



May 5, 2017

Financial Stability Board (FSB)
Via e-mail: fsb@fsb.org

Re: Proposed Governance Arrangements for the Unique Transaction Identifier (UTI) – Consultation Document

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Global FX Division (“GFXD”) of the Global Financial Markets Association (“GFMA”) (the “Associations”) appreciate the opportunity to provide the Financial Stability Board (“FSB”) with comments in response to the Consultation Document referenced above (“Consultation Document”).

The Associations and their members are strong proponents of global data harmonisation and the coordinated implementation of harmonised transaction reporting data elements, including the Unique Transaction Identifier (“UTI”). We work with market participants and market infrastructure providers to promote global standards and help to improve the data quality of transaction reporting to facilitate data aggregation. We support the FSB and FSB Working Group on UTI and UPI Governance (“GUUG”) in the efforts to form the appropriate Governance Framework for the UTI, and support the initiatives undertaken by the Committee on Payments and Market Infrastructures (“CPMI”) and the Board of the International Organization of Securities Commissions (“IOSCO”) working group for the harmonisation of key OTC derivatives data elements (“CPMI-IOSCO Harmonisation Group”).

Preface

Overview of Proposals on Governance Options:

The Consultation Document proposes governance alternatives for three areas (“Area 1”, “Area 2”, and “Area 3”). An overview of our proposals are outlined in this preface. Further details can be found in the responses to individual questions.

References to Area 1-3 functions use the identifiers listed on pages 7-8 of the FSB Consultation Document.

Area 1

For governance Area 1, we support using an International Standardisation Body such as the International Organization for Standardization (“ISO”) to specify the elements of the UTI, such as allowable characters, length, code and format. For the sake of clarity, the ISO governance would be limited to specification of the code structure and format, while other aspects of the UTI, such as changes to the UTI workflows and the process for changes, the remit of Area 2, would not be governed by ISO, as further described below.

Area 2

We propose that a centralized governing body, comprised of representatives from FSB, CPMI, IOSCO, industry participants, relevant derivatives trade associations, and regulatory Authorities from jurisdictions impacted by the UTI guidance, be established for Area 2 and function F3.3¹ of Area 3. The UTI implementation and maintenance body (“UTI IMB” for ease of reference for purposes of the Consultation Document response) should have balanced representation to help ensure that UTI Technical Guidance clarifications and updated solutions are formed in good faith and are in the public interest. We propose that the FSB representatives on the UTI IMB also sit on the governing body for Area 3, which is related to global coordination, to ensure harmonised implementation of the UTI Technical Guidance, and any clarifications, across jurisdictions.

We do not believe that individual Authorities, although stakeholders, are in the best position to govern over Area 2. The need for the FSB GUUG and the CPMI-IOSCO Harmonisation Group to work on standardization of the UTI and other key data elements after jurisdictions have already implemented their reporting regimes demonstrates the risk of relying on multiple, distinct individual actors. Placing governance on individual Authorities for either Area 2 or Area 3 will likely end in a similar divergence of UTI clarifications/guidance given to industry participants, resulting in UTIs which will not be unique, and UTI issuance and dissemination which is not globally standardized.

¹ References to functions use identifiers list on pages 7-8 of the Consultation Document.

See “Area 3” below for supplementary information, and responses to Q14-17 for further details for Area 2 proposal.

Area 3

We urge a central international body, such as the FSB (or a central body designated by the FSB) to be responsible for functions F.3.1, F.3.2 and F.3.4² of governance Area 3, due to the importance of coordinating transition timelines, creating a harmonised implementation roadmap, and obtaining identical buy-in of the UTI Technical Guidance on the part of Standard-Setting Bodies, International Standardisation Bodies, and multi-jurisdictional regulatory Authorities. The proposal for centralized governance would apply to both initial UTI guidance and any clarifying changes or future updates.

We recommend that the monitoring of implementation by the individual regulatory Authorities also be performed by the FSB, or a central body designated by the FSB, including identification of issues which hinder harmonised implementation plans, as set out by the FSB. Multi-jurisdictional progress could be made transparent by publication of a periodic report with each jurisdiction’s status of implementation against the roadmap set out by the FSB. During initial implementation of the UTI technical guidance, periodic reports could be published on a monthly basis and less frequently subsequent to the initial implementation activity.

We strongly recommend that the same representatives from the FSB (or central body designated by the FSB) governing the noted Area 3 functions overlap in representation on the UTI IMB governing body for Area 2 to ensure any technical clarifications and guidance, including workflow issue resolutions (Area 2), are aligned with the FSB’s (or central body designated by the FSB) global coordination with Authorities, to ensure efficient and harmonised implementation (Area 3) of technical changes.

