

Committee on
Payments and Market
Infrastructures

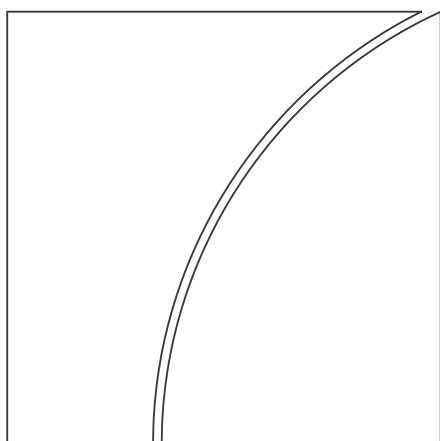
Board of the International
Organization of Securities
Commissions

Consultative report

Harmonisation of critical
OTC derivatives data
elements (other than
UTI and UPI) – third
batch

June 2017

Response form



BANK FOR INTERNATIONAL SETTLEMENTS



OICU-IOSCO

Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) – third batch – consultative report

Respondent name: International Swaps and Derivatives Association, Inc. (ISDA). Response for Sections 2.1-2.36; 2.64 to 2.77

Contact person: Eleanor Hsu; Rishi Kapoor; Ian Sloyan; Kaori Horaguchi

Contact details: EHsu@isda.org; RKapoor@isda.org; ISloyan@isda.org; KHoraguchi@isda.org

Please flag if you do not wish your comments to be published. Otherwise, the completed form with your comments will be published on the websites of the BIS and IOSCO. ☐

General comments on the report

The International Swaps and Derivatives Association, Inc. ("ISDA") appreciates the opportunity to provide Committee on Payments and Market Infrastructures and the International Organization of Securities Commission ("CPMI-IOSCO") Harmonisation Group ("HG") with comments in response to the third consultation ("Consultation") on the Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) ("CDE"). ISDA has been a long-term advocate of the need for globally harmonized reporting requirements, including the use of aligned formats, definitions, and values for data fields, and globally recognized standards for product identification and transaction identification. We appreciate the work that the HG has been doing towards the same goals.

Before proceeding to individual responses, we open with key messages regarding the CDE data elements.

Collaboration and Engagement
ISDA and its members appreciate the work of the Harmonisation Group towards our common goal of data standardization. We would welcome the opportunity to further collaborate with the HG and discuss any of data elements in the Consultation.

Improving Data Quality
Improving data quality is a critical condition precedent to providing relevant authorities with a comprehensive view of the OTC derivatives market and its activity. Based on industry experience, we believe that streamlining the number of data elements to meet the priority use-cases of the relevant authorities, and providing clear guidance on what is expected to be reported for each critical data element is fundamental to improving data quality. We are concerned that the volume and granularity of the data elements proposed through the three CDE consultations, if adopted, would result in substantial effort, resources, and cost for reporting parties and market infrastructures to build and implement.

To this end, we urge CPMI-IOSCO to pare down the number of elements to a minimum number of key data fields, and focus on providing the industry with unambiguous definitions, clear guidance and examples on what is expected to be reported for each, rather than trying to capture every data point.

Section 1.2 of the Consultation conveys that "The Harmonisation Group acknowledges that the responsibility for issuing requirements on the reporting of OTC derivatives transactions to TRs falls within the remit of the relevant authorities. As a consequence, this consultative report does not present guidance on which critical data elements will be required to be reported in jurisdictions. Rather, to allow meaningful global aggregation, the consultative report solicits comment on the definition, format and allowable values of critical data elements to develop guidance for relevant authorities that require these data elements to be reported to TRs in the own jurisdiction."

We appreciate the acknowledgment that the Consultation does not present guidance on which critical data elements will be required to be reported in jurisdictions. We believe that individual authorities should have the ability to determine which of the entire set of data elements recommended by the HG are required to be reported in their respective jurisdictions. Individual jurisdictions should focus on ensuring that definition, format, and allowable values of data elements are consistent with those recommended by the Harmonisation Group, to promote harmonization of values that are reportable across multiple jurisdictions. Harmonizing the definition, format and allowable values minimizes the complexity and associated costs of implementation, and facilitates meaningful global aggregation of fields that the relevant authorities deem necessary to meet their obligations.

Collateral data elements - For CDE Batch 3, we urge the HG to reconsider and eliminate a number of the 35 data fields in the collateral grouping, per the below:

Excess Collateral (2.25, 2.26, 2.27 and 2.28) - Consistent application of data elements relating to excess collateral would be difficult, and the regulatory value of obtaining these data elements is unclear. First, there is no valid reason why a party would post more IM than they need to. Second, there is no industry standard definition of what constitutes excess collateral. Lastly, excess variation margin can build up over time due to a positive change in the mark-to-market value, but that amount differential is not "paid" by the posting party so would not be considered "excess" collateral. Under the terms of the Credit Support Annex ("CSA"), an adjustment to the variation margin amount is made when the change in variation margin required in either direction exceeds the minimum transfer amount. For these reasons, ISDA recommends that the data elements related to excess collateral be eliminated.

