

November 17, 2017

Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Comments on the consultation document, “*Governance arrangements for the unique product identifier (UPI): key criteria and functions,*” issued by the Financial Stability Board

Dear Sirs/Madams:

We, the Japanese Bankers Association (JBA), would like to express our gratitude for this opportunity to comment on the consultation document, “*Governance arrangements for the unique product identifier (UPI): key criteria and functions,*” issued on October 3, 2017 by the Financial Stability Board (FSB).

We welcome the work on harmonisation of data elements undertaken by international authorities including the FSB, in the situations where OTC derivatives transaction reports are filed based on different definitions and formats across countries and jurisdictions, and believe that practicable, stable and effective UPI Governance Arrangements should be implemented and established. We respectfully expect that the following comments will contribute to your further discussion.

[General comments]

The JBA is an organization whose members consist of approximately 190 banks and bank holding companies operating domestically and internationally. Many Japanese banks file transaction reports in accordance with transaction reporting requirements stipulated in Japan. Some banks, however, report their transactions in accordance with reporting requirements in respective jurisdictions by the main body of the bank or branches and affiliates around the world. Each Japanese bank usually uses in-house systems for purposes of complying with national transaction reporting requirements. It is currently a common practice among financial institutions to set up UPIs, or other product codes similar to UPIs, in their own systems based on regulatory guidance or a framework established at an industry level, such as ISDA Taxonomy, and to report transactions through a trade repository. While banks bear cost for developing their systems, very few banks incur cost for obtaining UPIs and other codes. Given

such situations, we would like to put emphasis on the following three opinions: (i) UPI Governance Arrangements should avoid any complications as possible; (ii) UPI Governance Arrangements should allow the process where financial institutions obtain a UPI of a product for which they are expected to engage in transactions and set up the UPIs in its own in-house system for transaction reporting; (iii) as a governance framework, the Global Legal Entity Identifier System (GLEIS) should be referred.

First, we expect that significantly increased burdens would not be imposed on banks as a consequence of harmonisation directed towards establishing more complicated requirements as a whole. Therefore, we would like to request the FSB to sufficiently respect the existing frameworks and business practices, etc. that are already established in the industry (e.g. ISDA Taxonomy) in considering UPI Governance Arrangements and to design a simple framework so as to avoid overly complicating the governance arrangements and current business practices. We consider that UPIs should accurately and simply reflect information that is truly needed for the identification of a product. Information that is available from the other reporting data elements than UPI, such as currencies and tenors, should refer to such elements and does not necessarily need to be obtained from UPIs.

The more complicated UPIs become, the more the number of UPIs would be assigned, leading to undue increases in cost and burdens arising from the UPI Governance Arrangements. For example, a framework for ISIN required under MiFID II is extremely complicated because there are a significant number of complicated product attributes for which a new code needs to be assigned and financial institutions may need to obtain a UPI on a transaction-by-transaction basis. This has imposed considerable burdens on financial institutions. In this work on the harmonisation of data elements, we strongly request to avoid suiting the rules to such a framework. We understand that some asset classes, such as securities, require detailed information related to underlying assets. Accordingly, differences in granularities for each asset class by stemming from existing frameworks and business practices could also be considered acceptable.

Secondly, we basically assume the process¹ whereby financial institutions obtain a UPI of a product for which banks are expected to engage in transactions and set up the UPI in its own in-house system for transaction reporting. For complying with complicated reporting requirements on a real time basis such as MiFID II, financial institutions need to take an outsourcing approach² whereby they provide details of transactions to a vendor and outsource the operation for setting up UPIs to the vendor. We however consider that taking a policy

¹ We assume the process where the Service Providers manage UPIs for each product attributes, then financial institutions download such data to their own system and financial institutions allocate UPIs to each transaction.

² We assume the approach where financial institutions do not connect transactions and UPIs, financial institutions provide information of transactions to Service Providers instead, then the Service Providers set up UPI for the transaction.

which is solely reliant on the latter approach would not be suitable in establishing globally unified (or coordinated) UPI Governance Arrangements. We therefore suggest to design a simple system that allows flexibility in taking an approach depending on actual situations of each jurisdiction or financial institution on a global coordination level.

Instead of relying on a complicated approach whereby operations need to be outsourced to obtain UPIs, a simple system which is designed in a manner to secure open access to UPIs allowing users' discretion and at the same time to comply with national requirements, would minimise costs imposed on each user, and facilitate the widespread use of UPIs.

