8 July 2022

Mr Craig McBurnie
Senior Analyst, Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street, Sydney, NSW 2000
By email: : otcd@asic.gov.au

Re: Consultation Paper 361 Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second Consultation

Dear Craig,

The International Swaps and Derivatives Association (**ISDA**), the Australian Financial Markets Association (**AFMA**) and the Global Foreign Markets Association (**GFMA**) appreciate the opportunity to provide comments to the Australian Securities and Investments Commission (**ASIC**) on Consultation Paper 361 (**CP**). We would also like to thank ASIC for conducting a closed-door industry briefing for our members on 7 June 2022 on the detailed CP, and sharing the policy considerations and taking questions at the session.

Background

2. Of the G20 OTC derivatives reforms pledged at the Pittsburgh summit in September 2009, trade reporting was recognised as the most fundamental reform to allow regulators and market participants to first understand and be able to monitor this market. Given the global and cross-border nature of the market, this could only be possible with harmonised reporting requirements, accurate and comparable data and proper consistent reporting of all OTC derivatives trades across jurisdictions.

3. Global harmonisation of reporting rules and standards has proven to be easier said than done. The implementation of the commitments made at the 2009 Pittsburgh summit was left to each individual jurisdiction without a global oversight structure. We have landed in a situation where each jurisdiction independently sets its own rules and reporting formats, and at different timing, resulting in inconsistencies and high compliance costs to the industry and inaccurate data that do not quite serve the original purpose.

4. This is set to change as we now are giving trade reporting a second chance. Major regulators, including ASIC, are undertaking revisions to their derivatives reporting rules, with an aim to drive greater standardisation across jurisdictions with

globally harmonised standards, and thereby improving the quality of data available for systemic risk assessment. However, as we have observed, the lack of global harmonisation in critical issues such as interpretation of the CPMI-IOSCO technical guidance of critical data element and implementation approach of UTI, and with regulators making jurisdiction-specific reporting requirements, could derail global efforts and add significant costs to the industry to devote resources and comply with new standards that are still not harmonised globally.

5. As such, we encourage ASIC and other regulators to communicate and harmonise reporting standards and implementation timeline before finalisation of the reporting rules. In our response, besides the specific issues that ASIC is consulting in the CP, our members would also like to comment on other aspects of ASIC's approach to implement the globally harmonised standards to streamline and harmonise efforts, and reduce compliance burden and operational complexity to the industry.

Implementation timeline

6. ASIC has proposed a two-phase approach in the implementation of reporting rule amendments: 1 Oct 2023 (Phase 1 rollover of existing rules with implementation of LEI, UTI and lifecycle reporting) and 1 April 2024 (Phase 2 implementation of UPI, CDE, and ISO 20022) with only a short six-month gap in between. In addition, the industry would have to re-report legacy trades on 1 Oct 2024.

7. **We strongly encourage ASIC to consider consolidating the two phases into a single go-live date** – 1 April 2024, or later, in harmonisation with other jurisdictions. Our members opine that the two staged implementation approach adds complexity, risk and associated IT costs as firms need to implement two stages of significant changes within a short six-month window.

8. **Compliance with ASIC's Phase 1 remade rules will entail substantial build and system changes.** Contrary to what suggested in the Consultation, Phase 1 will require significant change in reporting requirements. For instance, members will need to build the capability for the UTI generation and the necessary system in place to receive UTI from UTI generating entity. Members will also need to make system changes to transit from end-of-day position reporting to lifecycle submissions. These would require substantial infrastructure design changes, system build and testing. Introducing changes to a number of data fields, such as those set out under Proposal E4 as well as the introduction of the Platform Identifier field, as part of the remade rules in Phase 1 will unnecessarily increase the cost of implementation of ASIC's reporting rules. Making field changes as part of the Phase 1 remade rules will require development and testing and therefore cost associated with this work.

9. Specifically, by implementing UTI in Phase 1, Australia would likely be the first jurisdiction after the US to implement UTI before other jurisdictions[1]. We opine that there is no urgency nor benefit to ASIC in front-running other jurisdictions in implementing UTI and other field changes, particularly the EU and UK where the scale of their OTC derivatives markets are bigger. It would make more sense for the industry to prepare for the new reporting requirements of these global jurisdictions first so that it will be easier and smoother to comply with the new reporting rules for Australia which are largely aligned with the US and EU rules.

10. **We would like to underline again industry's preference for a harmonised and synchronised approach for UTI implementation across jurisdictions. Conflicting UTI generating party waterfall rules will result in industry confusion and implementation complexity for multi-jurisdictional trades and will ultimately counter the objective of ensuring both parties to a transaction use the same global UTI for their respective reporting.** The industry would prefer regulators implement UTI across jurisdictions at the same time with harmonised rules. We also understand from our conversations with regional regulators such as MAS and JFSA that they are aiming to have a synchronised implementation of UTI, UPI and other CDE on 1 April 2024 to align with other regional jurisdictions. ASIC's two-phase approach with Phase 1 implementation of UTI would outpace regional and global regulators and be out of step with other regulators. This will present problems when expectations around UTI generation party differ between ASIC reporting entities and others. We understand that ASIC has also been in regular dialogue with the other APAC regulators to harmonise approaches. As such, ASIC's planned implementation of UTI does not seem harmonised with other jurisdictions. Therefore, we suggest ASIC consolidate the phases and consider aligning UTI implementation with other jurisdictions to 1 April 2024 or later, if regulators could not agree on a harmonised approach to implement UTI and/or other jurisdictions are not in time to mandate.

11. **As the changes for Phase 2 are more significant, it would not be possible to adopt a sequential approach and complete the Phase 2 build within the six-month gap.** The build for the two stages would have to run *concurrently.* This means duplicating effort and resources required to build and test both solutions. For example, training and internal controls would need to be revised and implemented

[1] At this stage, only JFSA has indicated implementation timeline of 1 April 2024. On 10 Jun 2022, EC has endorsed EMIR Refit reporting RTS and ITS. These will be published in the Official Journal provided the European Parliament and Council do not provide objections. ESMA previously communicated these will be with Parliament and Council for a period of three months. With an 18-month implementation period, this could take EU's implementation to late Q1/early Q2 2024, if there is no further delay.

at each stage. With the conversion to ISO 20022 in Phase 2, the Phase 1 changes will need to be reimplemented and tested at additional cost.

12. **Further, implementation timelines would likely be shorter than expected.** From our engagement with ASIC, we understand that the finalisation of the reporting rules might slip from the original Q3 2022 timeline. ASIC has also indicated that it would consult on RG 251 and publish an additional third consultation paper on outstanding reporting issues. This means further delay of the finalisation of reporting rules and guidelines, and shorter implementation period for Phase 1 and 2. It is therefore likely that the industry would likely have less than 12 and 18 months to prepare for the implementation of the two phases, and the two-phase approach would further complicate implementation.

13. If ASIC wishes to proceed with the two-phase approach and the planned timelines, we would like to raise the following concerns for ASIC's attention:

a) There will be a very short window to resolve any post release issues for Phase 1 because in order to allow firms enough time to test Phase 2, the DTCC UAT environment will need to switch to its Phase 2 implementation very shortly after Phase 1 go-live for e.g., need to perform validations on new CDE fields / ISO 20022 standards etc.

b) Consequently, reporting entities will not be able to test any Phase 1 fixes in UAT once the DTCC UAT environment switches to Phase 2. We note that there is a requirement to test all changes in a UAT environment as part of banks' change management policies.

14. Should ASIC decide to proceed with a two-phase approach for reasons such as the need to roll over sunsetting reporting rules on 1 Oct 2023 (if extension of the existing rules sunset timeline is not possible), we suggest ASIC consider the approach below:

- **Phase 1 (1 Oct 2023) – Truly minimise Phase 1 changes** by only rolling over existing rules. ASIC could also implement changes that would entail minimal changes such as amend rules on scope of reportable transaction & reporting entities, and remove delegated reporting safe harbour provision, and mandate LEI (although it would be best to do it in Phase 2 to allow industry 18-month implementation period to educate clients).

