties which would undermine the utility of this data element.

PROPOSAL E21

Question E21Q1

Members wholeheartedly agree with this proposal, with additional comments as detailed below.

Question E21Q2

Members unanimously agree that given the inherent, intrinsic link between regulatory technical specifications and trade repositories, that the technical specification proposed should be modeled on those trade repositories. They also agree that having the flexibility to amend the technical specification without requiring amendment to the Rules would be very beneficial.

A key tenet of the technical specification must be that it minimises instances where any interpretation would be required, as interpretive differences are a primary contributing factor to inconsistent reporting. By ASIC introducing its own technical specifications, it removes ambiguity which reporting entities must navigate between the Rules and the operational specifications and capability offerings of trade repositories. It also helps remove cross-jurisdictional ambiguity where one only one relevant regulator has provided guidance on technical details. It will also help to more clearly define ASIC's expectations for data.

Engagement and outreach with licensed trade repositories to align and ideally mirror technical specifications (with minimised duplication through cross-references between technical specifications) will reap huge efficiency and consistency benefits for the market. Nevertheless, as a stopgap measure, members would see benefit in a specific clarification of which technical specification will prevail in the event of any inconsistency between the two.

In terms of other recommended technical specification models to follow, members point to the ESMA technical standards, with a smaller number pointing to the final CFTC rules.

Additionally, if interpretation within the technical specification is unavoidable, they would request that ASIC provide clear, exhaustive guidance and/or provisions for reporting entities to refer to the ESMA or CFTC rules for reference, where required.

Finally, critically relevant to all the arguments above is Digital Regulatory Reporting, as per our general comments. The ISDA CDM is the 'Rosetta Stone' which can bring together rules, technical specifications, guidance, required formats, allowable values, best practices and all other requirements under a common, machine-readable model with standard regulatory reporting logic for the entire industry to use. In a truly fit-for-purpose regulatory reporting regime, technical specifications are expressed digitally, and this is now possible. Indeed, the very platform through which the ISDA CDM is accessed is named Rosetta.

Section F – The Legal Entity Identifier (LEI)

PROPOSAL F1

Question F1Q1

The Associations note that since the publication of CP 334, subsequent clarifications from ESMA have alleviated many of the concerns initially raised by members in response to ASIC's proposals in this section. We support ASIC's in-principle intent to align as closely as practical with the rules of other jurisdictions and to consequently consider changes from those originally proposed in the final EU rules for adoption in the next version of proposed ASIC rules for consultation, including not requiring that the LEI of 'Counterparty 2' be validated as a renewed LEI.

Members note that the proposals may effectively constitute a "No LEI, no trade" requirement for Australia. While such a requirement may be more easily enforced in other regions, it remains the case that Asia-Pacific LEI issuance as a percentage of global LEI issuance remains low, and therefore any such requirement must be considered against the context of competitive market pressures in this region. A requirement to refrain on acting on the instructions of a client which does not have an LEI may lead to unintended negative outcomes.

Question F1Q2

With respect to paragraph 350, if the conditional exemption is repealed, members would be grateful for clarification on whether this would entail any obligations for the reporting counterparty in respect of the non-reporting counterparty obtaining an allowable entity identifier. Members believe it should not.

Members strongly suggest that ASIC does not impose LEI reporting obligations on existing transactions unless and until a new transaction is entered into with the relevant counterparty. Members are of the view that a significant outreach process will be required to ensure counterparties understand the requirement to obtain and maintain an LEI. The relevant

compliance date should also be sufficiently distant to allow for the processes involved in client outreach and to minimise disruption to transacting with counterparties.

PROPOSAL F2

Question F2Q1

Members note that existing transactions were entered into on the basis that AVID and BIC codes were acceptable identifiers, and counterparties to these transactions would now be required to obtain LEIs. Obtaining LEIs on a counterparty's behalf may require express counterparty consent and involve a cost, which is not necessarily the case for AVID and BIC codes. Members urge ASIC that the current grace period exemption of two business days in section 6 'Exemption 2 (Entity Information)' and section 6B 'Exemption 2B (Joint Counterparties)' of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844[11] is retained in its current form, enabling, at a minimum, non-reporting counterparties expected to have infrequent dealings in derivatives to transact on the basis that an LEI is applied for within two business days after the requirement to report the entity identifier arises, including where a request for an LEI has been made to or by an LEI validation agent within two business days.

