ISDA response to HM Treasury's Financial Services Future Regulatory Framework Review: Call for Evidence: Regulatory Coordination

The International Swaps and Derivatives Association (ISDA) welcome the chance to contribute to the first phase in HM Treasury's Future Regulatory Framework Review. This response centers on the second question in this call for evidence; looking at how firms and regulators can work together to make authorization, supervision and enforcement more efficient. In particular, how firms and regulators take advantage of new technology to make supervisory reporting more efficient, flexible and less burdensome.

Increasing the efficiency of reporting between firms and regulators

ISDA's response to the European Commission's Supervisory Reporting Requirements 'Fitness Check' of March 14, 2018[1] identifies ways to simplify and streamline the development and operation of supervisory reporting between firms and regulators. We suggest: increasing the amount of time given to firms to implement new reporting rules; phased implementation; and the early engagement of industry experts to work with policy makers to develop robust and feasible solutions.

More specifically we recommended that:

1. *Regulators should set out their regulatory goals for a new regulation, and then approach the industry domain experts for the market/domain, which is relevant to the new regulation, and for which data is required. The correct data sets and data sources can be identified which will allow a solution to be crafted to allow regulators to meet their regulatory objectives. Only then, if necessary, legislative instruments like regulatory technical standards should be written. The European Commission's recent initiative to ensure 'better regulation' provides stakeholders with the opportunity to contribute throughout the policy and law-making cycle.*[2] *ISDA recommends that a similar model could be implemented in the UK.*

2. *ISDA would like the Commission to consider the current process/framework by which supervisory reporting requirements are developed and published. The regulatory and technical standards are difficult to change and as such are not flexible enough to deal with market developments or other problems as they arise. This has a detrimental effect on the quality of data reported across all regimes.*

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[1] https://www.isda.org/a/ut8EE/ISDA-response_Fitness-Check-of-supervisory-reporting-requirements.pdf

[2] https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en

We would ask that the same recommendations and considerations are taken on board when shaping the UK regulatory landscape.

Reduction in duplicative reporting

The Position Paper on the '*Necessary amendments and revisions to secondary market provisions in MiFID and MiFIR'* prepared by the German Ministry of Finance in August 2019, identifies the Harmonization of reporting regimes as one of the areas where improvements could be made to MiFID/MiFIR in the medium-term. The position paper recommends that the transaction reporting regimes under MiFID/MiFIR, EMIR, Securities Financing Transactions Regulation (SFTR), the Regulation on the Wholesale Energy Market Integrity and Transparency (REMIT), the Short Selling Regulation (SSR) and Market Abuse Regulation (MAR) should be subject to a comprehensive analysis with a view to harmonization and to avoiding overlap and duplication. The paper also recommends that existing and planned requirements regarding the use of identifiers such as LEI, ISIN, UTI and UPI should be re-assessed.

ISDA, along with other trade associations (FIA, GFXD and the GFMA Commodities WG) had advocated for this: a harmonized regulatory framework in line with the European Commission's commitment to better regulation and we had recommended that it would be sensible for any adjustments to MiFID/R reporting to be coordinated with any plans that the EC has under the Fitness Check on Regulatory Reporting.

Building on our response to the EC's Reporting Fitness Check, and thinking about UK regulatory policy, we set out below our four-point plan to not only to increase the efficiency of reporting, but also to reduce the instance of duplicative reporting:

Policymakers could work to increase the efficiency of reporting in the following ways:

1) Increase engagement between domestic and international regulators to seek alignment of terminology and reporting rules across jurisdictions – including continued advocacy for single sided reporting globally.

2) Support the work which the CPMI, IOSCO, and the FSB are conducting for the global harmonization of the Unique Transaction Identifier (UTI), Unique Product Identifier (UPI), and the Critical Data Elements (CDE) of OTC derivatives reported to Trade Repositories.

3) Reduce duplicative reporting, in particular align UK EMIR reporting with similar regimes globally. UK EMIR should establish a market-wide principle that derivative transactions, which have been matched via confirmation and reconciliation processes, should only be reported once to supervisors, by one party, not twice.

4) In the longer term, utilize the appropriate standards or new technology to build a 'report once/permission to data once' regime: firms would produce a single dataset which the relevant regulators could 'cut' to suit their particular regulatory objectives.

Aligning UK EMIR with similar regimes globally – such as the CFTC, MAS and HKMA – and advocating for single sided reporting – is something worth exploring – even if EU EMIR currently demands double sided reporting.