Thirdly, we would like to mention that the Global Legal Entity Identifier System (GLEIS) as one of the existing frameworks that can be referenced as governance arrangements. The GLEIS is a framework whereby Central Operating Units (COUs) and the LEI Regulatory Oversight Committee (ROC) supervise Local Operating Units (LOUs). Accordingly, even if there are multiple LOUs, data is centralised by COUs and hence the GLEIS is efficiently operated. If the UPI governance is designed in a manner following this governance arrangement, and UPI Service Providers are supervised by a regulatory body like the ROC (the existing ROC function may be expanded to include this supervision), data can be centralised even if multiple providers exist due to jurisdictional-specific circumstances or for each asset class. This approach would avoid needless cost and other burdens for users.

As such, we believe that the following elements are important for developing UPI Governance Arrangements; i.e. the fairness of cost allocation associated with the arrangements, free access to the UPI Reference Data Library, single UPI Service Provider structure and the involvement of supervisory authorities and responded to the questions described below from these perspectives.

When implementing the UPI Governance Arrangements, we request that a sufficient preparation time will be provided to users after the finalisation of the arrangements given that they will need to consider their necessary actions from practical perspectives, such as systems development/modification.

[Our responses to questions and other comments]

1. Question 1:

Do you consider any further criteria should be included in the above list?
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(Comments)

“Uniform” and “unique” should be included in the key criteria.

(Rationale)

In some jurisdictions, other product identifiers (e.g. ISIN and CFI) are used in addition to the UPI.

Co-existence of various code systems will give rise to overlap management which is unfavorable from the perspectives of data aggregation and costs for systems development/modification. Therefore, it is important to duly consider that UPIs will function as a uniform and unique product identifier.

2. Question 3:

Should the UPI System operate on a cost recovery model? If not, what is the suggested alternative and how does it fit with other governance criteria?

(Comments)

The UPI System should operate on a cost recovery model.

(Rationale)

The purpose of implementing the UPI System is to uniquely identify OTC derivatives products to facilitate data aggregation, and thereby enhance the transparency of the OTC derivatives market. In light of this purpose, the FSB should ensure that excessive costs imposed on users will not prevent the implementation of UPI System.

3. Question 4:

How should cost recovery be defined in the context of UPI? How should a UPI Service Provider be permitted to recover its costs? Should start-up, infrastructure, and initial creation of UPI Code costs be treated differently than ongoing maintenance and other continuing costs of operating a UPI Service Provider?

(Comments)

The “cost recovery” for continuing costs should be defined as charge made by the UPI Service Providers to each user for the payment of the costs arising from assigning a UPI code.

The amount of costs arising at the time of start-up or developing infrastructures would vary by users. Therefore, a reasonable amount to be charged to the users should be determined between the UPI Service Providers and the users.

4. Question 5:

How should costs be allocated amongst stakeholders?

(Comments)

Fees to be paid by users should be based on the number of trades in reports. Furthermore, authorities should provide oversight with respect to the pricing.

(Rationale)

The cost allocation should not discourage participation in the derivatives market. To this end, a fair fee structure is preferable and thus users should be charged a fee in accordance with the volume of use (i.e. metered-rate system). From the perspective of clarity, a rate table should be clarified. In addition authorities should provide oversight with respect to specific pricing so as to prevent excessive cost allocation to the users (see our subsequent comments to

Question 15).

5. Question 6:

How should a UPI Service Provider provide its rationale for calculating cost recovery? What level of transparency and frequency of disclosure of cost by a UPI Service Provider is required to demonstrate that the UPI System is being administered on a cost-recovery basis? For example, should a UPI Service Provider be required to undertake an audit or other type of review of its costs? To whom should transparency be provided (e.g. to Authorities and/or the public) and under what circumstances?

(Comments)

The UPI Service Providers should provide its rationale for calculating cost recovery to the users upon billing (e.g. monthly) so that the users can confirm that the amount being charged is based on a cost recovery model.

6. Question 8:

Should access to, and use of, the UPI Reference Data Library (which includes the Data Elements therein) be unrestricted? If not, what types of usage restrictions would be appropriate and to whom should they apply? What would be the consequences, including for harmonisation, of having usage restrictions on the UPI Reference Data Library?

(Comments)

Access to, and use of, the UPI Reference Date Library should be unrestricted.

(Rationale)

Given that the purpose of implementing the UPI System is to enhance the market transparency, the UPI Codes should be made broadly accessible.

7. Question 9:

Should the UPI Reference Data Library be subject to any intellectual property restrictions? If so, what types of restrictions would be appropriate? What would be the consequences of having any intellectual property restrictions on the use of, or access to, the UPI Reference Data Library?

