

September 30, 2015

Comments on the Consultative Report: *Harmonisation of the Unique Transaction Identifier*, issued by the Committee on Payments and Market Infrastructures and the Board of the International Organization of Securities Commissions

Japanese Bankers Association

We, the Japanese Bankers Association (“JBA”), would like to express our gratitude for this opportunity to comment on the consultative report: *Harmonisation of the Unique Transaction Identifier*, issued on August 19, 2015 by the Committee on Payments and Market Infrastructures (“CPMI”) and the Board of the International Organization of Securities Commissions (“IOSCO”). We respectfully expect that the following comments will contribute to your further discussion.

[General Comments]

We would like to express our support and respect for the work on harmonisation undertaken mainly by CPMI and IOSCO amid situations where OTC derivatives data are being reported based on different definitions and formats across jurisdictions.

While the consultative report presents many proposals and questions regarding the UTI from a technical point of view, the following aspects, in addition to such a technical point of view, should also be fully considered in the harmonisation efforts of the UTI, as being expressed by participants in the Workshop of CMPI-IOSCO WG Harmonisation of key OTC derivatives data elements held in Basel in March 2015.

- (i) Burdens in practice and costs for regulatory compliance (including the transfer of costs at trade repositories (TRs)) to be incurred by private financial institutions, i.e. the reporting entity
- (ii) The level of effectiveness of risk management by authorities to be achieved by harmonisation relative to associated costs (including those incurred by the private sector)
- (iii) Narrowing down action to be taken and setting of timelines that would not impose an excessive burden on the reporting entity by also taking into account the above (i) and (ii)

Our comments on the consultative report are provided hereinafter from a practical point of view in the capacity of a private financial institution, the reporting entity.

CPMI and IOSCO are requested to limit the purpose of the UTI to aggregation of transaction data held by each authority, and then to discuss this matter so that minimum actions would be required for regulatory compliance.

[Specific Comments]

Out of questions 1 to 53 presented in the consultative report, we would like to comment on the following 24 questions and would appreciate your consideration.

1. Question 2:

Are there further harmonisations (that could potentially be applied) to the rules that define which transactions are reportable that would reduce or eliminate the challenges around generating UTIs? In answering this question, please also describe the challenge(s) and identify the jurisdiction(s).

(Our comment)

In Singapore and other jurisdictions where strict restriction is imposed on the treatment of customer information, there is a possibility that identification of transaction entities based on the UTI itself will not be allowed. CPMI and IOSCO are requested to give due regard to this point.

2. Question 8:

Is the proposed division between events that should and should not require a new UTI complete and correct (please refer to the proposal described in this section and the table in Section 8)? If not, please provide other cases and explain why they should or should not lead to a new UTI being required.

(Our comment)

It is not preferable, in terms of traceability, to require a new UTI when one counterparty changes to be the CCP. If the responsibility discussed in section 3.4 is required for the CCP, a UTI should not be initially assigned between the parties to the transaction, but instead should be allocated only after the CCP undertakes the transaction.

Further, with regard to the table in section 8;

- (i) There is not much need to require a new UTI for the second in event types like “Full unwind” and “Partial Unwind” so long as the original UTI data is retained; and
- (ii) Although the event type of “Clearing events” is classified into “agency model” and “principal model”, it is considered that this classification may not be applicable in some jurisdictions, and thus CPMI and IOSCO should consider treatment at each jurisdiction.

3. Question 9:

Different jurisdictions may have different rules (including case law) defining which events would require a new UTI to be created. Are respondents aware of any such differences? What difficulties do these differences create in the creation of UTIs? If jurisdictions’

approaches to when a new UTI is required cannot be harmonised, are there other steps that could be taken to avoid double-counting of transactions reported to different TRs?

(Our comment)

Application of a uniform approach and definition across jurisdiction is a prerequisite for the harmonisation of the UTI. Allowing different treatments is expected to cause significant confusion not only for authorities and TRs but also for private financial institutions subject to reporting; and therefore should be avoided.

4. Question 10:

Do respondents agree with the analysis of linking related transactions through lifecycle events?

(Our comment)

We understand that an approach to contain multiple UTIs in one field will have a limited impact on the reporting format. Nonetheless, since the approach does not appear to be used by any jurisdiction, CPMI and IOSCO are requested to take a prudent approach by assessing whether there are any practical, not only technical, challenges for national authorities, TRs and private financial institutions. Since this approach is not currently used by any jurisdiction, if it is adopted, both the public and private sectors will face a greater burden.

5. Question 14:

Which of the proposed solutions to linking reports subject to lifecycle events do you favour? Do you see any difficulties in implementing any of the proposed solutions, and if so, what are they?