- **Phase 2 (1 April 2024 or later to be in line with other jurisdictions) – Implement CDE changes, UPI, UTI, ISO 20022 Messaging standard, lifecycle reporting, backload legacy trades (with six-month relief), complete update to RG 251.** Our members would also like ASIC to work with regulators such as MAS, JFSA, SFC/HKMA, ESMA to harmonise the implementation approach and timelines - we note that so far JFSA has

indicated go-live of the rewrite rules on 1 April 2024 which would be in line with ASIC's Phase 2 timeline, and MAS is also working towards this timeline. As per footnote 1, EU's timeline will likely be end Q1/early Q2 2024, and could potentially coincide. As such, we hope ASIC could coordinate with other relevant authorities.

- **Provide a transition relief from Phase 2 go-live date of at least 6 months** to allow more time to prepare for Phase 2 compliance, especially if ASIC were to proceed with the 1 April 2024 timeline and the implementation period were to be less than 18 months from finalisation of rules and update of RG 251. Our members have provided inputs that at least 18 to 24 months of preparation from the finalisation of reporting rules would be necessary given the extent of rewrite rules and the fact that H1 2024 would likely be a packed period with various jurisdictions going live with potentially different rules if harmonisation is not achieved. We hence propose for ASIC to provide a sufficient transitional period, especially as there are many dependencies on global alignment such as UTI, UPI and package trades reporting, which have not been finalised globally.

Section B: UTI

15. **We appreciate ASIC taking an outcome-based approach, but we would like to reiterate the importance of implementing an approach that is globally harmonised across jurisdictions. We would like to highlight the industry's appeal for ASIC to (i) harmonise the UTI framework and (ii) align the UTI implementation timelines with other global jurisdictions – Europe, Singapore, HK, Japan.** Failing to do so will likely result in increased instances where counterparties are forced to use different UTIs for the same transactions, which is counter to the purpose of global UTI. Non-harmonised build on reporting entities' end will also lead to complex architecture and increased cost across regimes, particularly on UTI generating party determination. ASIC should integrate these changes and readjust the implementation timing to be in line the broader global movement to reduce friction for international market participants.

16. **While some Australia-based banks (including the Australian Swap Dealers) broadly agree with, and are supportive of ASIC's UTI proposal, some global banks felt that there would be significant challenges with the approach outlined.** We would like to recognise ASIC's careful consideration of the responses submitted in CP 334 in coming up with the UTI generating party waterfall proposal in CP 361. However, ASIC's proposed UTI generating party waterfall approach appears to differ from what is expected to be implemented in other jurisdictions. If so, this will significantly increase the operational burden for reporting entities subject to multiple jurisdictions with different rules, and we would like to ask that ASIC reviews (with other regulators) if a global adoption of a simpler waterfall

logic is possible. Robust discussions around this topic during our CP 361 working group discussions reflected a desire to create a workable outcome that can result in a successful adoption of the global UTI, with several ideas that held merit discussed at length. Ultimately our members recognise the need for both industry and regulators to participate globally in refining and agreeing on a more suitable harmonised UTI generating party waterfall framework.

17. **We would like to highlight some challenges and issues with the UTI generating party waterfall framework that our members have identified:**

a) **First, conflicting "classifications" of upstream UTI generating parties across jurisdictions.** Members noted the differences across jurisdictions in the recognition of CCPs, trading platforms and confirmation platforms as UTI generators. If prescriptive steps involving providers of these infrastructure are to be implemented across regimes, it is important that the definitions of these providers are aligned across regulations. Uncertainty and differences in this regard may impact global UTI adoption where the requirements are not aligned. We have already seen examples where CFTC's UTI framework is effectively different compared to those of other regulators and CPMI IOSCO guidance due to nuances in definitions of these upstream generators, creating issues during cross-border implementation. For instance:
   - MTF and OTF trading platforms are not recognised by CFTC
   - MarkitServ affirmation/confirmation platform is not registered with CFTC and cannot be a global UTI generator.

   Hence, we suggest that ASIC work with global regulators to impose a harmonised definition for clearing facility, trading platform and confirmation/affirmation platform to avoid any circumstance of generation of two UTIs for same transaction, which will not be in line with the harmonisation process.

b) **Second, members also underline the challenge of identifying single vs cross jurisdictional transactions and the "sooner" jurisdiction for reporting, and the need to do that in the proposed UTI generating party waterfall framework will result in huge implementation efforts**. A reporting entity generally would <u>not</u> be aware of its counterparty's reporting obligations at trade inception and without prior dialogue with the prospective counterparty. For example, in the case of Items 4 and 5 of Overview of Table 2 of Rule 2.2.9(3), on "Sole Reporting Entity", 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 and hence determining if a party is the sole reporting party of a transaction is not feasible.

All firms have reiterated that the steps within the CPMI-IOSCO UTI technical guidance, which implicitly rely on knowledge of a counterparty's reporting requirements and timing, to be near impossible to employ from an implementation perspective. It is problematic that this "fatal flaw" was not identified when the document was finalised more than 5 years ago.

ASIC's proposed UTI generating party waterfall framework also relies on this expectation for a reporting entity to cooperate with its counterparty to ascertain (i) sufficient information to determine that a relevant transaction is also reportable in another jurisdiction and (ii) sufficient information about the counterparties' expectations for UTI generation so that a single UTI generation method can be used. This would also require complex and significant development/build to maintain the database to determine the counterparty reporting obligation. For example, even though some counterparty entities may appear to be CFTC (or ESMA) reportable in general, it does not mean that all ASIC reportable trades will be CFTC (or ESMA) reportable on transaction level. CFTC is also on a single-sided reporting regime where the reporting counterparty is expected to generate UTI. There can be cases where counterparty's trade is CFTC reportable, but counterparty is not the reporting counterparty/UTI generating party. Some members note that removing the 'nexus' or 'trader location' aspect from the single / cross jurisdiction determination will remove some of the complexity but does not fully address the problem of gathering and maintaining the full reporting liability of all counterparties which would require significant client outreach and data maintenance across the industry. This is further complicated by different reportable product rules in different jurisdictions.

One possible solution is to eradicate the need to determine whether a trade is single- or multi-jurisdictional, and the counterparty that is subject to a "sooner" reporting regime. To allay the concern of a non-reporting entity being required to generate UTI under the rules, this could be done by placing a condition that no non-reporting entity should end up being the UTI generator. We have attempted to work these suggestions into alternatives in Para 18.

c) **Third, members have different understanding of Item 5 and are not sure how to operationalise it.** Members appreciate the policy rationale for Item 5 to accord flexibility but would like to reiterate as per above that the notion of "the method used is 'in accordance with a method that the Reporting Entity reasonably believes is 'in accordance with the derivative transaction reporting requirements of *each* of the foreign jurisdictions in which the Reportable Transaction will be reported' would be difficult to implement in practice.

At the industry briefing by ASIC, most members took away that ASIC's policy consideration was to provide significant flexibility through Item 5(b). In fact, the takeaway from most members was that "any other method" that would result in a single UTI generating party being used would be appropriate provided it would not contravene any rules in the other foreign jurisdictions.

Some global banks opined that the wording of Item 5 "in accordance with the derivative transaction requirements of each of the foreign jurisdictions" implied a "substituted compliance" meaning and that the alternative "method" by their reading would be restricted to the direct waterfall or rules in the other jurisdiction. Clarifying this in the regulation could be beneficial, as this was a common interpretation prior to the ASIC briefing and persisted afterwards for some firms.

Another issue raised was whether Item 5 would be "recognised" as an allowable method in the other jurisdictions and hence there will be no need for determination of the "sooner" reporting jurisdiction as intended. To fully employ the step, it essentially needs a duplicative step in other regulations globally. We would encourage ASIC to discuss this in its interactions with other global regulators.

