AIMA-EBF-ISDA response to EC consultation on the

unique product identifier for public transparency in OTC derivatives transactions

Final

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About AIMA

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$3 trillion in hedge fund and private credit assets.

AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry.

AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over US$1 trillion of private credit assets globally.

AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

About EBF

The European Banking Federation is the voice of the European banking sector, uniting 33 national banking associations in Europe that together represent some 3,500 banks – large and small, wholesale and retail, local and international – employing about 2,7 million people.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

Question 1. For reporting reference data of in-scope OTC derivatives for the purpose of public transparency which option do you prefer?

- **Option 1: mandating UPI plus additional identifying reference data**
- Option 2: mandating ISIN and requiring a change to the ISIN attributes to include the above-mentioned two additional product attributes 'Term of Contract' and 'Forward Starting Term'
- Don't know / no opinion / not applicable

The Alternative Investment Management Association (AIMA), European Banking Federation (EBF) and International Swaps and Derivatives Association (ISDA) (hereinafter known as 'the associations') support *a version of* Option 1, as the best way to identify OTC derivatives for transparency purposes. Our preferred approach would also remedy the problems caused for derivatives instrument identification caused by the daily ISIN roll (which results from the inclusion of the maturity field in the design of ISIN as implemented in Europe for OTC derivatives).

It is clear to the associations that if European regulators were building systems for derivatives instrument identification from scratch today, they would mandate use of the globally agreed standard for OTC derivatives product identification, the UPI (ISO 4914) as the unique product identifier for this purpose. It is also clear that reporting of the UPI (ISO 4914) – augmented by reporting of additional fields for optimal granularity for different MIFIR purposes – should, in principle, be the end state. Beyond this, care should be taken to limit or mitigate operational and financial challenges as progress is made towards this end state.

The associations believe that the EC consultation is clear in its intention that the reference data 'additional' to the UPI in this context would be reported in an amended version of MIFIR RTS 2.

The associations further believe that it is legally feasible for the eventual Delegated Act to require reporting of the UPI, as well as a number of additional fields in RTS 2, to ensure appropriate granularity in public transparency reporting. Indeed, this consultation has been launched by the EC to inform its drafting of a Delegated Act governing transparency requirements applying (in revised MIFIR Level 1) to pre-trade transparency for OTC derivatives, post-trade transparency for OTC derivatives and post-trade disclosure by investment firms for (among other asset classes) OTC derivatives.

The associations further note that the MIFIR Level 1 text (Recital 19) refers to the use of ISIN for public transparency as 'cumbersome and ineffective' for this purpose. That recital refers to the ISO 4914 as a potential solution, while acknowledging that ISO 4914 needs to be complemented by 'additional identifying data'.

The version of Option 1 that has received the most support within the signatory associations would entail reporting of the ISO 4914 (the globally agreed Unique Product Identifier) and a number of other fields *in MIFIR RTS 2* (i.e., in post-trade transparency / trade reporting, on a trade-by-trade basis, not in an instrument reference database / ESMA FIRDS). This version of Option 1 would not entail any amendment to ISO 4914.

Additional fields favoured for inclusion in RTS 2 in this version of Option 1[1] are:

- Effective date
- Termination date (also known as 'expiry date' (e.g., in the ISIN (ISO 6166) as designed) or 'maturity date')
- Clearing House LEI
- Spread (this is component of the price, where spread is part of the design of the product. If trades with a spread are covered by MIFIR transparency, 'Spread' should be included as a field. Otherwise, trades including a spread should be excluded from the regime to avoid misleading consumers of transparency data. A spread is rarely a component of fixed versus floating IRS/OIS products, however, meaning that for the vast majority of in scope trades this field will be zero (or blank)).
- Up-front payment (for CDS only – again, this is a component of the price)[2].

A key consideration in this approach is how the tenor of the OTC derivative instruments covered by MIFIR transparency requirements can most efficiently and effectively be communicated.

Ideally, the 'contract term' or 'tenor' could simply be reported to, and then reported by APAs.

Certainly, market participants wishing to consume transparency data are interested in (quickly) understanding the tenor of OTC derivatives instruments (among other trade attributes) in the course of their investment and risk management decision-making.

