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May 22, 2020

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

Comments on the Proposed Rule: Amendments to the Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AE31)

Dear Mr. Kirkpatrick:

We, the Japanese Bankers Association (JBA), would like to express our gratitude for this opportunity to comment on the Proposed Rule: “Amendments to the Swap Data Recordkeeping and Reporting Requirements” (“Amendments”) issued by the Commodity Futures Trading Commission (CFTC) on February 20, 2020. We respectfully expect that the following comments will contribute to your further discussion.

[General Comments]

We generally support the Amendments since our understanding is that it proposes to review the definitions, simplify the reporting requirements and introduce new requirements regarding swap identifiers in consideration of the “Roadmap to Achieve High Quality Swaps Data” announced in July 2017 and relevant international swap data harmonization efforts. From a perspective of reporting entities, however, we respectfully request that the CFTC fully consider the followings in finalizing the rule.

➤ **Consideration to regulatory implementation by other jurisdictions**

It is our understanding that one of the reasons that the CFTC amend its rules is consideration to global harmonization advocated by the Financial Stability Board as well as the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO). Significant elements of such global harmonization would be the implementation timeline and technical details of the rules. In that respect, we have a strong concern over Unique Transaction Identifiers (UTIs), in particular, and would like to make the following requests.

(1) Implementation timeline of UTIs

The Amendments state that the CFTC expects to implement the rules on UTIs on

December 31, 2020 in accordance with the international agreement. However, some of the jurisdictions that were initially planning to implement UTIs in April 2020 have deferred the implementation.¹²³ A suggestion is also raised in ESMA consultation that a considerable period of time is needed for the implementation⁴. It is, therefore, realistic to consider that only a few major jurisdictions will be able to implement UTIs by the end of 2020.

If the U.S. implements UTIs ahead of others at the end of 2020 while other jurisdictions have not established a UTI generation framework, it may create confusion with regard to the treatment of UTIs in cross-border transactions. Taking into consideration that the UTI generation responsibility is determined on a transaction-by-transaction basis, aligning the implementation timeline across jurisdictions will be more beneficial relative to other regulations. The UTI implementation timeline, therefore, should be finalized after deliberation across national competent authorities with due consideration of the preparation period needed for the implementation.

With respect to the Unique Product Identifier (UPI) and critical data elements other than UTI and UPI (CDE), the international agreement assumes the implementation of them around the autumn of 2022 whereas the U.S. assumes one year from the final rulemakings. Since market participants would need a considerable amount of time and funds for costs to establish necessary processes and procedures (e.g. system updates), we request the CFTC to determine the implementation timeline after due consideration to allow a sufficient preparation period.

We would like to suggest, as one of the best solutions, that the implementation timeline of UTI be deferred to coincide with that of UPI and CDE, in light of proposals offered in the ESMA consultation. That would promote preparations, such as for system developments, efficiently among market participants.

(2) UTI implementation rules

The rules for determining the UTI generation responsibility for some transactions in the Amendments are slightly modified from the IOSCO's Technical Guidance to more accommodate practical needs. However, if other jurisdictions apply different UTI

¹ HKMA and SFC (March 2020) Notice - Mandating the use of Unique Transaction Identifier for the reporting obligation

² ASIC(March 2020) ASIC Corporations (Amendment) Instrument 2020/242

³ MAS(February 2020) Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2020

⁴ ESMA (March 2020) Consultation regarding Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT

generation rules by, for example, faithfully adopting that of the IOSCO's, such inconsistencies in UTI generation rules may give rise to confusion in cross-border transactions. We therefore request the CFTC to give due consideration, in particular, to the comments to be provided by market participants on the Amendments.

Especially, in the case of cross-jurisdictional swaps, the Amendments require the use of a UTI generated according to the rules of the jurisdiction with the earliest reporting deadline for CFTC reporting purposes. If other jurisdictions with a regulatory reporting deadline earlier than the deadline of the CFTC rules do not mandate the UTI or do use an identifier different from the UTI required under the CFTC rules or global rules, it would be difficult for a counterparty in such jurisdictions to generate a UTI. From practical perspectives, not only static data (e.g. the counterparty's country of incorporation, registration as a dealer) but many other elements (e.g. the locations of arrangement, negotiation and execution of each transaction, the location of booking and the business day convention) have complicated effects on the determination. It is therefore difficult to accurately identify the reporting deadline of each counterparty's jurisdiction.

In view of the above, designing flexible rules⁵, such as allowing a change to the UTI generation responsibility in accordance with a bilateral agreement, would avoid double-counting of the same transaction and meet the regulatory goal of collecting accurate transaction data.

⁵ Another possible option would be to adopt a logic that enables easy determination of the UTI responsibility (e.g. Payer/Receiver, Seller/Buyer) and that can be easily implemented in systems in a similar manner with the existing ISDA Tie Breaker Logic.

[Comments to the Questions]

II. Proposed Amendments to Part 45

A. § 45.1 – Definitions

(1) Does the Commission’s proposed definition of “execution date” present problems for SEFs, DCMs, SDRs, or reporting counterparties? Should the Commission instead adopt a definition that aligns with other regulations, including, for instance, the definition of “day of execution” in § 23.501(a)(5)(i)?