(Our comment)

We support the approach (ii).

The approach (i) is simple, but could make it hard to achieve the total set of UTI characteristics as mentioned in the consultative report. While other three proposed approaches can all ensure traceability among those, we believe the approach (ii) would enable the easiest analysis.

6. Question 16:

Are there additional issues that should be taken into account in considering the responsibility for generating UTIs?

(Our comment)

The assignment of a UTI to transactions subject to reporting encompasses issues, such as time limit and, in some cases, unavailability of cooperation from the counterparty. Therefore, it is requested that CPMI and IOSCO will consider a framework that generates a UTI without requiring the parties to the transaction to take a certain action as much as possible.

Specifically, CPMI and IOSCO are requested to consider introducing a mechanism to rely on UTI generation as much as possible on common infrastructures within the industry, such as electronic trading platforms (e.g. SEF), CCPs and electronic trade confirmation platforms (e.g. Middleware); and for those transactions that do not use such infrastructures, to consider developing rules for a mechanism to automatically determine the entity responsible for generating the UTI in accordance with ISDA's tiebreaker logic.

Particularly in the case of cross-border transactions, it would be necessary that a third party (e.g. TRs and CCPs), instead of the parties to the transaction, is made responsible for the assignment of the UTI.

7. Question 17:

Would it be beneficial if the guidance did not provide for the harmonization of rules for the responsibility for UTI generation with respect to trades that are not cross-border? Would there be disadvantages to this approach? Does the analysis of this idea depend on which option is used for cross-border trades?

(Our comment)

Prudence is required in discussing those trades that are not cross-border (i.e. trades within one jurisdiction) given that some consider that harmonised rules for UTI generation are not necessarily needed and flexibility could be given, while some consider that it is more reasonable not to change the method for determining the responsibility for UTI generation depending on whether a trade is cross-border or not.

8. Question 18:

Do respondents agree with the high-level assessment of the Option 1 proposal for the responsibility for generating UTIs? Please explain why or why not.

(Our comment)

We agree with the high-level assessment of the Option 1 proposal because a high-level assessment should be limited and the Option 1 proposal can remove ambiguity the most relative to Options 2 and 3.

9. Question 21:

What are respondents' views on the proposed Option 1 hierarchy for the responsibility for generating UTIs? Are the steps necessary and sufficient? Are they defined well-enough? Are there alternative ways of achieving Step 6?

(Our comment)

The column "Question" in the table of Option 1 describes the treatment in the cases where the derivative contract is: (i) executed on an electronic trading platform (e.g. SEF); (ii) confirmed using an electronic trade confirmation platform (Middleware); and (iii) cleared by a CCP. It is practical to treat these types of derivative transactions under harmonised rules,

regardless of jurisdictions.

Also from the perspective of the priority in capturing risks, those cross-border transactions that fall under the categories of the above (i) to (iii) should be prioritized based on the Option 1 approach, and particularly at the time of the implementation of the rule, the scope of transactions to which a UTI is assigned should be limited to those transactions that can be treated in Steps 2, 3 and 4 .

The treatment of LEI referred to in Step 6 needs to be discussed in line with international discussions and implementation processes in each jurisdiction.

10. Question 22:

Is it desirable to include the sort of flexibility represented by Steps 1–5? If so, where in the hierarchy should the flexibility be provided?

(Our comment)

It is preferable that the UTI will be assigned by in the order of, starting from the upstream of the transaction lifecycle: electronic trading platforms (e.g. SEF) → electronic trade confirmation platforms (Middleware) → CCPs → agreement between the counterparties → common tiebreaker logic, such as ISDA's, within the industry.

This method is more reasonable because UTI generation can be incorporated into those processes developed in connection with the derivatives reform, such as electronic trading platforms (e.g. SEF) and CCPs. In this view, agreement between the counterparties should not be placed at the top of the hierarchy as Step 1.

11. Question 25:

Do respondents agree with the high-level assessment of the Option 2 proposal for the responsibility for generating UTIs? Please explain why or why not.

(Our comment)

We agree with the high-level assessment of the Option 2 proposal.

In particular, with regard to those transactions not involving electronic trading platforms (e.g. SEF), electronic trade confirmation platforms (Middleware) or CCPs, etc., more discussion is needed for possible approaches after taking into account issues related to harmonisation of jurisdictions' rules, as described in Option 2 or Option 3.

12. Question 26:

What are respondents' views on the feasibility of the Option 2 proposal to the responsibility for generating UTIs? Are there particular issues for respondents that operate in more than one jurisdiction? How serious is the possible ambiguity in Option 2 and are there efficient

and suitable workarounds?