However, the associations understand that many market participants (in particular, market participants who would be likely to be Designated Publishing Entities under revised MIFIR, assuring compliance by their clients with reporting requirements) do not maintain a 'tenor' field in their booking systems (in the main because the term 'tenor' is not included in ISDA definitions and is not part of the legal contract). As such, support for the additional fields listed above (in particular effective date and termination date) is underpinned by the belief 1) that the tenor of contracts covered in MIFIR transparency requirements can easily be (and typically is) extrapolated by reference to the time stamp in transaction-level data, the 'termination date' (or 'expiry date' or 'maturity date') field and (in the event forward-starting swaps are eventually included in scope of the transparency regime), the 'effective date' field that should be included in RTS 2 and that 2) this approach would be less operationally disruptive (overall) for investment firms actually performing reporting requirements. The tenor would then be calculated by APAs for purpose of public dissemination. The optimal methodology of reports to and by APAs could be addressed through some combination of Level 2 legislation and/or legal agreements between APAs and reporting parties.

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[1] These additional fields are specified by the associations' members in view of the scope of MIFIR trade transparency as set out in final recently revised MIFIR Level 1 text. If the scope of MIFIR transparency were to expand or reduce drastically in the future, it may be appropriate to revisit these additional fields with a view to optimally identifying a drastically different product set.

[2] On 8 January 2024, ESMA published an update of its 'Manual on Post-Trade Transparency under MIFID II/MIFIR', including an update regarding CDS price reporting, where ESMA states that 'quoted spread' should be reported as price. The associations have not yet had an opportunity to discuss this update, but this may negate the need for publication of 'up-front payment' in RTS 2 in addition to the UPI, as (otherwise) supported by the associations on this submission. See [ESMA74-2134169708-6870 Manual on post-trade transparency (europa.eu)](#).

If the tenor has to be calculated by a significant number of market participants this would increase the likelihood of diverging practice in making these calculations of tenor (from the dates held), which could increase the likelihood or errors and potentially undermine the value of the data (although this is less of a concern if the scope of the transparency regime remains focused on benchmark swaps, and does not include forward-starting or other more complex contracts to calculate e.g. IMM swaps).

While the associations acknowledge that this approach may require some operational expenditure (for compliance purposes) for some APAs or (when selected) the Consolidated Tape Provider (if these actors don't currently have a tenor field in trade data they hold or disseminate), this would affect a smaller number of economic actors by comparison with a requirement for market participants to record tenor as a field.

This specific issue – how most effectively to ensure clarity for users of MIFIR transparency data regarding the tenor of instruments covered – is one that will benefit from further discussion between industry and regulators in the coming weeks and months.

While the associations' focus in the response to this question has been RTS 2, given its criticality to the transparency regime, we are also supportive of addition of ISO 4914 (UPI) as adata element within FIRDS, to be mandatory for all OTC derivatives products. This change would allow all regulatory regimes to have access to the UPI code directly. It would also facilitate a potential future mandate for use of the UPI as the basis for MIFIR transaction reporting, should such a step pass cost-benefit assessment.

The associations believe that MIFIR trade transparency, MIFIR transaction reporting and EMIR Refit reporting requirements would all have been better served if the ISIN had not been hardwired into the requirements as the OTC derivatives identifier under each piece of legislation at the outset:

- The ISIN is excessively granular. In particular, the maturity date field has both undermined identification of instruments (by requiring otherwise identical instruments to be identified under new ISINs) and generated unnecessarily large numbers of ISINs, creating otherwise avoidable 'noise' in the set of contracts covered by transparency requirements (over 117 million ISINs created since MIFIR went live in January 2018, as of November 2023, according to ANNA-DSB). This undermines the ability for would-be users of public trade reports to extract useful information from these reports.
- The associations believe it would have been easier for regulators to supervise market integrity and systemic risk if OTC derivative instrument identification had been designed more efficiently. For example, it would be easier to undertake time series analysis of a given instrument if only looking at a single identifying number (instead of having to look at successive ISINs, with expiry dates on successive days).
- Although the ANNA-DSB ISIN and UPI services are run on cost recovery basis, it would have been cheaper for users to be able to avail of a single identifier for all MIFIR and EMIR data-related purposes at the outset. The requirement for EU firms to have two contracts with ANNA-DSB for full access to both these identifiers (paying twice for the same data) is a burden not present in US or Asian markets, where only access to the UPI service would be required.