Question F2Q2

One member takes the view that LEI concerns for smaller, infrequently trading counterparties remain valid, and therefore need to still be considered in the context of global LEI implementation. Although the relevant exemption will have been in place for three years as noted in paragraph 354, infrequently dealing counterparties who have not transacted during this time, however few in number, may nevertheless have an expectation that they can immediately transact if they have an urgent need. If they have not transacted during this time, it may be far from likely that they will be aware of new LEI requirements. Moreover, the member considers that there would be limited regulatory detriment where the internal identifier is used in the report for such transactions and there is immediate action to obtain the new identifier for such a cohort. The scope of entities affected by this proposal do not pose any threat to systemic risk, and therefore the member does not see the rationale for removing a short grace period.

[11] https://www.legislation.gov.au/Details/F2020C00930

Section G – Scope of Reportable Transactions and Reporting Entities

PROPOSAL G1

Question G1Q1

Members warmly welcome the proposed clearer and ongoing exclusion of transactions for spot settlement and exchange-traded derivatives. To be effective, the definitions of these products need to be precise.

As outlined in previous correspondence with ASIC in relation to the time-limited relief granted for FX security conversion transactions, subjecting these transactions which are purely incidental to related securities transactions to OTC derivatives regulation could expose bank custodians, broker-dealers and their customers to unnecessary operational, price, credit and other risks. As a result, participants may restrict these transactions to T+2 FX spot contracts, even when the securities settlement takes longer, thereby exposing the customer to FX risk while exposing the bank to certain operational risks, and changing the long-standing and well-functioning settlement process for systemically relevant securities markets which exist today. This permanent exemption would remove the need for repeated extensions to the current time-limited relief, and would also be in line with other major regulators such as the CFTC[12], ESMA[13], MAS[14] and HK SFC[15].

With respect to exchange-traded derivatives, members agree that ASIC has correctly identified a key framework element for defining a reportable OTC derivative transaction as "Excluding products that are not derivatives", however one member notes that section 761D(3)(c) of the Corporations Act is highly unsatisfactory in this regard. Section 761D's conceptual reach is too broad, as acknowledged by ASIC in its 2013 transaction reporting consultation response[16], which recognised the need for more detailed guidance as to which derivative transactions will need to be reported. ASIC provided this guidance in its RG 251, confirming that the derivatives expected to be reported should be based on the ISDA taxonomy.

Members view the ISDA taxonomy "overlay" to s761D as an important and necessary measure to limit an overly broad definition to only capture transactions which the industry would agree are OTC derivatives, and prevent the over-capture of things that are theoretically within the scope of s761D but are not considered to be derivatives by industry insiders (e.g. fishing licenses).

ASIC's proposed definitional approach to excluding exchange-traded derivatives is favoured as a better solution to the existing combination approach.

Question G1Q2

Members prefer the Singapore version as it is more consistent with market practice.

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[12] https://www.gpo.gov/fdsys/pkg/FR-2012-08-13/pdf/2012-18003.pdf
[13] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN
[14] Securities and Futures Act (Reporting of Derivatives Contracts) Regulations 2013 – see §2 Definitions.
[15] https://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=15CP4; Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules – see §2 Definitions
[16] https://download.asic.gov.au/media/1344338/rep357-published-11-July-2013.pdf

Question G1Q4

It is strongly recommended that ASIC does not include a requirement to notify it of those financial markets that meet the definition of exchange-traded derivatives (as per the current exemption), as this would carry over some of the shortcomings of the existing approach and would require unnecessary and burdensome monitoring. Any deficiencies in the definitional approach should be addressed by drafting changes or by providing for ASIC to be able to issue 'disallowance' determinations, as per paragraph 375(c). While there are no objections to "avoidance of doubt" classes of financial markets (paragraph 375(a)), there should be no presumption of reportability for transactions which satisfy the exchange-traded derivatives definition but are not on one of the listed classes of financial market.