Others were concerned that Item 5 implied a need for explicit, documented bilateral agreements (at each reporting entity level, i.e., down to branch level) to be in place – a process which would be extremely complex and bespoke to agree across a large set of counterparties. Executing an expansive web of bilateral agreements with counterparties would result in huge operational overhead as it requires significant counterparty and client outreach for execution of such agreements, albeit only at the onset. In addition, there will be a need for system development and build to maintain a database of the agreements specifying generating parties, regimes, terms, etc. System changes will also be required to build in the UTI generation logic to factor in bilateral agreements. Also, there are no agreements catering to all regimes across the globe and having bilateral agreements does not align with the overall goal of harmonised framework. This interpretation of Item 5 would also negate the possibility of using a commonly understood industry methodology (if one was uniformly developed and adopted) which does not require explicit agreement bilaterally. On the other hand, some members support using bilateral agreements as it is simpler, more flexible and saves the on-going effort to determine the UTI generating party on a trade-by-trade basis. This difference in views could be because of the population of counterparties amongst our members.

Some members also pointed out that while Para 126 says that an ASIC reporting entity does not need to know ***all*** the jurisdictions in which the other

counterparty will report the transaction, Table 11 Item 5(b) requires the reporting entity and the other counterparty to determine the UTI generating party in accordance with a method that the reporting entity reasonably believes is in accordance with the derivative transaction reporting requirements of *each* of the foreign jurisdictions in which the reportable transaction will be reported. This ambiguity and potentially contradicting statements could create uncertainty and challenge in compliance.

d) **Our members feel that there could be clearer and simpler wordings for Item 5**, such as having phrases the extent of "the UTI generating entity may be determined by any method bilaterally agreed between parties or by a widely-adopted common global method". The optionality to use a widely-adopted common global method provides flexibility while also incentivising industry leaders to develop and maintain a more preferable global UTI framework solution. The method could also entail using a confirmation or affirmation platform where the Reportable Transaction has been, or will be, electronically affirmed or confirmed on an affirmation or confirmation platform and the operator of the affirmation or confirmation platform will generate a UTI.

e) **There is inconsistency in the proposal UTI generating party waterfall framework.** Members also noted that Item 8A promotes bilateral agreement above confirmation platform, which is inconsistent with Items 4 and 6A, and would appreciate it if ASIC could clarify the reason for this discrepancy. Members note that for a trade that is reported to jurisdictions with same reporting deadline (e.g., KFSC/ASIC) in Item 8, it may end up with 2 different UTIs as Korea UTI generating entity logic prioritises confirmation platform whereas ASIC Item 8 which prioritises bilateral agreement first. Members prefer a consistent approach for UTI determination in Items 6 and 8 – confirmation/affirmation platform, bilateral agreement, reverse LEI.

f) **There may be challenges operationalising Item 8A(c), for the operator of the trade repository (TR) to generate the UTI.** The TR usually validates a mandatory field like UTI, so some members questioned how would reporting entities be able to report transactions into the TR in the first place without a UTI being determined. In addition, if the supplier of the UTI has till T+1 to provide it, effectively this means either:
   - The non-generating party is prevented from reporting until its received; or
   - Some sort of temporary UTI would need to be used, along with methods and controls to ensure it gets changed once the generating party shares it.

   Should ASIC require a TR to generate the UTI in its UTI generating party waterfall framework, it would likely have to be a separate and distinct process at the TR from the main trade repository function. Reporting entities

would need to have a process in place to consume (and share) the UTI and populate it in their submission to the TR.

18. **Given the above challenges highlighted, we think that the alternative conceptual proposals that regulators can consider could be:**

Alternative A
Item 1: Authorised clearing facility
Item 2: Clearing member
Item 3: Trading/execution facility
Item 4 (previously Item 5): The Reporting Entity and the other counterparty determine the UTI generating entity in accordance with a method that the Reporting Entity reasonably believes is in accordance with the derivative transaction reporting requirements of the foreign jurisdictions in which the Reportable Transaction will be reported. The UTI generating entity may be determined by any method bilaterally agreed between parties or by a widely adopted common global method. The method may dictate using a confirmation or affirmation platform where the Reportable Transaction has been, or will be, electronically affirmed or confirmed on an affirmation or confirmation platform and the operator of the affirmation or confirmation platform will generate a UTI
Item 5: Reverse LEI sort (if no agreement is reached)
Condition: A non-reporting entity shall not end up being the UTI generator, unless it agrees to be a UTI generating entity, in accordance with the above waterfall.

Alternative B
Item 1: Authorised clearing facility
Item 2: Clearing member
Item 3: Trading/execution facility
Item 4: Confirmation/affirmation platform (this alternative prioritises confirmation and affirmation platform higher up the hierarchy)
Item 5: Any method/UTI generating entity bilaterally agreed between parties or by a widely adopted common global method
Item 6: Reverse LEI sort (if no agreement is reached)
Condition: A non-reporting entity shall not end up being the UTI generator, unless it agrees to be a UTI generating entity, in accordance with the above waterfall.

19. **These alternatives are still under conceptualisation, and would need to be discussed at the international level.** In these alternatives, we have removed the key impediment and challenge of determining the "sooner" jurisdiction and single vs cross-jurisdictional trades, while preserving the flexibility of ASIC's proposal. We note that these alternatives deviate from CPMI-IOSCO UTI technical guidance

and CFTC/EMIR's proposals, which exhibit the challenges highlighted[2]. Hence, a fundamental review of CPMI-IOSCO UTI technical guidance may be warranted, and a cross-jurisdiction discussion amongst global regulators and harmonisation of the UTI waterfall framework would be important as the issue is cross-border and global in nature.

20. **We would hence suggest that ASIC work with follow global regulators and the industry to address the challenges identified in ASIC's proposal as well as the existing CPMI-IOSCO UTI technical guidance, consider the above alternatives and review if there are other better alternatives**. ISDA and other trade associations are also trying to coordinate discussion across jurisdictions and members to propose an alternative that would be most palatable to the industry and regulators.

21. **Additionally, ASIC and global regulators may wish to consider putting in a tie-breaker determinant in the event of multiple UTIs generated for the same trade under different jurisdictions' rules if harmonisation of the UTI waterfall framework is not achieved.** For example, the multiple UTIs generated for a particular trade shall be sorted in ascending alphanumeric order and the first one shall be used, and this shall override the prior UTI waterfall rules in the conflicting jurisdiction to ensure there will only be a single UTI per trade.

22. **On B1(c), we wish to share that there would be challenges for a UTI generating entity to generate and provide UTI to counterparties by T+1 10am AEST**. For clearing trades and trades executed in affirmation/confirmation platforms, there would be no issue; T+1 10am AEST can be supported as the UTI is normally auto-generated and can be shared through the electronic platform.

23. **Members are concerned with the difficulty of meeting this timeline for trades that are not confirmed electronically, especially complex structured trades** – it will be difficult to guarantee delivery of confirmations for these trades by 10am the following day according to the typical workflow. If ASIC were to mandate this requirement, reporting entities will need to devise a bespoke approach to deliver UTI separately in time before the rest of the trade economics are confirmed, and this will increase the cost of implementation. This is because the confirmation process takes time as it requires back and forth correspondences between the counterparties. UTI is not the only field that is being confirmed; the entire set of economic terms and other provisions is part of the review. It hence does not make sense to create a separate process just to confirm UTI in order to meet the stipulated timeline.

[2] Another option that would be closer to CPMI-IOSCO UTI technical guidance would be to follow with ASIC's proposed Items 6-8 after Item 4 and Item 5 of Alternative A and B respectively. However, the issue of determining the "sooner" reporting jurisdiction would not be resolved.

24. This challenge is further exacerbated in cross-border trades where confirmation of trades is done by teams based in another time zone or is dependent on such cross-border teams. Confirmation teams for global banks are generally not in Australia and working hours start at later time zones (for example, most APAC teams are based in Singapore and HK and this would be 7am/8am SGT/HKT, if confirmation is dependent on reporting entities' HQ based in Europe or US, the issue will be even more challenging). As such, it will be challenging to meet the 10am AEST timeline.