While, in principle, the associations believes that (in the medium-to-long term) OTC derivatives identification for MIFIR transparency *and* transaction reporting (and indeed EMIR reporting purposes) would be better served by use of the ISO 4914 (UPI)) as the single OTC derivatives product identifier, we believe that the European Commission should commission a thorough, independent cost-benefit assessment of such a step, to consider:

- Impacts if such a step is mandated, looking across FITRS, FIRDS and EMIR reporting and the relationships between data reported to and held in each system (i.e., what would/would not break?).
- Costs to industry and public authorities of effecting such a step, including of remediation of any 'breakages' as referred to in the first bullet above.
- A proportionate timeframe for phasing in such a step, if justified by cost-benefit assessment (considering the need for orderly transition to compliance and amortisation of costs over this timeframe by market participants and public authorities alike).

Such a cost-benefit analysis should consider transition costs against the current costs e.g., financial costs (direct and indirect) and costs caused by data quality issues.

Question 2. If you prefer option 1:

a) **Do you agree with the proposal to mandate additional identifying reference data alongside the UPI (ISO 4914), such as 'Term of Contract' and 'Forward Term of Contract' for interest rate derivatives?**
   - **<u>Yes</u>**
   - No
   - Don't know / no opinion / not applicable

Please explain your reasoning:

The associations believe that public reporting of OTC derivatives under MIFIR *would* be optimally served by use of the ISO 4914 (the UPI), complemented by reporting of a number of other fields, in MIFIR RTS 2.

However, the associations do not believe that these extra fields should include 'term of contract' or 'forward term of contract.'

While market participants wishing to consume transparency data are interested in (quickly) understanding the tenor of OTC derivatives instruments (among other trade attributes) in the course of their investment and risk management decision-making, mandating reporting of 'term' or 'tenor' by market participants in RTS 2 may not be the most efficient way of delivering this transparency.

The version of Option 1 that has received the most support within the associations would entail reporting of the ISO 4914 (the globally agreed Unique Product Identifier) and a number of other fields *in MIFIR RTS 2* (i.e., in post-trade transparency / trade reporting, on a trade-by-trade basis, not in an instrument reference database / ESMA FIRDS). This version of Option 1 would not entail any amendment to ISO 4914.

Additional fields favoured for inclusion in RTS 2 in this version of Option 1 are:

- Effective date
- Termination date (also known as 'expiry date' (e.g., in the ISIN design) or 'maturity date')
- Clearing House LEI

- Spread (this is component of the price, where spread is part of the design of the product. If trades with a spread are covered by MIFIR transparency, 'Spread' should be included as a field. Otherwise, trades including a spread should be excluded from the regime to avoid misleading consumers of transparency data. A spread is rarely a component of fixed versus floating IRS/OIS products, however, meaning that for the vast majority of in scope trades this field will be zero (or blank)).
- Up-front payment (for CDS only – again, this is a component of the price)[3].

A key consideration in this approach is how the tenor of the OTC derivative instruments covered by MIFIR transparency requirements can most efficiently and effectively be communicated to users of transparency data.

Ideally, the 'contract term' or 'tenor' could simply be reported to, and then reported by, APAs.

However, the associations understand that many market participants (in particular, market participants who would be likely to be Designated Publishing Entities under revised MIFIR, assuring compliance by their clients with reporting requirements) do not maintain a 'tenor' field in their booking systems (in the main because the term 'tenor' is not included in ISDA definitions and is not part of the legal contract). As such, support for the additional fields listed above (in particular effective date and termination date) is underpinned by the belief 1) that the tenor of contracts covered in MIFIR transparency requirements can easily be (and typically is) extrapolated by reference to the time stamp in transaction-level data, the 'termination date' (or 'expiry date' or 'maturity date') field and (in the event forward-starting swaps are eventually included in scope of the transparency regime), the 'effective date' field that should be included in RTS 2 and that 2) this approach would be less operationally disruptive (overall) for investment firms actually performing reporting requirements. The tenor would then be calculated by APAs for purpose of public dissemination. The optimal methodology of reports to and by APAs could be addressed through some combination of Level 2 legislation and/or legal agreements between APAs reporting parties.

If the tenor has to be calculated by a significant number of market participants this would increase the likelihood of diverging practice in making these calculations of the tenor (from the dates held), which could increase the likelihood or errors and potentially undermine the value of the data (although this is less of a concern while the scope of the transparency regime remains focused on benchmark swaps, and does not include forward-starting or other more complex contracts to calculate e.g. IMM swaps).

While the associations acknowledge that this approach may require some operational expenditure (for compliance purposes) for some APAs or (when selected) the Consolidated Tape Provider (if these actors don't currently have a tenor field in trade data they hold or disseminate), this would affect a smaller number of economic actors by comparison with a requirement for market participants to record tenor as a field.

