



Melissa D. Jurgens, Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

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Re: RIN 3038–AE12
<http://comments.cftc.gov>

Review of Swap Data Recordkeeping and Reporting Requirements

Federal Register, Volume 79 Issue 58, Wednesday, March 26, 2014, Proposed Rules,
Pages 16689-16698

“.....I urge market participants to carefully review the Commission’s questions, submit their comments, and alert the Commission to other data reporting issues that have not been included in this request for comment. This comment period is a critical step in the Commission’s effort to improve its data utilization. I encourage all market participants to help the Commission improve its data reporting regime.”

**Statement of Commissioner Scott D. O’Malia
on the issuance of the CFTC’s Request for Comment on
Part 45 and Related Provisions of the Commission’s Swap Data Reporting Rules
March 19, 2014**

Introduction

The CFTC’s request for comment recognizes the importance of proper government policy to the structuring of appropriate regulation and the creation and use of data to fulfill the overall framework objective of systemic risk analysis.

Technology enabled data has evolved over a half century along with the development of risk management, data management, and information and communication technologies. Data is created and enabled through information technology applied to business process and practices, and to regulations overseeing both. After the 2007-2008 financial crisis industry best practices have been questioned and government oversight has changed as a consequence. Fundamental data weaknesses have been discovered. Prominent among such discovery has been the absence of a global identification system for identifying parties and products in the financial supply chain. A fundamental pillar of all global technology advances in our global economy was absent in global financial markets.

To date a first step has been taken to fill this gap. A global government standards body, the Financial Stability Board, has been empowered to set industry and regulators on a path toward global standards for identification and aggregation of financial transaction data. A rudimentary interim Global Legal Entity Identification (LEI) System (GLEIS) in the US has been operating for nearly two (2) years under a CFTC temporary order and elsewhere under sovereign regulator sponsorship of facilities operators, referred to as Local Operating Units (LOUs). At this time neither the technical core of the required federated internet-like GLEIS nor the Central Operating Unit's virtually aggregated data base of all separate LEI registries has been designed.

Further, the remaining parts of the overall global identification system (GIDS), for financial product and transaction identification, for metadata describing the LEI and these other identifiers, and for data tags describing transaction data details, remains to be done. Also, the current interim GLEIS has no provisions for maintaining the LEIs that undergo corporate reorganizations, no mechanism to aggregate data through to its control entity and/or parent entity organizational structure, and no linkages between products and entities issuing/trading those products.

In the rush to declare safe passage from the financial crisis, financial markets participants have been forced by hasty regulations to send data to newly mandated swaps data repositories (SDRs). This is the first use of the global identifiers, even though partial implementations, incomplete understandings of business practice, and poorly designed solutions are apparent. Later implementations call for the global identification of all financial market participants in all contracts and instruments.

In the spirit of this being, at its root, the implementation of a global technology solution for implementing a global capability to assess systemic risk across all parties and all trades it should be referred to as a 'beta' version, not yet industrial strength. It awaits redefinition and a revised next version for further pilot operations, for that is what this is in its first rollout for reporting and recording swaps transactions.

The CFTC must carry out its regulatory mandates while global forces are at work in rapid technology advances and in financial market innovation. Financial institutions and markets are global and know no sovereign boundaries. At the same time financial markets are globally integrated from a functional point of view but not from a regulatory or technical perspective. A lot still needs to be done to align regulation with its primary implementation resource, automated business process. Data standardization and its use for data aggregation are paramount in automated recordkeeping and reporting.

It was recognized that computer readable global identifiers were needed for identifying participants in the financial supply chain (the Legal Entity Identifier - LEI).

"There is widespread agreement among the public authorities and financial industry participants on the merits of establishing a uniform global system for legal entity identification. Such a system would provide a valuable 'building block' to contribute to and facilitate many financial stability objectives, including: improved risk management in firms; better assessment of micro and macro prudential risks; facilitation of orderly resolution; containing market abuse and curbing financial fraud; and enabling higher quality and accuracy of financial data overall. It would reduce operational risks within firms by mitigating the need for tailored systems to reconcile the identification of entities and to support aggregation of risk positions and financial data, which impose substantial deadweight costs across the economy. It would also facilitate straight through processing. But despite numerous past attempts, the financial industry has not been successful in establishing a common global entity identifier. The finance sector consequently lags well behind many other industries in agreeing and introducing a consistent global framework for entity identification."