Implementation – Transition and Timing:

The CPMI-IOSCO UTI Technical Guidance (“UTI Technical Guidance”) executive summary conveys that the UTI Technical Guidance “does not address the implementation or ongoing maintenance of this Technical Guidance or the UTI data standard. These issues are expected to be addressed by the FSB and be the subject of further consultation.” However, the Consultation Document does not address implementation timing or broad considerations on transition. Questions 18-20 suggest that implementation will be addressed at a later point.

Implementation is such a crucial and integral part of the successful adoption of the UTI Technical Guidance that we propose discussions on implementation transition and timing occur simultaneously with the governance discussion, coordinated by the FSB, or a central body designated by the FSB. Market participants will not only need the time to (re)build and test the global UTI processes and arrangements, but institutions, regardless of where they sit in the market infrastructure, will also need to obtain resource and budget approvals, which require a

² References to functions use identifiers list on pages 7-8 of the Consultation Document.

clear understanding of the coordinated plan and transition timeline. To address global UTI implementation once governance has been determined will negatively impact reporting parties who have an obligation to begin the UTI generation, communication and matching for reporting, currently scheduled for 1 October 2017, applicable for the jurisdictions of Australia, Singapore, and Hong Kong.

We recognize that the CPMI-IOSCO Harmonisation Group UTI Technical Guidance is intended for regulatory Authorities, and that each regulator may need to take different steps to amend their rules to adopt the recommendations. It is critical that all regulators implement and translate the guidance into their rules in a consistent way, and with a synchronized timeline. An inconsistent approach to global adoption of the UTI Technical Guidance would be inefficient, challenging and would indeed undermine the original rationale of harmonisation, and therefore, the availability of a globally consistent UTI for each derivative transaction. Fragmented adoption would impede and delay the ability of global regulators to aggregate or analyze data using the UTI. Therefore, we propose that a central body orchestrate the implementation discussions, including roadmap and timelines, with the industry, including multi-jurisdictional regulatory Authorities.

Industry participants are proponents in theory of a “big bang” approach to implementation, however, we propose that the FSB issue a recommendation for a specific period of transition, for instance 18-24 months, during which time the industry including regulatory Authorities can transition. Discussions on the coordinated transition to the new UTI, if led and conducted by a central global body such as the FSB, or a central body designated by the FSB, would help ensure harmonized and successful adoption of the new global UTI. We would welcome the opportunity to have a more detailed follow-up with the FSB, or central body designated by the FSB, to discuss proposed transition timelines and implementation roadmap.

In summary, it is crucial that the FSB call a discussion of the details of the transition and timeline at the global level as soon as possible.

Consultation Document Responses

Although the FSB Working Group on UTI and UPI Governance (“GUUG”) is responsible for preparing recommendations for the both the UTI and the UPI, the Consultation Document conveys that the current consultation applies only for the UTI Governance Arrangements. As such, responses apply only to the governance and implementation of the UTI.

I. Key criteria for the UTI Governance Arrangements

Q1. Do you consider any further criteria should be included in the list of Key criteria for the UTI Governance Arrangements?

In general, we agree with the key criteria to consider in determining the most appropriate UTI Governance Arrangements, however in some cases further specificity should be outlined. See response to Question 3.

Q2. Are there any criteria in the list that you do not consider relevant to UTI Governance Arrangements?

We do not currently have comments on this question.

Q3. Are there ways in which any of the key criteria should be modified?

We believe that providing further detail, especially for certain criteria, would benefit stakeholders in providing transparency. Examples include:

Change only as needed

We suggest the FSB define a voting or quorum requirement which would enable the final governance body such as the proposed UTI IMB to determine “need-only” objectively.

Open Access

We propose the following modification of the text to: “Access to and use of the UTI and the UTI Data Standard should be unrestricted and free of charge for (i) Authorities, (ii) TRs acting in their capacity as TRs, and (iii) all other stakeholders and those in the lifecycle of a derivative contract.”

Q4. Do you have any suggestions on how the criteria should be applied?

Governance criteria should be made transparent through publication by the FSB, CPMI, IOSCO, regulatory Authorities, and any governance body designated. We propose that a process be established for market participants to be able to provide feedback regarding decisions around governance of the UTI if they feel any of the key criteria are not being met.

II. UTI areas of governance and governance functions

Q5. Can you suggest any refinements or additions to the articulated areas of governance?

FSB proposes that the governing body in charge of governance Area 2 be responsible for processing clarifications, guidance and changes to the Technical Guidance, including UTI generation workflow issues (function F.2.2³), while a potentially different governing body of Area 3 be responsible for implementation aspects, including timing (function F.3.1).

Selection of one governance body for governance Area 2 and a different one for governance Area 3 may cause avoidable inefficiencies in the effective and harmonised implementation of UTI workflow issue resolutions and clarifications. We therefore propose that clarifications, guidance and changes to the UTI Technical Guidance are coordinated with implementation, including timing, by ensuring that the same FSB representatives sit within the UTI IMB for governance Area 2⁴ and also the FSB governing body designated for Area 3⁵.