Indicator of intraday variation margin calls (2.29) - We question what significance and value that is provided by a requirement to report 2.29. It is our understanding that it is not a common occurrence for an intraday variation margin call to occur on the date for which the variation margin is reported. To require industry participants to incur the cost and time to build for an indicator that will not be utilized is not practicable. We therefore recommend this data element be eliminated.

Pre and Post haircuts (2.4, 2.5, 2.7, 2.8, 2.11, 2.12, 2.14, and 2.15) - With respect to data elements noted, the amount of margin posted or collected should only be reported post-haircut. This is the industry-standard approach to viewing the amount of collateral. The party receiving collateral is owed the amount of collateral post-haircut that satisfies the call amount and a party posting collateral posts the post-haircut amount to meet the margin call.

We further note that with respect to data elements 2.7 (IM collected by the reporting counterparty -pre-haircut) and 2.14 (VM collected by the reporting counterparty -pre-haircut), the party collecting collateral is not able to report the pre-haircut value, as this is only determined by the party posting the collateral, therefore data elements 2.7 and 2.14 are not feasible.

2.3 Portfolio containing non-reportable component - Collateral portfolios can change periodically, so the validity of the Y/N originally reported can fluctuate as well, so 2.3 would require active maintenance in cases where a non-reportable transaction gets added or expires, for example. Such maintenance and updating would be complex, leading to data quality issues. We therefore propose data field 2.3 be eliminated altogether.

2.17-2.24 Margin amount required - We appreciate the value of reporting the actual amount of collateral posted (collected) but believe that reporting the amount required to be posted (collected) is not necessary for the following reasons:
Existing margin regulations provide for margin dispute resolution processes that minimize the differences between the amount of margin requested by the collecting party and the amount posted by the posting party. Additionally, existing relevant authority requirements to require reporting of valuation disputes provides a more tailored approach to obtaining the information that may be gleaned from comparing the amount required with the amount posted.

Any incremental benefit obtained by reporting both required and collected margin amounts as part of transaction data is outweighed by the complexity of reporting such fields particularly in light of alternative means to collect such information.

For these reasons, ISDA recommends that 2.17 through 2.24 be eliminated.

2.1 Collateral portfolio

Comments on the data element "collateral portfolio":

It is not clear how a party would code a portfolio that has multiple collateral types. For example, would a portfolio collateralized on a basis of net positions for rates and credit, and OTC equity options which are margined separately, have a collateral portfolio indicator of "Y"? Technically, the options are not being netted with the rates/credit.

2.2 Collateral portfolio code

Q1: With reference to the alternatives proposed to capture information on portfolio code(s) (Section 2.2):

- (a) In your view, how prevalent is the situation in which different transactions concluded under the same Master Agreement are associated with different CSAs (for initial margin posted, initial margin received and variation margin)?

Due to regulatory margin requirements for uncleared derivatives, it is quite prevalent common that different transactions concluded under the same Master Agreement are associated with different CSAs. That will increasingly be the case over the next 3 years as additional market participants become subject to regulatory initial margin ("IM") requirements. As regulatory margin applies prospectively, there may be separate CSAs that cover each of (a) non-regulatory IM, (b) regulatory IM posted, (c) regulatory IM received, (d) non-regulatory variation margin ("VM"), and (e) regulatory VM, depending on when the parties jointly came into scope for the regulatory requirements and their agreed preferences for adopting and documenting the compliant terms. Over time, use of the non-regulatory CSAs will reduce and eventually cease, but this may take decades depending on the terms of the underlying transactions.

- (b) The definition proposed in Alternative 1 is based on the assumption that, in the event of default, the entirety of the collateral provided under the given Master Agreement would be used to cover the loss of the non-defaulting counterparty, whether or not separate CSAs (for initial margin posted, initial margin received and variation margin) might be linked to that Master Agreement and whether or not all the transactions concluded under that Master Agreement would be associated with each of these CSAs. Is this assumption correct? If not, please clarify how the respective obligations would be resolved in the case of default. Please provide examples.

Yes, this assumption is correct.

(c) Are the differences in authorities' use of the two alternatives clearly illustrated in Table 2?

Yes, we understand the proposals for the two alternatives.

(d) Which of the proposed harmonisation alternatives should be supported and why?

We support Alternative 1. Labelling the collateral portfolio code as in Alternative 2 is unnecessary since the other data fields (i.e. 2.5, 2.8, 2.12, 2.15) convey whether the amount specified is for IM or VM and whether the value is posted or collected. If Alternative 2 is used for collateral portfolio code in the final guidance, the Y/N flag for 2.3 must be reported three times – once for 2.2.2.1, another for 2.2.2.2, and a third for 2.2.2.3. Alternative 1 avoids redundancy, helps streamline reportable data, and avoids bloating the volume of data reported. We also believe Alternative 1 to be the more prevalent method.

Other comments on the data element "Collateral portfolio code":

A portfolio code should be able to be reported for any transaction which may be subject to collateral requirements. A collateral portfolio code is linked to the applicable CSA and is automatically assigned by a firm's systems regardless of the number of transactions in the underlying portfolio at a given time.

2.3 Portfolio containing non-reportable component

Comments on the data element "Portfolio containing non-reportable component":

Please see opening "General comments on the report" for comments on 2.3.