**Financial Stability Board
Global Legal Entity Identifier for Financial Markets**

8 June 2012

Further, that global identifiers were needed for the instruments and contracts traded in (the Unique Product Identifier – UPI), and an audit trail tying transactions together throughout their life -cycle (the Unique Transaction Identifier – UTI). No amount of automation would be effective for either risk management or trading on a global scale without such a global identification scheme.

Toward this end after the financial crisis of 2007-2008 the heads-of-state of the G20 countries gave a mandate to its new creation, the Financial Stability Board to “stabilize the global economy” by promulgating standards and coordinating regulations globally. To their credit one of the first initiatives the FSB accepted nearly four years ago was the Global Legal Entity Identification (LEI) project.

Another initiative, equally important, and accepted by the FSB was to create a consistent mechanism for implementing derivatives reform with a particular early emphasis on swaps regulation. The first use of the new data standard and data aggregation regime is being tested simultaneously with new swaps data reporting and recordkeeping regime.

With universally accepted identifiers embodied in financial transactions it was expected that regulators could recognize and aggregate identical transactions and components of those transactions into valued positions and cash flows. It was expected that this could be done by computer means across business units of individual firms, across multiple financial institutions, and across financial market infrastructure utilities.

More directly related to swaps data recordkeeping and reporting, it was expected to enable data aggregation across counterparties and their controlling business entities as those transactions were reported to swaps data repositories (SDRs). Unfortunately this has not occurred even though data is being reported to SDRs under regulations by the CFTC and by other regulators in other sovereign jurisdictions.

“The ability to compare and aggregate those data across the SDRs and across borders is absolutely critical to monitor those threats...We live in a world of global markets and global institutions and there’s no escaping the fact that, if we don’t standardize data and harmonize them across those borders, then we won’t be able to use them. ...The implementation reflects the need to use standards for entity identification (LEIs).

Obviously those are important. Equally important will be the use of instrument and product identifiers....and the use of hierarchies to organize those data in a coherent framework and those identifiers in a coherent framework so that we can compare and aggregate similar, but not exactly alike, either entities in a particular industry segment or instruments in a particular asset class, and both with respect to entities and instruments.”

**Richard Berner, Director
Office of Financial Research,
US Treasury
at the
CFTC Technology Advisory Committee meeting
Sept 12, 2013**

To begin this journey, in 2010 in the US the CFTC, the SEC and the US Treasury asked for a set of unique codes, the Counterparty Identifier Code now called the LEI (Legal Entity Identifier), the Unique Product Identifier (the UPI) and the Unique Swaps Identifier, now called the UTI (Unique Transaction Identifier). These three agencies had requested a single integrated solution to all three identifiers.

The momentum for implementing this bar-code-equivalent for financial services now comes from the G20, passed on from the US Treasury's Office of Financial Research to the G20's Financial Stability Board (FSB) and now to the Regulatory Oversight Committee (ROC). It will soon be passed to a Board of Directors that will make final decisions and implement a core facility, the Central Operating Unit, yet to be defined in any detail.

Only recently has the ROC made it a requirement to have the legal entity self-register itself. The earlier approach allowed third party facilities operators to both register and code the legal entity. Now only the code, referred to as the pre-LEI is to be created and assigned by domestically approved facilities operators (pre-LOUs). So far DTCC/SWIFT is the CFTC's chosen operator in the US, WM DatenServe and the German Federal Register is Bafin's in Germany, INSEE in France, the Irish Stock Exchange appointed by its Central Bank for Ireland, the LSE's Sedol subsidiary is the chosen facility operator in England, Takasbank in Turkey, the Dutch Chamber of Commerce in the Netherlands – in all to date 25 pre-LOUs have been identified to date.

Pre-LEIs are being implemented as an interim system for immediate use in regulating the swaps markets. Its first use was to aggregate swaps data in multiple swaps data repositories (SDRs) in the US and across the globe. Multiple counterparty identifier codes have been allowed rendering the data associated not useable for aggregating risk exposures by counterparty.

It is expected that these pre-LEIs can be transitioned to the Global Legal Entity Identifier (LEI) System for use in risk data aggregation for all financial transactions engaged in by all financial market participants globally. Such aggregation of data will be required for systemic risk analysis across multi-located business silos of individual financial institutions, with financial supervisors set for testing such functionality beginning in 2016. It will also be required to aggregate data across geographically dispersed global financial institutions domiciled in multiple sovereign jurisdictions. This capability has yet to be defined.