The need for this overlap in governance between Area 2 and 3 becomes evident when considering the example request for clarifications in Q16. The industry requests guidance regarding the UTI generating party workflow issues arising from the current Technical Guidance.

Q6. Can you suggest any other functions that should be included in the above list?

We do not currently have comments on this question.

Q7. Are there functions in the list which are not relevant for the UTI in your view?

We do not currently have any comment on this question.

³ References to functions use identifiers list on pages 7-8 of the Consultation Document.

⁴ And including function F3.3 of Area 3, in line with the Response proposal.

⁵ For functions F.3.1, F.3.2 and F.3.4, in line with the Response proposal.

III. Proposed allocation of UTI governance functions within the three areas of governance based on the key criteria

Proposed Governance Arrangements for AREA 1, overseeing the UTI Data Standard, limited to the operation of the code structure and format

We support using an International Standardisation Body to specify the format and construct of the UTI, such as allowable characters, length, code and format.

We recognize the requirements by most regulators for the use of the LEI to identify the parties to, or involved in, a reported transaction. However, we acknowledge there may be UTI generating parties who currently do not have a Legal Entity Identifier (“LEI”), which will be used as the UTI prefix, and therefore suggest that international bodies which promote standards and make recommendations to strengthen global financial system practices, such as the FSB, CPMI, and IOSCO, address these cases, through a joint recommendation that all legal entities involved in a financial transaction obtain an LEI. Doing so would reinforce the effort of global regulators to require party identification using the LEI, but would also help support the new global UTI standard.

Responses to Q8-13 to be considered in conjunction with one another.

Q8. Do you agree with this analysis? If not, how would you amend it?

We broadly agree with FSB’s evaluation that an International Standardisation Body is in an advantageous position to oversee the UTI Data Standard, limited to the specification of the UTI code structure and format. Other aspects of the UTI, such as changes to the UTI workflows and the process for changes, would not be governed by such an International Standardisation Body, but would fall under the remit of Area 2.

Q9. Do you see any other disadvantages to seeking UTI’s adoption as an International Data Standard?

In principle, we do not see any disadvantages in seeking adoption of the UTI format and construct as an International Data Standard, since such adoption would facilitate global acceptance.

Q10. Do you agree with this analysis? Or if not, how would you amend it or what alternatives would you suggest?

If the UTI Data Standard (structure and format) were to be adopted as an International Data Standard, we would support the International Organization for Standardization (“ISO”) as the appropriate International Standardisation Body. For the sake of clarity, we propose that the ISO governance would be limited to specification of the elements of the UTI structure,

such as allowable characters, length, code and format, while other aspects of the UTI, such as changes to the UTI workflows and the process for changes, would not be governed by ISO, but by the proposed UTI IMB, since these functions fall in governance Area 2.

Q11. If a decision were taken to adopt the UTI Data Standard as an International Data Standard, should the FSB seek to impose any conditions or limitations on ISO concerning the maintenance of the UTI Data Standard? If so, which?

Regardless of which International Standardisation Body is chosen, we urge the FSB to ensure that the right industry constituency is consulted in the data standards work and maintenance of the UTI Data Standard. UTI stakeholders include both regulators and market participants, among others, and therefore the governance option selected for the UTI Data Standard should allow for consultation with appropriate representation from a diverse set of industry stakeholders impacted. The need for market infrastructures and service providers to adopt the standard should also be taken into consideration in any data standard updates.

The ISO standard, although well established, has a long process to update standards, as well as a long period between updates to standards. A long process to update as well as a limited approach to input from a broader marketplace, through committee members, are significant concerns for many industry participants, considering ISO standards have a widespread impact. In instances where industry participants believe there is a need to update the UTI Data Standard, a process which allows participants to request that ISO review the UTI Data Standard would be valuable.

We would support increased flexibility of the ISO process to address these points, which would increase further the reliance on ISO as a standard setting body.

Q12. Can you identify any relevant lessons from the LEI governance or other standards in use in the financial community? Are there any lessons learned with respect to referral of a data standard to ISO for adoption?

Although the UTI has a notably more decentralized model of issuance than the LEI, there are lessons regarding the LEI implementation process and establishment of LEI governance that are worth highlighting, including:

- Efficiency: The ISO:17442⁶ standard was published shortly after the FSB announced⁷ the LEI's technical features, the proposed LEI oversight framework was released around the same time⁸, and the first LOU Prefix was assigned just 5 months later⁹.

⁶ International Organization for Standardization, ISO 17442:2012, <https://www.iso.org/standard/59771.html>

⁷ FSB, "Technical features of the LEI," http://www.fsb.org/wp-content/uploads/r_120307.pdf, (March 7, 2012).

⁸ Financial Stability Board, "A Global Legal Entity for Financial Markets," http://www.fsb.org/wp-content/uploads/r_120608.pdf, (June 8, 2012).