2.4–2.28 Data elements related to margins

Q2: The purpose of the data element "Initial margin settlement timing" (Section 2.10) is to allow authorities to better understand the difference between "Initial margin required to be posted by the reporting counterparty" (Section 2.17) and the "Initial margin posted by the reporting counterparty" (Section 2.5) as this difference may be due to the timing of when the required margin is determined and when the margin is posted. In the absence of information on the margin settlement timing, the difference in the margin required and margin posted amounts could be interpreted as over- or under-collateralisation. Information on the settlement timing of margin collected would serve the same purpose for global aggregation of initial margin collected (Sections 2.8 and 2.19).

- (a) Are there challenges linked to the data element "Initial margin settlement timing" as defined above? Is there an alternative, more effective, way to represent this information, such as the date on which the initial margin posted (or collected) has been settled?

The purpose specified in Q2 for data element 2.10 is based on a misunderstanding of the reasons why data elements 2.17 and 2.5 may not match. In actuality, the amount of IM or VM required to be posted and the amount which is posted will not be different based on the settlement timing. As an example, if a party makes a margin call for \$100 then the other party is required to post \$100 of post-haircut collateral on the settlement day regardless of whether settlement is required on T+1, T+2 or any day thereafter. The value of the collateral is not adjusted based on the differential between the day of the margin call and the day the party satisfies the call.

In reality, differences between the amount of margin requested by the collecting party and the amount posted by the posting party are generally due to a margin dispute, and should there be a gap, then margin regulations which are already in existence will govern.

Therefore, requiring the data elements of 2.17 through 2.24 for transaction reporting to allow visibility into gaps between what is required to be posted and what is actually posted would be duplicative.

For these reasons, ISDA recommends that 2.17 through 2.24 be eliminated.

- (b) How prevalent is the existence of different settlement timings (T+0, T+1, T+2, T+3) within a given jurisdiction? Would the settlement timing for the initial margin posted differ from the one for initial margins collected?

Uncleared margin regulations dictate settlement timings, therefore there is no value to reporting the settlement timing requirement for a portfolio subject to regulatory margin. Differences in settlement timing for regulatory margin are between jurisdictions and not within them. If a pair of counterparties is subject to regulations with different settlement timings, the strictest requirement is applied for both of them.

Among CSAs for non-regulatory margin, there will be variations in the settlement timing since this term would have been bilaterally agreed between the parties. However, since the use of non-regulatory CSAs will reduce over time, the settlement timing is not a negotiated value for regulatory margin, and the settlement timing does not provide insight into a discrepancy between the amount of margin called versus the amount received, ISDA suggests that the this data field be removed.

Further, we note that the definition of 2.10 initial margin settlement timing uses the undefined term of "execution date". The "T" in settlement timing is based on the valuation date of the portfolio against which the margin is calculated. Valuation date is an industry standard term that would be clearer and more precise in this context for the definition of 2.10.

Other comments on the data elements related to margins:

Excess Collateral (2.25, 2.26, 2.27 and 2.28):

Please see opening comments under "General comments on the report."

Pre and Post haircuts (2.4, 2.5, 2.7, 2.8, 2.11, 2.12, 2.14, and 2.15):

Please see opening comments under "General comments on the report."

Multiple currencies 2.6, 2.9, 2.13, 2.16:

Final CDE recommendations should define how a party would report if posting IM (VM) in multiple currencies, for example if the party's obligation is US\$100, but the party posts 20% in EUR.

2.29 Indicator of intraday variation margin calls

Comments on the data element "Indicator of intraday variation margin calls":

Please see opening "General comments on the report" for comments on 2.29.

2.30 Collateralisation category

Comments on the data element "Collateralisation category":

ISDA objects to the long list of proposed allowable values for 2.30. Extensive granularity is requested which will make building complex and costly with seemingly limited value over the four categories in use for regulatory reporting today (uncollateralized, partially collateralized, one-way collateralized and fully collateralized). Instead, ISDA recommends to continue use of these four, but urges the HG to provide definitions in the final technical recommendations so that harmonized definitions can be adopted across jurisdictions, instead of the disparate definitions which currently exist. ISDA had previously submitted to the HG a suggested set of definitions that had been worked on and agreed with its members globally. The set of values takes into consideration the industry shift to regulatory margin for uncleared derivatives. We provide a copy in the Appendix of our response.

We believe that implementation of the proposed list of values would be extremely difficult for all market participants to interpret, tie out against all existing CSAs, and implement in a consistent manner. As a result, we predict an increase in discrepancies between counterparties who report for the same portfolio whereby their respective views do not correspond to accurately represent the terms of the relevant CSAs. Such discrepancies may be difficult to resolve since they may be based on their respective technological capacity to determine these granular values for the CSAs that apply to the relevant transaction or portfolio. In addition, the work to determine the categorization will need to be done multiple times by counterparties until 2020, as additional market participants phase into VM and IM regulations for uncleared derivatives.

We also do not support the determination of the collateralization value based on the perspective of the reporting counterparty. It should be based on the terms of the relevant CSAs only and the value reported should be the same for both parties for a particular transaction or portfolio. In the case of one-way or partial collateralization requirements, the party required to post will be transparent based on the figures reported against the data elements for the amount of margin posted or required.