“One of the most significant lessons learned from the global financial crisis that began in 2007 was that banks' information technology (IT) and data architectures were inadequate to support the broad management of financial risks. Many banks lacked the ability to aggregate risk exposures and identify concentrations quickly and accurately at the bank group level, across business lines and between legal entities. Some banks were unable to manage their risks properly because of weak risk data aggregation capabilities and risk reporting practices. This had severe consequences to the banks themselves and to the stability of the financial system as a whole.”

**Basel Committee on Banking Supervision
Principles for effective risk data aggregation and risk reporting
January 2013**

Data aggregation will require data linkages between legal entities of the same controlling business entity. This will further require relationships and hierarchies of ownership to be organized within the GLEIS or elsewhere. It was the presence of multiple non-unique identities, the absence of linkages between them and the inability of regulators to observe these linkages that caused risks to cascade across the globe. This was observed by regulators as the 'Lehman problem', later understood as an industry problem, that gave impetus to the GLEIS initiative. This data linkages mechanism has yet to be defined as well.

The absence of a requirement of a control entity/parent entity at the initiation of the swaps data reporting regime is one of the inhibitors preventing swaps data from being aggregated for risk analysis by the CFTC and by other regulators. To this immediate need we have been advocating for affixing such an identifier to the pre-LEI, the preliminary LEI now being used for swaps reporting.

We think the building blocks of the foundation of the GLEIS and the overall global identification scheme have been laid before the full purpose has been understood and the system and identification code design fully considered. The consequences are apparent, data and an identification scheme that is not fit for purpose, both to the FSB who has requested comments to its consultative paper on OTC Derivatives Data Aggregation in Trade Repositories and by this request for comment by the CFTC. Specific questions that we have answered through the below summary of recommendations are included as the Attachment at the end of this letter.

Recommendations

1. LEIs - transition the LEIs from its pre-LEI state to a more robust globally useful structure and issuance process:

- a) The pre-LEIs need to have a globally unique parent /control entity prefix (randomly chosen by the COU to maintain non-intelligence of the identifier code) attached to it. It should be provided by the LOU to be affixed at the first instance of self-registering each LEI. This will permit all transactions embedding the LEI for each controlling/parent business entity to be directly aggregated, on an individual swaps transaction basis up to its ultimate parent entity and across all SDRs.
- b) In the US the CFTC in conjunction with the grant of powers by the Dodd-frank legislation to the US Treasury's Office of Financial Research has the power to request from financial institutions within their jurisdiction any data it needs to identify financial market participants before issuance of a LEI. Denial of the issuance of a LEI serves to close out use, in this instance, of the swaps markets by a business entity, which is a powerful incentive to provide parent information at LEI issuance time. Later requests to provide such information carries a lesser incentive, especially as the trade has already been booked and cash flows with other counterparties are operating.
- c) Follow internationally accepted accounting conventions for determining such control/parent lineage. Once the parent is identified additional hierarchies can be deployed for aggregation for credit and trading limits, for standard financial reporting and for accommodating risk capital computations.
- d) Have certified public accountants, chartered accountants, lawyers, notaries and other trusted professionals that provide assurance and validation services match data from original source documents for ongoing updates to the GLEIS, later to be directly input from formatted data templates, for direct input to the GLEIS
- e) Trusted professionals registering LEIs and their associated data can also be used to apply redaction algorithms to the assigned prefix, thereby masking lineage but not preventing data aggregation. The prefix in redacted form is the same for all LEIs in the hierarchy and throughout all the transactions it is embedded in.