⁹ LEI ROC, "Allocation of Pre-LOU Prefixes for Pre-LEI Issuance," http://www.leiroc.org/publications/gls/lo_u_20130318.pdf, (20 January 2016).

- Transparency: Progress on the LEI framework was made public through ‘Progress Notes’ which were periodically posted by the FSB and LEI Regulatory Oversight Committee (“LEI ROC”), detailing the work being performed and next steps.
- Private/Public Cooperation: During implementation of the Global LEI System (“GLEIS”), private sector representatives were able to join the implementation effort via a public invitation issued by the FSB, and strong cooperation between the private sector and the global regulatory community was valued and relied upon. The private sector representatives are still consulted today, post-initial implementation. as part of the ongoing governance of the GLEIS, for Level 2 and ‘business as usual,’ through the LEI ROC’s use of consultations on new policies.

The efficiency and transparency provided during the formation of the LEI governance framework and cooperation with private sector in implementation plans gave clarity and certainty to market participants, which helped to promote industry adoption of the LEI. The continued involvement of the private sector in the Global LEI Foundation (“GLEIF”) Board and in the LEI ROC’s consultations on new policy helps promote continued adoption of the LEI and helps ensure the LEI system continues to be viable. Oversight by the central global body of the 70 regulators of the LEI ROC is also key to the LEI’s globally consistent approach and broad acceptance.

Q13. (i) Do you see any other advantages and disadvantages of seeking ISO’s assistance in this governance function? (ii) Should the assistance of ISO be sought from the outset or rather in a subsequent step, following implementation of the UTI?

If the UTI Data Standard is to be adopted as an ISO International Data Standard, we believe there are disadvantages to not seeking adoption at the outset. As expressed in the response to Q12, efficiency, transparency, and certainty were vital contributions to the successful and efficient adoption of the UTI.

Proposed Governance Arrangements for AREA 2, implementing the UTI Technical Guidance

For governance Area 2 of the UTI Governance Framework, the Consultation Document suggests that regulatory Authorities may be best positioned to govern each of the functions listed for Area 2. We reiterate that individual Authorities may not be in the best position to govern Area 2. The need for the FSB GUUG and the CPMI-IOSCO Harmonisation Group to work on standardization of the UTI and other key data elements after jurisdictions have already implemented their reporting regimes demonstrates the risk of relying on multiple, distinct, individual actors. Placing governance on individual Authorities will result in a similar divergence of UTI guidance given to industry participants, resulting in fragmentation of UTI issuance and dissemination.

A centralized global governing body would be more effective in ensuring that adoption and implementation of the UTI guidance is harmonised. We propose that a body, comprised of representatives from CPMI, IOSCO, FSB, regulatory Authorities, industry participants, and relevant derivatives trade associations, be established for governance Area 2, as well as function F3.3¹⁰ of Area 3. Jurisdictions which have regulatory requirements for transaction reporting should be part of this governing body. The UTI implementation and maintenance body (“UTI IMB” for ease of reference for purposes of the Consultation Document response) should strive to have balanced representation to help ensure that UTI Technical Guidance clarifications and any updates are formed in good faith and are in the public interest.

This UTI IMB would be responsible for governance of the functions listed in the Consultation Document for Area 2 and function F.3.3 of Area 3, and also for:

- Assessing that the initial implementation of the UTI and UTI-related processes from the Technical Guidance, as well as any future changes are being conformed with, by industry participants, in line with the UTI Technical Guidance.
- Steering industry clarification requests, issues, and queries through a resolution process which has been established by the UTI IMB.
- Creation and publication of a FAQ document which includes resulting clarifications and resolutions, for the benefit of all industry participants.

During initial implementation, the UTI IMB may require active involvement and frequent meetings, however, after initial implementation, the UTI IMB need only be called together on a periodic basis for maintenance purposes, or if clarification or issues related to the technical guidance are brought forward by industry participants.

¹⁰ References to functions use the identifiers listed by the FSB on pages 7-8 of the Consultation Document.

The proposed UTI IMB could benefit from the expertise of rotating co-chairs, however we propose that the same representatives from the FSB on the UTI IMB for Area 2¹¹ would also belong on the FSB or FSB designated central governing body for Area 3¹² to ensure that Area 2 processing of clarifications/guidance on workflow issues is synchronized with the Area 3 global coordination with Authorities, Standard-Setting Bodies, and International Standardisation Bodies to assist in efficient and harmonised implementation.

Q14. Do you agree with these analyses supporting the proposed allocation of functions to Authorities, A.2.1 through A.2.5 above?

A.2.1: Disseminating UTI Technical Guidance:

Although the Technical Guidance is issued for Authorities, and Authorities may need to publish related rule sets, we propose that a global body such as UTI IMB (see preface of the response) be responsible for the technical aspects of the UTI Technical Guidance, specifically governance Area 2 and all its functions, including A.2.1.