Despite reference to the BCBS-IOSCO use of the term "regularly" in the footnote of 2.30, ISDA does not support the use of the term in the definitions for 2.30 allowable values. "Regularly" is not a term that defines that the categorization is based on the terms of the collateral agreement. Under a CSA, either a party is required to post VM or they are not, and the frequency at which such posting may occur is not a qualifier capable of being implemented as part of static data. If a party is required to post VM, the frequency is determined based on changes to the net valuation of the bilateral portfolio, the direction of any such shift and any applicable thresholds and minimum transfer amounts.

2.30 definitions refer to a single collateral agreement. Per our Q1 response, many transactions will be subject to two different CSAs, albeit under the same Master Agreement. For instance, a counterparty that will come into scope for regulatory IM requirements on September 1, 2017, will likely become subject to regulatory VM on March 1, 2017. Aside from any differences in which products are subject to VM versus IM requirements, trades from September 1, 2017 would be fully collateralized, while those between March 1 and September 1 may be partially collateralized, notwithstanding the fact that all trades from March 1 forward would be part of the same portfolio for determining VM.

In addition, considering the shift to regulatory margin requirements for uncleared derivatives, the applicability of many 2.30 values will become increasingly limited as more jurisdictions and more parties become subject to the new requirements:

- The majority of the market was required to comply with VM requirements on or prior to March 1, 2017, thus the application of the allowable values of U, PC1, PC2, OC1, and OC2 is limited.
- For market participants which became subject to regulatory IM requirements from September 1, 2016, including most major global dealers, PC, OC1PC and OC2PC are no longer values that could be applicable to their regulatory IM portfolios.

With each additional phase-in to VM and regulatory IM requirements over the next three+ years, the only reportable value for the majority of portfolios will be FC. The rest of the allowable values will only be suitable for (i) counterparties that fall outside the scope of the margin requirements and which are not caught by the requirements of their counterparty and (ii) legacy transactions for some counterparty pairs, which will roll off over time.

By the time the HG finalizes CDE guidance and recommendations are adopted in regulations and required by global jurisdictions, a greater scope of transactions will be subject to regulatory margin. We believe that a cost-benefit analysis with respect to the proposed 2.30 values would not justify adoption, and therefore reiterate our recommended use of the four noted categories, with definitions that are harmonized across global regulatory regimes.

2.31–2.35 Data elements related to counterparty rating trigger

Q3: With reference to the data elements "Counterparty rating trigger indicator", "Counterparty rating threshold", "Incremental collateral required", "Threshold rating for automatic termination provision" and "Closeout payment for automatic termination provisions" (Sections 2.31–2.34):

- (a) For each alternative of the data element "Counterparty rating trigger indicator", do definitions and allowable values accurately reflect provisions contained in collateral agreements or master agreements covering OTC derivative transactions to protect parties from counterparty credit deterioration? How prevalent currently are counterparty collateral rating triggers or comparable automatic-termination provisions in collateral agreements or master agreements? How, if at all, have recent changes to market practices affected the

prevalence or the form of counterparty collateral rating triggers or comparable automatic termination provisions?

Counterparty rating triggers are not market standard and are not part of any ISDA documentation published for use by market participants whilst negotiating their CSAs. Any such terms are based on a firm's proprietary preferences and internal templates, and therefore ISDA does not have adequate information to advise whether those terms are generally or specifically mirrored by the definitions and allowable values proposed for the counterparty rating trigger indicator. Rather the proprietary nature of these provisions suggests a lack of standardization, signalling difficulty in an attempt to require uniform reporting of such data. ISDA's response to these questions is based on our general understanding of what may be accurate, feasible or appropriate if reporting such information, as applicable.

The definition for Alternative 2 requires clarification since an automatic termination provision is relevant to a trade or a portfolio of trades under a CSA and would have the effect of terminating the relevant transaction(s) rather than directly affecting the collateral posted by the reporting counterparty against such transaction(s). Instead, the termination of any or all transactions under a CSA would indirectly alter the collateral required to be posted or returned by one or both parties upon the next valuation or calculation.

For similar reasons, ISDA does not have sufficient information to advise how prevalent counterparty collateral rating triggers or comparable automatic-termination provisions triggers may be, the form they take or whether the use of such provisions has changed based on the changes to recent market practice (by which we assume you mean the requirement to comply with regulatory margin regulations).

- (b) Are the advantages and disadvantages of the proposed harmonisation alternatives of the data element "Counterparty rating trigger indicator" appropriately defined? If not, which aspects should be revised and how? Which of the proposed harmonisation alternatives should be supported and why?

Alternatively 1 is a more practicable alternative. Unless there is evidence to suggest that the use of automatic termination provisions due to a ratings downgrade are prevalent in the market, it does not seem prudent to unnecessarily complicate this data element by adopting Alternative 2, the complexity of which may make it difficult for all market participants to comply in an accurate and consistent manner.

Q4: With reference to the alternatives proposed for the data element "Counterparty rating threshold" (Section 2.32):

- (a) Are the advantages and disadvantages of the proposed harmonisation alternatives appropriately defined? If not, which aspects should be revised and how?