Industry best practices for regulatory reporting

When a regime publishes new or updated regulatory reporting rules, each industry participant is required to interpret and implement the rules into their reporting processes. For rules which may lack full clarity or are open to interpretation, it is not uncommon for such rules to be implemented inconsistently across the market, resulting in data being reported to regulators in a non-standard way throughout the industry. For regimes requiring dual sided reporting, there can be a high level of mismatches between counterparties.

A common approach to establish a single standard means of interpreting reporting rules and thereby increasing matching rates, is to develop and follow reporting best practices. ISDA have developed reporting best practices for a number of regimes and recently ISDA, along with several prominent trade associations (including the IA, FIA, GFXD, BVI and EFAMA), have been establishing a single industry wide set of EMIR reporting best practices. With the backing of Trade Repositories and the adoption by the members of trade association (covering buy side firms, sell side firms and CCPs), more standardized and reliable data will be reported to regulators. Best practices also highlight to the regulators where additional clarification is required within the rules and where reporting standards can be improved upon.

While cross industry best practices are initially being established for EMIR, the same principle can be applied to other global reporting regimes.

Taking advantage of new technology

The FCA and the Bank of England have been examining how technology can make the current system of regulatory reporting more accurate, efficient and consistent – through their joint work over the past few years on their Digital Regulatory Reporting (DRR) pilot. Currently, this pilot is exploring how it could apply to different product groups – one of which is derivatives[3].

In May 2019, we announced the deployment of our ISDA Common Domain Model (CDM) to support the FCA, Bank of England and participating financial institutions in testing phase two of the DRR pilot. The ISDA CDM establishes a common set of representations for derivative

[3] https://www.isda.org/a/outME/ISDA-CDM-Deployment-FCA-BoE-DRR-final1.pdf

products and their components, events and processes – it is a common language if you like, designed to solve the problem of fragmentation in the interpretation and implementation of various processes, such as meeting regulations like reporting. Additionally, our report on *'Regulatory Driven Market Fragmentation'* identifies reporting as one of the key examples where firms are forced to develop and implement different systems and solutions in different jurisdictions because of varying regulatory requirements – even though those requirements are being implemented to meet a global standard[4]:

'Data and reporting is an obvious example [where firms are forced to develop and implement different systems and solutions in different jurisdictions]. If all jurisdictions require market participants to report generally the same information to trade repositories, but each requires different data forms and formats in which such information should be reported as part of its rule set, then firms will incur significant expense in complying with myriad rules. Discrepancies such as those related to data standards will also impact the ability of regulators to monitor risk on a global basis'.

The problem is not confined to the fact that different jurisdictions implement global standards in various different ways. It is compounded by various industry participants implementing the reporting requirements in their own way and having their own way of describing trading scenarios. Essentially, if every industry participant describes derivatives trade events in their own way, then each dealer and vendor cannot speak to each other in a standard way. Institutions which have adopted the ISDA CDM however, will only ever describe and manage trade events in a single, defined way.

The ISDA CDM has the ability to code regulatory requirements, making each institution use the same descriptions for their reports, removing the likelihood of institutions interpreting and implementing reporting requirements differently. For example, the ISDA CDM can codify the reporting rules for MiFID RTS 22 reports (transaction reports to regulators) or EMIR reporting to the market via trade repositories. Furthermore, industry best practice or further regulatory advice can be added to this code (for example, incorporating Q&A guidance into the reporting code with the rules found in regulatory technical standards).

Using technology to make the development of new regulation more efficient

With reference to our recommendation above that regulators should set out their regulatory goals and then approach industry experts, we have, via our work under the Digital Regulatory Reporting pilot, now demonstrated the potential of such an approach. Namely, where a test data set can be used to demonstrate implementation of regulatory requirements which, in the pre-publication/consultation phase of the legislative process, can be built transparently with market participants and regulators involved. This allows the results of different approaches and