(Comments)

The UPI Reference Data Library should not be subject to any intellectual property restrictions.

(Rationale)

Intellectual property restrictions may, as a consequence, prevent the use of UPI codes.

8. Question 10:

Are there any types of ownership or membership structures of a UPI Service Provider that could create conflicts of interest? If so, please describe.

(Comments)

If limited private-sector entities are appointed as a UPI Service Provider, it could create conflicts of interest unless authorities fulfill an appropriate supervisory function.

(Rationale)

If a private-sector entity is appointed as a UPI Service Provider, there is a possibility of its monopoly due to a high barrier to entry. This may lead to the entity's undue pursuit of profits by using its advantageous position. Therefore, in the case of a private-sector UPI Service Provider, an appropriate supervision by authorities should be given.

9. Question 12:

What Governance Frameworks for other universal identifiers should or should not be considered in designing the UPI Governance Arrangements and why?

(Comments)

The Global Legal Entity Identifier System (GLEIS) should be considered.

(Rationale)

The GLEIS is a framework already operated globally and thus is worth considering as an example of similar frameworks implemented ahead of the UPI.

10. Question 13:

Which elements of such frameworks would be useful or not useful for the UPI Governance Arrangements and why?

(Comments)

Consistent with the GLEIS framework whereby Local Operating Units (LOUs) are supervised by the Central Operating Units (COUs) and the LEI Regulatory Oversight Committee (ROC), the FSB should develop a framework where authorities will be involved in the operation of the UPI Service Providers.

(Rationale)

Such a framework would prevent the UPI Service Providers from overly pursuing profits (see our previous comments to Question 10).

11. Question 14:

Do you agree with the articulated areas of governance identified above?

(Comments)

We agree with the functions related to ongoing generation of UPIs (Consultation document paragraph 5.1) and the functions associated with the oversight of the UPI System

(Consultation document paragraph 5.2).

12. Question 15:

Can you suggest any refinements or modifications to any of the functions therein?

(Comments)

The FSB should appropriately oversee the implementation of the UPI System and unify the timing of its national-level implementation.

Further, with respect to the oversight of ongoing operations, it is advisable for authorities to oversee ongoing operations to ensure that the UPI Service Providers are not overly pursuing their profits.

(Rationale)

If the timing of application varies across jurisdictions, entities with reporting obligations engaging in cross-border transactions will need to align with those jurisdictions implementing the UPI earlier. This may give rise to market fragmentation or confusion in taking regulatory compliance actions at their branches/subsidiaries operating in each jurisdiction.

Furthermore, lack of supervisory oversight may result in abuse of the UPI Service Providers' advantageous position.

13. Question 17:

Could a UPI Service Provider also be expected to develop human readable aliases for UPI Codes to satisfy the needs of particular jurisdictions or other stakeholders? Why or why not?

(Comments)

The UPI Service Providers should develop a UPI Code system which is human readable, not only by particular jurisdictions but also by other stakeholders.

(Rationale)

In order to promote transparency of OTC derivatives or to represent the product in a process where there is human involvement, it is useful to develop human readable aliases for UPI Codes.

14. Question 18:

Are there functions in the list which are not relevant for the UPI in your view and if so which ones and why?

(Comments)

There is no particular function in the list which is not relevant for the UPI. The functions listed in items (g) and (h) (e.g. consideration of reference data or related data structures, and updates to the UPI Technical Guidance) are particularly necessary, and the FSB should develop a framework that will ensure the effectiveness of these functions.

(Rationale)

Also from the perspective of avoiding undue burdens on financial institutions, those UPI reference data items that are not truly necessary for the purposes of use by authorities should be excluded.

15. Question 19:

Which entity or entities (or type of entity) would be best placed to perform each of the above governance functions?

(Comments)

Public-sector entities, such as the FSB, should perform the governance functions of the UPI System.

(Rationale)

If the governance functions of the UPI System are not performed by any public-sector entities but are completely entrusted to a private-sector entity (or entities) instead, that entity (or entities) may capitalise on its advantageous position to overly pursue its (their) profits.

16. Question 21:

What benefits of implementation of the UPI, if any, do you see beyond OTC derivatives reporting? Please justify your answer.

(Comments)

At the moment, we do not see any particular benefits for the users other than the possibility of the use of the UPI for the TR reporting data.

(Rationale)

While the assignment of the UPI would uniquely identify OTC derivatives products to facilitate data aggregation, and thereby would enhance the transparency of the OTC derivatives market, the private sector has not identified any other particular benefits at the moment.