(Comment)

It is considered that the proposed definition of “execution date” presents problems as it is determined by reference to eastern time (EST). In light of its use at the global level and ensuring consistency, the execution date should be determined by reference to Coordinated Universal Time (UTC). Furthermore, we request the CFTC to also apply UTC to other required swap data elements (e.g. Execution timestamp, Valuation timestamp) consistently although the Amendments do not specify the time standard applicable to such timestamps.

(Rationale)

The Amendments clarify a definition of “execution date” to §45.1, specifying that it “would mean the date, determined by reference to eastern time, on which swap execution has occurred.” This, however, is inconsistent with the global norm. For example, the CDE Technical Guidance stipulates that the execution timestamp is based on UTC and the final report on “Clock Synchronisation” published by IOSCO in January 2020 recommends that business clocks should be synchronised to UTC as well.

If the Amendments adopt EST without considering global consistency or globally unified definition, certain locations of reporting entities may unevenly bear burdens (due to the time lag), and excessive practical burdens may incur due to summer time adjustments, system modifications and reporting differences from other jurisdictions.

D. § 45.4 – Swap Data Reporting: Continuation Data

(7) Does the Commission’s proposal to no longer require non-SD/MSP/DCO reporting counterparties to report valuation data raise any concerns about the Commission’s ability to monitor systemic risk in the U.S. swaps market?

(Comment)

We have no particular concern in this respect and support the proposal.

(Rationale)

As the activities by non-SD/MSP/DCO reporting counterparties in the U.S. swaps market are limited, they would not raise any concerns about the CFTC’s ability to monitor systemic risk.

H. § 45.10 – Reporting to a Single SDR

(10) Would the Commission's proposal to permit reporting counterparties to change SDRs raise any operational issues for reporting counterparties, SDRs, or non-reporting counterparties?

(Comment)

Changing SDRs would not raise any particular concern. It is, however, preferable to ensure consistency between SDRs in terms of data elements and formats with a view to simplifying the process for changing SDRs.

K. § 45.13 – Required Data Standards

(14) The CPMI-IOSCO Governance Arrangements for critical OTC derivatives data elements (other than UTI and UPI) ("CDE Governance Arrangements"), assigned ISO to execute the maintenance functions for the CDE data elements included in the CDE Technical Guidance. Some of the reasons include that almost half of the CDE data elements are already tied to an ISO standard and because ISO has significant experience maintaining data standards, specifically in financial services. CPMI and IOSCO, in the CDE Governance Arrangements, also decided that the CDE data elements should be included in the ISO 20022 data dictionary and supported the development of an ISO 20022-compliant message for CDE data elements. Given these factors, should the Commission consider mandating ISO 20022 message scheme for reporting to SDRs?

(Comment)

The CFTC should consider global harmonization in determining whether to mandate ISO 20022 message scheme.

(Rationale)

We have no objection to the adoption of ISO 20022 message scheme from the perspective of data standardization as it is an international agreement. Nonetheless, if ISO 20022 message scheme is mandated while some jurisdictions do not adopt the scheme, entities would need to prepare duplicated reporting data, one is for such jurisdictions and the other is for the CFTC, which may give rise to confusion. It is therefore advisable to ensure harmonization at the global level.

[Others]

✓ Consideration of changes to the requirement for obtaining an LEI

In §45.6, each derivatives clearing organization (DCO) and each financial entity reporting counterparty executing a swap with a counterparty that does not have an LEI is obligated to cause, prior to reporting any required swap creation data for such swap, an LEI to be assigned

to the counterparty including if necessary through third-party registration. Obtaining an LEI on behalf of the counterparty is significantly impractical due to its costs, the possibility of overlapped LEI acquisition and other relevant factors. We therefore request that the CFTC consider changing this requirement so that it will be sufficient for the DCO and financial entities to “recommend” the counterparty to obtain an LEI or to take other similar actions.

✓ **Clarification of “in the manner provided in § 45.13(b) each business day”**

§45.13 referred to in the proposed §45.4(c)(2) is a provision pertaining to data validation and does not specify the reporting and valuation deadlines. In the case of reporting swap valuation data, we would like the CFTC to clarify the base date for the valuation rate and the reporting deadline of such data.

✓ **Changes to the additional validation requirements (the deadline for re-submitting the report when it does not satisfy the data validation procedures of the swap data repository (SDR))**

With respect to the re-submission of the required swap data report to the SDR when the initial report has not satisfied the SDR’s data validation procedures and notification of data validation error message was sent, we request that the CFTC consider allowing entities to re-submit the report “as soon as practicable after recognition of the notification” or “within a certain timeframe after recognition of the notification,” instead of “within the applicable time deadline” as proposed in §45.13(b). This request is made on the basis that it is necessary to consider each jurisdiction’s holidays, such notifications by SDR cannot be identified by systems on a real-time basis in some cases and the proposed deadline causes a significant burden.

Sincerely yours,



Hideharu Iwamoto
Vice Chairman and Senior Executive Director