EMIR Reporting

Summary of Industry Issues and Challenges

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1	Representation of Underlyers
Challenge	**Representation of underlyers –** The ITS with regard to the format and frequency of trade reports to trade repositories indicates in Common Data field 4 of the annex those values which can be used to report the underlying of a derivative transaction. The values listed do not include many of the commonly used standards for certain OTC derivatives markets. These industry standard values are integrated into much of the current industry infrastructure that will be leveraged to enable reporting obligations to be met by the reporting start date. Furthermore, there are significant challenges for industry to incorporate the ITS listed values into their infrastructure in time for reporting go-live and some of the values may provide limited value when compared to other industry standard identifiers. It should also be noted that there are cases where the underlyer of a transaction cannot be properly represented by any of the values listed in the ITS.
Proposal	Many industry participants had anticipated leveraging existing infrastructure to facilitate compliance with their reporting obligations. Furthermore, there is insufficient time to design, build, test and implement infrastructures and processes that would enable many reporting parties to comply with providing only those values set out in the ITS in their reporting message. Even where such processes could be implemented there are instances where the underlyer to a transaction does not fit with the possible values set out in the ITS. In such instances and given that much of this infrastructure leverages other standard industry values to reference an underlyer, many firms may report using such values as of the reporting start date.
Next Steps	Industry requires guidance from ESMA as to how an underlyer should be reported in the case where such underlyer is not supported by the allowable values set out in the ITS. In the interim, industry would like to work with National Competent Authorities to agree a roadmap towards full compliance with the terms of the ITS.

2	Product Identification – UPI
Challenge	**Product Identification – UPI -** Article 4 of the ITS with regard to the format and frequency of trade reports to trade repositories provides a hierarchy for identifying products for reporting under EMIR. ISDA has proposed to ESMA that the ISDA Taxonomy is endorsed as the UPI for this purpose and is currently awaiting a response from ESMA. The ISDA Taxonomy is already used in other jurisdictions where reporting is live and provides for a more complete and granular product description than that described in Article 4. 3. Industry participants would benefit from a consistent approach under EMIR.
Proposal	At reporting go-live market participants who have reporting obligations in other jurisdictions will leverage existing workflows and use the ISDA Taxonomy for product identification. Other market participants may adopt the approach set out in Article 4.2 or 4.3 as applicable and therefore this information may not match.
Next Steps	Industry requires ESMA endorsement of the ISDA Taxonomy as UPI for reporting under EMIR. Upon ESMA endorsement of a UPI, whether ISDA Taxonomy or otherwise, impacted market participants will work with authorities to implement any necessary changes as quickly and as efficiently as possible.

3	UTI Exchange
Challenge	**UTI Exchange for Non Electronically Matched Trades (where both parties are independently reporting)** The Common Data (Table 2) in the annex of the RTS on the minimum details of the data to be reported to trade repositories states that the Trade ID (Common Data Field 8) should be “A Unique Trade ID agreed at the European level, which is provided by the reporting counterparty. If there is no unique trade ID in place, a unique code should be generated and agreed with the other counterparty”. For the subset of transactions not matched on existing market infrastructure various existing processes will be leveraged to exchange UTI as there is currently no alternative industry infrastructure available to facilitate this exchange.
Proposal	In the absence of a single industry solution to exchange UTI for this trade population[1] it is anticipated that market participants may leverage a number of existing processes, such as confirmation or affirmation, to facilitate the exchange. Due to the nature of these processes it should be noted that the UTI may not always be available to, and therefore capable of being reported by, the non UTI generating party by T+1. In such instances the non UTI generating counterparty will report using an internal reference and update once the UTI is received. It should be clarified that, in such circumstances, the UTI should be known to one party to the transaction and therefore 50% of trade reports in this category will contain the correct UTI on the initial report. It should also be noted that other factors may reduce the instance of missing UTI, these include: delegated reporting to a counterparty and trades with counterparties that do not have an obligation to report.
Next Steps	Currently there are a number of initiatives under way to increase the level of confirmation execution on electronic platforms, roadmaps are being developed for both Equity and Commodity Derivatives asset classes and these are being shared with NCAs as part of the discussion around compliance with Confirmation Timeliness rules (Article 12 of the RTS on risk mitigation techniques for OTC derivatives contracts not cleared by a CCP). The result of these initiatives will cause the population of trades impacted by this issue to reduce over time. However, it should be noted that electronic confirmation is not suitable for all market participants, where this is the case UTI will continue to be exchanged via the paper confirmation.

