ISDA Safe, Efficient Markets

March 7, 2016
Submitted via www.cftc.gov

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Comments on Draft Technical Specifications for Certain Swap Data Elements

Dear Mr. Kirkpatrick,

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] appreciates the opportunity to provide the Commodity Futures Trading Commission (the "CFTC" or "Commission") with comments in response to the request for comment referenced above (the "Technical Specifications"). ISDA has been working with the Commission since 2012 on behalf of its members to obtain clarifications and improvements to its Part 43, Part 45 and Part 46 reporting regulations (the "Reporting Regulations") and the reportable data elements in order to increase the ability of parties to comply with the Reporting Regulations in an accurate and consistent manner. ISDA has been a long-term advocate of the need for globally harmonized reporting requirements, including the use of aligned data fields (i.e. formats, values and meanings) and globally recognized standards for data messaging, product identification and transaction identification. We recognize the potential value of the Technical Specifications toward those goals. We have provided our comments, suggestions and concerns based on the extensive experience of ISDA and its members, which are subject to the derivatives transaction reporting regulations of the Commission and of other regulators throughout the globe in a growing number of jurisdictions.

I. Executive Summary

ISDA and its members support the harmonization of global standards in order to facilitate compliance with global reporting regulations in a consistent and efficient manner that results in accurate data that is useful and appropriate to meet regulatory mandates for systemic risk assessment and suitable for global data aggregation and analysis. To that end, the Commission should improve the quality of the data collected pursuant to its Reporting Regulations in accordance with the following principles:

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 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.

1. ***Harmonization***. ISDA respectfully submits that global harmonization should be the primary regulatory driver for purposes of defining reporting technical standards as well as, to the maximum extent possible, reporting data elements. In particular, we believe regulators should leverage the recommendations for standards that will result from their collaboration with the Committee on Payments and Market Infrastructures and the International Organization of Securities Commission ("CPMI-IOSCO"), thereby avoiding overlapping and contradictory efforts to establish new data requirements in their jurisdictions.

   In addition, the CFTC and the Securities Exchange Commission ("SEC") should adopt a harmonized domestic framework for the collection of derivatives data that aligns with the CPMI-IOSCO recommendations. Harmonized reporting requirements that leverage existing industry standards will produce better quality data for use by global regulators and reduce the cost and complexity of complying with reporting requirements for all market participants.

2. ***Global Industry Standards.*** Derivatives data should be reported using the same industry terms, ISDA product definitions, and messaging standards (e.g., Financial products Markup Language[2] ("FpML")) that are used by global market participants to agree on the terms of transactions. Data should not be required to be transformed into a representation that is inconsistent with the legally agreed terms of the transaction. Doing so risks the inaccurate translation of the trade terms and impedes the ability to reconcile reported data against source systems, between counterparties and against the actual terms of the transaction executed in the confirmation.

3. ***Formal Rule-Making.*** The Technical Specifications introduce dozens of new data fields or elements that would result in significant amendments to the Reporting Regulations. Any substantive change should be introduced by the Commission in a formal rule-making process with a complete cost/benefit analysis. Reporting requirements should not overlap with and duplicate other regulatory requirements to provide or verify information relating to trading activity thresholds and registration requirements, a party's status, or data reconciliation.

4. ***Prioritization.*** ISDA respectfully submits that clarifying existing reporting requirements and data fields over the expansion of data collection will enhance the quality and consistency of swap data, which we understand is a fundamental regulatory objective. More accurate and useful data will result from a collaborative focus on a streamlined set of data fields with clear purpose and value. We urge the Commission to focus on identifying a defined core list of key economic data elements that may be adopted in a globally consistent manner and seek to limit jurisdiction-specific data elements to those that are truly essential and useful to the oversight of market risk.

5. ***Burden of Implementation.*** The scope and complexities of the proposed Technical Specifications would result in enormous costs to market participants. The burden to end-users is particularly challenging given the additional technology, legal and compliance support and infrastructure that will be needed to capture and transform transactional data into the proposed framework of reportable data elements.

[2] http://www.fpml.org/

ISDA Safe, Efficient Markets

II. Introduction

We welcome the Commission's outreach to market participants to obtain input on reportable data elements for swaps. As part of our analysis of the impact of the Technical Specifications, we have identified opportunities where the Commission could better align its Reporting Regulations with industry standards, global data harmonization efforts, domestic regulatory collaboration and prior industry feedback to the Part 45 regulations. We believe there are less complex and costly paths the Commission should pursue first to improve data quality under the existing regulations while it collaborates on global data standards. The themes conveyed in this section are consistent with those endorsed by a range of market participants at both the CPMI-IOSCO workshop on the Harmonisation of OTC derivatives data elements important for global aggregation held on February 10, 2016 and at the public hearing held on February 25, 2016 by the House Agriculture Committee's Subcommittee on Commodity Exchanges, Energy and Credit to review the G-20 swap data reporting goals.

A. Harmonization

The preamble of the Technical Specifications refers to the initiative of CPMI-IOSCO to develop guidance for the harmonization of key OTC derivatives data elements through the establishment of a dedicated working group, which it refers to as the Harmonisation Group. However, ISDA observes that, the Technical Specifications propose different approaches for the naming of data elements, their descriptions, and allowable values for many of the data elements that were also part of the Consultative Report *Harmonisation of key OTC Derivatives data elements (other than UTI and UPI) – first batch*[3] ("ODE Consultation"). Importantly, the Technical Specifications does not appear to incorporate or address industry feedback to the ODE Consultation. Given the CFTC's role as co-chair of the Harmonisation Group and the active participation of CFTC staff in its sub-groups, we strongly urge the CFTC to leverage the work already completed by the Harmonisation Group and the ODE Consultation.

Domestically, we encourage the CFTC to work collaboratively with the SEC on data standards. The issuance of concurrent consultations by the CFTC and SEC for ostensibly the same purpose but via entirely different and uncoordinated approaches is inefficient and could lead to different and conflicting results. Since the two commissions are seeking to comply with the same mandates under The Dodd-Frank Act and each has oversight of interrelated portions of the derivatives market in the U.S., it seems sensible and appropriate to align their reporting requirements in almost all aspects, including key economic data fields and values. Exceptions should be limited and apply only to explicit differences between the swaps and security-based swaps markets. We encourage the CFTC and SEC to set an example for regulatory collaboration that can be emulated by regulators globally.

B. Global Industry standards

Global industry standards already exist for both (i) the name, definition and values of the key economic terms of derivatives transactions and (ii) messaging representation of these data elements for reporting. The Commission and global regulators should align reporting technical specifications with both the ISDA product definitions and FpML instead of creating a new framework of definitions and standards. Efforts to develop new standards will reduce rather than improve the quality of the data available to meet the Commission's regulatory mandates. The CFTC and global regulators should work to use existing industry

standards to their benefit, allowing them to increase the clarity, accuracy and usefulness of the collected data.

Product Definitions
ISDA product definitions are incorporated by reference into confirmations for derivative transactions. The terms they define are the market standard references, providing legal certainty to counterparties on the key economic terms of their transactions. Aligning reported data with the terms and values agreed and confirmed between transacting parties facilitates harmonization among the execution, confirmation, and reporting processes laying the groundwork for data completeness and accuracy. ISDA and its members recommend that the Commission and other global regulators align with these widely adopted and existing standards.

Conversely, redefining the framework for terms and definitions of derivatives transactions solely for purposes of reporting data is inefficient and contributes to market confusion and data inconsistencies. Using alternative terms, definitions and values in reported transactional data requires parties to transform their trade data to represent it in a different manner for reporting purposes. This greatly increases the challenge of reconciling swap data repository ("SDR") data back to a reporting counterparty's source systems or the confirmation, and inhibits bilateral reconciliation since a non-reporting counterparty will not have transformed its data in accordance with the Reporting Regulations.

These challenges are further exacerbated when the parties are required to represent the data for the same trade differently when reporting to multiple jurisdictions. It is neither practical nor efficient for parties to create, report, and maintain several different data representations for the same trade without impinging on the clarity and certainty of the transaction's terms. Aligning the Reporting Regulations with the applicable established ISDA product definitions is the more accurate and appropriate baseline for representing reported data and avoids the deleterious consequences of adopting different data standards solely for reporting purposes.

Messaging standards
The other key to leveraging existing trade representation is through the use of established reporting standards that are designed from, and align with, the ISDA product definitions. FpML is the predominant messaging standard for OTC derivatives, facilitating both the electronic confirmation and electronic reporting of transactions. Significant enhancements have been made to FpML to support both global and jurisdictional reporting regulations. In the Technical Specifications, the Commission leverages the standards established by FpML in limited cases (e.g., for "Holiday Calendars" and "Day Count Convention"). We urge the Commission to fully embrace this standard by aligning with the FpML data elements and scheme for all supported data fields.

Concurrent with the CFTC's request for comments on the Technical Specifications, the SEC sought feedback on its proposed rule *Establishing the Form and Manner with which Security-Based Swap Data Repositories Must Make Security-Based Swap Data Available to the Commission*[4] (the "Form and Manner Consultation"). Notably, the SEC has proposed to mandate that security-based swap SDRs ("SBSDRs") use either FpML or FIXML to provide the data required to be reported pursuant to *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information; Final Rule* ("SBSR") and has paired its data fields with the corresponding data elements in these standards. For the reasons provided in the

[4] https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015-31703.pdf.

preceding paragraph and as discussed more specifically in ISDA's responses[5] to the Form and Manner Consultation and the associated Draft Security-Based Swap Data Technical Specification[6], we fully support the SEC's proposal to require FpML to obtain better, more consistent data. Importantly, use of the existing standard also helps to contain the cost to the industry and to SBSDRs to develop messaging necessary to comply with SBSR. We urge the Commission to directly align its Technical Specifications with FpML and those of the SEC in order to promote and foster global harmonization within a highly fragmented industry.

In contrast to both the Commission and the SEC, the European Securities and Market Authority ("ESMA") has initiated the development of yet another new messaging standard under ISO 20022 for trade reporting pursuant to its European Market Infrastructure Regulations ("EMIR") in its *Review of the Regulatory and Implementing Technical Standards on reporting under Article 9 of ESMA*[7] ("EMIR RTS"). A new standard is redundant and will further fragment the collection of derivatives data and greatly increase the cost and effort for reporting counterparties, market infrastructure providers and global trade repositories to comply with or support trade reporting since they will need to build separate messaging specifications for EMIR. Where the data presentation differs between ISO 20022 and FpML, mapping or translation of the data will be necessary for regulators to aggregate and compare data. This directly contradicts the efforts of CPMI-IOSCO to harmonize the data and creates unnecessary additional work. As the SEC has acknowledged in the Form and Manner Consultation, "FpML and FIXML are both international open industry standards, meaning that they are technological standards that are widely available to the public, royalty-free, and at no cost"[8]. The existing standards that are already available were designed specifically for the electronic representation of derivatives data and are widely implemented and used by market participants.

Global trade reporting requirements, including those of the CFTC, can benefit from alignment with the existing industry recognized standards for data representation in FpML regardless of whether the use of FpML is explicitly mandated. While today reporting counterparties use messaging approaches other than FpML (e.g., CSV), in the long term, the most reliable and direct method for the CFTC to achieve greater consistency and domestic harmonization of reported trade data, may be for the CFTC to explicitly require the use of FpML for compliance with its Reporting Regulations. While we encourage this step, it is important to also take into consideration current practices so that reporting in other messaging types would need to be grandfathered under Part 45. This would include data already reported in such other data formats as well as any updates (e.g., swap continuations data reporting, error corrections) that need to be made for trades reported in any such other data formats during the terms of the trade and/or thereafter.

Evolution of standards

In order to accommodate changes to the ISDA product definitions, FpML, the recommendations of the Harmonisation Group and other industry standards, the Commission should consider adopting a framework that refers to these standards in their current and future forms and which allows the Reporting Regulations to incorporate and benefit from the evolution of these standards without a recurring need for formal amendments to the Reporting Regulations.

---

[5] http://www.fpml.org/latest_news/fpml-response-to-sec-consultation-on-form-and-manner-and-draft-technical-standard/

[6] http://www.sec.gov/files/SBS_Data_Technical_Specification-2015-12-11.pdf.

[7] https://www.esma.europa.eu/system/files_force/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf

[8] See footnote 4.

C. Formal rulemaking

The content of the Technical Specifications goes beyond qualifying how to report fields that are currently required to be reported, and significantly expands the scope of the Reporting Regulations. This includes, for example, the reporting of data related to orders, counterparty-related data elements and collateral/margin, which are not covered by the existing rules and would represent significant implementation costs and workflow issues for marketplace participants. With respect to certain data elements included in the Technical Specifications, we are in effect commenting on the form and manner for reporting a data field before we have had an opportunity to comment on the requirement to report the same data field.

We believe it is important that the Commission issue a notice of proposed rulemaking should it decide to make any changes to the Reporting Regulations based on the information gathered from responses to the Technical Specifications and conduct a complete cost/benefit analysis of the proposed changes. This will allow the Commission to consider any potential future rule modifications via an orderly rulemaking notice and comment process, whereby it will give interested persons an opportunity to participate in the rule-making process through submission of written data, views, or arguments. Market participants should be afforded a notice and comment period to specifically address the rules in their totality as they reflect any changes made pursuant to this request, and not just the advisability of isolated responses contained in this request for comment.

D. Prioritization

ISDA respectfully submits that clarifying existing reporting requirements and data fields over the expansion of data collection will enhance the swap data quality and consistency, which we understand is a fundamental regulatory objective. The scope and specificity of the data elements proposed for consultation in the Technical Specifications goes well beyond those in the current regulations. In the case of existing data fields, those clarifications are welcomed as they will help drive consistent use of existing standards, such as the use of ISO currency codes or the FpML values for Business Days. But in addition to those improvements, the Commission is consulting on many new fields and variations on existing fields that would require complex changes to the way the data is captured and reported. As discussed more specifically throughout our responses, the value of some of these data elements to the Commission's ability to assess market risk is unclear. In addition, many of these data elements seem to overlap in purpose, creating duplication and the potential for misaligned interpretations. Additional, pertinent feedback will be able to be provided by the industry once the context for these data elements is clarified in any proposed rulemaking. ISDA and its members stand ready to engage in dialogue on this matter in advance of any further consultations or rule proposals.

As previously stated by ISDA, including in our response ("ISDA's 2014 Part 45 RFC Response")[9] to the CFTC's *Review of Swap Data Recordkeeping and Reporting Requirements*[10] (the "2014 Part 45 RFC"), we believe the Commission should explicitly define the data fields it needs, including confirmation data, and eliminate the "any other terms" field in Primary Economic Terms ("PET"). Without the context for how the data elements in the Technical Specifications would complement or replace the existing data fields under the Reporting Regulations, the proposed data elements seem to complicate rather than improve on the existing data requirements.

[9] http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf, pages 6-8, 21, 38.

[10] 79 Fed. Reg. 16689.

We strongly believe that the Commission, in collaboration with global regulators, should be working to reduce the overall footprint of fields and field permutations rather than expanding it. A defined, core list of key economic data elements should be adopted in a globally consistent manner and regulators should limit any additional jurisdiction-specific data elements to those that are truly essential and useful to the oversight of market risk. A more expansive and complex set of data requirements creates opportunities for differing interpretations or implementations and does not consider the current technological capacity of reporting counterparties and differences in technological capabilities between market participants. It increases the complexity of compliance and ultimately undermines rather than enhances data quality. More data does not equal better data. The more data required and the more parties have to transform that data from the representations in their sources systems and legal confirmations, the more likely that the quality of the data will decrease and not be as accurate and useful to the Commission. Focusing on a streamlined set of data fields with an explicit purpose will result in more useful and reliable data.

It should be noted that SDRs have been working collaboratively with their participants and each other to improve the quality of the data (e.g. the "completeness"). This process will and should continue and could produce immediate and substantive improvements to data quality if the clarifications and amendments to the rules proposed in ISDA's 2014 Part 45 RFC Response were adopted.

E. Burden of Implementation

If adopted, the complexity of the reporting requirements suggested by the Technical Specifications would result in enormous cost and effort for reporting counterparties, market infrastructure providers and SDRs. The data elements in the Reporting Regulations should be clarified, based on existing industry definitions/standards, where applicable, and globally aligned. We understand there is a need to invest in the improvement of data quality for the purposes of regulatory oversight and global data aggregation. Any investment market participants must make to redesign their reporting architectures should be done once to accomplish global reporting objectives and must take into consideration the technological capacity of all market participants. Interim implementation changes that may be superseded by global standards already under discussion will be unnecessarily burdensome to market participants.

To mitigate the burden of any changes to the Reporting Regulations that should be required pursuant to a globally harmonized standard, changes should apply on a going-forward basis and only apply to swaps transacted after the compliance date. A significant and sufficient implementation period must be accommodated that takes into consideration the extent of the changes, the impact to all market participants and allows for a globally coordinated transition. More specific input on a suitable timeframe for implementation can be given if a concrete rule amendment is proposed.