17. Question 23:

What would be the impact on market participants and other key stakeholders of having multiple UPI Service Providers (whether across asset classes or serving the same asset class) in terms of:

- (a) cost;
- (b) ease of use of the UPI System;
- (c) their ability to conform to the UPI Technical Guidance; and
- (d) their ability to associate UPIs with products in a timely manner at least to facilitate the discharge of reporting obligations for OTC derivative transactions?

(Comments)

If multiple UPI Service Providers are to be established, the following issues would arise

unless there are appropriate oversight by authorities, mutual coordination among Providers, data centralisation and database sharing.

(a) Cost

(Comments)

Having multiple UPI Service Providers would increase costs incurred by market participants and other key stakeholders.

(Rationale)

If multiple UPI Service Providers are established, such a situation will give rise to costs associated with oversight of UPI Service Providers, data synchronization and establishment of a UPI Reference Data Library. Furthermore, there is a possibility that the UPI System itself may not function effectively, as overlapped UPI Codes may be assigned.

In order to realize enhancement of the quality and reduction of the cost of UPI Service Providers, the FSB should prioritize on the consideration of realizing a framework for the supervision by authorities. Even in the case of single UPI Service Provider, with the involvement of authorities, it would be able to enhance the Service Provider's quality and at the same time realize the minimal cost based on the concept of the cost recovery model.

(b) Ease of use of the UPI System

(Comments)

It would be less easy to use the UPI System.

(Rationale)

If there are any changes made on the guidance level and if the timing of their implementation or the timing of actions to address such changes varies by UPI Service Providers, this will make the use of the UPI System less easy.

(c) Their ability to conform to the UPI Technical Guidance

(Comments)

The ability of UPI Service Providers to conform to the UPI Technical Guidance will decline.

(Rationale)

If there are multiple UPI Service Providers, consistency, interpretation and capabilities of approaches, including practices, will differ by UPI Service Providers. As a result, the ability to conform to the UPI Technical Guidance would decline.

(d) Their ability to associate UPIs with products in a timely manner at least to facilitate the discharge of reporting obligations for OTC derivative transactions

(Comments)

The ability of UPI Service Providers to associate UPIs with products in a timely manner would decline.

(Rationale)

Where multiple UPI Service Providers exist, unless databases are shared between them, it is difficult for a UPI Service Provider to associate a UPI assigned by another UPI Service Provider with products in a timely manner.

18. Question 24:

Should one or a limited number of UPI Service Providers be selected at the outset? Should the UPI Governance Arrangements allow for additional UPI Service Provider(s) to be incorporated over time?

(Comments)

Only one UPI system should be established. At the same time, similarly to the GLEIS framework, an appropriate oversight by authorities should be implemented.

(Rationale)

If multiple UPI Service Providers are selected and the coding system or the operational flow differs by these providers, it may give rise to confusion in the use of UPIs. Meanwhile, UPI Codes should be assigned based on a single system even if UPI Service Providers differ due to jurisdictional-specific circumstances or for each asset class.

19. Other comments

(1) Design of the reporting flow

(Comments)

The UPI reporting should be performed by one side of the parties to the transaction. If both parties to the transaction will be required to report the UPI, it would be important to develop a reporting flow (framework) which ensures that both parties appropriately report the same UPI. A framework where the sell-side participant applies for issuance of a UPI Code and notifies the code to the buy-side through confirmation or by other means would align with business practices. Given this, the FSB is requested to design a framework which clarifies the entity assigning a UPI Code and enables straight through processing from the earlier stages of the transaction.

(2) Data subject to reporting

(Comments)

If data elements are required beyond those elements each reporting entity holds, practical burdens and systems development cost will increase, making it difficult for market participants

to take uniform approaches. Therefore, for the purpose of reporting the UPI and relevant data elements, the FSB is requested to give due consideration to reporting entities so that they will be able to comply with the requirements using those data they currently hold.

(3) Compatibility between global harmonisation and respect for each jurisdiction's national laws/business practices

(Comments)

When initiating the new framework in multiple jurisdictions simultaneously, the basic design of the framework (e.g. covered products) should be standardised to the extent practicable. Nonetheless, since variation would arise due to different laws and business practices across jurisdictions, the framework should be implemented in a way that is in line with actual roles and functions based on applicable legislation and practices (for example, in the case of investments trusts in Japan, data held by the trustee bank mainly consists of management data associated with custody/settlement, etc. because the investment manager undertakes management activities of investments and transactions).