25. **We would like to ask if ASIC could modify this provision to factor in the limitations of the confirmation process from an operational perspective** for this requirement to be met on a best-effort basis or instituting it as a guideline instead of a hard regulation (Rule 2.2.9(5)), or have a differentiated approach for such complex structured trades. In any case, ASIC can draw comfort that reporting entities would need to meet the T+1 end of day timeline anyway (which is by the way not harmonised with the T+2 requirement in Singapore, HK, Japan and Korea), and reporting entities could submit trades with a temporary UTI.

26. With regards to Para 625, members are concerned of the practical implications of the expectation that "counterparties agree on the number and product nature of the transactions they will each report and, accordingly, report the same Rule 2.2.9 UTI for each transaction". With structured products, in particular, counterparties may have differences in how product systems have been catered to capture these transactions, and differing views on how transactions should be regulator reported. For example, a Cancellable Swap may be booked by one counterparty as a single exotic trade in their internal systems, whereas another counterparty may book it as a package, constituting of a swap and a swaption, which are then be reported as two trades under a package. Members urge ASIC to give further consideration to such scenarios, where a common approach could be adopted across global regulators on how products of this nature are expected to be reported, or in providing some flexibility in reporting UTIs, similar to that noted under Para 628 on reporting of UTIs for FX Swaps where the reporting approach differs across jurisdictions. ISDA is also working with members to try and standardise the reporting of packages / complex trades across jurisdictions. This effort still requires a lot of work and regulatory input may assist with finding cross-jurisdictional solution.

27. **On B1Q1(d), our members have two feedbacks**:

a) **The three steps outlined in (i), (ii), (iii) add complexity and could be replaced with a single step** stating that if a reporting entity does not receive a UTI from the UTI generating entity in sufficient time for reporting, it must generate and report its own UTI and subsequently update if and when the UTI becomes available.

b) **ASIC could exercise greater flexibility and leniency in considering what would constitute as late reporting of OTC derivative trades.**
   - In the above scenario, we propose that when the latter takes place and reporting entities would then have to exit and report new trades in order to update a new UTI, ASIC should not consider this case as late reporting as the reporting entity would have endeavoured to submit trades in time with a temporary self-generated UTI.
   - We also would like to highlight that the complexity of determining the UTI generating entity in the proposed rules may lead to incorrect submissions. There would then be the need to correct and resubmit reports if the original UTI was found to be generated incorrectly. We also suggest ASIC to not consider such cases as late reporting.

28. **In response to B2Q2, some members noted the lack of clarity in relation to Rule 2.2.9 referencing Rule 1.2.5(1)(b)(iv)**[3] - the requirement of a new UTI for a "change to the way a Reporting Entity records an OTC Derivative in the Reporting Entity's books and records". We would appreciate it if ASIC could clarify the following points:

a) Scenario 1 - Does “changes to books and records” only refer to changes in position as covered by paragraphs 373-377 of the consultation paper?

b) Scenario 2 - Does this refer to a change in asset class? Currently, for change in asset class, there is no new UTI generated. This is consistent with CPMI-IOSCO Technical Guidance on the Harmonisation of the UTI which states “If new information is being reported about an OTC derivatives transaction about which a report has already been made, or some of the previously reported information has changed, then the report should be updated using the same UTI as previously”. Such scenarios are addressed by a manual exit from the previous asset class and a resubmission into the new asset class with the same UTI. It is also possible that from counterparty perspective there is no need to reclassify the trade. However, they will be forced to amend their UTI as well.

[3] Rule 1.2.5 Reporting Entities and Reportable Transactions
(1)(b)(iv) a change to the way a Reporting Entity records an OTC Derivative in the Reporting Entity’s books and records, even if that change does not affect any of the information already reported about the OTC Derivative, but excluding (if applicable) any interim changes leading to or necessary for a final change to recording in books and records.

Note: After entering into or modifying an OTC Derivative, a Reporting Entity may, without reentering or modifying the OTC Derivative, make a change or a series of changes to the way it records the OTC Derivative in its books and records. If only one change is made that change is a Reportable Transaction under subparagraph (1)(b)(iv), and will require the determination of a new UTI for the change. If a series of cumulative interim changes lead to or are necessary to be recorded for a final change, only the final change is a Reportable Transaction requiring the determination of a new UTI for the final change.

c) Scenario 3 - Does this refer to a change in book/entity (e.g. trade booked in Australia entity is transferred to a London entity)? CPMI-IOSCO Technical Guidance on the Harmonisation of the Unique Transaction Identifier requires a new UTI if there is a change to either counterparty. However, in cases where both entities share the same LEI, is a new UTI required by ASIC? Book moves are also usually internal decisions which may not be visible to the counterparty. It is not advisable for an activity that is decided unilaterally to impact the counterparty's reporting.

   If scenarios 2 and 3 require a new UTI, it might impact multi-jurisdictional trades as other jurisdictions do not specifically mention such requirement. Reporting such changes with new UTI will be an operational overhead for both reporting entities and counterparty to reshare UTI data.

Section C: UPI

29. To **C1**, we note at the industry briefing by ASIC, ASIC has confirmed there is a typo and that this question is in relation to "amend" instead of "remade" per Para 236 and table 16 and 17 of the CP.

30. **On implementation of non-UPI data elements, our members would like to underscore the following challenges/questions. First, on reporting requirement of "Underlier ID–non-UPI" and "Underlier ID source–non-UPI", this appears to be a temporary fix before DSB is able to fully generate UPI for equity and commodity asset classes by including a full range of underlier identifiers. The long term fix would be to include the full range of underliers in the ANNA DSB list of values, such as the range including; ISIN, FIGI, Cusip and RIC which mentioned in Para 585 of the consultation.** We understand from the briefing that ASIC recognises that in time, the UPI system may broaden its underlier coverage to support more specific underliers, therefore the values for these data elements would not be required to be reported. In the initial stages of ANNA DSB's roll out of their UPI service, there is expectation that not all securities and underliers may be on-boarded and a considerable amount will hence be tagged as non-UPI.

31. Attribute-based lookup to identifiers is (by the nature of the process) complicated and error prone. While this process provides significant value when standardising the product identifier for OTC reporting (UPI), we would suggest that value achieved is significantly lower for secondary or tertiary identifiers (eg. ISIN, RIC). Moreover, the waterfall logic for the 2 fields demands quite a bit of complexity with regards to data sourcing. The waterfall implementation of this data element implies a necessity to create lookups and effectively "rule out" the possibility that ISIN or RIC exists before moving to lower tiered identifiers. Therefore, implementing reporting for these fields would create additional

substantial costs and reporting risk for the reporting parties to maintain databases and build interim processes and systems to ensure reporting accuracy and completeness, which as the UPI system matures, these investments/costs would not pay off. DSB's inability to provide UPI should not end up as additional burden and data fields to reporting entities. We would suggest that any alternate underlying identifier is roughly of equivalent value when the UPI is generally the standardised source for this information, and the long term fix would be to include the underlier in the ANNA DSB list of values.

32. **We would hence like ASIC to consider an exemption of these fields, or made these optional until ASIC considers that UPI system is robust enough to allow reporting parties to report these fields without significant additional costs and risks.** In the meantime, we would encourage ASIC to engage DSB to widen the sources of the underliers. For commodity reference price dataset of ISDA Taxonomy 2.0, ISDA will be happy to work with ASIC, Australian entities and ASIC reporting entities on updating the taxonomy and ensure DSB would be aware of the updates.

33. Alternatively, one of the members commented that for commodity and equity asset classes, they would report ISIN if available for underliers; if not, internal alphanumeric value will be reported. A further alternative is to also allow the use of FIGI, a unique identifier available openly, which has the same character length as ISIN, and has good coverage of indices and benchmarks, including for equity and commodity indices. FIGI is also one of the identifier data sources which the DSB should be encouraged to implement in the UPI, thereby negating the need longer term for the additional fields which ASIC are proposing and ensuring that any short-term fix is made as future proof as possible.