End-users which either have reporting obligations or which would be compelled to provide data to the reporting counterparty necessitated by the proposed fields would be particularly burdened by the requirements and many will lack the technological capability to capture, transform and report or provide data as required. The small to mid-sized commodity producers, processors, merchants and other end-users that use swaps to mitigate commodity, interest rates, foreign exchange or other price risks will require additional technology, compliance and legal support in order to accommodate additional reporting requirements. This will impose significant, unjustified costs to end-users, especially in cases where such requirements duplicate their obligations under other Commission regulations. In

addition, due to the relatively smaller size of their commercial operations and related hedging transaction needs, as well as their dispersed geographic locations, these mid-market commercial clients may be faced with additional local and cross-border reporting regulatory conflicts and hence, costs, since they will have to build systems capable of handling different messaging formats for the same trades. ISDA, on behalf of commercial end-users, requests the CFTC to avoid imposing changes and additional reporting requirements on end-users by maintaining their obligations under the current Reporting Regulations to the greatest extent possible.

To avoid unnecessary complexity, duplication, and potential inconsistency, we recommend that the Commission undertake a thorough review of the existing reporting requirements in other Commission regulations (e.g., Part 50 clearing exemption reporting in CFTC regulation 50.50(b), 50.51(c), and 50.52(c)). Any variation or redundancy in the reporting requirements, no matter how minor, will incur additional compliance costs, especially for smaller firms, which will put them at a further competitive disadvantage to larger institutions.

III. Responses to CFTC Request for Comment on Draft Technical Specifications for Certain Swap Data Elements

A. Counterparty-Related Data Elements

1. Are there challenges associated with identifying the Ultimate Parent and/or Ultimate Guarantor of a swap counterparty? If so, how might those challenges be addressed?

Ultimate Parent

It can be challenging to understand another entity's hierarchy. Firms may have different views and access to information regarding a counterparty's corporate hierarchy that may lead to inconsistent conclusions and impair the ability to uniformly and accurately report such relationships, including the identification of an Ultimate Parent. We understand the Commission's desire to use the identification of an ultimate parent to assess the systemic risk of associated parties. ISDA believes the Commission can more effectively promote this regulatory objective using the hierarchical data provided by the Global LEI System rather than requiring that this parental information be reported on a swap-by-swap basis. By going directly to the primary source, the Commission will have a more accurate and consistent lineage of parties associated with swap risk, especially with respect to the non-reporting counterparty.

The LEI Regulatory Oversight Committee ("ROC") recently conducted a consultation[11] (the "Level 2 Consultation") on the collection of data on the direct and ultimate parents of legal entities in the Global LEI System as part of its Level 2 data. The Level 2 Consultation included the solicitation of input regarding the standard(s) by which parents should be determined in a uniform manner, and as a starting point they refer to global accounting definitions. In response to the Level 2 Consultation[12], we urged the ROC to ensure that the organizational approach for

[11] http://www.leiroc.org/publications/gls/lou_20150907-1.pdf.

[12] http://www2.isda.org/attachment/ODA4NQ==/LEI%20ROC%20-%20direct%20and%20ultimate%20parent_FINAL%2019%20October%202015.pdf.

the Level 2 data accommodates (i) legal entities related to a parent by virtue of an accounting standard and (ii) those that are related in an unconsolidated manner due to control, legal or other economic connections. The Commission should recognize the standard(s) adopted by the ROC after it concludes its analysis and issues its recommendations.

Ultimate Guarantor

In the data elements table, the Commission has not provided a definition for an Ultimate Guarantor. It is not clear to us what distinction the Commission is seeking to make by designating an "ultimate" guarantor seemingly as different from another party that provides a guarantee of the party's swap obligations.

The SEC requires in SBSR the identification of an "Indirect Counterparty"[13]. If Ultimate Guarantor were to be a required data element, then the CFTC and SEC should collaborate on a synonymous definition of such party and ideally use the same terminology so that participants in the swaps market could apply the same guarantor party determination to applicable swaps, security-based swaps ("SBS") and mixed swaps, thus promoting data consistency, accuracy and facilitating a greater ability for the commissions to jointly assess aggregate counterparty risk in the U.S. If ultimate guarantors could not be easily and consistently identified as party-level static data, it would not be possible to determine on a transactional basis in time to adhere with reporting deadlines.

2. ***Are there any additional counterparty-related data elements that should be included to evaluate the risk undertaken by the Ultimate Parent and Ultimate Guarantor?***

Additional information pertaining to the parties to the transaction and their associated parent(s) will be available as Level 2 data in the Global LEI System. We believe that the most efficient and consistent method for the Commission to apply this information it believes is relevant to its analysis of risk would be to source it directly from the database of the Global LEI System, once the framework for hierarchical data has been established and collection of the Level 2 data has sufficiently matured.

3. ***When a swap counterparty has more than one Ultimate Parent, including, but not limited to, situations in which an entity is a joint venture, how might this be reflected in a single data element?***

Investment funds, especially those of the contractual or trust type, would need special rules for determining a "parent" entity. The relationships among funds, fund managers and investors do not fit well with the ordinary accounting concepts of corporate control or economic connection as the capital investors in funds (often as required by law) do not exercise control over the fund product. The "control" concept in case of funds should aim primarily to identify only as an "associated entity"[14] the administrative body of the fund as provided for by law, in particular the relevant fund management company which is the relevant entity. As noted in the Level 2 Consultation, this link is already accommodated in the Level 1 data, but would be more appropriate to capture as Level 2 in due course. With a key goal of the Global LEI System being risk management, we suggested the ROC considers building the framework for the Level 2 data

[13] 80 Fed. Register at 14729.

[14] See section 2.3.3 of the Level 2 Consultation in footnote 17.

in such a way to accommodate entities related in an unconsolidated manner, regulated investment funds, and other types of connected relationships.

The ROC withheld addressing the question of joint ventures in the Level 2 Consultation, instead intending to cover these issues in a subsequent consultation. Although the ROC is expected to ask the Global LEI Foundation ("GLEIF") to collect the identity of Ultimate Parents, a consistent and appropriate approach to identify such parties has not yet been determined. The Commission should only consider using data regarding Ultimate Parents in conjunction with the evolution of the GLEIF's efforts on this matter and the subsequent availability of this hierarchical information in the Global LEI System.

In the event a party has more than one Ultimate Parent, challenges regarding reporting the identity of multiple entities could be avoided by deriving such information directly from the Global LEI System, rather than reporting this party static data on a transactional basis. If reporting of multiple entities was required, we do not recommend attempting to put multiple entities into a single data element. It would be preferable to extend the data model.

4. ***Are there situations in which a natural person is the Ultimate Parent of a swap counterparty? If so, is it clear who should and should not be reported?***

Although not a counterparty relationship commonly seen with respect to counterparties to derivatives transactions, we understand it may be possible for a natural person to be the ultimate parent of a swap counterparty in cases such as a family-owned business. It is unclear how such relationships fit into existing accounting definitions, and special consideration is warranted regarding the issuance of Legal Entity Identifiers ("LEIs") to such individuals and the associated privacy issues within the Global LEI System and with respect to transaction reporting.

The ROC has issued a statement clarifying the standards governing the issuance of LEIs for individuals acting in a business capacity[15], and will need to provide further guidance regarding the role of individuals as direct and ultimate parents in the collection of Level 2 data.

5. ***Should the allowable values for Counterparty ID be modified for counterparties that are natural persons? If so, how?***

Since the ROC has determined that only individuals that conduct an independent business activity (as evidenced by registration in a business registry) are eligible to obtain an LEI[16], the Commission must modify the allowable values for Counterparty ID to accommodate an alternative value for natural persons and any other swap counterparties which may be deemed ineligible to obtain an LEI by the ROC. Even if an individual is deemed eligible to obtain an LEI, privacy protection laws and other obstacles remain; a point conceded by the ROC in its statement on the matter.

If a party is not eligible to obtain an LEI, then a reporting counterparty should be allowed to use its own internal identifier for the party in accordance with current practices. The scope of swap transactions with such parties is extremely limited, and the swaps of natural persons are not

[15] http://www.leiroc.org/publications/gls/lou_20150930-1.pdf.
[16] Id.

significant to an analysis of systemic risk. In the event the Commission does require further information regarding such parties, it can be obtained from the reporting counterparty.

6. ***Is there an alternative definition that would more appropriately capture all forms of prime brokerage relationships and transactions in the swap markets?***

The Commission characterizes a prime brokerage transaction as one in which "…a Prime Broker steps into an existing trade between the executing SD and the client." However, in these arrangements, there is not a swap between the executing dealer ("ED") and the client. Rather, the client agrees to the economics of the swap with the ED but the relevant transactions between (i) the ED and the Prime Broker ("PB") and (ii) the PB and its client only come into existence upon acceptance by the PB. The act of PB acceptance does not result in a novation of an existing trade, but rather the creation of a set of new off-setting swaps.

With respect to the definition itself, ISDA previously provided the below prime broker arrangement definition to the Division of Swap Dealer and Intermediary Oversight ("DSIO") in the context of a possible CFTC rulemaking initiative to discuss prime broker intermediated transactions and compliance with the CFTC's External Business Conduct Rule. As already noted in that ISDA submission, the definition does not encompass all possible arrangements for swap dealers to provide credit intermediation to counterparties by entering into uncleared transactions, and there may be other arrangements. We are available to work with the Commission, or may follow-up via a separate submission, regarding a definition that may capture additional possible prime broker intermediation market activity.

The definition previously submitted to DSIO reads as follows:

"Prime broker" means a destination prime broker and any other swap dealer acting as such (other than a swap dealer acting in the capacity of an executing dealer) participating in a prime brokerage arrangement.

"Prime brokerage arrangement" means an arrangement between or among two or more swap dealers registered as such with the Commission and a PB counterparty evidenced by one or more written agreements between or among such parties, pursuant to which arrangement:

(A) One swap dealer (the "executing dealer") and the PB counterparty, commit to the material terms and conditions of a transaction;

(B) Upon satisfaction of certain conditions agreed upon pursuant to the prime brokerage arrangement, one of the swap dealers (other than the executing dealer) (the "destination prime broker") is required to enter into a transaction with the PB counterparty and a transaction with the executing dealer or with another swap dealer participating in the prime brokerage arrangement; and

(C) As a result of the foregoing:

(i) the destination prime broker and the PB counterparty are parties to a transaction in which all material terms and conditions are substantially identical (other than adjustments attributable to fees payable by the PB counterparty) to

the terms and conditions to which the PB counterparty and the executing dealer previously committed;

(ii) one of the swap dealers (which may but need not be the destination prime broker) and the executing dealer are parties to a transaction with substantially equal but opposite terms and conditions (other than adjustments attributable to fees) to the transaction between the destination prime broker and the PB counterparty; and

(iii) each swap dealer, if any, other than the executing dealer and the destination prime broker is party to a pair of transactions with substantially equal but opposite terms and conditions (other than adjustments attributable to fees).

"PB counterparty" means a person that is or will become a counterparty to a transaction with a destination prime broker pursuant to a prime brokerage arrangement.

7. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

LEIs

In the Technical Specifications, the CFTC has suggested that it might allow only "current and valid" LEIs to be used to define numerous party fields within its swaps reporting requirements. We believe there are three important principles that the Commission should consider in relation to this proposed requirement:

1. A prohibition on the use of lapsed LEIs would reduce the quality of data available to the Commission and limit its oversight capacity.

We recognize the important role of LEIs as a tool to precisely and accurately identify parties to a swap and facilitate the Commission's analysis of counterparty exposures and activity. As such, we feel strongly that an LEI should be used for reporting even if it has a registration status of "LAPSED". We recognize the value of the periodic renewal process for LEI registration to the integrity of the data in the Global LEI System, but regardless of a lapsed status an LEI still uniquely identifies a counterparty to a swap. Said differently, the informational value of having an LEI attached to the record outweighs the potential lower data quality of a lapsed LEI. Rather than improving swaps reporting, we are concerned that a prohibition on the use of lapsed LEIs in swap reporting would actually reduce the ability of the Commission to obtain transparency into derivatives markets and assess market risk.

Furthermore, by not accepting lapsed LEIs, the Commission is not improving the underlying problem of counterparty's failure to renew its LEI. In fact, it further limits the CFTC's ability to affect change since the Commission will no longer have visibility to the trades with counterparties that have lapsed LEIs. The Commission would be in an advantageous position to actually improve the underlying problem of lapsed LEIs if it took a different approach. For example, the Commission could directly contact counterparties that do not have active LEIs and make it clear that those parties are in violation of the Part 45 regulations. Where those parties are beyond the Commission's oversight, it could collaborate with regulators in other

jurisdictions to implement aligned requirements and conduct necessary outreach to encourage compliance. A variety of methods could be used by regulators to encourage or require derivatives market participants to renew their LEI registrations without the need for prohibiting the use of lapsed LEIs.

2. The responsibility to maintain an LEI should reside with the LEI registrant.

The Financial Stability Board has stated that "Responsibility for the accuracy of reference data should rest with the LEI registrant"[17] and the Commission has previously stated that a "counterparty should validate or certify its own LEI…and be responsible for maintaining that LEI thereafter"[18]. Consistent with these views, the Commission should require a swap counterparty to maintain its own LEI, and avoid imposing any responsibility for the enforcement or monitoring of such obligation on its counterparties. The Reporting Regulations must be clear that reporting counterparties will not be held accountable for ensuring that the non-reporting counterparty maintains its LEI in an active status and such breach on the part of a non-reporting counterparty will not be construed as non-compliance on the part of the reporting counterparty if it should use a lapsed LEI to comply with its reporting obligations.

The availability of LEIs has improved greatly as more jurisdictions finalize their trade reporting requirements and require use of LEIs. But LEIs are not yet mandated in all jurisdictions, and therefore some non-U.S. counterparties have not obtained an LEI. This challenge will reduce over time, but in the interim, the CFTC should allow reporting counterparties to report using a substitute counterparty identifier.

3. Reporting based on changes to LEI registration status would add significant complexity to reporting.

A prohibition on the use of lapsed LEIs would add a great deal of operational complexity to reporting, as previously conveyed in ISDA's 2014 Part 45 RFC Response[19]. If use of lapsed LEIs was prohibited, a reporting counterparty would have to source, implement and maintain on a daily basis an additional layer of static data for the registration status of each LEI and develop reporting logic to determine whether an existing LEI should be included in a swap report. Today, many firms do not source the underlying LEI registration status data into their systems. If an LEI were lapsed at the time of reporting, the reporting counterparty would have to withhold submission of the LEI and use an alternative identifier instead, diminishing the Commission's certainty regarding the non-reporting counterparty to the swap and impeding data aggregation.

It would not be practical for the reporting counterparty to update the swap reporting once the status of the LEI registration is no longer "LAPSED". Similarly, if the original swap report submitted to the SDR contained a current LEI that subsequently fell into a lapsed status during the life of the swap (or for 5 years following the termination date), then it would not be practical for the reporting counterparty to amend that swap report to reflect that there was no longer a "current and valid" LEI, and then perhaps amend it again if and when the non-reporting

[17] Financial Stability Board, "Recommendation 18 - LEI Data Validation," *A Global Identifier for Financial Markets* (June 12, 2012), page 46: http://www.leiroc.org/publications/gls/roc_20120608.pdf .
[18] http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/startreporting_qa_final.pdf.
[19] See footnote 14 at page 53.

counterparty maintained the LEI. These expectations would put a great deal of complexity and compliance risk for swap reporting onto reporting counterparties, which should only be required to keep their own LEI registrations current. Instead, we suggest that the Commission could obtain a more accurate and consistent view of LEI registration status directly from the GLEIF Concatenated File[20] which is updated daily and freely available via the GLEIF website.

Special entity Indicator/Counterparty Dealing Activity Exclusion

ISDA believes that the party claiming the exclusion, rather than its reporting counterparties, is better positioned to satisfy the Commission that registration is not required. Capturing information from a counterparty related to its dealing exclusion is cumbersome, and it would be difficult for a reporting counterparty to determine on which exclusion its counterparty is relying, in an accurate and timely manner. Such information cannot be practically determined or acquired on a swap by swap basis during the timeframe required for reporting, thus creating a compliance burden and risk for swap dealer reporting counterparties. In some cases, the actual counterparty(ies) to the trade become known at different points in the trade flow (e.g. at execution time or allocation time), and therefore it would be extremely difficult for market participants to have to adjust all those workflows for the purpose of conveying such information.

Due to the complexity of determining (i) a party's status as a special entity, (ii) its eligibility for a dealing activity exclusion and (iii) identification of the relevant exclusion, the data reported by other market participants may be inconsistent and frustrate, rather than aid, the Commission's surveillance objectives. In the event the Commission seeks to amend its rules to require these fields despite their envisaged shortcomings, the fields should only be required to be reported by reporting counterparties which are not registered swap dealers and which can report such information on their own behalf. This approach was supported by the Financial Services Roundtable in its response[21] to the CFTC's Swap Dealer *De Minimis* Exception Preliminary Report.

The proposed data elements for "Special entity/utility special entity Indicator" and "Counterparty Dealing Activity Exclusion Type" imply that the Commission intends to use swap data to monitor compliance with its regulations pertaining to the registration of swap dealers and major swap participants. Considering the complexities of reporting these elements on a swap-by-swap basis, we do not think that swap data reporting is the best source of data for this purpose.

Third Party Reporter ID/Submitter ID

It is unclear what value the Commission expects to obtain from the submission of both a "Third Party Reporter ID" and a "Submitter ID" as these fields seemingly overlap in purpose, likely leading to confusion and inconsistent use. A reporting counterparty is required to report on its own behalf unless it relies on the provision in §45.9 to contract with a third-party to facilitate reporting. It seems then that identification of such a "Third Party Reporter" alone would be sufficient and appropriate to provide the Commission with the relevant transparency.