In general, ISDA questions the requirement for a recurring obligation to report counterparty agreement level static data. Such information would only change in the case of the amendment of an existing CSA or the adoption of a new CSA. If required, such data should be capable of being provided once by party to a trade repository and maintained until and unless a revised value is reported.

- (b) Which of the proposed harmonisation alternatives should be supported and why?

ISDA supports Alternative 1 because it would be easier and less costly for market participants to implement in a consistent and accurate manner. Not all market participants have easily accessible electronic representations of the data contained in their CSAs that can be extracted and repurposed in a manner such as this. It may take significant effort to build and maintain such capability. In general, ISDA questions the requirement for a recurring obligation to report counterparty agreement level static data. Such information would only change in the case of the amendment of an existing CSA or the adoption of a new CSA. If required, such data should be capable of being provided once by party to a trade repository and maintained until and unless a revised value is reported.

Q5: The definition of the data element "Incremental collateral required" (Section 2.33) relies on the assumption that the effects of multiple-notch downgrades are roughly linear. Are there instances in which the effects increase more than linearly with the number of notches in a hypothetical downgrade? If so, how could multiple scenarios be encompassed in the definition?

For 2.33, the terms, including any increase in collateral required from a one-notch downgrade in a counterparty rating, is not standardized information, but proprietary as established by the relevant counterparties. As such, ISDA does not have adequate information to provide guidance with respect to this question.

Other comments on the data elements "Counterparty rating trigger indicator", "Counterparty rating threshold", "Incremental collateral required", "Threshold rating for automatic termination provision" and "Closeout payment for automatic termination provisions" (Sections 2.31–2.35):

No additional comments.

2.36 Clearing obligation in the jurisdiction of the reporting counterparty

Comments on the data element "Clearing obligation in the jurisdiction of the reporting counterparty":

ISDA believes that the applicability of an obligation to clear in the jurisdiction of the reporting counterparty can be derived from other data elements which are reported, and therefore considers data element 2.36 to be duplicative.

2.64–2.71 Data elements related to “Packages”

Q11: With reference to the data element “Package trade price” (Section 2.66), could it be agreed that two possible situations may arise: (i) a package price does exist because all the transactions that represent individual components of the package are priced jointly, or (ii) a package price is not available because all the transactions that represent individual components of the package are priced individually? Is more clarity needed regarding the reporting of “Package trade price” and prices of individual components?

As a preface to this CDE grouping, packages, structured trades, complex transactions, baskets, strategies and custom baskets are exceptionally complicated transactions. The variety of definitions, pricing, timing, components, and approaches to decomposition is markedly disparate across market participants, including regulatory authorities. Although the industry has discussed many different approaches during countless hours of discussions in industry working groups as well as within institutions to determine the appropriate approach, there will be no resolution to the lack of clarity around reporting of these transactions, unless a central authority such as the HG determines and puts forward definitive, clear and comprehensive technical guidance which covers what constitutes a package or complex trade, how reporting parties should decompose the trade for reporting, and what is expected to be reported, so that approaches can be harmonized. ISDA has been working with its members to promote standards on certain aspects such as linking identifiers for these types of transactions, and would welcome the opportunity to discuss further with the HG.

Specific to Q11, we agree that situations (i) and (ii) listed may arise. However, there is a possible third scenario where the package price and prices of its individual components are known. ISDA believes the use of 2.66 Package trade price is able to cover each of these three scenarios.

Other comments on the data elements “Package ID”, “Package trade price”, “Package containing non-reportable components”, “Package trade price currency”, “Package trade price notation”, “Package trade spread”, “Package trade spread currency” and “Package trade spread notation”:

2.64 Package ID – states “Existing industry standard: Not available”. ISDA does not consider this to be accurate. ESMA has provided a “Complex Trade Component ID” field in EMIR and MiFIR data reporting requirements. Swaps Data Repositories (SDRs) provide link ID fields to link reports. For messaging standards, the Financial products Markup Language (FpML) offers a package identifier (“packagelidentifier”) and allows a description of the originating package from which component trade reports originated.

ISDA and its members support 2.64 Package ID to allow component reports to be linked together in instances where the basic reporting template is not able to accommodate all data for a transaction, such in the case of a package trade.

2.72 Prior UTI

Q12: With reference to the data element “Prior UTI” (Section 2.74), how is “Prior UTI” represented when clearing and allocation happen at the same point in time? And how is “Prior UTI” represented when clearing

and compression happen at the same point in time, as a single event? Do such cases of clearing and compression and clearing and allocation as a single event happen frequently?

Cases of clearing and compression and clearing and allocation as a single event do not occur frequently. Clearing and allocation usually occur as two events. Clearing and compression also normally occurs as two events.

Other comments on the data element "Prior UTI":

Prior UTI would not be practical for many-to-one or many-to-many events such as compressions.

2.73–2.77 Data elements related to "Custom baskets"

Q13: With reference to the data element "Basket constituents unit of measure" (Section 2.74) the list of allowable values in Table 4 in Annex 1 encompasses all the values included in ISO 20022's Unit Of Measure Code and four additional values.