34. **Next, on other attributes which are not contained within UPI but are retained by ASIC (e.g. "Maturity date of the underlier"), we would like to understand ASIC's approach for conditionality on fields.** In other words, would ASIC work with DTCC to make such fields like "Maturity date of the underlier" conditional based on product type, or will it be expected firms will interpret and implement on the reporting side based on their applicability? We wish to underline that the non-applicability of such fields should not be flagged as reporting errors.

35. On "accuracy of a UPI", from reading the rules, it seems that it is a requirement to create a new UPI before trading and reporting need arises. Whilst we are not certain how facile this process of creating a new UPI is, we have concerns that this requirement would create new processes and new costs to ensure accuracy. However, we also note that ASIC recognises that "the UPI service is designed so that it is possible to obtain a UPI for any kind of OTC derivative, including by allowing 'other' as a value for each UPI attribute for which a 'standard' value is not applicable for an OTC derivative". Therefore, we would like to understand whether ASIC would allow reporting parties to make use of 'other' as a value for each UPI

attribute in case of new UPIs, while reporting parties actively work to create the new UPI. In absence of this facility/understanding, we would therefore revert to the view expressed above that an exemption to these fields is considered by ASIC until UPI system is robust enough to allow reporting parties to report these fields without significant additional costs and risks.

Section D: LEI

36. Although ASIC has not requested feedback on LEI, we would like to reiterate the concern raised in the previous consultations response regarding the responsibility of maintaining the LEI. The ASIC rewritten rules include a requirement to report a "current" i.e. renewed LEI for Counterparty 2 (non-reporting party) for Australian clients. However, LEI renewal is performed by the party owning that LEI and not the reporting party (Counterparty 1). **This creates a bizarre case whereby the ability of the reporting party to be compliant with the rules is contingent on the activity of another party.**

37. **ASIC's proposed LEI requirement would be more onerous by placing too much administrative burden on the reporting entities than is the case under other reporting regimes.** The current market practice is to ensure the counterparty has an LEI at onboarding, and there is currently no way to ensure that LEI renewal status is tracked and updated at all times in banks' systems and checked prior to each transaction. The onus should be on each entity to ensure its own LEI is renewed before trading. The industry has raised this issue with ESMA too and ESMA has since amended this requirement so that the renewal of the LEI will be validated only for the reporting counterparty and the entity responsible for reporting, while for entities other than the counterparty 1 and the entity responsible for reporting a lapsed LEI should be allowed. We also note that under §45.6 of the revised CFTC Regulations, Swap Dealers are only required to maintain and renew their own LEI. In addition, the proposed amendments to the *Trade Repositories and Derivatives Data Reporting Rule* published by the Canadian Securities Administrators on 9 June 2022 also specifies that a reporting counterparty is not required to verify that its counterparties to each transaction that it reports have maintained and renewed their LEIs. Reporting counterparties are only required to maintain and renew their own LEI.

38. **We hence request that ASIC does not mandate renewed LEIs for Australian counterparty 2 entities that are exempt from reporting under the Australian regulatory framework**, until similar mandates are imposed by regulators globally, and until a practical technological solution is available for updating LEI status in dealer systems on a real-time basis.

39. In addition, there remains other uncertainty and concerns on the implementation of LEI and we hope ASIC could address in its response to CP or in RG 251:

a) Applicability to nexus trades - there are nexus trades where the counterparty may not be obligated to obtain an LEI or obtained on best effort basis. These are typically cases where the counterparties are based in a different jurisdiction (for e.g. China, Japan) and may not require to obtain an LEI for reporting to their regulator; by virtue of the nexus, if such trades are reportable to ASIC, the counterparty may not be forthcoming in obtaining LEI. When there are nexus trades and no LEI is available, we suggest an alternate identifier could be acceptable because Australian rules cannot extra-territorially apply to other jurisdictions, and ASIC reporting entities would have to reject such clients and ASIC reporting entities would be disadvantaged.

   One of our members have kindly provided some statistics to put things into perspective - out of OTCD trades reportable to ASIC, around 20% of the trade population do not have LEI as counterparty 2 identifier. While a small portion out of this 20% are nexus trades, when the member conducted its own review, it assessed that it will be difficult to convince some to obtain LEI as these trades are booked outside Australia. There is hence a possible outcome under strict LEI mandate that these client trades may be lost to other jurisdictions.

b) What are ASIC's expectations in the scenario where there are live transactions with Counterparties who have been not receptive to renewing a LEI?

c) Could ASIC confirm whether there is a requirement to re-report an existing transaction if the counterparty obtains an LEI at a later stage?

d) What are ASIC's expectations in a scenario where a lifecycle event occurs after the implementation date and a counterparty does not have a LEI or is not receptive to attaining a LEI? Can firms report using the old identifier?

e) Will ASIC consider extending the 'grace period' for applying for an LEI within 2 business days given this will be challenging for firms to meet?

f) Can ASIC provide further guidance as to which entity is required to obtain an LEI, e.g. parent entity versus child entity, trust bank v trust fund?

Section E: The ASIC data elements

40. **Members noted that ASIC is moving away from the goal of achieving globally harmonised standards.** The percentage of ASIC's proposed data elements that is harmonised with CDE, CFTC and EMIR dropped from 65% (81 fields) in CP 334 to 62% in CP 361 (78 fields). According to analysis by DTCC, this further reduces to 32 of 110 to be adopted and fully aligned between CFTC, EMIR, ASIC, and MAS. A further 29 elements would be adopted by all 4 regulators but with the implementation only partially aligned. This is a rather disappointing outcome.

41. **We would like ASIC to reconsider the benefits of requiring ASIC specific data fields and implementation that defer from global regulators, and whether they are absolutely must-have or good-to-have data fields for ASIC's work.** As the goal of the rewrite is to harmonise to international standards, we wish to advocate and underline this objective again, and hope that that ASIC could pursue further opportunities to fully align these fields with global regulators. Without proper harmonisation, the industry might face higher costs implementing the amended reporting requirements, which will likely need to be further changed in the future to align with other jurisdictions.

42. **On proposal E1(a), several members are unsure what constitutes "transaction-to-position" conversion practices and appreciate if ASIC could elaborate further and provide examples.** This also relates to our B1Q2 response above. Would that be an accounting classification of assets and liabilities that categorises into 'trading 'and 'held to maturity' type? In Attachment 1, it says "a change to the way a Reporting Entity records an OTC Derivative in the Reporting Entity's books and records, even if that change does not affect any of the information already reported about the OTC Derivative, but excluding (if applicable) any interim changes leading to or necessary for a final change to recording in books and records.".

43. **We would appreciate if it ASIC could provide more clarification and typical examples that are relevant.** If this is indeed a case of accounting changes that would need to be reported to ASIC as part of transaction reporting flow, we would object to this proposal as:

a) it would increase (dramatically) the complexity linked to the systems and processes that would be required to monitor such changes in accounting rules and then feed these into the reporting engine rules.
b) in conjunction with delegated reporting, it is (highly) unclear how this mechanism would work.
c) ASIC could consider whether there are other avenues for this transparency to be provided to ASIC via financials disclosures rather than leveraging on transaction reporting flow and mechanisms.

44. **Members are generally in agreement with proposals E1(b) to (f).** There are nevertheless some comments for ASIC's consideration:

a) On (b) to clarify where duplicative reporting exist today, and where does the new rule see a reduction (in house or industry).
b) On (c), members have requested if ASIC could provide a definitive and specific list of fields to be derived from TR - whether the expectation is only reporting timestamp field or more.