We reiterate that it is vital for the coordination on implementation (Area 3) to work hand-in-hand with Technical Guidance aspects (Area 2). This will help prevent delays in adoption and ensure that implementation is considered with respect to the technical aspects of the UTI.

A.2.2: Processing requests for information and providing clarification and guidance on workflow issues, reflecting changing needs of relevant stakeholders, including workflow issues such as who should generate a UTI, when the UTI should be generated.

We do not agree that clarification requests and issues related to UTI workflows, including UTI generating party workflows, should be the responsibility of individual Authorities. If the governance of this function were to use individual Authorities (“Option A”), different Authorities may provide different clarifications and resolutions so that stakeholders may subsequently follow differing UTI workflows.

A central governing body would more effectively be able to effect solutions that are determined, supported and disseminated in way that promotes standardized adoption, thereby helping to achieve CPMI, IOSCO and FSB’s goal for a globally harmonised approach to the UTI, including workflows.

Therefore we propose that the UTI IMB (a combination of Options A, B, and C) governs Area 2, including A.2.2. Issues and resulting resolutions would be addressed by the UTI IMB so that solutions are harmonised effectively and not jurisdiction specific. Resolutions could be collated into a FAQ document produced by the UTI IMB and published to help other industry participants who encounter the same issues or have the same questions.

An example which illustrates the need for clarifications and guidance at the global, rather

¹¹ And including A3.3 of Area 3, in line with the Response proposal.

¹² For A.3.1, F.3.2 and F.3.4, in line with the Response proposal.

than at the jurisdictional, level exists now from the UTI Technical Guidance. The industry requests clarification on workflows related to the UTI generation logic. Different interpretations of the generating party hierarchy will result in increased costs for the industry, reduce data quality, and hamper regulatory Authorities' abilities to meaningfully aggregate transaction data using the UTI.

Issues raised by the industry are outlined in specific steps, below:

Per UTI Technical Guidance			Requests
Step	Factor to consider	Responsibility for UTI generation	for clarification and resolution from industry stakeholders
1	Is a CCP a counterparty to this transaction?	If so, the CCP. Otherwise, see step 2.	<p>We generally support alignment of CCP's obligation to report and responsibility to act as UPI GP¹³ for trades covered by Step 1.</p> <p>(1) Step 1 involves a centralized counterparty clearing house (CCP). The industry understands Step 1 to therefore apply only to the "Beta" and "Gamma" trades and not to "Alpha" trades¹³.</p> <p>Clarification requested: Is this understanding accurate?</p> <p>(2) The industry requests that CCPs that have reporting obligations in a jurisdiction through exemptive order or no-action relief should also be obligated to generate a UTI under Step 1.</p> <p>(3) For either the Agency or Principal Clearing Model¹³, we support CCPs as UTI GP for the Beta and Gamma trades, since CCPs generally also have the reporting obligation for the Beta and Gamma.</p> <p>Clarification requested: The industry seeks the below clarifications for Step 1:</p> <p>(i) For Beta and Gamma trades cleared under the "Agency" Clearing model, the CCP would issue UTIs. A single UTI would be issued for the trade involving a</p>

¹³ UTI GP: UTI Generating Party

Alpha: the trade executed between two market participants and which is submitted to a CCP for clearing.

Beta and Gamma: the two trades resulting from clearing and to which the CCP is a party facing one market participant (from the Alpha) on one trade (Beta) and facing the other market participant (from the Alpha) on the other trade (Gamma).

Agency Clearing Model: Clearing model where the Clearing Member acts as agent on behalf of client (Client faces the CCP) .

Principal Clearing Model: Client faces the Clearing Member ("CM"), and the CM faces the CCP.

			<p>CM acting as Agent in a customer cleared trade (i.e. Client/CCP leg).</p> <p>For Beta and Gamma trades cleared under the "Principal" Clearing model, the CCP would generate a UTI for the trade between the CCP and CM. However, the CM would be UTI generator for the trade between the CM and Client. We request that this clarification be added to Step 1.</p> <p>Additionally, Step 1 applies to house cleared trades (CM/CCP i.e. a CM clearing a trade for itself) under the Principal Clearing Model).</p>
2	Is a counterparty to this transaction a clearing member of a CCP, and if so is that clearing member acting in its clearing member capacity for this transaction?	If so, the clearing member. Otherwise, see step 3.	<p>The industry understands Step 2 to apply only to customer cleared trades under the Principal Clearing Model. For the CM/Client leg, the CM will be UTI GP.</p> <p>Step 2 does not apply to the CCP/CM leg of the Principal model, as this is addressed in Step 1.</p> <p>Step 2 does not apply to trades cleared via the Agency model.</p> <p>In the case where there are 2 CMs as counterparties to the trade, acting in their own capacity, a tie-breaker logic shall apply.</p> <p>Clarification requested: Is this understanding accurate?</p>
3	Was the transaction executed on a trading platform?	If so, the trading platform. Otherwise, see step 4.	<p>We generally support UTI generation by trading platforms, however the industry requests the clarifications below:</p> <p>Clarification requested:</p> <p>(1) Since the definition of "platform/trading platform" varies, proposed UTI IMB to provide a definition of what constitutes a platform, including whether it includes SEFs, MTFs.</p> <p>(2) If a platform (as defined for previous point) is regulated or recognized only in a particular jurisdiction, proposed UTI IMB to provide guidance that the platform generate a UTI to be used for reporting in all jurisdictions where a transaction needs to be reported.</p> <p>(3) Add language that platforms should be required to generate and communicate the UTI immediately</p>