[20] https://www.gleif.org/en/lei-data/gleif-concatenated-file#.

[21] http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60606&SearchText=

Absent the identification of a third party facilitator, the Commission should assume the data has been submitted by the reporting counterparty (or the non-reporting counterparty in the case a report is identified as a "voluntary supplemental report"). The introduction of additional fields with overlapping purposes creates the potential for inconsistent or illogical data reported between such fields, undermining the clarity which the Commission seeks.

U.S. Person Indicator for Ultimate Parent/Ultimate Guarantor

Referring back to our concerns noted above regarding the definition and identification of an ultimate parent or guarantor, we further advise that reporting counterparties have not obtained representations regarding the U.S. Person status of such potential ultimate guarantors or ultimate parents of their counterparties. Significant work would be required to obtain additional representations from swap counterparties for this purpose and to build out static data, especially considering the potential need to account for differences in classifications based on the distinctions between the CFTC and SEC on the definition of U.S. Person. It would be more efficient, accurate and domestically harmonized if the CFTC and SEC would agree to a single definition of U.S. person under the Dodd-Frank Act. Obtaining these representations can be challenging, especially for parties that are not subject to the oversight of the Commission. Considering the associated challenges, the cost and effort of obtaining such representations must be carefully weighed against the substantive benefit to the Commission.

Counterparty Financial Entity Indicator

As provided in ISDA's 2014 Part 45 RFC Response[22], a representation regarding the financial entity status of a non-U.S. party may not be ascertainable. The representation for financial entity status is obtained from counterparties mainly using the ISDA March 2013 DF Protocol[23] ("DF Protocol 2.0"), which covers the CFTC's transaction level requirements. Typically, non-U.S. swap dealers do not seek to obtain DF Protocol 2.0 from non-U.S. person counterparties since, under the CFTC's cross-border guidance, the transaction level requirements apply only to a non-U.S. swap dealer's swap transactions with its U.S. person, guaranteed affiliate and conduit affiliate counterparties and do not apply to its non-U.S. person counterparties.

Obtaining separate representations from non-U.S. person counterparties regarding their financial entity status under U.S. rules would be very challenging and time consuming since it would be difficult to convince non-U.S. person counterparties (that have not already had to make this determination) to spend time and effort in ascertaining their financial entity status under U.S. rules. We therefore request the Commission to not require in its Reporting Regulations that information be reported on the financial entity status of the counterparty for transactions between non-U.S. person swap dealers and their non-U.S. person counterparties.

Prime Brokerage Indicator

With respect to the data element of Prime Brokerage Indicator, the description is written from the perspective of the PB, implying that the indicator would only apply to the swap reported by the PB, which is the PB-client swap per industry practice. Whereas we would expect that if a Prime Brokerage Indicator were to be a required data element, that it would be specified as "Y" on both the ED-PB and the PB-client swaps. In more complex PB transactions (e.g. those that involve client allocation), there may be additional related swaps that make up the set of PB

[22] See footnote 14, page 36.
[23] https://www2.isda.org/functional-areas/protocol-management/protocol/12.

transactions associated with a single execution that might be appropriately identified via this field.

B. Product

8. What are the challenges to reporting industry accepted uniform identifiers? How can those challenges be addressed?

We acknowledge that where an industry accepted uniform identifier for the swap underlier is available, it is not being consistently used by all market participants. This is due to differences in the way reporting counterparties, and potentially their third party facilitators, represent the value in their source systems. The solution is that all reporting counterparties should amend their static data to align with the industry standard identifier that is published for that underlier by its issuer. So, applying that logic to answer an example that Chairman Massad has raised in various speeches[24], the value that ought to be reported consistently for Markit's Credit North American Investment Grade Index Series 19 is "CDX.NA.IG.19 Version 1", the long name for the index that is published on the index annex. The Chairman's examples include the tenor of the swap (5 years), but this is not part of the index name and should not be part of the value that is reported or required to be reported. Instead, the termination date of the swap is reported as a separate data element. To allow firms to prioritize the necessary work, ISDA recommends that the Commission explicitly require the use of the industry accepted uniform identifier as published by the relevant issuer (e.g. Markit or ISDA) and suggest that SDRs implement validation logic with respect to those values, sending explicit error messages back to reporting counterparties when erroneous values are being reported.

Another benefit and incentive for the reporting of industry accepted uniform identifiers is that it eliminates the risk that the participant's anonymity will be compromised in public reporting due to its use of a non-standard value which other participants may use to "fingerprint" and thereby identify other swaps which the participant has reported using the same non-standard value.

For a floating rate option, we agree with the allowable values described in the table in section L. of the Technical Specifications, which provides that a valid index identifier should be as defined in section 7.1 of the 2006 ISDA Definitions or be the identifier used by the administrator for the index. That being said, we suggest that an approach which refers to the ISDA or FpML standard be used more broadly, rather than in a piece-meal fashion as currently applied in the Technical Specifications.

9. If there is not an industry accepted uniform identifier for a particular index, how should the index be represented in swaps data?

In the limited cases where there is not an industry accepted uniform identifier for a particular index, then we believe a value to use as an industry best practice should be agreed until the index has a value assigned by an administrator or published by ISDA. The establishment of best practice values could be accomplished, for instance, through ISDA's Rates Implementation Group, governed by our Rates Steering Committee, and made publicly available. This approach

[24] http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/cdx_slide_massad110415.pdf.

would allow SDRs to implement validation logic with respect to those values, sending explicit error messages back to reporting counterparties when erroneous values are being reported. We would welcome the opportunity to discuss with the Commission whether there is an opportunity to adjust the current governance model for determining new market standard values to better meet its expectations.

10. ***What are the challenges to using proprietary identifiers? Do you have recommendations for addressing these challenges?***

Proprietary identifiers are extremely valuable to the consistent and accurate identification of swap underliers. The issuers of such identifiers are commercially viable because they recognized an industry need for instrument identification and provide services that allow market participants to uniformly agree and confirm the underlier to their transactions. These identifiers provide legal certainty regarding the terms and risk of the swap that cannot be fully replicated by use of other identifiers (e.g. ISIN). Use of these proprietary identifiers for reporting is a natural extension of their broad use within the relevant asset class, creating continuity between trade execution, confirmation and post-trade processing.

We are aware of the reluctance of regulators to sanction the use of underlier identification values that are proprietary to an index issuer. We believe those concerns should be carefully weighed against the value these identifiers can provide to the clarity and consistency of swap data. Although a market participant must subscribe to use their full services, an index issuer usually makes the names, associated reference codes and constituents of its indices publicly available. That transparency is essential to promote broad trading of the index by a range of market participants. For similar reasons, index issuers are either willing or might be willing to allow their index names and short codes to be used by market participants for trade confirmation and regulatory reporting. Where the capability and authority exists for market participants to equally use these uniform asset identifiers, reporting regulations should allow or require them to do so in the interest of efficiency, accuracy and consistency.

For some products or asset classes, market participants that are not subscribers to the services of a reference data service provider may not have equal ability to use proprietary underlier values or codes. In these cases, parties clearly cannot be compelled to use the services or the associated identifiers. However, where a standard is predominant to that market, market participants that have access to these standard identifiers should be allowed to use them. For example, if the underlier or underlying index can be identified via an industry accepted uniform identifier by the reporting counterparties for 95% of the swaps traded on a product, then regulators should embrace their use to achieve good data quality that supports their ability to meet their transparency and oversight obligations. Prohibiting use of such proprietary identifiers would force all parties to use less efficient, less accurate values that would not be consistent with the values submitted by others. Such a prohibition would undermine (i) the Commission's ability to accurately aggregate swaps according to their underliers and (ii) decrease the ability of market participants to reconcile reported swap data.

Regulators should engage in direct dialogue with the issuers of propriety identifiers to determine the extent to which their intellectual property terms could be adjusted, if

appropriate, and/or issue guidelines in this respect, possibly as part of the recommendations of the Harmonisation Group.

11. ***What are the challenges presented when an identifier for an index is changed? Do you have recommendations for addressing these challenges?***

The identifier for an index or floating rate option can change for a number of reasons due to circumstances which are unique to each identifier, each leading to different considerations as to whether the change should result in an update to the reported swap data.

Credit Derivatives Indices

Credit derivatives indices provided by Markit can be identified by either a 9-digit RED ID or by the long name of the index, which includes the name, series and version. For instance, 2I65BYDJ1 is the RED ID for CDX.NA.IG.25 Version 1. The RED ID and the long name of an index will change due to either (i) the bi-annual roll of the index (resulting in a new series) or (ii) a credit event on an index constituent.

- Index roll: An index roll would not change the identifier of the index that applies to previously reported transactions. Transactions which were entered into prior to the index roll retain their index series and version and only transactions entered into subsequent to the roll are transacted on the new series. Therefore an index roll would not prompt an update to previously reported swap data.
- Credit event: Within approximately 24 hours of an announcement by a Credit Derivatives Determinations Committee[25] that a credit event has occurred on an index constituent, Markit will publish a new version of the impacted indices. The RED ID and long name of the index are updated in confirmation records in DSMatch as part of credit event processing, and firms update the identification of the applicable index in their systems. As a result, the identifier for the index in reported swap data would also be updated.

A succession event on an index constituent does not prompt a new version of the index. Instead, the changes to the index constituents and weighting, if applicable, would be reflected in the records of Markit and the systems of parties with trades on the relevant indices. The changes to the index constituent would be published in the next series of the index produced from the bi-annual roll. So, in the case of a succession event, no changes to the reported swap data would be necessary or appropriate. This information is pertinent to the Commission's proposals for Credit|Succession and Credit| Spin-Off event types, which are not feasible for reporting. See our response to question 61 for further feedback on this matter.

Floating Rate Options

The definition or name of a Floating Rate Option may be amended either by ISDA (and published as a supplement to the 2006 ISDA Definitions) or by the administrator of the rate.

- Definition: If only the underlying definition of the Floating Rate Option changes (e.g. due to a change in the reference page or time), this does not prompt a change to the

[25] Defined in Section 1.6 of the 2014 ISDA Credit Derivatives Definitions.

booking or confirmation of the swap between the parties and would not require a change in the reported swap data.

- Name: A change to the name of a Floating Rate Option would apply to swaps entered into after the update and would not apply retroactively. Parties to swaps on the preceding name must bilaterally or multilaterally agree to amend their swaps if they want them to reflect the new name. If the parties were to agree to such an amendment and update their systems, the reporting counterparty may be able to report the change to the name of the Rate Option; however it is important to consider that there is no automated processing of changes to Floating Rate Options and parties may have different technological capacity to apply such changes to reported swap data.

Equity Underlyers

For equity derivatives, corporate action events can change an underlying entity, which may be reported by reference to an ISIN or a Reuters Instrument Code (RIC). Such events are non-price forming, so would not be reportable under Part 43 and instead should only be reportable under Part 45 as continuation data or as a new trade that may be linked to the preceding trade via reference to the original USI.

12. ***Do the benefits of mandating a publically available standard reference representations and possibly a central maintenance authority outweigh the potential effect on innovation and competition in the creation of new indices or index identifiers?***

Although the idea of a central maintenance authority is compelling, we do not believe it is a viable solution for the creation of indices and the normalization of index identifiers. Such an authority would need to have a global mandate in order to justify its creation and global oversight to compel and govern its performance under its exclusive rights (e.g. similar to the establishment of the Global LEI Foundation). There may be significant resistance to such an authority since it may stifle competition and impact existing commercial index providers.

13. ***Would using a single source for each index identifier and/or asset class be preferable to using multiple index providers? If so, why, and which providers would you recommend and why?***

It would not be practical or appropriate for the Commission to limit the parties that can offer or identify indices. Doing so would fragment markets and create territorial oversight conflicts and commercial monopolies. Instead we believe that the Commission should develop recommendations that acknowledge there are, and will continue to be, multiple index sources. Although this makes the task of assuring data quality more challenging, this can be mitigated by providing explicit guidance that the index identification value should be reported in the precise manner which has been identified by the issuer of the index or the body which has defined the index recognized by the market. In cases where parties are currently not aligning with these values, they will need to make conforming revisions to their internal databases. It would be difficult for SDRs to build a validation of all these values since the list will never be finite, will evolve and all indices may not have a standard value. Nonetheless, if indices are harmonized at a global level, an SDR may be able to validate values for which the parties identify the source of the index.

14. ***How should currencies that do not have ISO 4217 codes be represented?***

We gave a great deal of consideration to the pros and cons of reporting off-shore versus ISO 4217 currencies and current market practice when considering this question in the ODE Consultation. Ultimately, we recommended that in the cases where the parties have transacted using an off-shore currency, the parties should map the off-shore currency to the on-shore equivalent that is supported by ISO 4217. Please see our response[26] to the ODE Consultation for further discussion on this matter.

15. ***Is there any uncertainty regarding how Reporting Counterparties should determine and report the Asset Class treated as the primary asset class involved in a multi-asset swap?***

The reporting counterparty should determine and report the Asset Class that it deems to be the primary asset class in a multi-asset swap. Although there is the potential for inconsistency between market participants, the volume/proportion of multi-asset swaps in relation to the swap market as a whole is not large enough to warrant the effort and cost of trying to standardize the approach to primary asset class determination. The industry should consider any identified discrepancies that may impact reporting counterparty determination in order to establish an appropriate best practice.

16. ***Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.***

We support use of the Asset Class data element. Parties already typically identify the asset class in their swap reporting even though the CFTC has only proposed the addition of this field as part of its *Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps* ("Cleared Swap Amendments"). SDRs use the asset class as the key determinant for which data fields are available for reporting in the associated messaging specifications. We note, however, that the allowable values in the Technical Specifications do not align with the field values proposed in the Cleared Swap Amendments. We prefer the values in the Technical Specifications (i.e., "ForeignExchange" rather than "FX" and "Commodity" rather than "other commodity"). The values to specify asset classes should be globally consistent and CPMI-IOSCO should consult on this in its next intended consultation on key data elements.

C. Price

17. ***Are there alternative terms for representing the value exchanged between parties for different asset classes and different types of contracts within each asset class?***

Although liquid markets tend to move toward standardization in pricing, different forms of a product, or products traded in different underliers, markets, etc. can be priced differently. For example, an interest rates swap could be traded based on a fixed rate, or with a standard fixed rate plus an upfront payment, with or without a spread.

[26] http://www2.isda.org/attachment/NzkzNA==/CPMI-IOSCO%20Response_ODE_9%20Oct%202015_FINAL.pdf, pages 14, 15.

To support efficient, globally consistent reporting, we believe that the data fields for reporting price should be simplified and streamlined. In these Technical Specifications, the Commission has separately proposed data elements pertaining to price in three different sections: (i) more general data elements pertaining to "Price" in this section, (ii) data elements pertaining to "Additional Fixed Payments" in section E., and (iii) data elements for the price of Options in section F. The approach to price representation needs to be looked at holistically and asset class, product and event specific pricing fields should be avoided in favor of universal pricing fields. This would simplify reporting and benefit data quality.

Currently, the Part 43 regulations have price notation and additional price notation fields while Part 45 has asset class specific price fields. It is unclear from the Technical Specifications whether the Commission anticipates replacing the existing fields with the proposed ones to improve data quality. This may be the Commission's intention, but if so, it would be undermined by the complexity added by product and event specific data fields that unnecessarily fragment pricing data. If the Commission deems separate fields valuable to distinguish Price from Additional Fixed Payments, for instance, then the delineation between the two must be clear to avoid inconsistent treatment which would reduce the usefulness of the information. Many of the Additional Fixed Payment Types proposed in section E. are actually components of the initial price of the swap and should be reported as such. Prices for options need not be divided from the pricing for other swaps; the product identification and transaction data will make it clear the price is associated with an option.

In addition, it is important for the Commission to consider the complexity of establishing too many different labels and buckets for pricing that cannot be operationally distinguished in a complex and jurisdictional-specific manner in trade capture and reporting systems. Although the aim may be to bring clarity to oversight, the added complexity will actually reduce the ability for firms to comply in a consistent manner as prescribed, thus decreasing the availability of quality data. We recognize there is some variation with respect to how market participants report the price of a swap, as there are different ways of expressing the same price. We recommend that the Commission focus on providing guidance, which is informed by prevailing industry standards and practices in global jurisdictions, regarding how to report a price. We believe that adopting this approach would improve consistency.

As part of the Part 43 regulations, the CFTC introduced the concept of Price Notation and Additional Price Notation to express pricing information, along with a specific field to report the option premium. As a follow-up from this, the industry undertook a data standardization exercise to specify how market participants should report the different price variations using that framework[27] (the "Price Notation Standard"). A meaningful investment has been undertaken across the marketplace to report such values, while recipients of the public price reporting tape have also undertaken investments to consume and make sense of such information. In that respect, we recommend that the Commission consider this implementation before considering moving away from it. Last but not least, if an alternative approach is considered, we recommend that the Commission uses the standardization analysis that has been developed through ISDA as an input to such approach, as a wide variety of use cases have been documented as part of it.

[27] http://www2.isda.org/attachment/NjcxMg==/ISDA%20PN-APN%20Approach%20Document%20v1.0%202013_03_15.xlsx

Please see our comments to sections E. and F. for further information regarding the reporting of price components.