45. **Members generally agree with E2(a) and (b) but have strong views on the challenge of (c) - new Rule 2.4.1.** Re-reporting of fields where the format or allowable values have changed for data previously required should not be an issue. A data remapping can be performed to address this. The challenge of (c) is that new data standards, including new CDEs of some live legacy trades may not have been captured at the time of trading because the amended regulatory requirements were not in place at the time of execution and the firm may not have required the fields for other internal processes. One example is package trades where data fields such as package price, indicator, venue MIC code (package related fields 90-96) would not be known unless these details were captured at the time of trading. Manual examination of every live trade's pre-trade communication and execution conditions would be prohibitively laborious and costly. This will entail significant effort in trying to source data (e.g. reviewing old term sheets, inputting data required in system). Members pointed out that once data sources of new fields are identified and mapped for the new template, the reporting system will automatically pick up the new values at the next reportable event. However, if reporting entities need to re-report all of them by Oct 2024, we force the risk booking system to retrigger reportable events which may create unnecessary impacts on other downstream processes such as confirmations and settlements.

46. **As this is instituted in a rule (2.4.1), we hope ASIC could appreciate the practical constraints in back populating new CDE fields and be open to exempting a limited number of problematic fields from the update requirement, particularly where the required data were not captured at the time of trading historically.** Hence, we propose to limit the requirement of re-reporting transactions with the updated data elements to only new transactions executed post the commencement of the amended ASIC rules. In other words, the new data fields specifications should only be applied to new trades executed post the commencement of the amended ASIC rules, as historically the new fields/requirements may not have been available/populated in old legacy systems and processes. One way is to limit the back loading requirement to certain attributes which were already agreed in the confirmation (i.e. economic conditions, trade party information, etc.), and/or exempt re-reporting of new CDE fields where such data were non-existent or not required to be reported prior to the amended reporting rules. ASIC could also consider including phrases such as "to the extent reasonable and practicable" in the rule with the aim of achieving the same outcome as above. This is also one additional area we hope ASIC could also align with other regulators for a harmonised approach, since ASIC took reference from MAS' proposed approach in its consultation paper.

47. From an implementation perspective, some members have commented that they would re-report/backload all transactions on Phase 2 go-live date as this will reduce the complexity to filter out transactions with expiration date of 1 April 2024 – 30 Sep 2024 – 31 March 2025. Having another timeline to meet post Phase 2 would further complicate the rewrite rules compliance process. In this regard, our members hope that ASIC would allow reporting entities to submit all live transactions on Phase 2 go-live date, subject to a transition period for full compliance.

48. **On E2Q2, we did not receive much feedback. One member is agnostic and commented that both basis would entail risk of inaccurate data migration from current state to future state of TSR. On the other hand, one member indicated preference for option (b).** A re-report of existing positions on the trade state report has the potential to create significant operational burden for reporting entities as the new data elements may not have been generated in the required form at the time of trade. Notwithstanding this, if ASIC requires this conversion, then option (b) a 'carried forward and converted TSR' appears to be preferable both in terms of ease of processing and the outcome of a more unified dataset. TSR is a positional report, but ASIC has proposed to change Rule 2.2.8 to require that transactions in all products are reported on a lifecycle basis. When re-reporting the outstanding positions on the TSR, we would like to ask if a position snapshot approach would be acceptable or would all lifecycle events for that position need to be re-reported.

49. **On E3, members generally agree,** and we would like to provide the following feedback:

a) "UTI"- We recommend ASIC clarify and simplify the UTI waterfall logic – see above response under UTI.

b) "Clearing member" - We would like ASIC to clarify whether this field is required in the case 'Counterparty 1' is itself a clearing member, or only in the case 'Counterparty 1' uses the services of another clearing member?

c) "Action Types" - We would like ASIC to provide detailed guidance on the usage of the various Action Types (item 99) - refer to response to E5Q2.

d) "Platform Identifier"- We would like to challenge this as it requires some (significant) IT change to derive for non-platform the value to be reported (XOFF, XXXX, BILT) based on the 'possibility' to trade on a platform. Implementation of this new field can create significant reporting risk if not implemented correctly. ASIC should continue to require the reporting entity to report whether traded on facility or not without the need to further detail based on the "ability" to trade on facility when not traded on facility.

50. **On E4, members expressed concerns that introducing new data elements as well as changes to a number of existing data fields, such Platform Identifier as part of the remade rules in Phase 1, will unnecessarily increase the cost of implementation of ASIC's reporting rules.** Making field changes as part of the Phase 1 remade rules will require development and testing and therefore cost associated with this work.

51. **We request that ASIC delay the implementation of these changes until Phase 2, so that firms can consolidate the development and testing of new data elements into a single phase.** Alternatively, noting that many of the additional data elements are already reported by reporting parties to the ASIC-licensed derivative trade repository DDRS, despite not being required by the current ASIC rules, and the formats and allowable values as part of the ASIC remade rules are largely in line with the existing data reported to DDRS, should ASIC require these field changes be made with the ASIC remade rules, members urge that ASIC require these fields to be reported on a best efforts basis.

52. Members would also like to seek clarity on whether the reported field name changes are expected to be reflected on the reports produced by DDRS (for example, the ASIC Trade State Reports). Members request that changes are not made to field names on reports from DDRS as part of the ASIC remade rules, as such changes would have a significant impact on members' existing trade reconciliation arrangements, requiring development and test effort duplicated across the ASIC remade rules implementation and the ASIC amended rules implementation, which we believe is not the intent of these changes.

53. Additionally, we would like ASIC to specify in the rules whether the field 'Day count convention-Leg 2' will continue to be optional for Credit or not applicable for Credit. In addition, in Attachment 1 for field 'Settlement rate or index' column 3 (Page 33) specifies that – 'There is no Derivative Transaction Information required to be reported for this item' so we would like to question the rational for the relocation of this field if it is not required for commodity.

54. **On E5Q1, our members have provided substantial comments on the following fields:**

a) "Platform Identifier" – We would like to challenge this as it requires some significant IT changes to derive for non-platform the value to be reported (XOFF, XXXX, BILT) based on the 'possibility' to trade on a platform. Implementation of this new field can create significant reporting risk if not implemented correctly. ASIC should continue to require reporting entities to report whether traded on facility or not. without the need to further detail based on the "ability" to trade on facility when not traded on facility.

b) "Delta" – similar to CP 334, we do not agree with the proposal to include the data element "Delta" as it is currently not available in members' internal system and could be challenging/costly to source.

c) Fields 99 "Action Type" & 100 "Event Type" – as these fields do not form part of the CDE technical guidance we request that ASIC aligns the valid values and their usage with other global regulators as far as possible to increase harmonisation across jurisdictions

d) Fields 90 through 98 – similar to feedback provided in CP 334:
(1) It will be challenging to implement the following 7 fields as this information is currently not captured in members' current internal system. In addition, this information is already reported at a position level, therefore not necessary to report again.

i. Package transaction price
ii. Package transaction price currency
iii. Package transaction price notation
iv. Package transaction spread
v. Package transaction spread currency
vi. Package transaction spread currency notation
vii. Event identifier

(2) Further clarifications are required on the implementation of (a) Package identifier and (b) Prior UTI. We would like to seek clarification if multi-leg booking models / B2B trades and Portfolio Swaps would be considered as packages.

e) "Unique transaction identifier"- we suggest ASIC to simplify the logic, see response to B1Q1.

f) "Reporting Entity" – We suggest ASIC consider requiring this field only where the Reporting Entity differs from Counterparty 1.

g) "Counterparty 2 identifier type" and "Beneficiary 1 identifier type" – we suggest removing in the interests of simplification.

h) "Next floating reference reset date–Leg 1" and "Next floating reference reset date–Leg 2" – challenge: as market participants globally are embracing new alternate reference rates (ARR), we are challenging the need to introduce these fields, as one of the benefits (from a regulator point of view) of introducing ARR is reduced risk of influence on the fixing rate due to market participants submission (as OIS is determined based on prior actual trading). Additionally, to implement these new fields would require some material IT investment to be done, which eventually will be lost as ARRs become the norm.

i) Fields 78 to 80 – Similar to feedback in CP 334 and also feedback to another regulator in the region following their respective similar CP. We do not agree with the proposal as it differs from the current rule for ESMA and CFTC. While we note that these were proposed in the ESMA consultation in early 2020 and the CFTC re-write for 2022, neither have been initiated yet by ESMA or the CTFC around adopting to the CDE guidance.