PROPOSAL G2

Question G2Q1

One member advises that given existing nexus reporting requirements for foreign financial service providers (FFSPs) which are likely to form the vast majority of the transactions facing Australian wholesale clients, expanding the regime to cover non-nexus transactions may be challenging to implement and unnecessarily onerous. The member notes that the proposal would effectively entail the modification of nexus reporting logic to ascertain the client location (in addition to the sales and/or trader location), and would be inconsistent with similar nexus requirements in Hong Kong and Singapore.

Additionally, to the extent 'alternative reporting' is permitted, ASIC should obtain comfort that, insofar as FFSPs are licensed in jurisdictions deemed as having "equivalent" rules in respect of OTC derivatives, there may be limited benefits in mandating further reporting to ASIC.

Regarding foreign subsidiary reporting, members interpret ASIC's comments in CP 334 as not including any intention to mandate reporting by foreign subsidiaries of Australian entities who are ADIs or AFS licensees. We would be grateful if ASIC could confirm this to be the case.

Section H – Alternative Reporting and Delegated Reporting

PROPOSAL H1

Question H1Q1

Although significant feedback has not been received with respect to this proposal, one member advises that many of its clients use alternative reporting for their hedge trades – that is, to offset their client-side exposure with counterparties in the UK or EU that are reporting to the trade repositories in those jurisdictions. The proposal would entail a significant increase in the amount of reporting being done by those clients, requiring sufficient time for preparation and implementation, particularly given the concurrent introduction of new requirements such as the UTI and UPI.

Regarding ASIC's approaches to addressing its concerns in paragraph 404 of the Consultation Paper, the member does not believe that any of its clients would take issue with advising ASIC they are using alternative reporting, potentially even to the extent of notifying ASIC of which counterparties and to which trade repository they understand the data is being sent. This would assist ASIC in readily identifying the already limited number of prescribed trade repositories to which it would need to connect.

ASIC is also encouraged to explore whether the LEI could be a useful tool for obtaining data from prescribed trade repositories with respect to Australian entities, which should be able to be easily identified by the domicile in their LEI information.

PROPOSAL H2

Question H2Q1

Members have strong and significant concerns regarding ASIC's proposals and the rationale behind them, particularly as they relate to delegators.

The safe harbour provisions benefit smaller and/or buyside (asset owner and investment manager) and other institutions which, for example, lack the technological resource, scale or sophistication to report for themselves, or who do not have direct visibility of full end-to-end data flows. The provisions mean that delegators need to have a written delegate appointment agreement and make regular enquiries reasonably designed to determine whether the delegate is performing the compliance activity in accordance with the terms of its appointment. This is less burdensome than performing or mirroring the reporting activity itself.

Members note that where they act as an asset manager, and therefore perform delegated reporting for an Australian client, the following factors can impact accuracy and timeliness:

- the complexity of the reporting requirements;
- the 'within one day' reporting time frames which are extremely tight;
- the volumes of trades and multiple data fields; and
- the multiple parties and vendors in a reporting chain that reliance must be placed on (e.g. clearinghouses, brokers, exchanges, counterparties, trade repositories and technology providers).

Members would caution against any insinuation that firms may be maliciously relying on the alternative reporting provisions, as this is not the experience nor observation which is borne out in reality. Delegators do not delegate their reporting because of a disrespect or lack of interest in their compliance requirements, and therefore the notion that they are wanting to transfer their responsibility is unfounded.

ASIC's proposal to remove the safe harbour provisions, when combined with additional logic and data requirements proposed, would dramatically increase the complexity of reporting, and place significant pressure on institutions that currently appoint a delegate to mirror the logic required to report derivative transactions to be able to accurately report for themselves. Due to their relative size and resource constraints, delegators typically require the resourcing assistance of specialist firms, third-party vendors, investment managers and custodians, and observe that

to date, the market has not seen the required maturity of effective solutions for entities to use where custody is outsourced, multiple delegated arrangements exist and/or more than one investment manager is involved, and considerable data access challenges remain.

Delegates give their clients very detailed guidance on how to read and reconcile the reporting confirmations provided to them each day, along with regular reminders and details of their obligations to conduct the reconciliations. Delegates do not market their services as relieving delegators entirely of responsibility. Practices currently used in the market (including with respect to 'middlewares') include, but are not limited to:

- the use of reporting attestations;
- follow-ups with delegates (including through monthly calls);
- KPI reporting;
- reconciliation reporting;
- daily transaction, collateral and valuation reporting completeness checks;
- monthly nexus eligibility checks;
- external vendor exception reporting for quality by multiple delegates;
- periodic sample testing for accuracy; and
- periodic collateral type static table maintenance.