18. ***Price is currently reported in several ways, including Price, Spread, Percentage, and Upfront Points. Is this list sufficient or should other Allowable Values be added?***

This list covers much of the market, but we caution that there may need to be several values to specify a price for a single transaction (e.g. a fixed percentage, a spread, and an upfront payment). Typically the counterparties will fix all but one of the values and negotiate the final one (e.g. for exiting an existing swap, they may specify the fixed rate and the spread and negotiate the upfront (termination) payment). However, all of the values are part of what makes up the price. If only one may be reported as the "price", different firms might report different values unless there is a consistent definition by the Commission and global regulators.

The proposed list of price types is not exhaustive. For instance, in the commodities asset class, price is often quoted per unit (e.g. price per barrel). Values such as Basis Points and Amount are currently supported by SDRs and used by market participants. The price type is reported using the coding scheme in FpML for price-quote-units[28], which "specifies the units in which a price is quoted." To account for both current market practices and market evolution, the Reporting Regulations should allow the use of any price type defined in this standard.

19. ***Should each asset class have a specific list of allowable Price types? If so, please suggest allowable price types.***

Any distinction regarding allowable price types for an asset class should be considered in conjunction with Price Notation Standard previously developed by the industry and discussed with the Commission. See our response to question 17 for further information.

20. ***What additional data elements related to Price should be provided for each asset class or product type to fully reflect the value exchange by counterparties of the swap?***

We suggest the Commission consider the Price Notation Standard to inform its analysis of pricing fields.

21. ***Where a swap uses "post pricing" (e.g., the pricing is determined by an average price over time, volumetric weighted average price, closing price, opening price), how should the Price data element be expressed before the numerical price value is determined for each type of post-priced swap?***

In accordance with ISDA's 2014 Part 45 RFC Response[29] and ISDA's ongoing discussion with CFTC staff, we feel strongly that a swap is not executed, and thus not reportable, until all the Primary Economic Terms are known, including the price and notional.

[28] http://www.fpml.org/coding-scheme/price-quote-units
[29] See footnote 14, pages 29, 30.

In the data element for Message Type, the Commission includes an example that the message type of "Update" could be used to provide an additional value that has not been provided in prior message traffic, such as "the price of a transaction that was executed at a yet to be determined VWAP". We do not believe pricing conditions should be reported. Reporting a post-priced swap before the price, size and/or other characteristics are determined exposes the investment strategy of the market participants that rely on these products to the market place. Premature reporting would allow other market participants to trade ahead of the client's order, negatively affecting the price of the swap. In the long term, this will limit the availability, viability and pricing of these products to institutional customers that use swaps to perform global asset allocation strategies.

Please see ISDA's 2014 Part 45 RFC Response for a full discussion on the reporting of post-priced swaps. We look forward to further dialogue with Commission staff to resolve this open matter.

22. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Under EMIR, fields related to Price allow for up to 20 numerical characters, while the CFTC suggests "5 digit decimal precision". The representation of price should be globally consistent and the Harmonisation Group should consult on and recommend a standard format informed by existing market practices.

D. Notional Amount

23. What challenges exist for reporting of static and/or varying notional amounts, such as a schedule for accreting or amortizing swaps? Do you have recommendations for addressing these challenges?

We recognize the value of regulatory access to the current notional amount of transactions to understand exposures and valuations, but challenges remain with respect to the technological capacity of market participants to report updates to the notional amount that are not the result of a post-trade event. Investment in system changes could be prioritized based on clear and globally consistent requirements regarding notional data representation. The ODE Consultation also requested feedback on this field[30], and we encourage the Commission to align behind that recommendation.

When known upfront, the reporting counterparty should be allowed, though not required, to report the notional schedule once instead of having to send periodic updates to the notional amount. Sending the notional as it varies through the life of the swap can be challenging since these values are predetermined and are not captured as a lifecycle event. FpML includes a standard representation of a notional schedule which is used by many reporting counterparties and works quite effectively. In the case where the schedule is specified upfront and is not subject to post-trade events as outlined below, the simplest approach might be for the SDRs to provide the Commission with a 'current notional' by computing this schedule, since all relevant information is available.

[30] See footnote 32, pages 12-14.

With respect to a schedule of notional changes, the date on which notional changes apply in a schedule or are applied to reported data could be either adjusted or unadjusted. Practice and mechanisms could vary within and between firms, though they are not likely to result in substantive issues with data quality and comparison.

In terms of the original notional of a swap, we believe this should not be required to be reported separately by a reporting counterparty if not equal to the current notional. If the Commission should need to compare the original notional amount to the current notional amount, this value would be available via the data in the initial messaging or could be persisted by the SDR.

24. ***How should the reported notional amount reflect embedded leverage that may alter the "effective" notional amount of the swap?***

We recommend including a separate scaling factor data field, to be filled in when the value is not equal to "1". FpML already supports this through the floatingRateMultiplierSchedule/initialValue and step/stepValue[31] elements.

25. ***Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.***

Notional Amount

The biggest challenge with defining notional is that not all products have a clear definition of "notional" expressed in currency units. For example, commodity swaps are defined in terms of volumes of a commodity over a time period. Converting this to a monetary amount requires deciding which price to use for the commodity (e.g. strike or spot) and what time period (e.g one month or the full life of the swap). Similar problems exist for equity based swaps which are defined in terms of number of shares, or variance amount, etc. For these we recommend that the Commission defines consistent rules for calculation of notional amounts. For example, commodity swap nationals could be calculated as the strike price times the average (or current) monthly volume, and equity swaps could be calculated as the strike price times the number of shares.

The Commission should clarify whether reporting counterparties are expected to report the current notional amount for a swap, taking into consideration accretion, amortization, or terms of the swap that alter the notional through the life of the swap but would not be considered a lifecycle event under common market practice.

Notional cannot and should not be reported differently based on the jurisdiction. The standard format adopted by global regulators should take into consideration the legitimate variations in the way a notional value is expressed and used for an asset class and product. Global regulators should avoid normalizing the use of this field to the extent that it contradicts the way that a notional amount is confirmed between the parties and used to calculate the payments or risk on the swap.

[31] http://www.fpml.org/spec/fpml-5-9-3-wd-3/html/recordkeeping/schemaDocumentation/schemas/fpml-shared-5-9_xsd/complexTypes/FloatingRate/floatingRateMultiplierSchedule.html.

Notional Currency

We agree with the proposed standard for reporting the currency associated with a notional in cases where the notional is agreed and confirmed in currency units. See our response to question 14 regarding currencies which are not supported under ISO 4217.

When the underlying is measured in non-currency units, e.g. equities or commodities, the Commission should specify whether the notional currency should be based on some other reference currency, such as the currency of the strike price, or the settlement currency of the swap.

E. Additional Fixed Payments

26. What challenges may exist for reporting Additional Fixed Payments? If so, what alternative approaches are available?

It is not clear why the various payments suggested by the proposed allowable values would be considered "additional", rather than just "Fixed Payments". There is an overlap between these fields, the Price fields proposed in section C., and the existing Price Notation and Additional Price Notation fields in Part 43 that is not sufficiently delineated. Fields with overlapping purpose create the risk for inconsistency in reporting rather than improving data quality.

The allowable values proposed for Additional Fixed Payment Type can be divided into roughly three groups: (i) arrangement fees (e.g. brokerage), (ii) contract intrinsic payments (e.g. initial payment) and (iii) payments associated with either intrinsic or negotiated post-trade events. The following paragraphs contain our feedback regarding reporting a price associated with an event in these groups as an additional payment. See our response to question 27 for further details.

- With respect to arrangement fees, (e.g. those paid to an inter-dealer broker or a prime broker) we do not believe these should be reportable as they are not part of the price of the swap. In accordance with the current practice under Part 43, fixed payments reported on a swap should only include relevant fees exchanged between the counterparties to the swap and not those that are tangential to the swap and paid to a third party.
- Contract intrinsic payments are already factored into the price reported for the swap or are part of the predetermined payment flows, so are not lifecycle events under Part 45 and would not be separately reported in the category of Additional Fixed Payments.
- Many post-trade events are subject to reporting in their own right as publicly reportable swap transactions and/or continuation data. Any fee exchanged between the parties reflects the price of the event and would be reported as such rather than as an additional fixed payment.

Since many of the Additional Fixed Payment Types suggested in the Technical Specifications are not considered "Additional Fixed Payments" by market participants, they will not be booked as such in firms' systems and it would be difficult for them to be identified and reported in this manner. Therefore, it is important that the list of allowable values and the corresponding requirement reflect fees that are appropriate to this set of data elements. Moreover, the way in

which price is reported should be simplified rather than made more complicated and must be globally consistent.

There could potentially be multiple fixed payments to a swap. The existing proposed list of data fields does not handle this situation, since only one fixed payment is supported. If only one fixed payment is allowed by the data format, the CFTC should specify the rules for determining which of the fixed payments should be reported (e.g., earliest, largest, etc.)

27. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Additional Fixed Payment Type

The description for Price in section C. of the Technical Specifications is explicit that the value is exclusive of commissions and accrued interest. In order to promote consistency, the description of Additional Fixed Payment Type should also be explicit as to whether or not these components may, should, or should not be included.

In accordance with our response to question 26, we do not agree with the list of allowable values for the Additional Fixed Payment Type, which appears to be a collection of various events that may apply to a trade rather than events that may involve a fee that would be appropriate to categorize as an "additional fixed payment".

Initial Exchange, Interim Exchange and Final Exchange

Initial Exchange, Interim Exchange and Final Exchange refer to the exchange of principal on an interest rates cross-currency swap, with the interim exchange an adjustment to reflect the periodic foreign exchange rate. Periodic payments for interest rates swaps are integral to the performance of the swap (e.g. to settle an offset of fixed and floating payments). As these payments are intrinsic to the function of the swap legs, they would not be considered "Additional Fixed Payments" and the ability of a reporting counterparty to report them as such would vary based on system capabilities. Considering the preceding, the corresponding value of independently reporting them in this manner is unclear. Rather, it seems more appropriate to report a "Currency: Premium Exchange", if applicable (e.g. when the fixed rate is deemed off-market).

Correction/cancellation

A correction or a cancellation is a technical event for which there should not be a fee attached since these are not price-forming events that are negotiated between parties. In the event of an error that would necessitate a correction or a cancellation (e.g. due to an operational mistake) a modification or cancelation message would be used to correct or expunge the report and no associated fees would be booked or exchanged.

Compression

No fee is exchanged between the parties for a compression event.

Novation
The fee exchanged between a transferor and transferee to affect a novation could not be reported as an additional fee on a swap. Rather this fee is just reported as the price for the publicly reportable swap event.

Unwind, Partial Termination and Full Termination
First, we do not believe that an "Unwind" is an event that is distinguishable from a Termination and its inclusion would lead to unintended bifurcation. But, we do not actually believe that any of these values should be included since, like a Novation, the fee associated with the execution of a partial or full termination would be reported as the Price for the lifecycle event and not as an additional fixed payment on the original swap.

Other
Although we recognize that it may be difficult to produce an exhaustive list of payment types for this field, it is systematically difficult to identify and report a payment that should be reported as "Other". The lack of guidance available for such a value means reporting counterparties are unlikely to approach the field in a consistent and reliable manner.

Initial Payment Amount
An Initial Payment Amount is a component of the price and is currently reported as an Additional Price Notation under Part 43 or as an upfront payment under Part 45.

Based on our response to questions 26 and 27 above, the following should be removed from the list of allowable values: Initial Exchange, Interim Exchange, Final Exchange, Unwind, Correction, Cancellation, Amendment, Novation, Compression, Partial Termination, Full Termination and Initial Payment Amount.

F. Options

28. Do the allowable values for Option Type clearly and properly reflect the possible outcomes resulting from an option exercise as they relate to the underlying contract?

FpML is used as a confirmation standard for a wide range of options across all asset classes, and properly represents those terms. In that respect, we would say that we are intrigued by the statement that "the swap data currently reported to SDRs does not sufficiently identify option buyers and sellers or the resulting obligations and cash flows associated with option exercises". Rather than developing a data reporting standard that is specific to the CFTC, we would suggest evaluating whether there are insufficiencies with the FpML standard, and address those if this is the case.

With respect to the allowable values in the Technical Specifications, we have the following feedback:

There are some other option types, particularly for more exotic option products. For example, "chooser" options allow the option holder to choose at exercise time whether to buy or sell the

underlying. We recommend having another option type such as "exotic" for accommodating these cases.

We understand what is intended by the allowable values of "Right to Pay", "Right to Receive", Right to Buy Protection" and "Right to Sell Protection", but we do not believe that the creation of new values that are applied from the perspective of a single party to the transaction (in this case the reporting counterparty) are appropriate for global reporting standards and data reconciliation. In some jurisdictions both parties are required to report and could not match on these values. Under the CFTC's regulations, these values would be difficult to reconcile between counterparties. In either case, the parties, reconciliation platforms, and the SDRs should not have to build logic to confirm that the non-reporting counterparty understands it has the rights to the opposite position. ISDA fears that the Commission's proposal to reshape the way trade economics are represented by including additional duplicative terms is likely to complicate reporting.

Instead, the Commission should align reporting with industry standard terminology and the way in which credit and rates options are confirmed. The parties agree and understand their respective obligations in accordance with the confirmation which specifies which party is the "Buyer" or "Seller"[32] of the swaption and each party's role as either the Fixed Rate Payer or the Floating Rate Payer specified in the terms of the underlying swap and as defined in the relevant product definitions. If a party is the Buyer of a Credit Default Swap ("CDS") swaption and the Floating Rate Payer (also defined as the Seller) of the underlying swap, then it is clear that if that party exercises they will be selling protection. There is no need to add a value of "Right to Sell Protection" to the swap data; it is redundant. If a party is the Seller of a rates swaption and the Fixed Rate Payer of the Underlying Swap Transaction[33], then it will pay the Fixed Rate and receive the Floating Rate. It is unnecessary and inconsistent to use an alternative term of "Right to Pay" or "Right to Receive" since these concepts are intrinsic to the party's confirmed role.

The terms "Put" and "Call" should not be used for rates and credit since they are not defined terms in these asset classes. Some regulators have sought to artificially apply these terms to the rights of the parties to swaptions[34] to force a uniform set of terms on all asset classes. But we do not agree that trade reporting regulations should alter the defined terms under which derivatives are agreed and confirmed or create an unnecessary disconnect between the terms applied to the same transaction for different purposes. Such distortion of terms impacts the ability of the parties to reconcile reported data against their systems and each other since the representation of the data has been artificially altered. A discrepancy in the economics of the swap could actually be created by the transformation of the swap terms and could undermine the legal certainty provided by the confirmation.

For equities, foreign exchange and commodities, "Put" and "Call" are terms which are defined[35] from the perspective of the buyer and the applicable value is confirmed and capable of being

[32] As defined in Section 12.1 of the 2006 ISDA Definitions and Sections 1.3 and 1.4 of the 2014 ISDA Credit Derivatives Definitions.
[33] As defined in Section 14.1(c) of the 2006 ISDA Definitions.
[34] See, for instance, EMIR RTS, footnote 7, pages 46, 47.
[35] See Section 8.3 of the 2005 ISDA Commodity Definitions, Section 2.4 of the 1996 ISDA Equity Derivatives Definitions, Section 2.3 of the 2006 ISDA Fund Derivatives Definitions and Section 3.3 of the 1998 FX and Currency Option Definitions.

reported in a consistent manner by either party. Therefore, these terms are appropriate for use in these asset classes.

29. ***Do the allowable values for Option Strike Type properly reflect the range of appropriate entries for this data element?***

Under FpML, option strike can be represented as a Price, Percentage, Spread or a Price per Unit.

30. ***Does the definition of Option Strike adequately describe the range of entries for this data element?***

As opposed to referring to the level or price at which an option may be exercised, the Option Strike would be more accurately defined in reference to the contract level or price at which the parties settle the option, if exercised.

When an option is on a swap with a fixed rate that changes during the life of the trade, there is not a single value for the strike. The Commission should specify how to handle this situation (e.g., use the initial fixed rate).

31. ***Do the allowable values for Option Premium Amount Type properly reflect the range of appropriate entries for this data element?***

The Commission could specify that the option premium should always be reported as either a monetary amount, or as percentage/basis points of notional. However, if the notional is not fixed, expressing it in points/percentage of notional could be problematic.

32. ***How should the Embedded Option Indicator data element be defined? Should optional termination rights at the market price of the swap, "tear up" swaps and/or "First Method" style termination rights be considered embedded options?***

Termination rights with payment of the market value of the swap to the in-the-money party (e.g. "mutual put" clauses), which do not confer any significant economic benefit to either of the parties and are typically used to mitigate credit risk, should not be classified as "embedded options". Only options which confer to one of the parties to the swap the right to either terminate early or to extend the option without market-price driven payments should be considered embedded options.

33. ***Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.***

<u>Option Buyer ID/Option Seller ID</u>
Data fields already exist to identify the buyer and seller of a swap. It unnecessarily bifurcates data and complicates messaging to have fields specific to options to indicate the direction of the trade.

Option Style

In the commodities and foreign exchange asset classes, an option style of "Asian"[36] may be agreed between the parties. This is a hybrid value that couples the European option to exercise only on the expiration date with a floating price which is determined by an averaging of the relevant price for each pricing date during the calculation period. Asian is included as an allowable value in the EMIR RTS as an Option exercise style, and we suggest that the values should be aligned globally and reflect all the option styles that are defined in the asset class definitions.