First, we do not agree with the proposal to report Custom Basket fields. Members have very few OTC transactions which qualifies for "custom basket", however, to report the required custom basket fields will involve significant changes in multiple internal systems, which will be difficult to be prioritised given the low trading volume involved. Consequently, this will result in inefficiency and intensive manual workaround, should the internal systems not able to accommodate. In addition, the level of details that are required to be reported (ie. identifiers captured in data field 79 per proposal, as well as the basket constituents and corresponding weight of each constituent - data filed 78 and 80) may reveal the business strategies of counterparties to transactions involving such thinly traded products.

Instead, we propose that the UPI code and associated UPI reference data elements, pertaining to an OTC derivative product based on a custom basket, should only include generic information about the characteristics of such an underlier. We are supportive of reviewing a new proposal from ASIC that accounts for the industry feedback. Similar concerns from the industry were expressed in the "UPI Technical Guidance"- which was published by CPMI and IOSCO on 28 September 2017, as technical guidance to regulators.

According to the views captured in the "UPI Technical Guidance" it is unlikely that the custom basket related data elements will be included in Phase 1 which is planned for go-live in Q2 2022, but to be taken up at a later stage after the initial implementation of the UPI system. Hence, we would suggest that regulator similarly undertake the reporting of Custom Basket data fields at a much later stage, when industry feedback as captured in the "UPI Technical Guidance" have been taken into account.

j) Field 8 "Portfolio containing non-reportable component indicator" under collateral arrangements - we see significant technical challenges with determining whether a collateral portfolio also contains transactions not reported under ASIC rules as this would require bespoke and complex logic between reporting and collateral systems.

55. **On E5Q2, we would like to request that ASIC provides detailed guidance on the following:**

a) Direction Field – Members would welcome clarification on whether "Direction 1" is applicable to Credit Default Swaps. Indeed, while Page 100 of CP 361 states that field 'Direction 2—Leg 1/Leg 2' is applicable to CDSs, other sections mentioned that Direction 1 would be applicable for Credit Default Swaps instead. Additionally, we would like ASIC to clarify if "Direction 2 - leg 2" is not applicable to Credit products in general. Overall, we invite ASIC to align with EMIR for the definition of the field Direction and the related reporting requirements.

b) Field 98 "Event Identifier" – We request ASIC provides additional guidance on the usage of this field.

c) "Day count convention—Leg 2 for all asset classes " would it replace "Fixed rate day count fraction (leg 2)" as it is not clear.

d) "Clearing member" – We request ASIC to clarify whether this field is required in the case Counterparty 1 is itself a clearing member, or only in the case Counterparty 1 uses the services of another clearing member.

e) "Action Types" – We would like to request ASIC to provide detailed guidance on the usage of the various Action Types (Field 99). Regulators should allow reporting entities to reopen position which are not closed in error for products like Equity Portfolio Swaps which are ideally open when position is flatten and later re-instated as per client request for further trading. These positions are exited when position is flattened and then re-reported with same UTI for further trading. Proposal would be to extend action type 'REVI' to cater for scenarios where position was genuinely closed and not just in error OR create another action type to cater for scenario as mentioned in above paragraph

f) "Event type" – We would like to request ASIC to provide detailed guidance on the usage of the various Event Types (Field 100).

g) "Notional amount—Leg 1" and "Notional amount—Leg 2" – We would like ASIC to clarify whether reporting entities would be expected to update the residual notional following the expiration of each leg for FX multi-leg options.

h) Fields 72 to 77 – We would like to ask if ASIC would be requiring reporting of full termination fee in the exit message (inclusive of cases of step-out). To implement reporting of such fees would require some material IT changes in our reporting, which we would like to avoid especially for step-out or full termination where currently we are sending out an exit message without fee information. Further, we would like to understand whether the initial and final principle exchange amounts of a Cross Currency Swap are

to be reported as other payments at the start of the trade (the New trade submission).

i) "Fixed rate—Leg 1" – We would like to check if this field would be applicable Credit Default Swaps.

j) Fields 38 to 43 – We would like to seek further guidance on how these data elements should be reported for FX exotics such as FX accumulator, target redemption forward. Mainly we would like to understand how reporting entities should report such exotic trades with multiple legs with outstanding legs decreasing over time after each fixing period. Given all the new fields around notional schedule, we would like to check if the expectation is to report the schedule of notional or most recent outstanding notional value under notional amount field.

k) Additionally, we would appreciate further guidance for FX Derivative Common Data Fields, specifically in relation to Notional Amount 1 and Notional Amount 2.

l) Custom Basket – One of our members highlighted that it shares information related to custom basket in confirmation document which will be used as means to share unique id however this approach should be adopted by all firms, otherwise, it will impose similar challenges related to UTI pairing. To illustrate, reporting entities will have to generate their own custom basket IDs, the other challenge is related to sharing information within stipulated timeframe since such products will be bilaterally agreed.

m) Leg Alignment - Additional guidance required for determination of leg 1/2 in case of exotic products with more than 2 legs. For example, IR structured trade can have funding leg and multiple floating legs, and multi-leg swap trade can have multiple fixed and floating legs.

n) Package Transaction Reporting – As we know, industry-wide discussion is ongoing for decomposition of package deals from a reporting standpoint on the back of CFTC 2.0. We would request all regulators to discuss and harmonise package reporting requirements. The misalignment already evident between rewrite rules will not only create additional cost to support different requirements in different regimes, it will impact some of the core aims of harmonisation like global UTI pairing. Tactical implementation to support bespoke requirements will increase risk of misreporting.

   One particular point of concern is the decomposition which is mandated for certain trades (e.g. IRS Floors or Straddle Swaptions). Industry convention and off-the-shelf product systems treat these agreements as single transactions in most cases. A hard requirement to split agreements into

"simple" products may be counterproductive to the goals of reporting and distort the view of a firm's trading activity. We would like to share a non-exhaustive list of other issues:

(i) Decomposition of a single transaction for the purpose of reporting will likely impact the ability report meaningful daily valuations. Valuation systems must align 1:1 to the booking representation of a trade in the product systems. (e.g. An IRS Floor will be valued at $xxx, but its two decomposed parts also need valuations as per reporting rules).

(ii) Firms have implemented infrastructure to cater for many of the products proposed for decomposition as single products, many of which are considered vanilla products in the industry. Changes to the booking model would trigger changes in the way trades are booked, confirmed, risk assessed and reported (including prudential reporting). This would involve a significant technical change across many areas of the bank. If firms implemented changes specific to transaction reporting rules without changing the booking model, there is a significant risk that transaction reporting will not align with the books and records of firms.

(iii) Decomposition of some transactions distorts the actual substance of a product. For example, Accumulator trades give buyers the ability to slowly acquire a set daily amount of an underlier (usually FX) when the spot rate is favourable. In practice, a client will enter into a single accumulator contract for a set period of time, with a daily notional value and set trigger points. The characteristics of the arrangement could be "constructed" using a large number of discrete barrier options. Under the package reporting rules, a single, relatively insignificant year-long accumulator deal would need to be reported as over a thousand tiny options. While this is an extreme example, we feel it does highlight the disadvantage to addressing an inflexibility in the UPI standards downstream via a package reporting requirement.

Noting the challenges of package field reporting highlighted above, we would ask ASIC to consider alternative approaches and timing associated with these fields. It is important that there is global agreement as to what constitutes a package to create consistent reporting between parties and global UTI use and accurate global aggregation of data. We request that ASIC continue to work with global regulators to harmonise these fields, especially around the expectations of decomposition for reporting purposes. While acknowledging that arriving at such agreement is a lengthy processes, we also highlight that the build following which would also likely be complex, and ask ASIC to consider this in setting package reporting requirements and timelines.