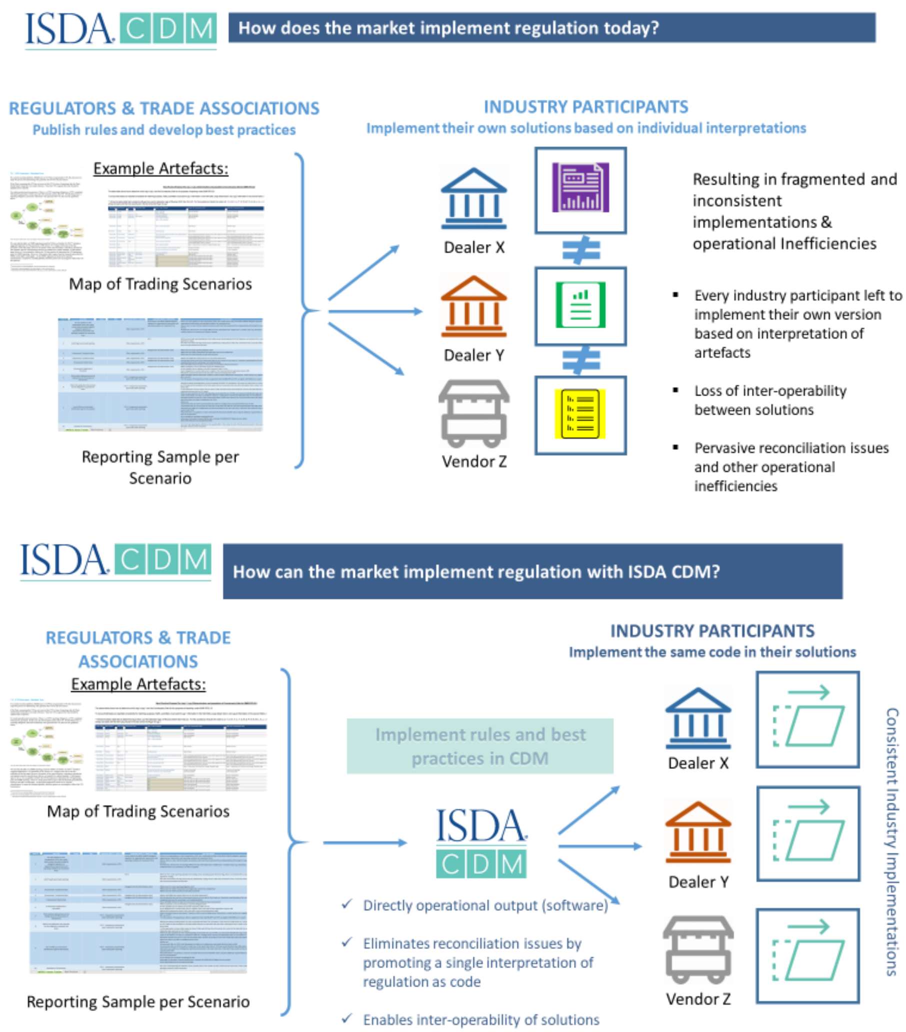
[4] https://www.isda.org/a/wpgME/Regulatory-Driven-Market-Fragmentation-January-2019-1.pdf

draft requirements to be analyzed by all parties, to hone the implementation, in an iterative way, so that eventually a specification can be reached that fully achieves the regulators' goals. And moreover, this specification can be made available to market participants as open source code for them to implement consistently in their own systems or with their service providers on different technology platforms as necessary.

In conclusion

ISDA's mission is to foster safe and efficient derivatives markets. Making reporting more efficient is part of our mission, and we are developing the new technologies to do this. We stand ready to discuss this further with you and to explore further areas for advancement, together.

Annex


ISDA CDM
How does the market implement regulation today?
REGULATORS & TRADE ASSOCIATIONS
Publish rules and develop best practices
Example Artefacts:
Map of Trading Scenarios
Reporting Sample per Scenario
INDUSTRY PARTICIPANTS
Implement their own solutions based on individual interpretations
Dealer X
Dealer Y
Vendor Z
Resulting in fragmented and inconsistent implementations & operational Inefficiencies
Every industry participant left to implement their own version based on interpretation of artefacts
Loss of inter-operability between solutions
Pervasive reconciliation issues and other operational inefficiencies
ISDA CDM
How can the market implement regulation with ISDA CDM?
REGULATORS & TRADE ASSOCIATIONS
Example Artefacts:
Map of Trading Scenarios
Reporting Sample per Scenario
Implement rules and best practices in CDM
ISDA CDM
Directly operational output (software)
Eliminates reconciliation issues by promoting a single interpretation of regulation as code
Enables inter-operability of solutions
INDUSTRY PARTICIPANTS
Implement the same code in their solutions
Dealer X
Dealer Y
Vendor Z
Consistent Industry Implementations

About ISDA

ISDA is the primary trade organization for participants in the market for over-the-counter derivatives. Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 71 countries. These members comprise a broad range of derivatives users, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition, 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.