Earliest Exercise Datetime/Final Exercise Datetime

An Earliest Exercise Time or a Latest Exercise Time are only applicable, agreed and confirmed between counterparties in limited cases. Otherwise, the dates and times are determined by other terms of the swap, for instance, the end of the applicable Expiration Date. Requiring these fields may create significant work for little discernable value.

G. Orders

34. Is a single Order ID sufficient to access historical order information? If not, what other identifier(s) would be sufficient to access historical order information?

A single Order ID would be sufficient to access historical order information. The allowable values and format/standard should remain sufficiently flexible, as proposed, to allow repurposing of existing values already created by SEFs/DCMs to track orders.

The description for this field refers to a numeric ID "for each counterparty". We feel strongly there should be one Order ID per transaction, rather than one for each counterparty. It is not clear what would be accomplished by having separate Order IDs per counterparty, which would complicate data requirements and access since there may be a necessity to link the values.

35. What challenges exist for reporting this type of order information for a particular swap traded on or subject to the rules of a SEF or DCM? Do you have recommendations for addressing these challenges?

As a matter of practicality, the Commission should consider focusing on the improvement of existing data fields before it looks to expand the scope of data collection. A requirement to report data related to Orders should not duplicate the obligations that SEFs and DCMs already have to provide information regarding execution on their platforms directly to the Commission. Also, use of the term "Orders" implies a broader scope than may be intended for these data fields. If any of these data fields were to be required to be reported, the Commission should be explicit that they only pertain to swaps which are actually executed on a SEF or DCM and do not pertain to requests for quote or other client orders that do not lead to an actual execution on the SEF or DCM.

If, subject to subsequent rule-making, the Commission should require the reporting of data elements related to "Orders", then the Commission should include in the Reporting Regulations

[36] Defined in Section 8.3 of the 2005 ISDA Commodity Definitions.

clear guidance that these fields would not be required to be persisted by the reporting counterparty upon a subsequent post trade event that was executed away from the SEF. In the event that the CFTC wants continued access to the originally reported data elements pertaining to Orders, then the Commission should provide explicit guidance to SDRs to persist the data.

Order DateTimestamp

This data element equates to a timestamp already collected by SEFs (i.e. "entry time") that is captured using ISO 8601/UTC.

Match DateTimestamp

The time the order was matched by the SEF/DCM is the timestamp that is currently captured as the execution timestamp. An additional, redundant value should not be required and the execution timestamp should not be labeled or reported under a different field based on whether the swap was executed on- or off-platform.

Price Discovery

It would be viable to report the method of execution, as suggested by the description and list of allowable values, but it may be more consistent with market vernacular to call this data element "Execution Method". We note that work would be required on the party of SEFs/DCMs to map their current representations of these pricing methods into the proposed allowable values.

Price Order

The list of allowable values appears to be driven from the futures market as opposed to reflecting the standard practices for SEFs/DCMs, and therefore cannot be meaningfully paired with a price discovery value. For instance, swaps entered into via a Request for Quote ("RFQ") do not have another price designation and an order transacted this way would have an order type of RFQ. Clarification is needed as to what information pertinent to the OTC derivatives execution process the Commission expects to obtain through this data element.

Block Trade Election Indicator

As Parts 43 and 45 already include a Block Trade Indictor field, it is unclear why a Block Trade Election Indicator field is being proposed as part of the data elements associated with orders. The current field should be used for all swaps for Part 43 reporting only[37], regardless of their execution method. If the Commission is considering a separate field for the same purpose that is specific to SEFs/DCMs, we advise that doing so would divide the data and add complexity to reporting for no discernable gain.

As the party responsible for reporting creation data, if a SEF/DCM processed a block trade for a customer that was executed pursuant to its rules (rather than on its platform) and received notification from the customer that the transaction was eligible for block treatment, then it would indicate "Yes" in the block trade indicator field as part of the creation data report. We are not aware of existing issues with respect to this process.

[37] See ISDA comments regarding exclusive application to Part 43 in ISDA's 2014 Part 45 RFC Response (footnote 14, pg. 35) and to the Cleared Swap Amendments (http://www2.isda.org/attachment/Nzk3NA==/ISDA_CFTC_ClearedSwaps_CommentLetter_30Oct2015_FINAL.pdf, page 8.

36. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Order ID
See our comment regarding the description in response to question 34, above.

Customer Type
The list of allowable values is not comprehensive. Additional scenarios include, but may not be limited to, a customer placing an order themselves, via an investment advisor or manager (which is not a broker) or via a prime broker. As the market evolves, additional types of customer relationships may emerge so the Commission should consider a flexible approach to the allowable values that accounts for innovation.

Execution Type
Reporting whether a swap instrument is a "required" or "permitted" transaction is feasible since SEF/DCM already track this data element.

Order Source
The list of allowable values for this field does not reflect the current SEF market and clarification is needed to understand their application. A BUST and a BLOCK are values that might be specified, but what value would apply to a swap for which the order source is the SEF's platform? Would it be considered "exchange activity"? The Commission should clarify whether this data element is envisioned to only apply in cases where the order is driven external to the SEF's platform.

H. Package Transactions

37. Are the proposed data elements appropriate in identifying which swaps are executed as component legs of a package transaction?

The proposed set of data fields is far more detailed than is required to simply identify which swaps are executed as part of a package transaction. Use of a Package/Strategy ID (otherwise referred to as a Link ID) is the best way to identify and link component transactions that are part of a package transaction. In CPMI-IOSCO's Consultative Report *Harmonisation of the Unique Transaction Identifier* ("UTI Consultation") feedback was also sought on the identification of package transactions and their relationship to UTI. In our response[38], we agreed with the proposed approach that a UTI should be assigned for each reportable transaction.

Currently, the most common reporting approach is to treat each component of a package transaction as a separate transaction and to assign a different USI or UTI to each component that is a reportable transaction according to the rules governing the reporting of that component. More specifically:

[38] http://www2.isda.org/attachment/NzkxMQ==/CPMI-IOSCO_UTI_Response_Sep%2030%202015_FINAL.pdf, pages 13-18.

- Where component reporting is used for package transactions, UTIs should be allocated for each component that is a reportable transaction.
- Where reporting happens at the package level, i.e. a single report for the entire package, then a single UTI should be allocated to the whole package.

Most often, reporting is not possible at the package level and, thus, we would expect that a USI/UTI would usually be assigned to each component transaction and a single Link ID would be reported with the data for each component UTI.

Please see our response to the UTI Consultation for further information.

38. Are there any unique characteristics to certain types of package transactions that Staff should account for in devising data elements?

As recognized by the Commission via the data element "Package Contains Non-CFTC Swap Components", a package as executed may include products that are not reportable under one regime but are reportable under another, or not reportable to a SDR under any regime but are reportable under a different regulation (e.g. MIFIR).

- The Link ID must be reusable across different global regimes. Regulators should not require that a reported Link ID only be used to reference products reportable to them.
- Regulators should be aware as a result (and accept) that they may be sent reports with Link IDs where they do not in fact have all the components of the package (or may even see single transactions with a Link ID), and hence may not have the full picture on initial pricing or valuation.

Some packages may be predefined structures, such as strategies (e.g., butterfly, call spread, etc.) while others may be highly customized for a specific purpose (e.g. as part of a compression activity). Data fields that are appropriate for one (e.g. Package Trade Price for a strategy) may be less relevant or meaningful for another (e.g. Package Trade Price for a highly customized package which will never be traded again.)

In addition, it is worth noting that a package could sometimes occur for a very large number of trades (e.g., in the thousands) such as for a purchase of an entire portfolio of transactions by one market participant from another market participant. These kinds of packages can create logistical challenges particularly for (i) timely reporting of data to the SDR and (ii) dissemination of pricing information to the public. See also the response to questions 39 and 41.

39. Should the data elements provide pricing for each component of a package transaction, or is it sufficient to only provide (1) pricing for the swap components only; or (2) price for the entire package?

For packages which contain complex trade components, it is most feasible to report the price for the entire package on each reportable component swap since this value may not be capable of decomposition into a price attributable to the relevant component swap. However, in the case of package transactions which are composed of standardized swap components (e.g. butterflies) the parties may capture, and it may be more meaningful to report, the price of each swap component. Use of the existing field in Part 43 for "Indication of other price affecting terms" would be necessary to clarify that the price cannot be understood based on the data provided in

the report for the component swap. A package indicator or Link ID should not be publicly reported because such values could be used by observers to construct the components of the package, divulge the associated strategy and compromise participant anonymity.

40. Should the data elements specifically identify the types of non-swap instrument component legs in the package transaction?

A reporting counterparty should not be required to provide data on component legs that are not swaps. Doing so may constitute a breach of privacy with the non-reporting counterparty since those components are not subject to oversight by the CFTC.

41. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Package Trade Price

We agree with the proposed description, but in furtherance of our response to question 39, caution that a label of "Package Trade Price" should only be considered for use in Part 45 reporting and would not be appropriate for public dissemination.

Package/Strategy ID

The Package/Strategy ID should be a value determined by the reporting counterparty unless one is created and available for reporting by the SEF or DCM.

I. Clearing

42. Are the sources cited above, and the associated Allowable Values, sufficiently clear to avoid any ambiguity regarding clearing requirements and allowable exemptions? If not, what ambiguity exists that Staff might address?

The Commission should retain the current approach to identifying whether an exemption applies by use of "Yes/No" indicator and, as needed, supplement that information with the information required to be provided by the party claiming the exemption under the Part 50 regulations. The obligations of the party claiming the exemption should not be shifted to its counterparties or duplicated in the reporting regulations.

The Clearing Exemption Type data element corresponds to the "Clearing exception or exemption type" data field in the Cleared Swap Amendments but suggests a requirement for even further specificity regarding the type of exemption(s) that have been claimed. In accordance with our comments to the Cleared Swap Amendments[39], since the exemptions are almost always claimed by the non-reporting counterparty rather than the reporting counterparty, the reporting counterparty will find it extremely challenging to obtain from their counterparty and systematically capture the applicable exemptions on a swap by swap basis in time to comply with its reporting deadlines. The infrastructure to accomplish this does not exist and would be costly and difficult to implement at the trade capture level.

[39] http://www2.isda.org/attachment/Nzk3NA==/ISDA_CFTC_ClearedSwaps_CommentLetter_30Oct2015_FINAL.pdf

We further note that it is not practical to require that reporting counterparties build to report which No Action letter may exclude a party from the clearing requirement. The availability and application of no action relief is not captured systematically by firms either at a party level or a swap level. It would be extremely onerous to build such a mechanism to track existing and future relief and the changes to such relief, especially considering that these staff letters are time-bound and may be extended just before the expiration of the preceding letter. Advance notice is essential to any systematic changes and cannot be guaranteed in the case of No Action letters.

43. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

The Commission has already proposed to amend its reporting requirements via the Cleared Swap Amendments. We note that some of the data elements proposed in these Technical Specifications do not align with those that were proposed in the Cleared Swap Amendments, such as the data element names, the descriptions and the allowable values.

We urge the Commission to address these matters as part of the Cleared Swap Amendment rulemaking, including if necessary, requesting further comment on such rule proposal. ISDA believes it is important to avoid requiring reporting counterparties, Derivatives Clearing Organizations ("DCOs") and SDRs to change their builds for the reporting of cleared swaps multiple times. Rather the Commission should amend these requirements once in a way that clarifies the reporting obligations and data requirement for cleared swaps while aligning with the recommendations of CPMI-IOSCO.

<u>Clearing Organization ID</u>
We agree that an LEI should be used to identify the clearing organization. We notice the suggestion of this data element instead of the "Clearing venue" field proposed in the Cleared Swap Amendments which refers to the derivatives clearing organization. Since some clearing organizations are not registered DCOs then the approach in the Technical Specifications seems more appropriate.

<u>Intent to Clear Indicator</u>
As discussed in our response to the Cleared Swap Amendments and to the ODE Consultation, we continue to believe that the clearing status and clearing model can be more efficiently represented on a globally consistent basis by use of a single field for which the application of an allowable value is explicit.

The ODE Consultation suggests use of a single "Cleared" field that would support multiple values to distinguish transactions intended for clearing and those accepted for clearing. We support this approach and have recommended values that would provide additional clarity without overcomplicating compliance. Rather than requiring a separate "Clearing indicator/Intent to Clear Indicator" field for uncleared swaps and original swaps and a separate field pertaining to the model applied for clearing swaps, we suggest the Commission expand use of the existing Clearing Indicator field. Instead of "Yes/No", the reportable values should be as follows:

- Not cleared
- Intent to clear
- Cleared (Principal)
- Cleared (Agency)

The associated guidance should make clear the following consistent application of the above values:

- "Not cleared" applies to a transaction that is not intended for clearing whether because it is ineligible for clearing, is not subject to a clearing mandate, or at the time of reporting the parties do not intend to voluntarily submit the transaction to clearing.
- "Intent to clear" would apply to any transaction for which, at the point of reporting, the parties intend to submit such transaction for clearing, regardless of whether the trade is subject to mandatory clearing or submitted voluntarily. This may apply to a single trade in a clearing transaction or multiple in the event of allocation prior to clearing submission. The reported value for an original swap would not be updated to either "Cleared (Principal)" or "Cleared (Agency)" upon clearing acceptance, but would persist as originally reported. If a transaction was reported as "Intent to clear" but was not accepted for clearing and will remain a bilateral transaction, then the value should be updated in reporting to "Not cleared".
- "Cleared (Principal)" should be the reported value for any component transaction of a clearing transaction enacted via the principal model, besides the original swap(s), regardless of whether the DCO is a counterparty to such transaction.
- "Cleared (Agency)" should be the reported value for any component transaction of an agency style clearing transaction, besides any original swap(s), regardless of whether the DCO is a counterparty to such transaction.

We encourage the Commission to align its recommendations with the CPMI-IOSCO Harmonization Group's recommendation given the Commission's leadership and participation in those efforts. Importantly, it would be more efficient and cost effective for the industry to implement an approach to this field that aligns with the global recommendations, rather than to support an interim CFTC requirement and then require market participants to shift to a globally aligned approach at a later point.

J. Periodic Reporting

(a) Reconciliation

44. To represent that the reporting counterparties and the SDRs have confirmed data accuracy, is there a methodology better than reporting the Data Accuracy Confirmation by Counterparty data element?

We assume the Data Accuracy Confirmation by Counterparty data element is proposed as a potential expansion and amendment of the requirements under §49.11, which require the SDR to confirm the accuracy of the data via notifying both counterparties of the data that was submitted and receiving from both counterparties acknowledgement of the accuracy of the

swap data[40]. Although we appreciate the necessity for the Commission to improve the accuracy of the reported data, we do not believe this data field or the corresponding requirements under §49.11 actually furthers those goals.

As required of them, SDRs currently make available swap data to non-reporting parties which on-board to their platforms and provide a mechanism for affirmation or dispute. But absent a corresponding regulatory requirement for non-reporting counterparties, there is little incentive for these parties to incur the tremendous cost and effort to on-board to the various SDRs used by their counterparties and develop methods to transform their internal transaction data into the format required by the Reporting Regulations and each SDR in order to perform an automated reconciliation. Rather, parties rely on existing industry practices and other regulatory mandates to obtain certainty regarding the economic terms of their transactions, including bilateral execution and affirmation processes, the legal confirmation, as well as portfolio reconciliation and valuation dispute requirements under Part 23.

We believe that imposing a definitive obligation on the non-reporting counterparty to reconcile data amounts to dual-sided reporting for which the prohibitive cost and burden do not actually result in an improvement in data quality. ISDA believes that trade reporting is not an effective or necessary additional method to identify or resolve differences in trade terms. Instead, our experience suggests that obligations to supplement or verify reported data amounts to overlapping and duplicative reporting obligations which do not yield material benefits. For example, ISDA's analysis of breaks between the transaction data of parties in jurisdictions that require dual-sided reporting reveals that such breaks are not attributable to a disagreement between the parties with respect to the economic terms of the transaction, but rather are due to differences in the way the data is presented to the SDR. In many cases, differences are attributed to fields required only for regulatory reporting which are not otherwise agreed or confirmed between the parties. This statement is supported by the notable differences in the matching rates at trade repositories between parties in dual-reporting regimes (around 60%) versus their corresponding confirmation rates (around 90% at a given time).

Therefore, efforts to reconcile the data in the trade repository between the parties do not actually contribute to a greater validity or accuracy of the key economics of the data which is most valuable to regulatory oversight. Instead, we believe that a reporting counterparty should be responsible for the quality and accuracy of the data it submits, leveraging existing bilateral processes to affirm the terms of its transactions directly with its counterparty. Due to the short deadlines for reporting under the Commission's reporting regulations, all such processes may not be conducted prior to reporting (e.g., confirmation), but in the event they result in a correction to previously reported data they can contribute to the quality of the available data. The ongoing efforts of the Commission, global regulators, reporting counterparties and SDRs to improve the consistency and comparability of the data reported by the reporting counterparty through greater specificity in regulatory requirements (including these Technical Specifications) will more effectively improve data quality than use of a Data Accuracy Confirmation by Counterparty data element.

[40] 76 Fed. Register 54579.

45. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Part 43/45/46

Whether a swap data report has been submitted in order to comply with Part 43, Part 45 or both, should be easy for SDRs to discern based on their current messaging specifications. However the same may not be true for all SDRs for swaps previously reported pursuant to Part 46 since the reporting was completed via various backloading and bulk reporting methods. Non-U.S. entities may still need to comply with Part 46 for their swaps with other non-U.S. entities, but resources should not be spent to build mechanisms to tag swaps as "Part 46" until it is known if substituted compliance will be available.