[1] based on G15 metrics provided to NCAs for confirmation timeliness monitoring and discussion this population is current estimated at: Credit Derivatives – 1%; Interest Rate Derivatives – 8%; Equity Derivatives (excluding Negative Affirmation) – 53%; Commodity Derivatives – 23%; FX Derivatives – 25%.

4	UTI for Cleared Trades
Challenge	**UTI for Cleared Trades** - Article 2, Point 1 of the RTS on the minimum details of the data to be reported to trade repositories states that; "Where an existing contract is subsequently cleared by a CCP, clearing should be reported as a modification of the existing contract." Furthermore, ESMA has provided subsequent verbal guidance to ISDA that a single UTI should persist as the OTC transaction moves from a bilateral to cleared state in order to facilitate tracking from original bilateral to all subsequent related transactions in the chain post clearing.
Proposal	• OTC market practice is such that when a bilateral trade (the 'alpha') is cleared, two new and independent legal contracts (the 'beta' and the 'gamma' trades) are created between the CCP and the two original counterparties, replacing the original Alpha trade which is terminated (not modified). • A single UTI cannot be retained post clearing across the Alpha, Beta and Gamma trades, as they are separate legal contracts with independent lifecycles. • The solution provided for at reporting go-live will reflect the legal status of the trades such that when a trade moves to cleared two new UTI's will be created (one for each of the Beta and Gamma trades) and the Alpha trade will be terminated. Linkage will be retained by the new trades including a prior UTI reference of the Alpha trade in the report. • This solution was discussed in detail and validated with major European clearing houses. • It should also be noted that where a party to the original transaction clears via a Clearing Member such party will have a transaction facing the Clearing Member and this transaction will have a different UTI to either the Beta or the Gamma as the case may be. The Beta or Gamma transaction will be between the Clearing Member and the CCP.
Next Steps	Industry require clarification from ESMA that this approach satisfies the reporting requirements for cleared trades.

5	Master Agreement
Challenge	**Master Agreement type and Master Agreement version (Fields 24.25) –** Fields 24 and 25 of the annex to the RTS on the minimum details of the data to be reported to trade repositories require reporting counterparties to provide the Master Agreement Type and Master Agreement Version. Firms may be leveraging existing middleware to facilitate their reporting of transaction details. In many cases this middleware facilitates the confirmation process and as Master Agreement Version is not part of the confirmation process the middleware may not contain this specific information in the form required if at all. For similar reasons many firms do not have this information in a form that is readily passed to external infrastructure, including Trade Repositories. Therefore this information will need to be gathered, stored and validated by reporting parties and/or middleware in order to report to the Trade Repository. Furthermore, on occasions counterparties may trade under a bespoke Master Agreement that does not have a version.
Proposal	At reporting go-live, for trades where this information may not yet be available, this field will be submitted with a Blank value and then updated as soon as the data has been collated. In cases where there is no concept of a Master Agreement Version this field will be left blank.
Next Steps	Industry is working in conjunction with middleware providers to ensure this information is complete as soon as possible.

6	Complex and Bespoke
Challenge	**Complex / Bespoke Trades** – The degree of standardisation of booking models for complex and bespoke trades (typically listed as Exotic or Other in the ISDA Taxonomy) varies across firms and asset classes. The probability of having many-to-one bookings of trades and therefore UTIs between two trading parties is high.
Proposal	Industry will report trades according to their own booking methodology. This may result in some trades not matching on trade details and trade shape.
Next Steps	As noted in the ISDA OTC Taxonomies Rules of Operations published on the ISDA website on 20th December 2011 it is anticipated that the ISDA Taxonomy will evolve over time as products are created or standardised. Consistent with this ISDA and the industry are actively progressing the degree of standardisation across different asset classes through various initiatives. Most notable in this respect is the work to increase levels of legal standardisation and facilitate more standard electronic representation of products. The progress of these initiatives will assist industry to comply with a number of the challenges to reporting of non standardised products, namely confirmation timeliness and consistent representation for reporting purposes.