(Our comment)

Ideally, it is preferable that harmonised rules will be implemented as proposed in Option 1. Nonetheless, Option 2 would not cause much confusion in terms of operation at each entity, because each of the transaction entities just needs to follow respective jurisdictional rules.

13. Question 27:

Are there additional considerations relevant to the Option 2 proposal for the responsibility for generating UTIs? If so, please describe.

(Our comment)

No. There is not any additional consideration at the moment.

14. Question 28:

Is a problem of enforceability created if the UTI was generated by an entity outside the jurisdiction of one of the counterparties?

(Our comment)

No. There is not any problem at the moment.

15. Question 30:

Do respondents agree with the assessment of the Option 3 approach for the responsibility for generating UTIs?

(Our comment)

We agree with the assessment of the Option 3 approach, provided that a common algorithm is established.

16. Question 31:

Are there particular challenges for authorities in monitoring compliance with any of the options for the responsibility for generating UTIs?

(Our comment)

It would be difficult to monitor UTIs in the case of those transactions that do not involve electronic trading platforms (e.g. SEF) or CCPs.

17. Question 32:

Considering all three options presented for the responsibility for generating UTIs, do respondents see other suitable solutions meeting the characteristics set out in Section 2?

(Our comment)

Option 1 should be adopted by utilizing infrastructures of those other than the parties to the transaction, such as electronic trading platforms (e.g. SEF) and CCPs.

18. Question 33:

Which option for the responsibility for generating UTIs do you regard as preferable? Why is this? What would be the disadvantages to you if your non-preferred option was chosen?

(Our comment)

Option 2 does not give a clear picture of specific rules on cross-border transactions.

Option 3 may impose additional burdens in monitoring the status of UTI generation, such as confirmation between the parties to the transaction.

19. Question 34:

Is the assessment about timing for UTI generation correct? Are there examples of timing requirements from authorities that are incompatible with other elements of the proposed UTI generation approach? If so, please describe them.

(Our comment)

As mentioned in the consultative report, it is appropriate to require the UTI be generated “as quickly as possible after execution” rather than on a real-time basis.

In practice, an impact arising from differences in time zone and holidays needs to be assessed as there are some cases where, for example, the department responsible for trade data reporting and the front office executing the transaction are not located in the same region.

21. Question 35:

Do respondents agree with the proposed overall approach to UTI structure and format? If not, please suggest alternatives that meet the characteristics?

(Our comment)

We basically agree with the UTI structure and format. Nonetheless, those components needed for data aggregation should take precedence and the scope of components should be limited to such components.

22. Question 36:

Which of these possible UTI components, if any, are important and why? Is it necessary for the UTI to have any of these components?

(Our comment)

From the perspectives of prioritizing those components needed for data aggregation and limiting the scope of components to such components as described in our comment to Q35, “Jurisdiction”, “CP1, CP2” and “Transaction date” would be sufficient for UTI components

The use of LEI in relation to “CP1, CP2” needs to be considered in line with international discussions on LEI and implementation processes in each jurisdiction.

23. Question 38:

Which components, if any, should be included in the UTI? Which components, if any, should be used in UTI construction but not appear in the UTI? In answering this question, consider both the components listed in the table above or suggest other components as necessary. Please explain how the particular components contribute towards meeting the characteristics set out in Section 2.

(Our comment)

In respect of data aggregation between authorities, CPMI and IOSCO are requested to develop harmonised rules where authorities and TRs, etc. cross-refer only the components needed for data aggregation, thereby ensuring consistency with those confidentiality regulations on the national level. This comment applies to questions 38 to 46.

Further, while a change to a dummy code or other measures as proposed in and after Q39 is one of possible options, we would like to note that requiring various actions will cause additional costs and burdens.

23. Question 39:

Should the UTI be solely a dummy code, i.e. a value that contains no embedded intelligence? Why or why not? Assuming that other data elements regarding a transaction (e.g. the identification of the counterparties, the date and time of execution etc.) will be captured by the report to the TR, is it necessary to reflect such elements in the UTI?

(Our comment)

Inclusion of intelligence within the UTI should be designed to the extent that does not violate regulations of multiple jurisdictions (especially those regulating the treatment of customer information) and not to undermine characteristics of the UTI itself.

24. Question 52:

Do respondents agree with the proposed implementation approach? Is there a risk that a newly generated UTI would have the same value as an existing UTI as a result of these proposals? Is it possible to estimate the size of this risk? What problems do respondents see regarding “legacy” UTIs under this approach?

(Our comment)

If it is required to generate a new UTI to, without exception, all existing transactions to which a UTI is already assigned and whose data is being reported, the reporting entities will incur considerable burdens in practice. Therefore, such a requirement should be avoided.