- (a) Are the values useful for reporting the "Basket constituents unit of measure"? If not, which ones are less useful and why?

Referencing an internationally recognized standards system for 2.74, but providing additional ad hoc values may indicate that the international standard may not be fit for purpose for this particular data element, however a comprehensive review of the list of units of measure is not possible in the available time to respond to this consultation. Allowing exceptions for Units of Measure (Table 4) and CNH for ISO 4217 means that the CDE governance framework and process will need to be sufficiently responsive and robust to accommodate changes/additions dependent on market needs, especially considering approximately 21 data elements of the third batch would be impacted. However, ISDA's members support CPMI-IOSCO's approach of pointing to a reference list of units of measure for 2.74, but recommend that the final CDE technical guidance refer to a list which is easily updated and informed and governed by derivatives industry experts.

(b) Are there other values that should be added? Which ones, and why?

See comment directly above.

Q14: With reference to the data element "Custom basket code" (section 2.75)

(a) would it be preferable to separate the information on the LEI of the basket issuer and the unique alphanumeric code assigned by such issuer to the custom basket? If so, please explain why this would be preferable for global aggregation.

Custom baskets by design are bespoke and customized to the requirements and objectives of the specific client. As such, they are usually one of a kind. Requiring a "Custom basket code" identifier for baskets which are singular in existence will not yield meaningful results when aggregating data.

Therefore, ISDA proposes that 2.75 "Custom basket code" data element be eliminated.

Separately, the definition for 2.75 begins with "If the OTC derivative transaction is based on a custom basket, the unique code assigned by the issuer of the custom basket..." A custom basket is structured, rather than issued. A party which is structuring the OTC derivative which references an aggregate price (or other risk factor) of a custom basket would not typically securitize or issue a security. It is possible for the party to issue a new security (i.e. note) which references the OTC derivative transaction (not the basket constituents). The new security has its own instrument identification and reference data, and the investor only has obligations related to the new security.

For these reasons, the term "issuer" is not applicable for custom baskets. We recommend the 2.75 definition be revised to "If the OTC derivative transaction is based on a custom basket, the unique code assigned by the structurer of the custom basket..."

- (b) are there types of custom basket for which the "issuer of the custom basket" is not clear? If so, please provide detailed examples of those custom baskets. Would the industry benefit from additional guidance for the term "issuer" in the "Custom basket code" data element?

See response to 14(a).

- (c) are 52 alphanumeric characters after the LEI of the basket issuer enough?

Requiring the LEI of the structurer as part of the allowable value for 2.75 could give rise to privacy issues. Underlier information for a derivative is typically in a set of reportable economic fields which are more likely to be made public under various transparency reporting regimes, or held in instrument static data systems for reference data purposes. The potential risk for unintended identification of parties to the trade via the underlier (in this case a custom basket), due to a code such as 2.75 which is associated with the underlier containing the party's identity is a conceivable one.

We therefore reiterate that 2.75 "Custom basket code" data element be eliminated.

Other comments on the data elements related to custom baskets:

No additional comments.

Other comments

Also refer to opening “General comments on the report” for additional key points. Three additional overarching comments are provided below:

1. Explicitly clear, robust definitions and examples for each data element:

It would benefit all industry participants if the final CDE technical guidance included robust definitions for each data element. We recommend the HG leverage the ISDA 2006 Definitions, which contains terminology and definitions widely used by market participants to agree and confirm their derivatives transactions for derivatives data elements. Adding more robust definitions in addition to examples in the final Technical Guidance would reduce inconsistencies in the interpretation of each data element and improve the quality of the data reported to repositories.

2. Guidance that allowable values not be padded:

We suggest that the HG recommend that allowable values not be padded with zeros; Table 3 “Format details” for the example Num (25,5) should explicitly prescribe in ‘Additional explanation’ that using zeros (0) to fill places should not be permitted. We believe this will help reduce reporting inconsistencies and increase the chance of matching in dual-reporting regimes.

For example, 12345.67 should not be reported as 000012345.67 or 00012345.670 for a Num(8,3) Format. Our view is consistent for data elements 2.37, 2.38, 2.42, 2.43, 2.46, 2.48, and 2.51.

3. Guidance when a data element is not applicable for a particular transaction:

It is currently unclear for each data elements what to report if the data element is not applicable for a particular transaction. We suggest that the Allowable value for each data element specifies what is allowable for reporting for these instances. For example, for 2.49 Option premium, the only allowable value listed is "Any number greater than zero." If the transaction is not an option, and therefore the data element is not applicable, we believe what is meant is that 'blank' is an acceptable allowable value for reporting but it is not explicitly clear, which leaves the door open for inconsistencies. We suggest the CDE guidance provides a prescriptive recommendation within allowable values for each data element, for whether "Not Applicable" or a 'blank' field would be permitted.

We take this opportunity to note that reporting of "Not Applicable" (or "N/A") as an allowable value implies that the party has actively determined that the data element does not apply to the transaction and implies a level of due diligence that may not be capable of automation in firms' systems for every single data element.