7	Notional Amount
Challenge	**Notional Amount (Common Data Field #14)** - The RTS on the minimum details of the data to be reported to trade repositories indicates in field 14 that the notional amount field should represent the "original value of the contract". This suggests that for any report for a given trade the value in this field will remain unchanged irrespective of the current notional of the transaction. The impact of this is that any analysis of the market based on Notional will likely be incorrect as trades are regularly terminated or novated in part or increased. Furthermore, there is no other field available to reflect the current notional.
Proposal	Following conversations with some NCAs Industry believes that the intention is for field 14 to reflect the current notional value for the trade and therefore will submit the current notional value in this field. This notional will reflect updates to the trade resulting from lifecycle events, i.e. Partial Terminations.
Next Steps	Industry believe that this approach is consistent with the intention of the rules but would appreciate further confirmation from NCAs to ensure consistent implementation.

8	Identification of Counterparties
Challenge	**Identification of Counterparties –** Article 3 of the ITS with regard to the format and frequency of trade reports to trade repositories indicates that counterparties and other entities should be identified by a legal entity identifier, in the absence of which an interim entity identifier, failing which a BIC in accordance with ISO 9362 where available. The RTS on the minimum details of the data to be reported to trade repositories further indicates for fields where entity identification is required that in the case of an individual, a client code shall be used. In the Questions and Answers on Implementation of the Regulation No 648/2012 on OTC Derivatives, central counterparties and trade repositories (EMIR) TR Answer 10(b)notes that a pre-LEI issued by any of the endorsed pre-LOUs (Local Operating Units) of the Global Legal Entity Identifier System should be used for reporting purposes under EMIR. We note that in certain circumstances at the time of reporting the reporting party may not have an interim LEI available for populating the Counterparty ID or Beneficiary ID of the trade. Reasons for this include: i. The Counterparty is a Non-EU Counterparty ii. The Counterparty is required to obtain an LEI but has not yet done so.
Proposal	Following conversations with some NCAs the industry understands it is the responsibility of each party transacting in financial markets to obtain their own LEI, indeed it is one of the requirements of the conditions set out by the LEI ROC (Self –Registration) in order for LEIs (and Pre-LEIs) to be mutually recognised by global regulators. ISDA and its members will continue to encourage market participants to obtain an LEI in advance of EMIR reporting go-live, however, we anticipate there will still be a number of instances whereby an LEI is not available to the reporting party. Therefore, firms have implemented reporting solutions that allow for an interim internal identifier to be used as a transition to LEI when their counterparty has not yet obtained a LEI.
Next Steps	It is anticipated that the number of counterparties that do not have an LEI will reduce overtime as the GLEIS is established and embedded in global financial markets. The volume of trades impacted by this issue should reduce accordingly. Industry would also be keen to discuss ways in which the authorities can increase the uptake of LEIs.