This specific issue – how most effectively to ensure clarity for users of MIFIR transparency data regarding the tenor of instruments covered – is one that will benefit from further discussion between industry and regulators in the coming weeks and months.

b) Do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the UPI plus certain additional identifying reference data, instead of only reporting a unique product identifier?

[3] See footnote 2

- **<u>Yes</u>**
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

While there would be some costs associated with implementation of UPI, complemented (in MIFIR RTS 2) with additional fields, reportable in RTS 2 (for transparency purposes), these costs should not be prohibitive, assuming sufficient implementation time would be permitted. The ISO 4914 is already being applied in EMIR Refit (with OTC derivatives to be reported using the UPI where no ISIN is yet available for that instrument). Some of the necessary market infrastructure will therefore already be in place at firm and market level.

Independent cost-benefit assessment should be undertaken to confirm whether UPI (ISO 4914) should be mandated as the basis for MIFIR *transaction reporting* (and, potentially, EMIR reporting), and the appropriate timetable for such a transition if so.

Although the UPI was developed in CPMI-IOSCO with systemic risk purposes primarily in mind, it is now being used under US rules for both public and regulatory reporting. ISDA has been making the case in the UK context that it would be more efficient for UK trade transparency rules to mandate UPI instead of ISIN (which was 'onshored' as the UK MIFIR OTC derivative identifier after the UK left the EU) for the reasons cited above and the FCA has publicly acknowledged the benefits of UPI as a potential identifier for OTC derivatives. The FCA is currently consulting on this issue (among others) in its consultation paper on 'Improving transparency for bond and derivatives markets', published 20 December. Although the FCA proposes to introduce the UPI for transparency reporting purposes for OTC derivatives, as a 'more effective method of identifying' them, the FCA proposes to retain ISIN, for purpose of 'backward compatibility' regarding OTC derivatives, although it says that it is 'open to the possibility of phasing them out over time'.

As such, we believe it would make more sense – particularly from the point of view of firms operating in multiple global markets or considering entering the EU market - for the EC to mandate use of UPI, complemented by reporting of additional fields, for transparency purposes. If Option 2 was preferred by the European Commission, we are concerned at potential downsides to this choice, including further cost, complexity, and uncertainty.

As explained in our response to Questions 1 and 2a), we believe it may be more effective (for data quality) and (overall) cheaper to focus on inclusion of 'effective date' and 'termination date' as RTS 2 fields, while maintaining focus on the need for investors looking to use transparency data to be able to easily see the tenor of OTC derivative instruments covered.

If this consultation results in a decision in favour of option 2, it will hardwire another 'Europe-only' version of ISIN into MIFIR. Although the ANNA-DSB ISIN and UPI services are run on cost recovery basis, it would be cheaper to avail of a single identifier for all MIFIR and EMIR data-related purposes. The requirement for EU firms to have two contracts with ANNA-DSB for full access to both these identifiers (paying twice for the same data) is a burden not present in US or Asian markets, where only access to the UPI service would be required. It is possible to view the requirement to use ISIN (whether existing ISIN or ISIN as redesigned under Option 2) as a material impediment to potential new entrants to the European market, who solely use UPI to identify OTC derivatives in other non-European markets.

Choosing UPI, complemented by other fields in RTS 2 for transparency purposes, would at least preserve the possibility of moving to a single identifier for different MIFIR requirements end state, rather than perpetuating a version of the existing, inefficient status quo.

We are also not certain what the consequences of a decision to focus on an ISIN redesign would be for the useability and complexity of the new and legacy ISIN data, in aggregate. What would happen to existing ISINs? For example, would existing ISINs be redundant for new trades, but maintained in the legacy trade population? Would there be a different version of ISIN for MIFIR transparency to the version of ISIN used for transaction reporting purposes?

Question 3. If you prefer option 2:

a) **Do you agree that modifying the ISIN by replacing the 'Expiry Date' attribute with the 'Forward Term of Contract' for OTC derivative types which have daily ISINs (e.g., interest rate derivatives) addresses the problems identified with the use of the ISIN for the purposes of public transparency reporting?**
   - Yes
   - **No**
   - Don't know / no opinion / not applicable

Please explain your reasoning:

The associations do not agree with Option 2.

