

September 30th, 2015

AFTE Response to the consultative report on harmonization of the Unique Transaction Identifier

*Report issued by Committee on Payments and Market Infrastructures
Board of the International Organization of Securities Commissions*

The AFTE welcomes the opportunity to respond to this consultation. Most of our members have the status NFC- under Emir, therefore AFTE contribution represents NFC- views.

Since 2008, regulation has imposed increasing obligations for companies, especially for those engaging in OTC derivatives transactions. The EMIR requirements have been and continue to be a major challenge for Non-Financial Counterparties (NFCs) . NFCs spent a considerable amount of both financial and human resources to ensure compliance with EMIR by February 2014. There have been, since then, at least two requests for change on the regulatory reporting. These led us to change our systems on an almost continuous basis, which requires investigation and implementation effort.

Whatever the consultation may recommend, we would like to ask that **sufficient time is allowed for such changes to be adopted**. The Trade Repositories (TRs), and market participants must have sufficient **time to implement and test the new enhancements**. We would also expect that the **new technical requirements would apply only to new transactions** and not to previously reported deals.

As a target, we would encourage a new set of rules which would encompass all required amendments once and for all. This can only take place once an exhaustive review of requested data has been performed with the view to concentrate on key data for systemic risk monitoring and for harmonization purposes. At this point in time, we can reiterate our request:

- To move to one-sided reporting, where financial counterparties would have the obligation and the responsibility to report 'over-the-counter' (OTC) derivative transactions to TRs, which should give the exhaustive view for risk monitoring
- To stop reporting for inter-company OTC derivatives, which have no impact on systematic risk
- To limit the reported data to bare essentials (e.g. confirmation timestamp, reconciled transaction, which are of operational significance to the market participants, but of limited value to assess systematic risk).

We reiterate that non-financial companies use 'over-the-counter' (OTC) derivatives in conjunction with risk mitigation of underlying real economic risks, i.e. from their operative businesses. It is crucial that the existing clearing exemptions for non-financial companies in EMIR are upheld and that end users are not discouraged from entering into OTC derivative transactions.

Question 1: Are there jurisdictional differences about what is a reportable transaction that respondents believe will cause challenges for UTI generation? Please describe the differences and challenges.

There is currently a lack of consistency in the definition of FX spot/FX forward in Europe, which creates distortion in derivative reporting and UTI generation. There is a need for derivative clarification.

Example with a 7-days transaction between a UK bank and a French company :

The bank located in the UK will consider the transaction as a FX Spot and will not create a UTI as the French company will consider the transaction as a forward and therefore need a UTI.

Question 2: Are there further harmonisation (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).

One-sided reporting in EMIR jurisdiction would certainly greatly contribute to further harmonization, and would eliminate most of UTI generation challenges for NFC.

To stop to report for inter-company derivatives would also eliminate UTI generation challenges.

Both of these proposals would not significantly impact the regulator's ability to monitor systematic risks, while considerably easing the reporting burden on NFCs.

Question 3: Do respondents agree with the proposed approach to UTI allocation for package transactions? Under what circumstances should the entire package have a single UTI?

The decision to consider transactions as a package or on an individual basis is taken bilaterally between market participants as it impacts deal recording into systems, deal confirmation and deal reporting. The ability to keep both option (package or individual) is key.

As an example, it can be decided that a commodity hedging for 6-months period, with varying nominal over the months, can be considered as a package or not.

Nevertheless, in most cases, treasury management systems are unable to treat a transaction with different components as a single transaction. These transactions are usually booked as different separate transactions with different UTIs allocated.

We consider important to leave 2 options open as long as markets participants can agree bilaterally prior to transactions.

Question 5: Which, if any, of the options for identifying and linking components of packages do you favor and why? In particular, please consider the extent to which the options achieve traceability?

Option (ii) would represent the best way, as it has no constraint on UTI structure (as opposed to (i)), nor link on UPI (as opposed to option (III)).

Whatever method is selected, it is important to link those transactions in order to be able to identify a package.

We stress that the option to add an additional field will generate administrative burden for all market participants as a new format change request will be necessary. Sufficient time must be allowed for format amendment.

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

The proposed division appears complete. What is nevertheless to be stressed is that the interpretation of the nature of event may differ from market participants to market participants. A more detailed framework could only help erase interpretation discrepancies.

Question 13: Can respondents suggest other ways of achieving links between reports subject to lifecycle events that meet the characteristic to provide an audit trail?

The ability to link transactions in a package would also be used in this specific case (see question 3).

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?

For the sake of harmonization, and to avoid having to adapt the reporting to different cases, we would be in favor of a guidance applicable to all jurisdictions, not matter if the trades are cross-border or not.

A UTI should be available, even for cross border transactions.

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?

We would be in favor of a clear guidance on who should report (option (i) or option (ii), whatever the easiest to get an agreement on), BUT also to keep the UTI construct/algorithm option open, at least until the guidance is obtained and put in application.

Some of our members are not in favor of a guidance solely based upon the size of the counterparty and are more in favor of a bilateral agreement between parties, under the condition that this agreement takes place prior to transactions.

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.

We are strongly in favor of generating the UTIS at the earliest time possible, so as to encourage market participants to exchange this crucial information at the trading time (for immediate recording by Front Officer into system), to avoid late manual keying of this data in otherwise STP process, and to favor “trading” platforms to get/generate/transmit this data into the deal interface.

Generating the UTI by the trading platform appears to be a relevant option for transactions executed on platform. If parties agree differently, this might be possible, as long as the platform deal can carry the UTI generated by one party.

In the case a NFC-s enters its internal transactions on platform with its own UTI, this option should be maintained.

Generating the UTI at the trade confirmation time is too late in the process.

Many NFC-s have developed an algorithm to report their internal transactions with a calculated UTI . They should be allowed to keep their algorithm.

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?

We would expect that the new technical requirements would apply only to new transactions and not to previously reported, and that sufficient time would be allocated to amend systems. We do not see any major risks in the co-existence of two UTI approaches, which would be transitory.

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