

16 September 2022

Trading & Wholesale Conduct Policy  
Financial Conduct Authority  
12 Endeavour Square  
London E20 1JN

### **CP22/12: Improving Equity Secondary Markets**

The International Swaps and Derivatives Association, Inc. (**ISDA**)<sup>1</sup> welcomes the opportunity to respond to CP22/12: *Improving Equity Secondary Markets*. We set out below ISDA's responses to questions 19, 20, and 21 on the designated reporter regime. In responding to these questions, we endorse the responses submitted by UK Finance and AFME. For the record, the UK Finance response is replicated below.

The joint trade associations of UK Finance, ISDA and AFME all stress that this regime should be set at the asset class level. Should it be set at an entity level, some of our members would face the cost of building out their post trading reporting systems for those asset classes they do not regularly trade. We do not want this regime to impose any barriers to entry or costs in this way, nor should it disadvantage any one group of firms. We also wish to be clear that our feedback is predominantly from the broker-dealer (i.e., principal trading firms) side of the membership rather than being representative of the broader membership (e.g., buy-side firms).

Please let us know if you wish to discuss further.

Yours faithfully,

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#### <sup>1</sup> **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 990 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. Information about ISDA and its activities is available on the Association's website: [www.isda.org](http://www.isda.org). Follow us on Twitter, LinkedIn, Facebook and YouTube.

**Question 19 - Do you agree with our proposal to create a regime where firms will be able to opt in as designated reporters at an entity level? Please explain your answer.**

Our members agree with the proposal to create a regime where firms can opt in as designated reporters. This would be a very welcome change that would significantly improve the regime as it exists today.

Specifically, we agree with the FCA proposal to decouple post-trade reporting obligations from SI status and to introduce the concept of designated reporter status.

With regards to the reporting hierarchy, we agree with the FCA proposal that (i) if a designated reporter transacts with a non-designated reporter, the designated reporter reports, (ii) if two designated reporters transact, then the seller reports, and similarly (iii) if two non-designated reporters transact, then the seller reports.

We believe this model would bring clarity to the current post-trade reporting regime through:

- Enabling firms to simply verify the designated reporter status of their counterparty by checking the designated reporter database
- Aiding clients to identify quickly and clearly who will report on their behalf, thereby mitigating any uncertainty and increasing efficiency
- Removing the overly burdensome and complex relationship between post-trade reporting requirements and SI status

Opting-in at an asset class level

Whilst we welcome and support the proposals to implement a designated reporter regime that allows for the certainty and simplicity to report at an entity level, there are firms that, when trading instruments in respect of which they are not SIs, choose to only trade with counterparties who are themselves SIs. The SI then provides the relevant post-trade reports. Whilst firms may be SIs in selected asset classes for which they have the relevant post-trade reporting systems in place, creating a new designated reporter regime with opt in only at an entity level would require those firms to build, for the first time, post-trade reporting systems across all remaining asset classes. For this reason, the option to register as a designated reporter at an asset class level should also be made available. The regime should not disadvantage smaller firms at the expense of larger firms who operate across all asset classes.

Although we fully support the proposals for the new designated reporter regime, we consider that it could be improved by allowing the relevant election to be at asset class level. We believe that this would not add undue complexity but would strike the right balance between this welcome simplification of post-trade reporting, while not leaving smaller investment firms with a need to re-write their post-trade reporting systems.

To define the “asset classes” we recommend adopting the 13 top level designations set out in RTS 1 and RTS 2: -

- (a) Equity and Equity like
- (b) Bonds (all bond types except ETCs and ETNs)
- (c) Bonds (ETC and ETN bond types)
- (d) Equity derivatives
- (e) Interest rate derivatives
- (f) Credit derivatives
- (g) Structured finance products
- (h) Foreign exchange derivatives
- (i) Securitised derivatives
- (j) Commodity derivatives
- (k) C10 derivatives
- (l) Emission allowances
- (m) Emission allowance derivatives

Under the above proposed approach, some firms will opt in to be designated reporters for all 13 asset classes (i.e., at an entity level) while other firms may select a subset.

Ease of use – We recommend that for ease of use and data recovery, that, when the database returns the designated reporter status of a firm opted in for all asset classes, it should do so in a form or forms that ensure simplicity of consumption by any firm querying the database.

Definition – As currently drafted, the new definition of “designated reporter” appears to rely on the relevant entity acting as “buyer”. However, as indicated by the FCA in CP22/12, the relevant designated reporter will also be responsible for post-trade reporting trades undertaken as seller, provided that the relevant counterparty / buyer is also a designated reporter. We recommend amending the “designated reporter” definition in both UK RTS 1 and 2, e.g., by deleting the wording “where it is the buyer of a financial instrument either on own account or on behalf of clients”, or by referring the “buyer or seller” in this part of the definition.

Our members also consider that the definition of “designated reporter” in both UK RTS 1 and 2 would benefit from a clarification that UK branches of third-country firms can also opt in to being designated reporters for UK post-trade purposes. We note that the designated reporter proposal should not require UK branches of third-country firms to seek an LEI for that branch, instead they should be able to opt-in using their home / parent LEI.

**Question 20 - Do you agree that the FCA should maintain the register of designated reporters for firms to determine who reports OTC trades? Please explain your answer.**

We note that a register of designated reporters is central to an efficient and effective regime and that AFME agree that the FCA should run the database. We note that UK Finance do not have a position on who should operate and maintain the designated reporter database and have highlighted the merits of the existing industry-led reference data utility (RDU) solution that houses both UK and EU data in a machine-accessible format (rather than presenting information on a website).

Whether it be the FCA, or not, when determining who should operate and maintain the designated reporter database, we would ask the FCA to ensure that key objectives are met such as those set out below:

- Clear and easily- accessible data should be available to all market participants;
- Ensuring that the data to be machine accessible (for example via an application programming interface (API)) so that both applications can interact, and the data can be consumed by systems on a continuous basis (e.g., by systems operating in different time zones); and
- Careful consideration of operational issues, such as disconnecting from the existing industry led RDU database and reconnecting to a database (such as for example a database run by the FCA).

We also agree with the suggestion to keep historic records of when a particular firm was (and ceased to be) a designated reporter. It is helpful for market participants to confirm the relevant status of counterparties retrospectively.

**Question 21 - Do you agree with the proposed implementation timetable? If not, please explain your answer.**

We recommend an implementation period of 12 months. This is due to the operational challenges firms will need to navigate to implement changes to RTS 1, alongside retaining old RTS 1 flags, within RTS 22 transaction reports. Working through the difficulties of the divergence between EU and UK post-trade reporting regimes, will also add an additional layer of operational complexity.

We would also recommend that RTS 1 changes be aligned with the timing of the STO removal (to not have to reflect changes to RTS 1, e.g., Article 2 exemptions in systems, only to make another change once the STO ceases to apply altogether).