Data Accuracy Confirmation by Counterparty

In addition to our response to question 44, we note that use of the term "Agree" in the definition of this data element would be more appropriate than "Affirm". Trade affirmation is a separate bilateral process that is neither replaced by nor the same as the proposed verification field in the Technical Specifications.

Date and time of last open swaps reconciliation with CP/with SDR

Since reconciliation information is not available at the time of execution and is not a "life cycle event", the reporting of these fields would not fall under either swap creation data or swap continuation data requirements. Instead, a requirement for these data fields would be a new set of reporting requirements. We believe that collecting new trade-by-trade portfolio reconciliation data via a reporting obligation is not the most effective means of obtaining the information necessary for the Commission to achieve its objective.

Portfolio reconciliation, valuation affirmation, and general affirmation are not currently viewed as 'reportable events', are considerably fragmented in their architecture, and would not represent improved data quality if reported as 'lifecycle events', as the information reconciled could be at a different granularity from that required to be reported under Part 45 (i.e. portfolio reconciliation aims at reconciling economic and agreed terms of a trade, while Part 45 reporting includes additional information such as U.S. person or swap dealer status, execution time stamp, block trade indicator, execution venue).

Some reporting counterparty/SDR populations may be 'reconciled' daily, resulting in daily updates to the SDR for a given position/portfolio with no benefit to data accuracy, but at high cost while creating reporting "noise". Furthermore, reconciliations are not necessarily the best approach to ensuring completeness and accuracy of reporting data. Real time exclusion workflows and sample checks form an equally important role in reporting control. The overall cost and effort would be very onerous and will likely yield limited improvement to the quality of data for the reasons discussed in question 44.

Additionally, looking at the Commission suggested data elements, ISO 8601 should only be used to express the date of a reconciliation and not the time for this data element. A reconciliation does not occur in the breadth of a second, and thus no value can be derived from trying to understand at precisely what time on a particular date such process occurred.

In the case of both data elements, it is not clear whether the Commission's intention is to capture the date when the last reconciliation was done between the parties for a portfolio of trades, regardless of whether the trade population included the swap being reported, or whether it is the date when the last reconciliation was done inclusive of the swap. As different portfolios of trades may be reconciled between a pair of counterparties on different dates, tying the date of the reconciliation to individual swaps in a portfolio will be challenging and would require new tracking logic to be built on a swap-by-swap basis.

Lastly, we note that the final specification of the data which must be reconciled under the Material Terms Reconciliation of Part 23 is pending finalization by the Commission pursuant to its *Proposal to Amend the Definition of "Material Terms" for Purposes of Swap Portfolio Reconciliation*[41]. The breadth of those requirements could impact how firms view and track the timing of bilateral reconciliations.

Dissemination ID

We recognize the potential value of being able to tie the data reported to the public to the data reported to the SDR via a Dissemination ID. We note that this value could only be provided to the Commission by the SDR.

(b) Next Reset Date

46. Are there any challenges for reporting the updated next reset date as the floating leg resets over time?

The floating rate reset frequency is determined at trade execution, confirmed between the parties and reported. However reporting the actual date on which the next reset will occur based on the agreed frequency would be very challenging since the schedule of dates is established at execution and not individually confirmed between the parties during the life of the trade. A reset is considered a contract intrinsic event, and thus the passage of a reset date and the establishment of the next one does not trigger an update in a reporting counterparty's trade capture system on which continuation data reported would be conducted.

More fundamentally, the overhead to both reporting counterparties and the CFTC to make sense of additional lifecycle reports (e.g., updates to the SDR to show the next reset date) goes against the overall principle of making reporting data more easily understood.

Note that reporting of valuation information as required by Part 45 already provides the CFTC with sufficient information to understand the exposure and systematic risk associated with a swap over the lifecycle of a position, without the need for additional reporting events.

47. Is there a different methodology for Staff to know the updated next reset date that is more efficient than the reporting of the Next Reset Date data element?

The next date could be derived from the floating rate reset frequency and the period end date. Alternatively, a schedule of dates could be reported with the creation data and made available

[41] 80 Fed. Reg. 57129.

to the Commission, ideally, populated on the trade record dynamically by the SDR. However, the Commission should carefully consider the actual contribution of this enumerated value to its oversight function, as this appears to be another case where additional granularity may not contribute materially to an understanding of systemic risk.

(c) Valuation

48. Is there a better methodology or should Staff provide more guidance on reporting the Valuation Amount?

For OTC derivatives transactions, valuation for portfolio reconciliations are determined based on mid-market fair values calculated under approaches defined in global accounting principles (such as the International Financial Reporting Standards (IFRS)).

49. Are there any conditions under which the NPV of a given leg/stream cannot be adequately determined? If so, how should the inability to determine the NPV be reported?

As a more general note, NPV may not be a value currently used by market participants in all asset classes/for all swaps to value a trade. This means that if there were any obligation to report NPV for a swap, such values would need to be created and kept in the reporting systems just for purposes of reporting.

To the extent NPV is used, market practice is to calculate the NPV of an entire swap, not of a specific stream. While it may be possible to calculate the NPV of a specific leg/stream for certain types of swaps, in general the value of the swap may not be able to be decomposed into streams. For example, a swap with an embedded option, or that is an option on a swap, typically cannot be decomposed into individual values for each stream. For credit purposes, there is also little worth in knowing the value of each stream separately, as in the vast majority of cases the values are netted for credit closeout purposes. For this reason, we recommend that the NPV not be decomposed into values for each stream.

50. What are the challenges to reporting Leg NPV for a trade with changing notionals and fixed rates that cannot be accurately represented by simple aggregation measures? Do you have recommendations for overcoming these challenges?

Situations where the notional schedule and the fixed rate schedule are known in advance could be addressed by any competent valuation method, which should be able to handle varying notional amounts, fixed rates, year fractions, forecast rates, and discount rates for each calculation period, for example. However, it may not be possible to so easily handle situations where the notional is linked to the behavior of the other stream or other variables (e.g. in FX-linked notional swaps and in equity return swaps).

However, in furtherance of our response to question 49, it is unclear what value the Commission expects to derive from this alternative approach to viewing valuation data, and due to the complexity and potentially negative impact of a regulator-specific approach, we do not support a requirement to report Leg NPV.

51. Are there any additional data elements related to valuation that would improve Staff's ability to use valuation data and/or to fulfill their regulatory responsibilities?

No. We believe that any global reporting requirements for valuation data should uniformly require only the Valuation Date and Time, the Valuation Amount and Currency and the Valuation Type.

52. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Leg NPV/Leg NPV Currency
In accordance with our responses to questions 49 and 50, we do not support a Leg NPV requirement.

Valuation Datetime
The use of ISO 8601/UTC and format of YYY-MM-DDThh:mm:ssZ in accordance with current market practice.

Valuation Amount
The 5 digit decimal precision aligns with ESMA's Level 2 validations for its EMIR trade reporting requirements.

Valuation Currency
We agree with use of the 3 character alphabetical currency codes which are available under ISO 4217.

Valuation Type
In addition to Mark-to-Market and Mark-to-Model, the Commission should consider including "C = CCP" as a Valuation Type, since for cleared swaps the valuation is determined by the model of the DCO. If the Part 45 regulations are amended as proposed in the Cleared Swap Amendments, a DCO will have the sole obligation to report cleared swaps in almost all cases. However, there may be exceptions, such as a clearing agency which is not registered as a DCO or otherwise obligated to report via an exemptive order, or in the case of a trade between the clearing broker and its client under the principal model. But in other regimes, a counterparty may be obligated to report in addition to the clearing agency and not know the precise method which was applied by the Central Counterparty to determine the valuation. Use of a "C" value would provide for a consistent approach to reporting Valuation Type between parties to a cleared swap, would align with the proposed technical standards in the EMIR RTS and better accommodate a unified global standard.

(d) Collateral/ Margin

53. What are the challenges to reporting the following collateral information:

- ***a) eligible currencies, securities and haircuts;***
- ***b) other types of eligible collateral and valuation valuation;***
- ***c) rehypothecation election; and***
- ***d) segregation of posted collateral in a triparty custodial account?***

Do you have recommendations for addressing these challenges?

The "collateral information" specified in this question is agreement level data as opposed to transactional or portfolio level data. It is therefore unclear to us what reporting obligations the Commission is considering when asking this question since associated data elements have not been presented. Overall, we can advise that reporting this agreement level data is challenging as the details of collateral agreements and tri-party custodial agreements may not be captured in an electronic format by firms, or if it is, would not be consistent since there is currently no industry standard representation (e.g., via FpML). If available, this data is housed in different source systems than are currently used for transaction reporting, so significant work would be required to port and integrate it into existing reporting architectures. Linking a Credit Support Annex ("CSA") to a specific transaction may be difficult since there can be different agreements between the parties that apply to subsets of their transactions.

It is important for the Commission to consider that the task of providing data pursuant to CSAs will become more challenging beginning September 1, 2016, as market participants become required in phases to comply with global regulations issued in response to the final margin policy framework established by the Basel Committee on Banking Supervision (BCBS) and IOSCO's Working Group on Margining Requirements ("WGMR"), including those promulgated by the Commission. Depending on the respective categorization of the counterparties, at different points in time over the next three years a pair of counterparties may be required to apply terms from up to three different CSAs to their transactions (i.e. a legacy CSA, a new Initial Margin ("IM") CSA, and a new Variation Margin ("VM") CSA). Depending on the scope of transactions that must or may be included in a particular netting set based on the applicable global regulations, more than one agreement may apply to a particular transaction and all transactions in a portfolio may not be subject to the same agreements.

Final rules for the margining of uncleared transactions are still pending in a number of jurisdictions, and the requisite documentation, applied model(s) and associated operational infrastructures are being actively developed and implemented by market participants. Any proposed rules the Commission might issue regarding reporting of collateral and margin data should carefully consider global margin requirements for uncleared swaps and the associated industry agreements and solutions that have been developed and adopted to address them. The infrastructure to support new uncleared margin requirements is still under development. If deemed necessary, any reporting of the associated data should be an extension of those systems and cannot precede the global industry transition to WGMR compliant margin requirements.

Reporting of collateral and margin data would be an entirely new component of swaps reporting to the CFTC. As stated in our introductory comments, we believe the CFTC should focus on improving the clarity and consistency of the data fields in the current Reporting Regulations rather than expanding its requirements. If the Commission should propose amended rules to expand its requirements, it should be done in a globally harmonized manner, taking into consideration reporting requirements already in effect in other jurisdictions such as EMIR and should reflect the new WGMR requirements and standards for margining of uncleared swaps. Any deviation among jurisdictions would create complexity, lengthen the development and

delivery time, and have a negative impact on data quality and global data aggregation and analysis.

54. What are the challenges to reporting Independent Amount/Initial Margin and Variation Margin amounts separately? Do you have recommendations for addressing these challenges?

Under current market practice IM is calculated on a per trade basis, but under WGMR requirements it will be primarily determined at a portfolio level. VM is normally calculated on a portfolio basis based on the aggregate market value of many trades, and therefore cannot easily be allocated to a single trade.

Under the current collateral data reporting requirements of EMIR, a single value is reported for a portfolio. We recognize that due to WGMR requirements parties will need to differentiate these calculations. In the EMIR RTS, ESMA proposes separate data fields for posted and received IM and VM.

It is important that any data requirements for collateral/margin take into consideration that a separate method will be necessary for transactions subject to legacy CSAs and those which are not subject to WGMR requirements. It may not be feasible for the IM and VM to be reported separately for transactions which are not subject to WGMR requirements and/or for which the legacy CSAs provide for netting of collateral, including both posted and received IM and VM.

Any proposed requirements for the reporting of IM and VM should be aligned with the requirements of other global regulators to facilitate a consistent set of data elements and associated requirements to promote efficient reporting of data that is suitable for global aggregation. It would neither be efficient nor appropriate for parties to represent calculated margin values in a way that contradicts their global approach for complying with margining regulations or in a jurisdiction-specific manner.

55. What are the challenges to reporting if a transaction is guaranteed by multiple entities at varying levels of subordination?

The purpose of this question and the reason for its inclusion in the section in the collateral/margin section is not clear to us. We do not believe that guarantees are currently considered collateral, and therefore should not be included as part of any associated requirements. However, we note that collateral may be calculated at the CSA level and that a CSA might be with a group or parent entity. Thus the legal entity of the counterparties to the underlying swaps may not tie out with the legal entities of the parties to the relevant CSA.

If this question relates to the application of guarantees in association with the CFTC's *Margin Requirements for Uncleared Swaps for Swaps Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements; Proposed Rule*[42] (the "Cross-Border Margin Rule"), then ISDA respectfully reserves the right to provide a response after the release of the Commission's final version of this rule. We encourage Commission staff to coordinate internally

[42] 80 Fed. Reg. 41376.

on any matters related to the application of the Cross-Border Margin Rule to the Reporting Requirements.

56. Should Netting Set valuation, collateral and margin information be reported at the transaction level or only at the aggregated portfolio level?

Netting Set valuation, collateral and margin should only be reported at the aggregated portfolio level, consistent with the margin rules. This is the level at which it is determined and it cannot be meaningfully or accurately reported at a transaction level.

57. Are the data described in the data element Close Out Netting Set Portfolio and Collateral Valuation Currency all denominated in the same currency? If not, should there be additional data elements to capture the currencies?

In most cases we anticipate that the currencies would be the same, but there will be exceptions since CSAs may allow for multiple currencies. Therefore separate currency fields would be appropriate. If there is one currency, a primary field could be used to report the single currency. An additional field could be populated only on an "if applicable" basis.

58. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Overall, we question the value of reporting this level of granular data related to collateral and margin as part of the Reporting Requirements. This data is meaningful at a portfolio level and not at a swap level, so is by definition not conducive to its inclusion in the Part 45 swap reporting regulations. Rather, we suggest the Commission should consider other less costly and challenging methods to gather insight into compliance with its margin requirements.

If the Commission should pursue the reporting of collateral/margin data, it is imperative that global requirements for reporting of collateral data be uniform, and that the way in which regulators define the data be the same. Margin determination and collateral management data must be appropriate to the global standards established to comply with WGMR requirements. Market participants cannot apply regulator-specific calculations and definitions to the reporting of the associated data.

In addition we note that if the Commission were to propose reporting requirements for collateral/margin similar to those proposed in the Technical Specifications, the current Part 45 field "Indication of Collateralization" would become redundant and ought to be eliminated.

<u>Close Out Netting Set Portfolio and Collateral Valuation Currency</u>
See our response to question 57. We support use of valid ISO 4217 currency codes.

<u>Close Out Netting Set Independent Amount/Initial Margin requirement and Close Out Netting Set Variation margin requirement</u>
Taking into consideration new requirements for the margining of uncleared derivatives, these definitions are problematic since a sum of individual trade calculations will not be possible. Instead, most parties will be doing portfolio-based model calculations in which all relevant trades are included in the model calculation in order to return an IM amount for the portfolio.

The description of these data elements may also benefit from the clarity that the required IM/VM reported is the actual amount of IM or VM required to be posted, *exclusive of any excess margin posted*. This approach would align with current requirements under EMIR.

Margin will be split into different netting portfolios since, for instance, a party will be able to call for IM on some trades (e.g., those subject to the new regulations) and not others (i.e. legacy trades) or may have separate regulatory and non-regulatory VM requirements. As a result, parties may need to report their margin requirements for multiple netting sets under a single Master Agreement.

Close Out Netting Set ID (unique)

The description of this data element provides that it is a "unique ID agreed to by both counterparties". This should instead be a value that is unique to the party reporting the collateral data for the portfolio. Current collateral data requirements under EMIR require both parties to report collateral data in some cases, but each party creates and submits its own ID to identify the portfolio.

The ability to create a standard value would be extremely challenging, especially under new uncleared margin rules. For collateral purposes, trades may be matched to multiple netting sets associated with different CSAs. Since portfolio constituents may change daily, an agreed value could not be determined and exchanged in advance of reporting new swaps.

Agreeing a mutual ID for a specified portfolio is not part of the global process parties currently undertake to reconcile their portfolios and resolve disputes. Reporting regulations should not impose new requirements on market participants with respect to the management of margin and collateral.

Close Out Netting Set Collateral Posted Valuation Date/Time

Valuation for different individual assets within a portfolio may occur at different times of the day, taking for instance the examples of U.S. Treasuries and Japanese government bonds. Nonetheless, parties generally have an end of day batch process to close out the collateral set. The Commission should provide clarity as to whether it is this end of day milestone it is considering for this data element. It would not be practicable to report separate timestamps for different types of collateral posted against a particular netting set.

Close Out Netting Set Portfolio Net Mark to Market Valuation Date/Time

As with the timestamp for valuation of posted collateral, determining the mark-to-market valuation timestamp for a netting set portfolio may also happen at different points in the day for a multi-regional portfolio since you are valuing individual trades and not the portfolio. Multiple time zones may be involved in the valuation of individual trades; although generally each party will have an end-of-day timestamp at which it completes its valuation of all the constituents of the portfolio.

59. Are there any other event types that are important to define and track?

ISDA does not believe there are other event types which the Commission should seek to define and track.