Appendices

Appendices begin on next page

August 12 2016

CPMI Secretariats

Cristina.picillo@big.org

Phillippe.traussard@bis.org

IOSCO Secretariat

v.sharma@iosco.org

Harmonisation Group CDE sub-group chairs

Claudine Herman, Banque de France; Claudine.HURMAN@banque-france.fr

Shaun Olson, Ontario Securities Commission; solson@osc.gov.on.ca

Re: Harmonisation of Critical Data Elements – Collateralisation

Dear Secretariats, Ms. Herman and Mr. Olson,

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ appreciated the opportunity to participate in the industry workshop hosted by the Committee on Payments and Market Infrastructures (“CPMI”) and the Board of the International Organization of Securities Commissions (“IOSCO”) on July 13, 2016 to discuss the development of recommendations by the Working Group for the harmonisation of key OTC derivatives data elements (the “Harmonisation Group”) which included a discussion of several Critical Data Elements. As invited by CPMI and IOSCO, ISDA is submitting supplemental commentary with respect to the collateralisation data element, including proposed definitions for the allowable reportable values for this data field and our associated analysis.

A. Background

A data element which describes the level at which the reported derivatives transaction is collateralised is currently required, or proposed to be required, for reporting in a number of jurisdictions. However, this data field has always been problematic as even where the regulatory requirements have been consistent regarding the list of allowable values for reporting, the definitions associated with those values are not consistent. See our comparative analysis in Appendix A.

As a result, in order to comply with the requirements for each jurisdiction to which a trade is reportable, a party would have to determine the appropriate collateralisation value independently for each jurisdiction and therefore potentially report different values for the same transaction. This is neither efficient for a reporting entity, nor effective in multi-jurisdictional reporting frameworks, where trade repositories hold either a single position data set for a transaction in their data center or link the

¹Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

multiple trade records for a particular transaction so that a primary transaction record gets updated regardless of which jurisdiction(s) the trade is, or becomes, reportable to.

This approach to transactional data management is essential to maintaining the integrity of the data reported to the trade repository and limits differences in data representation for a transaction to those mandated by the reporting requirements of each jurisdiction. This improves the reliability of the data for regulators and is important to meaningful global data aggregation and analysis. Without harmonised requirements for the collateralisation field, trade repositories would need a separate field for each jurisdiction, an approach which runs counter to the objectives of the Harmonisation Group.

The industry has struggled with the implications of the existing inconsistencies between reporting regulations for the collateralisation field, and therefore ISDA and its members are very supportive of a globally harmonised approach to reporting the collateralisation data element, including the definitions of the allowable values.

Prior to the announcement by the Harmonisation Group that it was seeking feedback on this data element, ISDA had already begun dialogue with its members through its global data and reporting working groups to discuss the collateralisation field. Those discussions were prompted by the impending global regulatory margin requirements for uncleared derivatives, which alter industry perspectives regarding how levels of collateralisation should be defined as new collateral arrangements will now be required. In collaboration with its members in all regions, ISDA has developed proposed definitions for the allowable values for the collateralisation field which build upon the considerations described in sections B, C, D, E and F below.

B. Agreement level determination

Currently, the definitions of the allowable values under various global regulatory reporting requirements are inconsistent as to whether they reference the collateral arrangements expected by the relevant collateral agreements. As conveyed by participants during the workshop, both initial margin (“IM”) and variation margin (“VM”) are generally determined at a portfolio level and not at an individual transaction level. Whether and at what level each of IM and VM are required to be posted and/or collected by either or both parties is based on the bilateral collateral agreements in place between the direct counterparties to the derivatives transaction. The ISDA Credit Support Annex (“CSA”) is the primary form of collateral agreement used in the derivatives market, but other forms could apply. Since the margining obligations between the parties are determined by the relevant CSA or other similar agreements, the allowable values for the collateralisation field should be defined with reference to the arrangements required in such agreements.

C. Joint party determination

There are currently inconsistencies between the regulatory requirements of various jurisdictions regarding whether the reported value for the collateralisation field is based on the margining obligations of both parties or based only on the obligations of the party which has the reporting obligation (i.e. the reporting party). ISDA believes the level of collateralisation of the portfolio to which a reportable transaction is associated can only be meaningfully assessed from the perspective of the obligations of both parties under their bilateral collateral agreement(s). Looking comprehensively at the margining arrangements of a set of counterparties for the portfolio to which a reported transaction is assigned provides the complete information which would be relevant to a regulator’s understanding of whether the transaction is adequately collateralised to mitigate the risk of the relevant transactions.

Determining the collateralisation level based solely on the obligations of a reporting party provides a one-sided and incomplete view that will not help a regulator to fully understand the sufficiency of the collateralisation.

In a dual-sided reporting regime, if each reporting party reports its respective obligations then these could be aggregated to form an understanding of the level of collateralisation. But, both parties may not have an obligation to report all transactions in dual-sided regimes and therefore in these cases the picture will be incomplete and not suitable for assessing the associated risk. Even where both parties are required to report, no greater value is achieved by assessing the combined reported collateral values of each side to determine a value for the collateralization field. Instead this creates additional work for regulators to translate those combined values into a single assessment regarding whether the relevant portfolio of transactions is sufficiently collateralised, and creates operational challenges and costs for reporting parties to determine and report a jurisdiction-specific value. It would be more efficient for reporting entities as well as more accurate for regulators if the reportable value is based on the comprehensive margining arrangements of both parties to the portfolio of transactions based on the applicable collateral agreements.