If Option 2 was preferred by the European Commission, we are concerned at potential downsides to this choice, including further cost, complexity, and uncertainty. See answer to question 2b.

b) **Do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the modified ISIN, instead of the existing ISIN?**
   - **Yes**
   - No
   - Don't know / no opinion / not applicable

Please explain your reasoning:

The associations do not agree with Option 2. See our answer to Question 2b) for our views regarding challenges and costs.

c) **Please indicate for which specific types of interest rate swaps the problem of daily ISIN arises that require this remedy:**

The daily ISIN issue is a problem for all interest rate swaps covered by the EU clearing obligation (and therefore in-scope of MIFIR post-trade transparency) but the problem is most significant in fixed-tofloat Euro-denominated swaps as these comprise the largest portion of interest rate swaps covered by the EU clearing obligation.

d) **Are there other types of OTC derivatives, apart from the interest rate swaps identified in question 3 (b) and (c), for which the integration of the attribute 'Expiry Date' results in unnecessary daily ISINs and which require modification of their ISIN definition?**

- **Yes**
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

If we only consider the scope of OTC derivatives subject to post-trade transparency requirements in the new MIFIR when responding to this question, it is clear that interest rate swaps are most effected. This is less of an issue for index CDS covered by the clearing obligation because of the standardisation of index CDS contracts relating to maturity date, with index CDS contracts maturity focusing on a specific date every quarter.

If we consider the broader scope of OTC derivatives covered by the current MIFIR post-trade transparency regime, this is also an issue for equity derivatives (56 million ISINs (over half of all ISINs issued since MIFIR went live in 2018 as of November 2023, according to ANNA-DSB, despite representing just over 1% of notional amount outstanding and around 0.5% of gross market value of the overall OTC derivatives market). The large numbers of ISINs issued herein are partly due to the maturity date issue but also due to the heterogenous nature of equity derivatives. The maturity date issue has also contributed to generating large numbers of ISINs (29 million – around 25% of all ISINs generated since MIFIR went live as of November 2023) in FX derivatives.

Please see https://www.anna-dsb.com/ISIN/.

Question 4. Are there any other additional identifying reference data that are neither part of the UPI or the ISIN attributes that appear relevant to enhance the above stated aims of price transparency and price formation for in-scope OTC derivatives – interest rate derivatives and/or credit default swaps?

- **Yes**
- No
- Don't know / no opinion / not applicable

The associations believe that optimal public transparency for the set of OTC derivatives covered in scope of the Level 1 MIFIR text as recently revised, and as expect to be published in the Official Journal in Spring 2024, would be served by reporting a number of additional fields in addition to the ISO 4914 Unique Product Identifier, in MIFIR RTS 2. The table below lists these fields (see left hand column) and explains their purpose (see right hand column):

Details	Financial Instrument	Description/Details to be published	Comments

Effective Date	For OTC derivatives	Effective date of the contract	The combination of Effective Date, Termination Date and the existing "Trading Date and Time" field will allow the tenor of the contract to be derived if forward-starting swaps are ever scoped in to the MIFIR transparency regime.
Termination Date	For OTC derivatives	Termination date of the contract	The combination of Termination Date and the existing "Trading Date and Time" field will allow the tenor of the contract to be derived for all derivatives contracts in-scope of trade transparency on day 1 of effectiveness of the regime. Also known as 'expiry date' or 'maturity date.'
Clearing House (CCP) LEI	For OTC derivatives	Valid LEI for a registered CCP	This ISO standard identifier should be added to provide consumers of the data with visibility as to the CCP at which the trade was cleared. Identical instruments cleared at different CCPs can have divergent prices, so identification of the CCP will improve the quality and useability of transparency data.
Spread	For OTC derivatives	The spread on the floating leg	The spread for certain IRS trades containing a floating leg is considered a price-impacting field and therefore warrants inclusion. As this is only relevant for a subset of IRS, a value of 0 should be allowed where no spread exists. If this field is not included, then

			trades with a spread should be excluded from the transparency regime to avoid misleading consumers of the data. A spread is rarely a component of fixed versus floating IRS/OIS products.
Up-front payment[4]	For CDS Instruments	The up-front payment exchanged as part of the CDS	Only relevant in the context of CDS, the up-front payment is considered a price-impacting field and therefore warrants inclusion.

Further details can be found in the ISDA paper (of November 2023) 'Unique Product Identifier (UPI) as a replacement for ISIN for the purpose of instrument identification in UK MIFIR / MIFIR Transparency' at https://www.isda.org/a/9uqgE/ISDA-Paper-on-Unique-Product-Identifiers.pdf.

[4] See footnote 2