K. Events

60. Are there other ways to resolve the challenges encountered by Staff in understanding swap events? If so, please provide details regarding how these potential solutions illustrate both: (i) all of the events impacting a swap and (ii) the current status of a transaction?

We do not comprehend the full value anticipated from greater detail regarding swap events or the associated audit trail inferred by the data elements in this section. Data regarding individual transactions is provided to SDRs, but may be amalgamated into the swap level position data. Extensive work may be required by SDRs to separately retain a granular audit trail of events.

As this section of the Technical Specifications demonstrates a desire for very detailed information regarding transaction events, we question whether the Commission is considering amending Part 45 to eliminate the option to report continuation data via state data. We encourage the Commission to leave that option intact, as a switch from existing state data reporting to individual event reporting would be extremely costly for market participants that have implemented this approach and would disregard the disparity in technological capability between market participants.

61. What are some of the challenges with the Event Types listed below? If so, please provide suggestions to address them.

Our overall concern with respect to the list of event types is that it is too granular, seeking to make distinctions that cannot be easily or consistently captured and reported. There should be a single global list of event types that is used for reporting, as it is not practical to expect that a party captures in their systems a jurisdiction-specific event type and maintains and reports different event types for the same transaction to different jurisdictions.

CPMI-IOSCO includes a list of event types in its UTI Consultation, seeking input around the delineation and definition of those events and their impact to the creation of UTI. We ask the Commission consider our response to question 8 of the UTI Consultation[43] and align its event types with a globally agreed list which is recommended by CPMI-IOSCO and which is capable of being supported by all market participants. Use of a single set of event types globally will promote consistent and efficient reporting and improve the ability of regulators to aggregate and analyze data across borders.

Following is some specific feedback with respect to the list of event types in the Technical Specifications:

<u>Novations</u>
The descriptions for a Novation|Step-In and a Novation|Step-Out do not reflect the industry understanding of these events (i.e. a party's perspective of a novation), rather they imply that the Commission may be using these terms to identify different events that may instead be known by market participants as a "collapse". As these events are not commonly traded and can be complex, they are booked based on each party's perspective of their change in risk for

[43] http://www2.isda.org/attachment/NzkxMQ==/CPMI-IOSCO_UTI_Response_Sep%2030%202015_FINAL.pdf, pages 18, 19.

the related transactions, and likely result in the reporting of a termination for one transaction and the novation of another that aligns with the view of the relevant reporting counterparty. It is not viable for all participants to such events to book and view the associated swaps in the same manner and as a single or the same event type as this could not be represented consistently in trade capture systems. We do not recommend that these events be included in a jurisdictional or global list of event types.

If the above is not the Commission's intention, then it has included event types for novations that overlap, meaning more than one could apply to a swap event. A novation would be either a 3-way or a 4-way novation and could also be a Step-In or Step-Out depending on the perspective of the reporting counterparty, based on industry use of these terms. A single approach should be used to report novations, otherwise the Commission will not get a consistent view depending on the method chosen by a reporting counterparty.

Event types should not be specific to the perspective of the reporting counterparty (i.e. the transferee to a novation would report it as a step-in, while the transferor would report it as a step-out), rather all parties to a swap should view the event in the same way. Event types based on a party's perspective would create challenges for reconciliation and would interfere with a party's ability to submit a voluntary supplemental reporting (which they may be systematically unable to do from their counterparty's perspective) and would not be appropriate in jurisdictions in which dual-reporting is required.

Some reporting counterparties may find it difficult to distinguish 3-way novations from 4-way novations in reported data since the mechanics may not be available in their booking systems. This may be due to differences in the technological capabilities of the parties or based on the asset class (e.g., 4-way novations are more common for Credit and Rates). We question the importance of this distinction since SDRs already provide the ability to report multiple transferors and transferees in a swap report, which would allow the Commission to distinguish these in reported data. Instead we suggest a single value of "Novation" for this event type.

Novation|Allocation

We think it is misleading to include the term "Novation" and suggest that "Allocation" alone is more accurate. The industry does not consider the process by which a bunched order entered into by an investment advisor or asset manager ("agent") is allocated to the funds that are the counterparties to a specified portion of the notional of such a transaction to be a "novation". Such term implies a transfer of risk from the agent to the funds which is not recognized by the dealer to such transaction. The process of allocation is not confirmed as a novation. Rather an allocated swap is not confirmed until after allocation has occurred, with each fund specified as the only counterparty to its portion of the notional of the bunched order. Instead, Industry participants take the view is that there is only one execution covering the pre- and post-allocation swaps and no execution of a new trade (i.e. no novation).

Compression

With six proposed event types for compression, the Commission is seeking more division and granularity than may be possible to report and for which the supervisory value of such distinctions is not clear. The systems of reporting counterparties and all platforms through which compression exercises occur are not currently designed to capture the distinction between

bilateral vs. multilateral and blended vs. netting, and each combination thereof. Since it may involve significant work to implement this level of distinction, it would be useful to understand how the Commission envisions these separate events would benefit its analysis of market risk and surveillance.

Compression events should be identified in a globally consistent manner to which all types of market participants can adhere. Reporting entities, compression platforms and SDRs should not have to accommodate for the complexity of determining, maintaining and reporting different values for the same compression event that are jurisdiction specific. Separate labels and levels of granularity would impede the ability to compare the data globally. Instead we suggest that a single event type of "Compression" would be more appropriate and practicable.

Termination|Void

Clarification is needed as to whether this event refers to transactions that are deemed by the Commission to be *void ab initio* if they are required to be cleared (under the Part 39 regulations) but are not accepted for clearing by a DCO. Beyond this scenario, it is unclear what event(s) the Commission considers may result in the voiding of a derivatives contract, as opposed to a cancelation or termination. This event type would be jurisdiction-specific, an approach that should be avoided due to the operational complexity it creates and the impact to data aggregation.

Clearing

We agree that clearing via the agency versus principal model should be distinguished in reporting, however we are not convinced that doing so as distinctive event types is the best approach. In our response to the Commission's Cleared Swap Amendments, we echoed the recommendations we made in response to the ODE Consultation, suggesting that a single field should be used to specify whether a transaction is (i) not cleared, (ii) intended to be cleared, (iii) cleared via the principal model, or (iv) cleared via the agency model. See our response to question 43. This single clearing field would provide the necessary transparency without a need to duplicate the same information in the event type or via other overlapping fields. A streamlined approach to obtain the data in fewer fields will reduce the complexity of reporting, reduce the risk of non-compliant reporting and make the data easier for the Commission to assess.

Option|Exercise

The exercise of an option should not be required to be reported as a distinct event. In firms' systems, in electronic confirmations and in reported swap data, an option exercise is usually reflected as a termination of the original swap and the creation of a new swap. The associated systems are not designed to transform the swap booking/confirmation/data from an option product to instead reflect only the terms of the underlying swap. Often, options are automatically exercised in firms' systems using the applicable rate to determine whether the option is "in the money". In some cases, parties may be able to link the option and the resulting swap via use of a prior USI, but for others this would be new and challenging to build.

Although we do not support the use of a separate event type to track the exercise of an option, we note that the description for this event is confusing as provided in the Technical

Specifications. Instead we would characterize an option exercise as a contract intrinsic event in which a party (the buyer) has chosen to exercise its rights under the swap contract.

Option|Assignment
This event is a concept in listed options so should not be included on a list of proposed event types for OTC derivatives.

Transformation
Although we acknowledge that changes to swap bookings might occur in the way described by these event types, parties would not have the technological capacity to capture, label and report the alternation to their bookings as a "Transformation" event. With such events done infrequently, the cost and effort of building the complex logic to track them systematically would not be justified. Instead, changes to individual swaps would need to be reported and prior USIs could be used to provide a trail.

End of Life|Maturity|Option Expiration
The maturity of a swap and the expiration of an option that is not exercised are contract intrinsic events for which both trade capture systems and SDR records are automatically updated to remove the swap from the parties' risk/records. A separate event is not agreed or confirmed and should not be, nor could it easily be, reported. Therefore, it is unclear how the Commission believes a swap could be tagged with these event types, unless it anticipates the SDR would mark the transaction accordingly in its records.

Modification
First, the industry refers to events that change the terms of a swap as "Amendments"; you cannot modify the terms of transaction without negotiating an amendment. Anything else would be a correction. Under FpML, the term "Amendment" is reserved for a negotiated amendment to a trade. An "Increase", for instance, is a bilaterally negotiated Amendment. Use of the term "Modification" for this purpose may be misleading and subject to different interpretations. Use of any SDR-specific nomenclatures should be avoided.

Secondly, the Commission has suggested too many variations on a "Modification", which may be difficult to distinguish in all cases. It is not clear what terms of a swap would change to prompt a "Reference_Change"; does this refer to the underlying asset or rate? Parties book changes to a swap as Amendments in their systems and it would be difficult and costly to implement the ability to distinguish and label different types of Amendments in the various trade capture systems of all market participants in a consistent and accurate manner.

It is not practicable for a reporting counterparty to label a trade event an "Amendment" in one jurisdiction and a "Modification|Increase" in another. Multiple data element event types cannot be booked in a trade capture system for a single event so a requirement to label them differently in jurisdiction-specific messaging requires manipulation of the data external to trade captures systems and before the data is sent to the SDR. This increases the difficulty of performing reconciliation against source systems, complicates and interferes with the ability to conduct efficient, multi-jurisdictional reporting, and undermines cross-jurisdictional data aggregation and comparative analysis.

Error|Correction Event|Cancel Event

The descriptions for these events refer to the correction or cancelation of a prior swap version, suggesting that they are not actual trade events, but the act of resolving reporting errors. The message specific tag (that would be associated with the USI and the event) would be used by parties to alter or cancel a prior swap version. Use of specific event types in this case would be challenging for a reporting counterparty to apply to automated messaging that may be sent as a result of updates to its trade capture systems.

In the event a reporting counterparty does make an error with respect to the order or details of a reported event, it must be feasible within the SDR for that error to be remedied without requiring the party to rebuild the trade from inception or the point from which the error occurred.

Credit|Succession|Spin-Off

By the term "Spin-Off", we are interpreting that the Commission is referring to events in which there is more than one successor to a CDS. If so, "Spin-Off" is not an industry standard term for such an event nor is the term defined by the 2014 ISDA Credit Derivatives Definitions. When processed through the DSMatch confirmation platform, the splitting of a CDS transaction due to multiple successors is referred to as a "reorganization" event. However, this distinction is moot since the Commission should not be including an event type(s) for succession events in its regulations. Referring back to our response to question 11, succession events to credit index trades do not result in an update to the index name or version. As such, there is no event that is processed in DSMatch or confirmed between the parties that would be possible to report.

Credit|Auction|Cash Settlement[44]

A credit event results in the settlement of a Credit Derivatives Transaction in accordance with the Settlement Method or Fallback Settlement Method, as applicable. The majority of CDS are executed with a Settlement Method of Auction Settlement, and a Fallback Settlement Method of Physical Settlement, unless Cash Settlement is specified in the related Confirmation.

These proposed event types suggest the Commission is looking for the settlement of the CDS due to a credit event to be distinguished in reporting from other termination events. However, this is not feasible based on the way that credit events for index CDS are processed. The settlement of a CDS due to a credit event results in the termination of all, or a portion, of the notional of the swap. In the case of an index CDS, Markit issues a new version of the index to remove the defaulted name and associated notional weighting (as discussed in question 11). DSMatch processes the credit event against all the applicable index transactions, updating the index name in the confirmation platform from which the change can be pushed to the SDR. Each impacted swap is tagged with the same event ID which is unique to that credit event (e.g. Thomson09). The event ID provides a more precise audit trail regarding the rationale for the update to the index name and should be leveraged by the Commission instead of the introduction of a new event type.

[44] Capitalized terms in this portion of the response are as defined in the 2014 ISDA Credit Derivatives Definitions.

62. Is there any uncertainty regarding how Reporting Counterparties should determine whether an event is price-forming or not?

We are not aware of any particular inconsistencies between market participants with respect to determining which swaps are publicly reportable swap transactions, as defined in the Part 43 regulations.

63. What factors should Reporting Counterparties consider in determining whether an event is price-forming or not?

Reporting counterparties determine whether an event is price-forming based on whether a new price has been agreed and applied to the transaction. For a post-trade event, such pricing event generally results in the exchange of a fee.

64. Do the descriptions suggested for event types clearly convey when an event is price forming in nature or not?

No, the descriptions for the event types do not provide clarity into whether the Commission sees these events as price-forming. However, market participants have a general understanding of which event types are likely to be price-forming (e.g. Trade) versus those which will not be (e.g. Compression, Allocation, Cancel). Some event types may or may not be price-forming depending on the circumstances which have led to the event (e.g. a Basket Change). Any clear guidance from the Commission may help promote consistency, but such guidance should be driven by the current definition of a publicly reportable swap transaction.

65. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

<u>Event ID</u>

In accordance with FpML messaging standards, a unique event ID assigned by the reporting counterparty is already included in a message submission for post trade events. It is essential to the ability for a party to send an update, correction or cancelation on a specific trade event message. This value may not be made available to the Commission, but it could be included in the data provided by the SDR.

A separate event ID value that is not required for technical messaging reasons may be created for package trades or compression trades. For compression trades, a unique identifier assigned by the vendor which has provided the compression services is included in swap messaging already and should be available to the Commission.

While use of an event ID may be helpful in terms of understanding certain events impacting multiple positions, it is not feasible, cost effective, or within the scope of the current Reporting Regulations to fundamentally change the way that firms book and process lifecycle events generally. Certain events, like the change of a RIC due to a corporate event, do not have a single event ID associated with the event (or persisted through all impacted positions). As such, the requirement for a new event ID as proposed in the Technical Specifications should be limited to events which are currently identified and processed as a single event. Hence, an event ID must

be optional. In other scenarios, use of a prior USI represents the cleanest and simplest way to provide the Commission with the audit trail of a swap.

Event Type
See our response to question 61.

Event DateTimestamp
We support the introduction of an Event DateTimestamp field that is only applicable for post trade events. ISDA has previously sought further guidance and written clarification from the Commission regarding the use of the Execution Timestamp to represent the time a post-trade event is agreed. Although a strict interpretation of the existing Execution Timestamp field in Part 45 would lead to a conclusion that there is only a single execution for a swap at its inception, the requirement to provide an Execution Timestamp for Part 43 suggests that the value should be relevant to the swap event which meets the definition of a publicly reportable swap transaction. When such event is associated with a life-cycle event on a swap, the public reporting of the Execution Timestamp for the original swap execution undermines the ability of the public to compare and benefit from an understanding of the pricing of the event based on when the price was agreed. We believe that in the case of a publicly reportable swap transaction which is due to a post-trade event, only the Event DateTimestamp should be publicly reported by the SDR. The Commission should be explicit on this in its regulations.

The introduction of an Event DateTimestamp also creates a more accurate mechanism for the Commission to monitor the timeliness of reporting. The Execution Timestamp of the original swap cannot be used to determine whether reporting was conducted in a timely manner for a life-cycle event.

FpML already has the ability to distinguish the date and time of the swap execution from the date and time of its associated life-cycle events. What has been needed for market participants to implement consistently in accordance with available functionality is clarity in the Reporting Regulations.

Lastly, we note that if clarification is provided in the regulations that the Execution Timestamp only applies to execution of the original swap, then we suggest that such value would only be reportable initially as creation data and that the value should be persisted from a swap perspective in Part 45 by the SDR.

Event USI Version
This data element implies reporting counterparties would need to keep an event sequence with their USIs. This could be a potentially significant implementation burden and goes beyond what is anticipated for a global UTI standard. Instead, we believe that use of prior USIs and event IDs, where appropriate, should be sufficient to delineate swap activity.

Message Type
We are concerned about the proposal to employ a more specific and more rigid set of messaging types. This approach assumes the use of more nuanced and sophisticated systems that are capable of capturing these distinctions and the explicit knowledge by all individuals in a firm that input changes to a swap booking regarding the differentiation. It is simply not feasible

to rely on the consistent and accurate delineation between reported data that is an "update" vs. a "modify" vs. a "correct". For the sake of global reporting efficiency and consistency, a single approach to messaging types should be applied by global trade repositories that can be practically implemented by all market participants.

Price Forming Event

With this "Price Forming Event" data element, the Commission is either (i) rebranding and redefining "publicly reportable swap transaction",[45] or (ii) trying to make a distinction between the two. The aim is not transparent in its description. Assuming it is the former, this data element is redundant to the data element proposed in section J. called "Part 43/45/46" since an event which is a publicly reportable swap transaction would be reported using a Part 43 message.

Individual messages for price-forming events are already sent by market participants to the SDR based on its message requirements for Part 43, so this information should be available to the Commission. If the aim is to know if an event reported under Part 45 has been publicly reported, then this would be evident by the proposed Dissemination ID data element.

This appears to be another case where it is difficult to comment on the data element without context for how the Commission anticipates using this field in addition to or instead of current data fields and the other data elements for which it is seeking input. We reiterate our concerns that fields with redundant and overlapping purposes overly complicate reporting, create opportunities for discrepancies and undermine the availability of the quality of information the Commission is seeking.

Transferee/Transferor

There could be more than one Transferee and Transferor to a novated swap. SDRs already provide the ability for a party to specify a "Transferee 1" and a "Transferee 2", for instance. However, we refer back to our comments in response to question 61 that the event type for novations should not be bifurcated between a 3-way and a 4-way novation.