56. **On E6 (a) to (d), there are generally no concerns, some minor feedback as follows:**

a) Underlying which will be renamed as 'Underlier ID–non-UPI' in ASIC amended rules is currently being reported across asset classes except FX. As per ASIC amended rules, this field would be reportable for Commodity and Equity asset class. Some members commented that they will report ISIN if available for underliers else internal alphanumeric value will be reported.

b) 'Underlier ID source–non-UPI' in ASIC amended rules is currently not being reported. As per ASIC amended rules, this field would be reportable for Commodity and Equity asset class. Some members commented they will report ISIN if available for underliers else internal alphanumeric value will be reported.

c) Members agree with the proposal for adding specified 2 new fields "Next floating reference reset date–Leg 1" and "Next floating reference reset date–Leg 2" for valuation reporting.

d) Members agree with the proposal for Collateral Timestamp field for Collateral reporting.

Section F: ISO 20022 messaging standard

57. **Members agree and did not voice concerns** as requirement of reporting in the ISO 20022 XML message is in sync with the requirement in other jurisdictions and members do not foresee any issues with the implementation.

Section G: Scope of reportable transactions and reporting entities

58. **Members agree with the proposals, however, we would like to reiterate the importance to reporting entities of including in any revised RG 251 the list of derivatives asset classes and products to which the ASIC reporting rules apply.** We note that ASIC does acknowledge prior feedback in relation to this point in the CP, however, does not give any indication of ASIC's intention to replicate the current approach to limiting the scope of reportable OTC derivatives in a revised RG 251. We consider that ASIC's proposed changes in the CP do not remove the continued need for clarification of the scope of derivative transactions to be reported. In this regard, we refer ASIC to ASIC's Report 357 entitled "Response to submissions on CP 205 Derivative transaction reporting", in which ASIC acknowledged/stated at Para 38: "the need for greater clarity and specificity of the

definition of derivative" and that "[t]he derivatives we will expect to be reported are based on the ISDA taxonomy".

Section H: Alternative reporting and delegated reporting

59. **On H1Q1 alternative reporting and delegated reporting proposals, there were no objections.** A couple of sell-side members added that they are not a current user of alternative reporting. On the other hand, buy-side members typically outsource trade reporting.

60. **On H1Q2, one of our members would like ASIC to provide clarification on the expectations on reporting entities for outsourcing arrangements** between them and their delegates/service providers, for example, whether ASIC would expect reporting entities to internalise the delegated reporting handled by external service provider on behalf of them. In addition, some members currently use confirmation platforms to report transactions on their behalf and they would like to check in with ASIC that confirmation platforms can be seen as a service provider and this reporting arrangement would fall under the umbrella of 'delegated reporting'.

61. **To H1Q3, members believe a revised guidance in RG251 would be most helpful.** However, consideration should be given on whether this clarity would be better provided under a legislative instrument rather than subsuming it within a guidance document. Our buy-side members have requested that ASIC be clear, preferably by legislative instrument, on how the oversight of delegated reporting is intended to be conducted by a reporting entity, covering the level of visibility required of the activity and the frequency and breadth of required oversight/review. In this relation, we would also like to check specifically, if Regular and Reasonably Designed Enquiries will be removed completely as a concept. Without Safe Harbour, the expectation is that a heightened level of oversight of delegated reporting will be necessary, but ASIC will need to be clear as to what is required if the regular and reasonably designed threshold, applicable to Safe Harbour delegated reporting, is also removed. Also, we would like ASIC to specify its expectation or any recommendations for reporting entities to manage the monitoring/reporting of errors and breaches on a going forward basis, e.g., if these should be managed via agreements between the reporting entities and their delegates.

62. **On H1Q4, our members suggest ASIC publish a consultation paper** on amendments to RG251 so that they could consider this question in more detail.

Section I: Reporting requirements

63. **Members agree with the proposal to require all products to be reported on a lifecycle basis.** However, as pointed out above, there are concerns with the two-phase approach and some members who are not reporting or not able to report on a lifecycle basis commented that there would be significant build required for Phase 1 implementation.

Trades executed anonymously on a Derivatives Trading Facility

64. With ASIC proposing to require that transactions in all products are reported on a lifecycle basis, **members request that ASIC provide clarity on its expectations regarding the reporting of transactions that are executed anonymously on a derivative trading facility and subsequently cleared, in accordance with the regulatory requirements of foreign jurisdiction(s).**

65. Members propose that where a transaction is executed on venue anonymously, and intended to be cleared the same day, that the Alpha trade be deemed non-reportable to ASIC. Members do not see benefit in reporting these anonymous Alpha trades and believe an exclusion from reporting provides the simplest approach in terms of trade reporting requirements.

66. If ASIC does require the reporting of the Alpha trade for these transactions, then Members request that ASIC clarify its expectations on how 'Counterparty 2' field should be populated. Members also urge for consistency of corresponding 'Counterparty 2' identifiers across jurisdictions, should these Alpha trades be deemed ASIC reportable.

Section J: Outstanding matters

67. We did not receive any feedback on any other matters for ASIC to take into consideration in the third CP.

Section K: Regulatory and financial impact

68. **On the likely compliance costs, other impact, costs and benefits, our members would like to point out that the impact and cost estimates provided by ASIC are understated** compared to their preliminary assessment (this may be subject to change upon receipt of the final rules and complete analysis conducted). Specifically, the two-phase implementation approach will require a duplication of build and resources that would need to run concurrently in order to meet both timelines. This would impact from a resourcing perspective. Implementing the rules

with multiple delivery dates adds an additional risk. Given the two dates are 6 months apart, this decreases the capacity to build and adequately test and conduct regression test. Training and internal controls would also need to be revised and implemented for each stage, duplicating effort in this space. In addition, re-reporting legacy trades will have a greater resourcing impact and would be costly to implement.

69. Further, in terms of benefits, as noted above, the degree of harmonisation of data fields has decreased from CP 334, and we would like ASIC to reconsider the benefits of requiring ASIC specific data fields and implementation that defer from global regulators. It is of utmost importance to harmonise rules and timeline for implementation (e.g., UTI) with global regulators in order to achieve the full benefits of rewriting rules to adopt international standards. For further information on specific data elements and the impacts, please refer to the responses to the questions raised above.

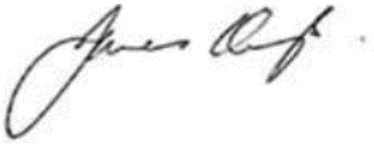
70. **On the likely effect on competition, members opine that the LEI requirements on trades falling under nexus requirements will have an impact on competition due inconsistent requirements with other global jurisdictions.** It will create challenges for ASIC reporting entities to enforce mandatory LEI requirement on non-Australian clients. In addition, the detailed nature of the fields required for baskets as pointed out above may reveal the business strategies of counterparties to transactions involving such thinly traded products.

71. Thank you for your consideration of our members' feedback. We appreciate ASIC for the thorough analyses and taking a pragmatic approach as reflected in CP 361. Should ASIC wish to discuss our response, please do not hesitate to contact the undersigned.

Yours sincerely,

Xiangjing Ng
Director, Public Policy, Asia Pacific
ISDA

David Love
General Counsel &
International Adviser
AFMA



James Kemp
Managing Director
Global FX Division, GFMA

Background of the Associations

- **ISDA** has worked to make the global derivatives markets safer and more efficient since Today, ISDA has over 980 member institutions from 78 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.

- **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.

- **GFMA's** Global Foreign Exchange Division (GFXD) 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 23 global foreign exchange (FX) market participants[4], collectively representing the majority of the FX inter-dealer market[5]. 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.

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[4] Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, ING, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, RBC, Standard Chartered Bank, State Street, UBS and Wells Fargo.
[5] According to Euromoney league tables.