2. UTIs can be assigned in real-time as globally unique transaction identifiers.

- a) Using the same randomly chosen method as described for the LEI prefix, UTIs can be requested over the Internet from the yet to be designed COU of the GLEIS through a universal, singular set of coded software (an “app”). The LOU federated structure can be utilized for sovereign control over access and assignment of UTIs.
 - b) UTIs can be requested singularly or in pairs (for each side or leg of a swap transaction), as well as be requested throughout a swaps’ trades life cycle, whether for creation or continuation data, for maintenance of primary economic terms (PET) data, for matching and aggregating trades, and for audit trail purposes.
 - c) A valid LEI must be provided to receive a UTI, thereby assuring that both are tied together in the transaction detail.
- 3. UPIs – the current UPIs presented in swaps data in the US is not universally accepted and competes with other UPI coding systems that have broader coverage beyond just swaps. A reluctance of each constituent group to give up control of UPI identification and assignment in their own spheres of influence (by market or sovereign jurisdiction, or by product or contract type, whether symbols or codes) must be brokered by the only global standards entity chartered for such purpose, the Financial Stability Board.**
- a) Legal entities that issue products, such as investment instruments, must be included in the global identification system at some point. Issuers of pooled and collective instruments and contracts must likewise be included. Sole practitioners that both trade in and organize tradable instruments and contracts must be also have both their products and their legal identities considered.
 - b) Data vendors, National Numbering Agencies, exchanges that issue symbols, business registries that register and identify entities that themselves are financial products; trusts, SPVs, funds, etc. must be considered in any universal solution to a UPI.
 - c) An effort not unlike the GLEIS, should be established with the intent to build on the backbone of the technology of the evolving GLEIS
- 4. FEI – the financial event identifier (FEI) has been proposed by Financial InterGroup and its partners as a further needed identifier to accommodate maintenance to the LEI and UPI and as they both need to be updated in the continuation data kept in SDRs**
- a) The FEI is to be assigned by the originator at the source of creation of the notice of a corporate reorganization, of a bankruptcy, of a merger, acquisition or spin-off, etc.
 - b) The FEI would use the prefix assigned to the parent company for LEI creation to create the FEI.
 - c) The FEI would share procedural characteristics of the UTI, obtaining a randomly chosen numeric code to attach to the prefix throughout each stage of the life cycle of the financial event.
- 5. Data tags (encoding meta data and other data elements that define both human and computer readable data, whether arrayed in data bases, in communication messages, or in financial transaction reports)**

Standardizing data attributes of swaps transactions (and other financial transactions) is the subject of much work. Today it is being carried out under the simple idea of harmonization of disparate data formats, what technologists call ‘normalizing the data’. Each standards organization is attempting to offer standardized tagging conventions using different techniques to accompany data elements associated with the industry’s financial transactions. Tags accompany each data element comprising a financial transaction. They are used by computers to read this data in much the same way as a laser is used to read and interpret the codes contained in a barcode on a physical product.

In the identification space of the LEI and UPI and the FEI these efforts all have a single goal of transforming legally drafted definitions of products, business entities, contractual relationships, notices of corporate reorganizations, etc. from paper or word-processed documents into digital form. The originating source of this information is documents – offering memorandum, prospectuses, corporate resolutions, master agreements, collateral agreements, trust agreements, articles of incorporation, word processed documents, etc. It would, therefore, seem reasonable that the preferred method to transform this information into computer readable form is to use the standard of XBRL, the eXtensible Markup Language (XML) for Reports, (eXtensible Business Reporting Language) for this transformation. Three quarters of the globe’s regulators already use XBRL to transform regulatory information reported to them in this way.

In the transactional space data is not created from paper documents. Data is simply typed into or retrieved from a computer in an existing data format. Information such as a price or notional, or a buy or sell indicator, or a reset date, tenor or interest rate, and many other codes and input items are placed into existing computer generated templates. Here such standards as FpML (Financial Product Markup Language) and FixML (Financial Information Exchange Markup Language) are in broad use in the financial industry. Each can be incorporated into XBRL as well as stand apart, depending upon the application.

The biggest challenge is to conform to a common nomenclature, a set of nouns that describe in the smallest number of characters possible what industry members conclude is the best description of the data element the tags describe. This is a task yet to be carried out. It would seem logical to do so under FSB oversight and, where necessary, regulatory mandate to assure conformity. To this end the FIBO (Financial Industry Business Object) language, the most recent attempt at standard tagging nomenclature has shown promise. It along with FpML and FixML, perhaps data vendors and others, should form the basis for a Working Group under FSB oversight to bring finality to a harmonized tagging nomenclature.

6. Technology - The approach we are proposing builds off of the FSB’s desired implementation of the final version of the GLEIS described in the FSBs Recommendation of June 8, 2012 on the Global Legal Entity Identifier System:

“The COU will support the maintenance of a ‘logically’ centralised database of identifiers and corresponding reference data – as with the Internet, the database will appear to users to be from a single seamless system, but again as with the Internet, the data will be physically stored on different systems across the globe. Technology will deliver the logical centralisation.”