USI Impact

We believe this data element is not feasible, as it implies reporting counterparties will need to keep full USI history in reporting systems on a real-time basis for calculating this field. Firms' systems do not hold this information, and to build would incur a substantial capacity / processing cost for limited benefit. If a new swap is executed or a new swap results from an event on another swap then by default it is reported using a new USI; therefore it is unclear what value is derived from indicating that a USI has just been created when that USI has not previously been reported. If an event does not result in a new USI, then a prior USI will not be indicated on the message and no additional information is conveyed by reporting a value of "None". A USI may be "Retired" for a number of reasons, but in many of them a message is not sent against the USI that could be used to indicate this status. When a USI is replaced by another USI due to a swap event, the original USI is generally reported as the prior USI to the succeeding trade and the SDR automatically terminates the swap position and the associated

[45] 77 Fed Reg. 1244.

USI. In the case of maturation, no event is reported but instead, as is logical and appropriate, the SDR removes the swap position from its live records.

USI Version

It is unclear to us the value that is added by this data element. How does it help the Commission to know if an event is the 3rd or the 10th event? It seems to us that there is more apparent value to the USI-event ID pairing, through which the Commission could track each unique event. The number of events on a USI is rarely so high that it could not be counted without the aid of versioning when looking at a list of USI-event ID pairings.

The description says the primary purpose of this data element is for validation and reconciliation. But a USI version would not help the parties to a swap with validation or reconciliation since the sequential numbering of USI events would only be created and held by the reporting counterparty. Plus, reconciliation is conducted as an end-of-day exercise based on the parties' current position.

We are concerned about the Commission's suggestions to create regulator-specific values associated with the USI. Rather, we believe that a consistent approach to the creation, linkage and use of UTIs should be agreed and implemented globally in accordance with the ongoing CPMI-IOSCO efforts.

USI Namespace/USI Transaction ID

It is unclear why the Commission is seeking comment on the USI Namespace and USI Transaction ID when these specifications will need to be repealed and replaced with the global standard recommended by CPMI-IOSCO as a result of the UTI Consultation. There is no place for a regulator-specific transaction identifier in the global framework for reporting and data aggregation. We encourage the Commission to consider in advance the path by which it can expedite changes to its regulations to adopt the global UTI recommendations in order to accommodate an industry-wide coordinated transition. Please see our comments to UTI Consultation[46] for further information.

L. Rates

66. How should swap data reporting adapt to changing indices/benchmarks and/or bespoke indices/benchmarks used for the floating leg(s) of a swap?

Changes to a benchmark rate (e.g. EURIBOR) associated with the Floating Rate Option applicable to a swap would have no impact on reported swap data since the rate is covered by the definition of the Floating Rate Option and not separately reported. As detailed in our response to question 11, a change to the underlying terms would be published as an amendment to the definition of the Floating Rate Option and would not necessitate the amendment of the associated confirmation, provided the name of the Floating Rate Option persists.

[46] http://www2.isda.org/attachment/NzkxMQ==/CPMI-IOSCO_UTI_Response_Sep%2030%202015_FINAL.pdf.

67. Should swap data reporting select the multiplier approach or the effective notional approach? Please provide reasons for your selection.

Swap data reporting should select the multiplier approach in order to align with the method by which the parties confirm the swap. Transforming the reported notional value (by multiplying the leg multiplier and the agreed notional) would be misrepresenting the agreed terms of the transaction, risks confusion regarding the agreed notional and impacts the ability to reconcile the notional against source systems, the confirmation and the non-reporting counterparty. Reporting of the multiplier and the agreed notional also provides full transparency to the Commission.

68. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Floating Rate Index

As stated in our response to question 8, we agree that the allowable values should be equal to the Rate Option value published in section 7.1 of the 2006 ISDA Definitions and that for a bespoke rate option, the name determined by the administrator should be used.

We suggest that the Commission should call this data element "Floating Rate Option" to align with the industry standard confirmation terminology. Also, the Allowable Value should refer to the "2006 ISDA Definitions" instead of the "ISDA 2006 Definitions".

Floating Rate Reset Frequency Period/Payment Frequency Period

The Technical Specifications propose to add the value 'T' for 'term' to the equivalent FpML enumeration that is used to represent the Floating Rate Reset Frequency Period and the Payment Frequency Period. Such approach would imply that reporting participants that currently use FpML (which we believe represent the vast majority of reporting activity) would have to implement a specific logic in such case, which would be distinct from what is being reported for other regulatory regimes. This would most probably result in lesser data quality and higher costs for both reporting counterparties, SDRs and the CFTC. Rather, we suggest that the Commission's staff work with the FpML organization to understand how such use cases are being reported. If genuine limitations are identified, a better outcome would then be to adjust the standard accordingly.

Payment Frequency Period Multiplier

Assuming this data element would not exclusively apply to Part 43 reporting, the description should be revised to refer to the "swap" rather than the "publicly reportable swap transaction".

Day Count Convention

The Commission should use the defined term of Day Count Fraction[47] for this data element. We appreciate that the list of allowable values is sourced primarily from FpML which derived the codes from 2006 ISDA Definitions. However, the Commission has proposed to introduce a new value of 30E+/360 in addition to the 12 values already identified through the FpML coding scheme[48]. In accordance with our response to data elements of Floating Rate Reset Frequency

[47] Defined in Section 4.16 of the 2006 ISDA Definitions.

[48] http://www.fpml.org/coding-scheme/day-count-fraction

Period and Payment Frequency Period, we believe the CFTC should either align with the existing FpML standard or work with the FpML organization to address any modifications or additions.

M. Foreign Exchange

69. How should the spot component of a jurisdictional foreign exchange swap transaction be represented?

With respect to the reporting of the component transactions of an FX swap, we support the response of the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association. In accordance with our response to the ODE Consultation[49], an FX swap consists of a near-leg and far-leg which should each be reported as a forward, regardless of the tenor of each transaction.

70. What are the swap data elements best suited to link the spot and forward components of a foreign exchange swap?

In furtherance of our response to question 69, the two forwards which are separately reported should each have its own USI, and the related transactions should be identified by the inclusion of the same Link ID in the report for each transaction. The Package/Strategy ID data element proposed by the Commission in these Technical Specifications could be used for that purpose, but currently firms report the value using an additional "Link ID" field provided by SDRs for this purpose. The CFTC should accept these Link ID values to see the near and far legs of an FX swap without any need for further development work by market participants.

71. Are there additional data elements that are needed for regulatory reporting of transactions in the foreign exchange asset class, including data elements that may be specific to particular types of foreign exchange transactions?

The CFTC should work with global regulators and market participants to determine and define a consistent set of data fields that are necessary to satisfy their oversight mandates. We support the view of the GFXD with respect to the need for further collaborative dialogue to identify the data elements that provide regulatory benefit and can be practically implemented.

72. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

<u>Delivery Type</u>

This data element actually refers to how the parties agree the swap will be settled, which across asset classes is the "Settlement Method" confirmed between the parties. The allowable values suggest the Commission understands that a single data element should apply to all asset classes, but then it should be called Settlement Method rather than Delivery Type. The ODE Consultation also sought feedback on the Settlement Method, and we encourage the Commission to consider the responses to that consultation and align with the global recommendation.

[49] ODE Response, page 13.

With respect to the values that should be allowed for a cross-asset data element of Settlement Method, we agree with the specified allowable values of C=Cash, P=Physical, E=Election and A=Auction. However, we do not agree with a value of N for non-deliverable because that is exclusive to FX related swaps.

The specific terms for Settlement Methods are defined in the relevant asset class definitions that govern each OTC Derivatives transaction. For interest rates, credit, equity and commodity derivatives, the defined terms are "Cash Settlement" and "Physical Settlement"[50]. For FX the defined terms are "Non-Deliverable" and "Deliverable"[51], where "Non-Deliverable" is equivalent to "Cash Settlement", and "Deliverable" is equivalent to "Physical Settlement". In its description for this data element, the Commission should acknowledge the industry standard terms and definitions that apply to transactions and provide additional clarity by including the following:

- Cash refers to either "Cash Settlement", as defined in the relevant product definitions published by the International Swaps and Derivatives Association, Inc. ("ISDA"), or "Non-Deliverable" as defined in the relevant product definitions published by ISDA, the Emerging Markets Traders Association and The Foreign Exchange Committee (the "FX Definitions").
- Physical refers to either "Physical Settlement", as defined in the relevant product definitions published by ISDA, or "Deliverable", as defined in the FX Definitions.
- Election refers to the right for a party to select either Cash or Physical settlement, as defined above.
- Auction refers to "Auction Settlement", as defined in the 2014 ISDA Credit Derivatives Definitions.

N. Other Data Elements

Execution Venue ID

We agree that an execution venue should be identified by use of its LEI. Since a SEF or DCM will have the obligation to report the creation data, it should be able to easily comply with this requirement. However, since the reporting counterparty has the obligation to report continuation data for an uncleared swap, the Commission should be explicit as to whether the SDR should retain and persist this value through the life of the swap or whether the reporting counterparty would be required to include the value in its continuation data reporting. In either event, the Commission should explicitly state whether the LEI of the SEF/DCM should be persisted in reporting or reported data regardless of whether post-trade events may be executed away from the platform.

Trade Execution Requirement Indicator

Proposal of this new field indicates an intention by the Commission to use swap data reporting to monitor compliance with its Part 37 regulations. However, this field seems redundant or overlapping in purpose to the proposed field in section G. called "Execution Type" which would

[50] Defined in the 2006 ISDA Definitions, 2014 ISDA Credit Derivatives Definitions, 1996 Equity Derivatives Definitions and the 2005 ISDA Commodity Definitions, respectively.
[51] Defined in the 1998 FX and Currency Option Definitions.

require the SEF/DCM to indicate whether the instrument is "Required" or "Permitted" and to the Mandatory Clearing Indicator in section I. If a swap is "Required", then by definition it is subject to the clearing mandate and if it is "Permitted", then it is not. Therefore this field does not add any additional value.

Leg Receiver, Leg Type, Leg Payer

We assume that by proposing these data elements, the Commission is attempting to resolve the challenge of labeling swap legs in a consistent manner between market participants. But it is not clear to us that a cross asset generic data element is needed for this purpose. The allowable values of CDS Protection Buyer and CDS Protection Seller suggest that this field would apply to CDS, but CDS do not have off-setting component parts that would be considered, booked or confirmed as "legs" by the parties. An Additional Fixed Payment or an Initial Payment Amount would be reported as part of the price for the swap, and an Additional Fixed Payment may be appropriate to report in limited cases in accordance with our feedback to section E. But in neither case would these payments be associated with a particular leg of the swap.

In terms of the remaining allowable values, these do not seem to be fully comprehensive of all potential leg types. But in order for us to provide a set of appropriate alternative or additional values, we would appreciate some examples that demonstrate the issue the Commission is looking to resolve through these data elements.

Effective Date[52]

There are limited cases in which market participants use a different approach to determine which date to report as the Effective Date. This can occur when a date is not actually defined in the relevant confirmation as the Effective Date, such as when a transaction is novated. In this case the Effective Date of the original swap may not be relevant to the New Transaction between the Transferee and Remaining Party. Instead, the parties could report the Novation Date as the Effective Date, but in the case of interest rate swaps some participants believe that when the novation is affected mid-period, the accrual start date more accurately reflects the date on which the terms of the Novation Transaction reflect their mutual risks and obligations.

ISDA has been discussing these inconsistencies with market participants in order to reach consensus on the most appropriate date to report as the Effective Date. Those discussions continue, and we believe any such inconsistencies are best resolved through an industry best practice, rather than trying to codify guidance for each potential scenario.

Business Day Convention

As the proposed allowable values are equal to the FpML values for business day conventions, to normalize the data the Commission should refer to the FpML enumeration BusinessDayConventionEnum.

The Commission's description for this data element is taken from section 4.12 of the 2006 ISDA Definitions but fails to include the definition also available in that publication for "FRN

[52] Capitalized terms in this section besides Effective Date are as defined in the ISDA 2004 Novation Definitions.

Convention"[53]. "NEAREST" is defined in both the 2005 ISDA Commodity Definitions[54] and the 1998 FX and Currency Option Definitions[55]. Rather than include all of these definitions in its regulations, the Commission should defer to the definitions of Business Day Convention and the associated Allowable Values in the relevant publications.

Holiday calendar

It is sensible for the Commission to suggest use of the FpML businessCenterScheme codelist since it is the industry standard for electronic transaction messaging of these calendars. The businessCenterScheme has been extended in recent years to accommodate regulatory reporting, is reasonably extensive and accommodates relevant geographical and non-geographical calendars (e.g. TARGET Settlement Day, NYSE Business Day).

Rather than create the new term of "Holiday calendar", we suggest that the Commission use the ISDA defined term for these business centers of "Business Day"[56] which is used consistently to agree and confirm derivatives transactions. We further note that there may be multiple Business Day calendars that apply to a transaction (e.g. New York and London) and therefore the Data Element should be pluralized.

Reference Price

The Reference Price is only agreed and confirmed between parties if it is not 100%. This occurs in very limited cases, such as Recovery Locks and some CDS on Mortgage Backed Securities. Therefore, we suggest that if the Commission were to require the Reference Price to be reported, it should only be required if it is not 100%.

O. General Questions

73. Are any of the Data Elements listed herein unclear? Do any Data elements require greater standardization?

Yes, we believe that some of the data elements are unclear. As indicated in our introduction and in our answers to certain questions, the extent to which the data elements are not clear or may create more confusion is hard to discern since we lack context of how the Commission anticipates using them to clarify, supplement or replace data fields in its existing Reporting Regulations.

For instance, many of the data elements in the Technical Specifications have an overlapping or duplicative purpose to existing data fields and to each other. In some cases, the proposed data element might improve data quality by providing a more prescriptive definition and format than an existing field. But in other cases, fields that appear to have competing purposes or duplicate information that is already discernable from other fields will complicate reporting, increase inconsistencies and degrade the quality of the data.

[53] Section 4.11.
[54] Section 1.5.
[55] Section 1.2.
[56] Section 1.4 of the 2006 ISDA Definitions.

74. Are any of the Descriptions inconsistent with common industry usage or your utilization of the data element?

Yes, there are. Please see our responses to the questions and data elements throughout this letter. We reiterate the importance of globally consistent use of existing industry standard terminology, definitions and standards.

75. Are there any additional Allowable Values that are required to properly represent the reporting of swap transactions?

Please see our responses throughout this letter to data elements proposed in each section of the Technical Specifications.

76. Is there a better electronic representation of the Data Elements that can be prescribed in the Format data element?

Yes, the Commission could better represent the data elements by reference to the corresponding FpML data element. As discussed in our introduction, the most precise and valuable method for the Commission to create consistency and clarity in its reporting regulations would be to prescribe the use of FpML. Referring to the predominant messaging standard for OTC derivatives reporting leverages the extensive work already done by technical specialists in the industry to facilitate the confirmation and reporting of derivatives transactions. As proposed by the SEC in its Form and Manner Consultation, the CFTC should refer to the FpML data element rather than creating CFTC-specific terms that need to separately be mapped to the actual messaging specifications by SDRs and market participants. A requirement for reporting counterparties and SDRs to use FpML and align with its standards would facilitate greater alignment between the SEC and CFTC and facilitate domestic data aggregation and analysis between the agencies.

77. Should "date" related Data Elements be adjusted or unadjusted?

Industry practice is to use unadjusted dates for all but very short-dated trades, for instance FX trades. However, we believe the Commission should not be prescriptive on whether dates should be reported as adjusted or unadjusted as doing so would not add any real value to the reported data while increasing reporting cost and burden.

78. Is the Day Count Convention list of allowable values sufficient?

Please see our response to question 68.

79. Are there any other data elements that reporting counterparties require in order to accurately reflect all of the economic terms of a swap transaction or adhere to existing reporting regulations?

The data elements proposed in these Technical Specifications seem to be broadly comprehensive of the economic terms of swap transactions for the credit, interest rates and foreign exchange asset classes, encompassing both data elements that are currently Primary Economic Terms data as well as data elements that are likely being reported already as

Confirmation data. These fields also represent many data elements that are cross-asset in nature, and thus consideration should be given to whether a data element may apply to equities and/or commodities as well. As previously advocated by ISDA, we strongly prefer that the Commission provides an explicit list of all the data fields it requires. Eliminating the ambiguous "any other terms" PET field and providing specific additional fields that meet the needs of the confirmation data requirement, will provide clarity and consistency and improve the quality of the reported data.

80. Are there other data elements not included in this draft technical specifications for certain swap data elements that you think should be prioritized for standardization? Please explain why and provide relevant information as per the draft technical specifications for certain swap data elements included in the Appendix, such as Description, Allowable Values, and Format.

We do not have additional data elements to suggest for the Commission's standardization at this time. However, with respect to any requirements or clarifications which may result from these Technical Specifications or other initiatives by the Commission to improve data quality, we believe it is essential for the Commission to openly collaborate with SDRs and market participants and take into consideration CPMI-IOSCO recommendations to ensure that all parties involved have a clear and consistent understanding of what is expected.

IV. Conclusion

Thank you for your consideration of ISDA's response to the Technical Specifications. Please contact me if you have any questions or if I can provide additional information relevant to your review of this response.

Sincerely,

Tara Kruse
Co-Head of Data, Reporting and FpML
International Swaps and Derivatives Association, Inc.