ISDA Safe, Efficient Markets

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ISDA commentary on implementation of the Delegated Act on identifying reference data to be used for the purposes of transparency of OTC derivatives under MiFIR

Introduction

ISDA welcomes the adoption of the Delegated Act specifying the identifying reference data to be used for OTC derivatives transparency under MiFIR.

We note that Article 2 of the Delegated Act mandates the inclusion of the UPI in identifying reference data for OTC derivatives in respect of transparency. We welcome the recognition in the Act of the benefits of use of the UPI (ISO 4914), including "bringing increased transparency" and for "aggregation of data across the global OTC derivative markets".

ISDA observes that Recital 17 of the Delegated Act stipulates that the UPI shall be complemented by other identifying reference data identified in the Act, and empowers ESMA to specify how these data are supplied, transmitted and by extension reported.

We are keen to understand how ESMA intends to implement the Delegated Act, and would strongly advocate that ESMA consults on this important area in the upcoming consultation paper on transparency for derivatives.

We note, in this regard, that Recital 17 includes "the option to require that all the identifying reference data set out in this Regulation are reported as part of a unique identifier".

ISDA believes strongly that EU transparency objectives, and the industry, are best served by a MiFIR public reporting framework for derivatives that is based on the UPI, complemented by further fields providing appropriate granularity for transparency reporting, and would be ill-served by the creation of another transparency-specific identifier (used only in the EU, and not by any other significant derivatives trading jurisdictions), whether that would be a modified ISIN, a modified UPI assignment, or some other form of identifier.

ISDA has received feedback from members indicating that some market participants, and even NCAs, have formed the understanding that as the mandate for this Delegated Act is in the revised MiFIR Article 27, there is an implication that the identifying reference data specified in the Act must be reported into FIRDS under RTS 23. ISDA does not share this interpretation, and notes that both the consultation and the Delegated Act itself are clear that the focus is transparency. Indeed, the Act states that its main objective "is to comply with the mandate given to the Commission in Article 27(5), first subparagraph, of MiFIR which is to specify the identifying reference data to be used with regard to OTC derivatives for the purposes of the transparency requirements laid down in Article 8a(2) and Articles 10 and 21 of MiFIR." This Delegated Act does not extend to the reporting of reference data as required under RTS 23. The UPI and the additional identifying reference data should be directly included in the transparency reports required under Articles 10 and 21.

ISDA does also note that in the second sub-paragraph of Article 27(5), the Commission is separately empowered to adopt delegated acts to specify the identifying reference data to be used for the transaction reporting of OTC derivatives under Article 26. However, we have understood, from early in and throughout the process of consultation on this Delegated Act, that the mandate on the second sub-paragraph of Article 27(5) will be addressed at a later date in a separate process, and will fall outside the scope of the current Delegated Act.

In summary, the inclusion in the RTS 2 report of the UPI (as defined under ISO 4914) in place of the ISIN, and along with the fields identified in the annex to the Delegated Act, would best align with a number of EU (and global) regulatory objectives including:

- More coherent International and EU datasets, supporting more effective oversight
- More effective transparency for EU users; a more attractive consolidated tape
- Reduction of cost and complexity

More coherent and international and EU datasets, supporting more effective oversight

ISDA observes that this one key advantage regarding adoption of the UPI – the fact that it facilitates coherence and comparability of data across derivatives markets in different jurisdictions – is particularly noteworthy at a time when global regulatory bodies see optimization of global datasets as a key objective.

In this regard, we highlight that the UK will soon discard the OTC ISIN and join the US in adopting the UPI for the purpose of public reporting of OTC derivatives trading.

The EU has the opportunity to converge with the increasing international consensus on the UPI as the basis for OTC derivatives identification, enhancing the useability of this dataset.

More effective transparency for EU market participants; a more attractive consolidated tape

The objective of improving the quality and useability of transparency data, both for its own sake and to ensure the consolidated tape for OTC derivatives delivers its full potential, dictate that the immediate focus must be on ensuring that the implementation of identifying reference data supports more effective transparency.

Use of the UPI would also leverage investment to date by market participants on other regulations, encouraging uptake of the consolidated tape.

The exigencies of improving the quality and useability of transparency data, both for its own sake and to ensure the consolidated tape for OTC derivatives delivers its full potential, dictate that the key focus must be on ensuring that the implementation of the Delegated Act supports more effective transparency, and that factors such as interoperability with other (ESMA) systems are secondary. Short-term costs for regulators incurred in this context represent an investment in effective transparency, and should not be a limiting factor in the choice of identifying reference data.

Adoption of a bespoke EU only identifier will place the delivery of policy objectives related to the Consolidated Tape at risk.

Reduction of cost and complexity

ISDA notes that the impending change to the derivatives transparency framework to remove the need for quantitative calculations to calibrate transparency thresholds would appear to also remove the need for non-equity transparency data to be reported to FITRS, removing any requirement for FITRS to be closely integrated with FIRDS. This supports an approach that concentrates on immediately improving the output of transparency.

While there is cost inherent in any regulatory change, our members observe that they uniformly already have the capability to obtain UPIs by virtue of their EMIR reporting obligations, and so the cost of a switch to incorporate UPI in place of the ISIN would not be punitive.

The changes required to modify ISIN (or UPI) creation, retrieval and consumption would be considerably more significant.

Conclusion

ISDA therefore strongly believes that the best approach, in terms of both outcomes and costs, is to use the UPI alongside other identifying reference data specified in the Delegated Act, and to update Tables 1 and 2 of Annex II of RTS 2 in this respect, including removing the ISIN in respect of OTC derivatives from Table 2.

We believe that this approach would be consistent with the objectives of simplification and burden reduction. It would enhance the value of EU market data for EU users, and indeed support the value and coherence of data available to regulators across key derivatives trading jurisdictions.

ISDA submits that its members comprise the large majority of entities responsible for reporting OTC derivatives transparency in the EU. Our members are overwhelmingly in favour of the UPI and supporting identifying reference data specified in the Delegated Act forming part of what is reported under MiFIR Articles 10 and 21. Our position in support of the UPI as the basis for OTC derivative transparency reporting was the predominant one expressed by respondents to EC consultations on this issue and was shared on all sides of the market (including trade associations representing venues, sell-side firms, buyside firms and combinations thereof).

We appreciate the efforts of ESMA (and indeed the European Commission) to address this issue, as mandated under MiFIR Level 1, and would welcome the opportunity to discuss it with ESMA at its earliest convenience.