			upon execution, in case a party to the trade requires it for reporting. If not, this could create issues for a party that has an obligation to report platform-executed trades upon execution, or within a relatively short timeframe.
4	Is the transaction cross-jurisdictional (ie are the counterparties to the transaction subject to more than one jurisdiction's reporting rules)?	If so, see step 10. Otherwise, see step 5.	Issues: A party will not be aware of which jurisdiction's reporting rules apply to their counterparty in the transaction. The complexity of various jurisdictional reporting requirements, including those where the use of a trader and/or salesperson makes a trade reportable in that jurisdiction ("nexus reporting"), mean that on a trade-by-trade basis it is almost impossible to reliably answer this question with "yes" or "no".
5	Do both counterparties have reporting obligations?	If so, see step 6. Otherwise, see step 7.	Clarification requested: We understand this to mean "Do both counterparties have reporting obligations in a jurisdiction that requires a UTI?" Is this understanding correct? Issues: A party to the trade is not able to fully and accurately know its counterparty's reporting obligations. This would be complex to build and impractical to keep updated accurately, because they can change from trade to trade (due to nexus reporting and/or ANE ¹⁴ obligations, from product to product (due to lack of consistency in reporting of products across jurisdictions), regulations can change, and new jurisdictions and rules can come into force. Should any of the above factors change in the future, this would require changes to builds related to the UTI GP logic. Current step 5 in the UTI generation logic would cause the need for the industry to build a substantial reference data repository simply to comply with one step of the UTI generation logic. The cost burden to the industry should be a consideration in all aspects of the development and maintenance of UTI Technical Guidance, workflows and implementation.
6	Has the transaction been electronically confirmed	If so, the confirmation	Issues: There is a risk that a UTI issued by a confirmation, affirmation and matching platforms

¹⁴ A transaction in connection with a non U.S. person's security-based swap dealing activity that is arranged, negotiated, or executed ("ANE") by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office. Securities and Exchange Commission, 81 FR 53582 <https://www.gpo.gov/fdsys/pkg/FR-2016-08-12/pdf/2016-17032.pdf>, (August 12, 2016).

	or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules?	platform. Otherwise, see step 7.	may occur after the deadline for reporting of trade data may have passed. If so, this may not be a viable option. Proposal: We propose this step be moved to an earlier step in the generation logic decision process, specifically to the step directly after “Was the transaction executed on a trading platform?” (i.e. Step 3).
7	Does the jurisdiction employ a counterparty-status-based approach (eg, rule definition or registration status) for determining which entity should have responsibility for generating the UTI?	If so, see step 8. Otherwise, see step 11.	Proposal: Generally speaking, we propose the party with the reporting obligation should have the UTI issuance obligation. - In single-sided reporting jurisdictions, a registered entity (e.g., dealer) is first in line for a reporting obligation and should, thus, also issue the UTI ¹⁵ . - In dual sided reporting jurisdictions, UTI generation should follow a similar hierarchy with registered entities (i.e., dealers) first line to issue UTIs.
8	Do the counterparties have the same regulatory status for UTI generation purposes under the relevant jurisdiction?	If so, see step 11. Otherwise, see step 9.	Proposal: If the entities have the same status, a standard tie-breaker logic could be applied, unless the parties have an agreement governing which entity would be UTI generating party.
9	Do the applicable rules determine which entity should have responsibility for generating the UTI?	If so, the assigned entity. Otherwise, see step 12.	Proposal: We propose the party with the reporting obligation should have the UTI issuance obligation. - In single-sided reporting jurisdictions, a registered entity (e.g., dealer) is first in line for a reporting obligation and should, thus, also issue the UTI. - In dual sided reporting jurisdictions, UTI generation should follow a similar hierarchy with registered entities (i.e., dealers) first in line to issue UTIs.
10	Does one of the jurisdictions have a sooner deadline for reporting than the other(s)?	If so, then the UTI generation rules of the jurisdiction with the sooner reporting deadline should be followed.	Issues: Reporting counterparties (“RCPs”) are not able to fully and accurately know their counterparties’ reporting obligations. This would be complex to build and impractical to keep accurately updated, considering changing rules or new rule sets, nexus obligations and ANE ¹⁶ obligations (SEC). Should a reporting deadline change in the future, this

¹⁵ ISDA, “Improving Derivatives Transparency: The Merits of an Entity-based Reporting Framework,” [http://www2.isda.org/attachment/ODI5OA==/Entity%20based%20reporting%20FINAL%20\(002\).pdf](http://www2.isda.org/attachment/ODI5OA==/Entity%20based%20reporting%20FINAL%20(002).pdf), (April 2016).