The COU (Central Operating Unit) is the pivotal operational arm of the global LEI system and has yet to be designed or stood up. It, therefore, has the flexibility to become the overall Global Identification System (GIDS). Its importance is noted by the FSB in the same referenced paper:

“In particular, the COU has responsibility for ensuring the application of uniform global operational standards and protocols that deliver: global uniqueness of the LEI; seamless, open access to the global LEI and to high quality reference data for users (with the depth of access controlled by appropriate access rights); as well as protocols and methods for how local systems can connect to the COU, including the necessary support of the local systems.”

We have proposed a design using the DNS (Domain Name System) services of a virtual private network tunneled through the Internet. Servers on the network would follow a ‘network card’ and plug in architecture’ prescribed by the FSB for the GLEIS. The technology and techniques proposed are proven standards used on the Internet, used by market data vendors, used in search and indexing software, and deployed in Big Data networks in military and intelligence applications.

7. Next steps – Under the auspices of the FSB convene a global technology and data standards working group to advise on the:

- a) Final technical implementation of the GLEIS and how it can be extended to the other required IDs (the UPI, UTI and FEI) and to accommodate data tagging conventions, and
- b) Application of Internet indexing, search and federation technologies to further the aim of global identification and rapid aggregation of financial transaction data

The detail on the above approaches has been formally presented previously by Financial InterGroup and its partners in response to US and global regulatory and standards bodies’ consultative papers. They can be found on the websites of the:

CFTC:

FIG response to CFTC’s request for comments regarding “Swap Data Recordkeeping and Reporting Requirements” at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27632&SearchText=>

FSB:

FIG response to “Consultation Paper: Feasibility study on approaches to aggregate OTC derivatives data”, 4 February 2014 at http://www.financialstabilityboard.org/publications/c_140416j.pdf.

Respectfully submitted,



Allan D. Grody, President
Financial Intergroup Holdings Ltd
169 East 69th Street
New York, NY 10021

Bio of author of submission included at end of Attachment

Issues and Questions Addressed by Our Response

4. More generally, please describe any operational, technological, or other challenges faced in reporting confirmation data to an SDR.
5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?
6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).
 - a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?
 - b. How should reporting entities identify the reason why two swaps are linked (e.g., identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?
 - c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?
 - d. How should related swaps reported to different SDRs be linked?
16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?
22. In addition to those entities enumerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers (“USIs”)? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.
24. In order to understand affiliate relationships and the combine positions of an affiliated group of companies, should reporting counterparties report and identify (and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6?
If so, how?
30. Have reporting entities been unable to report to an SDR terms or products that they believe are required under part 45 or related provisions? If so, please generally describe the data elements and/or products involved.
 - a. Where a single swap has more than two counterparties, please comment on how such information should be provided within a single part 45 submission (i.e., one USI)?

50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.

51. How should SDRs leverage the results of data elements harmonization to help ensure regulatory reporting is more accurate and consistent?

52. Are there additional existing swaps data standards (other than the legal entity identifier (“LEI”), unique product identifier (“UPI”) and USI that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?

53. Please explain your experiences and any challenges associated with obtaining and maintaining a LEI.
a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?

54. What principles should the Commission consider when designating a UPI and product classification system pursuant to § 45.7?
a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.

55. Please explain your experiences and any challenges associated with the creation, transmission and reporting of USIs.

62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?

63. What international regulatory coordination would be necessary to facilitate such data aggregation?

Allan D. Grody, President, Financial Intergroup Holdings Ltd

Participated on the team that designed and installed the first use of the US standard for identifying stocks and bonds, the CUSIP numbering convention; advised on the implementation of the first modern era global trade communication network; advised on the design of the first electronic futures trading system; with my colleagues at NYU conducted the first global survey of electronic trading markets; was a founding board member of the FIA's Technology Committee; designed the first internet based financial website; provided expert advice on a number of landmark futures trading system patent cases; taught risk management systems at the Stern Graduate School of Business at NYU; and founded the Financial Services Consulting practice of Coopers & Lybrand, now PricewaterhouseCoopers. Currently an Editorial Board member of the Journal of Risk Management in Financial Institutions; a Blue Ribbon Advisory Panel member to the Board of the Professional Risk Managers International Association (PRMIA); the Advisory Board Chairman of the European-based Financial Industry Ontology, Risk and Data (FIORD) initiative; and advises the Financial Stability Board on both their Global Identification initiative and their Swaps Data Repositories Data Aggregation initiative.