9	Non Electronically Confirmed / Executed Trades - Common Data
Challenge	**Non Electronically Confirmed/Executed Trades - Common Data Field Queries** - Not all of the data attributes in the common data are matched in the market, for example: > Execution Time (Common Data Field #19) – For voice executed transactions this information is manually entered at point of trade; while the values will be similar they are unlikely to match exactly. For example, the date and hour will match, however the minutes may not. > Confirmation Time (Common Data Field #26) – For transactions not confirmed electronically (e.g. on paper), the confirmation time will differ by party depending on when the confirmation is drafted and/or counter-signed. This is also impacted by back office processing occurring across multiple and differing regions.
Proposal	The reporting party will send the date and time as recorded in their internal risk management and/or tracking infrastructure. These fields will not match exactly for non-electronically confirmed[1] trades. The degree to which the timestamp differs between the 2 reporting parties will vary based on the parties process for capturing confirmation execution information within their infrastructure. Similarly these fields with not match for non-electronically executed trades although it expected that the difference in time will be marginal.
Next Steps	As more trades are electronically confirmed / executed there will be an increased level of match for these fields. Currently there are a number of initiatives underway to increase the level of confirmation execution on electronic platforms, roadmaps are being developed for both Equity and Commodity Derivatives asset classes while a broader roadmap for extension of FpML is being developed through the ISDA FpML working group. For electronic execution the industry continues to work with regulators globally to adopt new rules around execution venues, with the introduction of SEFs in the US and, in time, OTFs under MIFIDII/MIFIR in Europe. Each of these will facilitate the increased availability and use of electronic execution across all asset classes. However, it should be noted that electronic processing, both execution and confirmation, is not suitable for all market participants or in all instances and therefore execution and confirmation timestamps will continue to differ for a proportion of trades.

[1] based on G15 metrics provided to NCAs for confirmation timeliness monitoring and discussion this population is current estimated at: Credit Derivatives – 1%; Interest Rate Derivatives – 8%; Equity Derivatives (excluding Negative Affirmation) – 53%; Commodity Derivatives – 23%; FX Derivatives – 25%.

10	Block Trades
Challenge	**Block Trades – Where traded and allocated as OTC, irrespective of whether subsequently cleared** Industry has received conflicting guidance from regulators as to whether block trades are required to be reported under EMIR; specifically in the case that subsequent allocations are received and reporting happens within T+1. In many cases block trades are not matched/confirmed between parties. Furthermore, as they are not yet allocated to specified beneficial owners it is not possible to populate certain counterparty data fields. As they are not matched, this population of block trades cannot be paired for reporting with a single UTI. It should be noted that the issue described herein is distinct from the situation where block trades are executed pursuant to the rules of a regulated market, in such instance the block trade is equivalent to and should be treated the same way as exchange traded derivatives.
Proposal	In the absence of a formal coordinated view, industry is likely to apply guidance from their relevant NCA therefore, there could be inconsistencies in the actual reporting of block trades. Where a market participant does report, it may not be possible to populate certain Counterparty Data fields accurately. In such instances the Reporting Party will populate the fields according to the best available information at the point of booking of the block. In certain cases this may result in a field being left blank. Once received, the allocations will supersede the block report which will be cancelled to avoid duplication . Examples of Counterparty Data fields that may not be populated correctly include, but are not limited to: • ID of the Other Counterparty (Counterparty Data Field #3) • Beneficiary ID (Counterparty Data Field #11) • Contract with Non-EEA Counterparty (Counterparty Data Field #14)
Next Steps	Industry require formal coordinated guidance from regulators regarding when a Block Trade needs to be reported. Upon such guidance, certain market participants may require time to develop and implement the necessary infrastructure in order to be compliant with the required state. Industry propose to work with NCAs at such time to agree an appropriate delivery timetable.

11	Confirmation Status
Challenge	**Confirmation Status** – Common Data field 27 of the RTS on the minimum details of the data to be reported to trade repositories indicates that the confirmation status of a transaction must be reported to a Trade Repository. It is currently unclear whether this confirmation status relates to the original confirmation and/or confirmations related to subsequent lifecycle events which may be unconfirmed when the original new trade has been confirmed. Furthermore, conversations with some NCAs have suggested that authorities plan to use this field to monitor confirmation timeliness but industry is concerned that the information required in the report is unsuitable for confirmation timeliness monitoring.
Proposal	A transaction will only be reported as confirmed when the latest confirmable event for that UTI is confirmed. In this respect, a confirmable event is (i) the initial confirmation and (ii) any subsequent event that changes the trade from its current state to a form that was not envisaged by the original confirmation.
Next Steps	Industry believe this approach is consistent with the rules but would appreciate further confirmation from NCAs to ensure consistent implementation.