¹⁶ A transaction in connection with a non U.S. person’s security-based swap dealing activity that is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office. 81 FR 53582 <https://www.gpo.gov/fdsys/pkg/FR-2016-08-12/pdf/2016-17032.pdf>.

		Otherwise, see step 11.	would require changes to builds related to UTI GP logic. The cost burden to the industry should be considered. Proposal: Request global requirement that UTI generation and communication, as needed, should occur at the time of execution for electronic trades. If not, issues could be created for a party that has an obligation to report in the soonest timeframe.
11	Do the counterparties have an agreement governing which entity should have responsibility for generating the UTI for this transaction?	If so, the agreed entity. Otherwise, see step 12.	Proposal: Where there is no central generating party, any prior understanding between counterparties of who will be UTI generating party should be respected.
12	Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules?	If so, the confirmation platform. Otherwise, see step 13.	Proposal: If Step 6 is moved up to Step 4, this step will be unnecessary.
13	Is there a single TR to which reports relating to the transaction have to be made, and is that TR able, willing and permitted to generate UTIs under the applicable rules?	If so, the TR. Otherwise, one of the counterparties, based on sorting the identifiers of the counterparties with the characters of the identifier reversed and picking the counterparty that comes first in this sort sequence.	Issues: Market participants may have more than 1 TR. Additionally, TRs would not know they have responsibility to generate unless told by RCP, however, this step can act as a fallback for smaller market participants i.e. who do not have UTI generation capability.

A.2.3: Communicating with relevant stakeholders about the UTI for educational or promotional purposes.

We support alternative (i), specifically support at a global level provided by the UTI IMB which is mandated by the FSB, for A.2.3. Although Authorities have a vested interest in stakeholder compliance as FSB notes, support and promotion of the UTI recommendations and workflows at a global level is an important component to successful a harmonised adoption. Support at a global level by the UTI IMB should remain a driver to facilitate and communicate the harmonised UTI recommendations to all industry stakeholders.

A.2.4: Conformity assessment on the extent to which UTI-related processes (including generation, applications for UTIs, etc.) are being conducted in conformity with the UTI Technical Guidance and the UTI Data Standard.

We believe that conformity, by industry participants, to jurisdictional requirements of the UTI guidance could be performed by the UTI IMB since this body will include the relevant individual Authorities familiar with their own requirements.

Q15. Are there any functions on this list that you think would be better allocated to a different governance option? If so, which functions and why?

See response to Q14.

Q16. Do you perceive ways in which any of the proposed allocation of governance functions might vary from key criteria? If so, how and why?

We do not currently have any comment on this question.

Q17. Regarding A.2.5, should the need arise, do you think that instead of the CPMI and IOSCO or the FSB, another international entity should ensure that the key criteria for governance remain fulfilled from the outset of UTI implementation? Should the FSB alternatively recommend that Authorities oversee implementation and await indications of a need for international compliance oversight before allocating this coordination function to an international body?

A.2.5: Coordination: Helping to ensure the key criteria for the governance mechanism remain fulfilled, and for that purpose coordinating with relevant actors and stakeholders as required.

We recommend that the governance framework be established and socialized at the outset. Doing so reduces uncertainty for the industry and provides market participants with a clear vision of the path forward and an understanding of who is responsible for different Areas of governance. For the reasons, the process for addressing UTI workflow clarifications and queries should be developed and made transparent as soon as possible.

We do not recommend that the FSB alternatively recommend that Authorities oversee implementation and await indications of a need for international compliance oversight prior to allocating this coordination function to an international body, for the reasons put forth.

Please consider this response in conjunction with responses to Q12 and Q22.

Governance options for Area 3, coordinating among authorities and updating UTI Technical Guidance as necessary

Q18. Do you have a view on whether UTI implementation, including the setting of a timeline for implementation, should be conducted by Authorities alone or assisted by an international regulatory body?

Function F.3.1¹⁷: Determining and/or recommending how the UTI Technical Guidance should be implemented by Authorities, including timing aspects.