Delegators report that the impact of the proposals, if adopted in current form, would entail a massive uplift in capability and understanding, initially constituting a significant financial and resource impact to reporting entities, delegates and trade repositories in terms of assessment, architecture rebuild and control environment realignment. The risk of compliance failure may also be exacerbated, given the introduction of a wider, more comprehensive set of data requirements in CP 334. Another potential impact is that delegates may elect to discontinue other related OTC derivative reporting services.

Members note that derivative transaction reporting was introduced to provide greater regulator visibility of risk in the market. Firms which delegate their reporting represent a relatively small portion of this risk, with the vast majority being captured under dual-sided reporting.

Members do not believe that dramatically increasing the demands on small or buyside delegators will improve the level of accuracy or compliance. Rather, they believe that efforts would be best spent on incentives which more clearly and granularly define what would constitute 'subjecting an entity's delegated reporting arrangements to a level of oversight and rigour that sufficiently contributes to maintaining reported information as complete, accurate and current'. Providing such a minimum standard for compliance may help to clarify the varied expectations across the market, and spur the development of further industry technological solutions leveraging data flows to meet it. Members further note that a small number of specialist firms currently offer such services in other regions due to their reconciliation requirements, and the input of these firms in finding the optimal way forward with respect to delegated reporting would be much more valuable than effectively forcing the function in-house.

Section I – Reporting Requirements

PROPOSAL I1

Question I1Q1

We reiterate our previous general comments regarding the inherent difficulties and inevitable inconsistencies in adopting an approach to UTI generator determination predicated on an assessment of both counterparties' reporting obligations. We also suggest consideration of the workaround referred to in our response to Question C5Q1.

Question I1Q2

Members appreciate the benefit of having a single, specified deadline for reporting, however, per our comments above, using this deadline for the purpose of determining the sooner reporting obligation for UTI generation is problematic.

Nevertheless, practically speaking, if ASIC were to proceed with this proposal, despite the perceived efficiency benefits of a single deadline, operational realities may mean that the UTI deadline would need to precede the actual reporting obligation.

Question I1Q3

The majority of members state a preference for a singular, precise time.

PROPOSAL I2

Question I2Q1

Most members are supportive of the proposal, noting the alignment with some foreign reporting regimes. One member dissents to the proposal on the basis that all transactions are currently reported in a form which should capture all required information, and that the added complexity of implementation of this proposal outweighs the benefits.

Question I2Q2

Members suggest that the best way to minimise the possibility of interpretation or implementation issues is through constructive engagement with trade repositories to ensure a smooth implementation, and that new transaction data made available to ASIC through the change is fit for regulatory purpose.

Members would encourage ASIC to give further consideration to two matters: whether an update to data reported would be required in the absence of a lifecycle event, and the specific scenario of reporting block trades, which may exhibit a more significant change under lifecycle reporting than other product types.

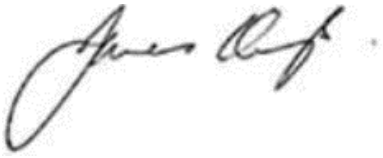
Question I3Q1

Members are in complete agreement with this proposal.

* * *

Once again, the Associations wish to thank ASIC for its thorough global analyses, detailed efforts and pragmatic approaches which are so clearly reflected in CP 334. We also wish to express our gratitude for the engaging manner with which ASIC has conducted its soft consultation and industry outreach on these issues, and reiterate that we stand ready to continue to work constructively and collaboratively to implement an updated Australian derivatives reporting regime which meets both the regulatory objectives of ASIC and the harmonisation and efficiency imperatives of the industry. Should you wish to discuss any of the comments in this response further, please do not hesitate to contact the undersigned.

Yours sincerely,



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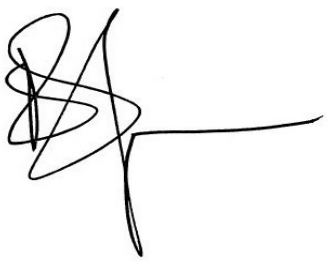

Rishi Kapoor

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ISDA