We propose that transition and implementation of the global UTI Technical Guidance should be globally agreed and coordinated by the FSB, or body under or designated by the FSB, as previously outlined in the Preface to the response. The FSB would coordinate, recommend, encourage and facilitate harmonised adoption among regulatory Authorities. Fragmented adoption would delay the ability of global regulators to aggregate or analyze data via the recommended UTIs effectively, thereby further delaying an improvement in data quality. The cost to the industry of the implementation approach should be a factor taken into consideration in an implementation and transition roadmap.

It is critical that each regulator, and indeed all regulators, translate and implement the UTI guidance into their respective reporting regulations in an identical way. Inconsistent implementation, to even a small degree, of the global UTI recommendations would be inefficient, challenging and would undermine the availability of a globally consistent UTI for each derivative transaction.

For these reasons, we emphatically believe that function F.3.1, including UTI implementation, setting timeframes for implementation, a transition roadmap, as well as any clarifying changes or updates, should be conducted at the global level by the FSB.

Currently, reporting parties under Australia, Singapore, and Hong Kong will have an obligation to begin generating, sharing and matching UTIs for reporting as of 1 October 2017. We therefore reiterate that the FSB begin discussions about harmonised UTI implementation timelines together with Authorities and the industry as soon as possible. Institutions, regardless of where they sit in the market infrastructure will need to obtain implementation plan and budget approvals, which requires a clear roadmap of the coordinated industry transition timelines. These budget approvals will then enable firms to mobilize and build, test, and implement the global UTI recommendations.

¹⁷ References to functions use identifiers list on pages 7-8 of the Consultation Document.

Q19. In your view, should the monitoring of implementation of the UTI be performed by Authorities or by another body?

Function F.3.2: Monitoring implementation of the UTI Technical Guidance by Authorities. There may be a need to monitor implementation at the global level and identify implementation issues which hinder harmonised approach.

This function, including the “need to monitor at the global level and identify implementation issues which hinder a harmonised approach,” should be conducted at the global level. We propose that the FSB, or body under or designated by the FSB, is in an ideal position to be responsible for the global interaction and coordination among regulatory Authorities towards the efficient and harmonised implementation of UTI Technical Guidance, including monitoring. Progress of implementation could be made transparent publicly by periodic FSB reports, listing each jurisdiction’s implementation status against the timeframes set out by the FSB. The periodic report could be published monthly during the initial implementation and then less frequently subsequent to the initial implementation activity.

Q20. If you feel that Authorities should not be responsible for implementation of the UTI, should an existing body be given this responsibility or should a new body be created for this purpose? If the latter, what kind of body?

Please see response to Q19.

Q21. What is your view as to the most appropriate arrangement for the maintenance (updating) of the guidance? Should an existing body be given this responsibility or should a new body be created for this purpose?

Function F.3.3: Updating the UTI Technical Guidance: Although the UTI Technical Guidance is not expected to change frequently, over the longer term there may be a need to update the guidance and consider benefits and costs of such updates.

Earlier in the response we proposed that the UTI IMB govern Area 2, which includes addressing UTI workflow issues or clarifications on the UTI technical guidance. In line with the technical nature of Area 2, function F.3.3 “*Updating the UTI Technical Guidance*” should be governed by the same UTI IMB body, including examining the cost/benefit of any UTI Technical Guidance updates.

Q22. In your view is there an immediate need for an international coordinating body? Please share your views on this point.

Function F.3.4: Coordinating analysis of and response to issues relating to the UTI Technical Guidance or its maintenance with other Standard-Setting Bodies, International Standardisation Bodies, or Authorities.

Yes, there is an immediate need for form at the outset both the international coordinating body such as UTI IMB as the governing body for Area 2 and function F.3.3, and the FSB as governance for certain functions in Area 3, for the reasons specified in prior responses such as Q12 and Q17. In addition, the coordinating body is currently needed for clarification of workflows from the UTI Technical Guidance. The industry requests guidance from the Area 2 governing body for UTI workflows issues from the current UTI Technical Guidance.

Closing

The Associations and their members recognize the importance of global data harmonisation, and support the initiatives of the FSB, CPMI, and IOSCO to promote global standards and the associated governance structures for OTC derivatives transaction reporting. We would like to reiterate our appreciation for the opportunity provided by FSB to respond to the Consultation Document with industry feedback. We are happy to discuss responses and to provide any additional information that may assist.

Thank you for your consideration of these important issues to market participants. Please contact ISDA staff if you have any questions or concerns.

Sincerely,

[Signature on file]

Eleanor Hsu
Director, Data and Reporting
International Swaps and Derivatives Association, Inc.

[Signature on file]

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

ABOUT THE ASSOCIATIONS

The International Swaps and Derivatives Association

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 68 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 web site: www.isda.org.

The Global Foreign Exchange Division of the Global Financial Markets Association

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25 global foreign exchange (FX) market participants,¹⁸ collectively representing around 85% of the FX inter-dealer market.¹⁹ 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.

¹⁸ Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, Nomura, RBC, RBS, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

¹⁹ According to Euromoney league tables.