The recommendations of the Harmonisation Group need to be practicable for both single and dual-sided reporting regimes. Assigning the applicable reportable value based on the reporting party's margin obligations will not work in a multi-jurisdictional framework and would impair global data aggregation and analysis.

D. Regulatory margin requirements

Existing definitions for the allowable values for the collateralisation field were established prior to the finalization of global regulatory requirements for the margining of non-centrally cleared derivatives. As such, they do not reflect the evolution in mandatory standards for collateralisation. After considering the matter, we do not believe it is necessary for the definitions of the allowable values to refer directly to the applicable regulatory requirements since the collateral agreements between the parties will be amended to reflect their collective regulatory requirements. Referring to the agreements alone will avoid any ambiguity regarding the reportable value in the event that the bilateral margining arrangements of a pair of counterparties in their agreements exceeds their regulatory requirements and would more accurately reflect the level at which the derivatives portfolio is required to be collateralised.

However, regulatory margin requirements do impact how the levels of collateralisation are perceived and should be defined. With the advent of both two-way initial margin and variation margin requirements that will be phased in over time for the majority of market participants, ISDA believes that only transactions associated with a portfolio which requires both parties to post and/or collect both IM and VM should be categorized as "fully collateralised". Anything that requires both parties to post either IM and/or VM, but does not require both parties to post both IM and VM, should be categorized as "partially collateralised".

We also note that as market participants are phased into their regulatory margin requirements over the next four years, there will be limited cases where the level of collateralisation would be either "uncollateralised" or "one-way collateralised" since these scenarios do not exist in the global regulatory margining framework. As ISDA cautioned at the workshop, regulators should carefully consider the point at which it may not be appropriate to include the collateralisation field in transaction level public reports since doing so may compromise the anonymity of corporate or other end-user entities which are not subject to regulatory margin requirements.

E. Regularly

The definitions of the allowable values for the collateralisation field in some trade reporting requirements currently use the word “regularly” to exclude situations where the parties may set a threshold amount that is so high that one or both parties will rarely post variation margin, if at all. Although we fully understand the reason for its use, ISDA does not support inclusion of the term “regularly” in the definition of the allowable values for the collateralisation field as it is subjective and requires an interpretation by each reporting party regarding the applicable threshold and what it means to “rarely” post variation margin. Differences in this interpretation or the technological capability to determine these distinctions and apply to them reported data would inevitably occur, resulting in inconsistencies in the reported data, including potentially between a pair of counterparties regarding their agreements. Furthermore, under regulatory margin requirements, the maximum thresholds are mandated, thereby eliminating the scenario suggested by some of the current definitions for the allowable values in which the parties may bilaterally establish a threshold that would obviate the need to post variation margin.

F. Cleared transactions

Most of the existing reporting regulations are silent on whether the collateralisation data field applies to cleared transactions. Without an explicit carve out in the rules, reporting entities can only assume the data field is reportable for all transactions. Whether this data field applies to cleared transactions should be globally consistent and explicitly clarified in the Harmonisation Group’s recommendations and the relevant regulations of each jurisdiction in which the data field is reportable.

Participants of a central counterparty (CCP) are required to settle all required margin amounts at least daily in accordance with the amounts determined by the CCPs regulator-approved model or otherwise be subject to an event of default. As such there is no discernable value to reporting the level of collateralisation for cleared derivatives. Therefore, ISDA believes the collateralisation field should not be reportable for cleared derivatives and requests that both the Harmonisation Group and any corresponding regulatory requirements should be clear and consistent on this point, regardless of whether definitions recommended by the Harmonisation Group proposed for the allowable values are unambiguous.

Even in the case where the regulatory requirements already indicate the field is only applicable for uncleared derivatives transactions, clearing agencies are often reporting a collateralisation value and trade repositories are accepting and publicly disseminating the reported value, notwithstanding the fact that the associated definitions do not take into consideration margining for cleared transactions. Absolute clarity in the recommendations and the resulting amendments to global regulatory reporting requirements would eliminate such variations in practice and allow trade repositories to implement appropriate validations to improve the data quality.

G. Proposed definitions

For the reasons explained above, ISDA recommends the following harmonised allowable values and definitions for the collateralisation field:

Uncollateralised. There is no credit arrangement between the parties; or the agreement(s) between the parties which apply to the uncleared derivatives transaction or relevant portfolio of uncleared derivatives transactions state that no collateral (neither initial margin nor variation margin) has to be posted and/or collected at any time.

Partially Collateralised. The collateral agreement(s) between the parties which apply to the uncleared derivatives transaction or relevant portfolio of uncleared derivatives transactions state that variation margin is required to be posted by, and/or collected from, both parties. Initial margin is either not required to be posted by, or collected from, either party or initial margin is only required to be posted by, or collected from, one party.

One-way collateralised. The collateral agreement(s) between the parties which apply to the uncleared derivatives transaction or relevant portfolio of uncleared derivatives transactions state that initial margin, variation margin, or both has to be posted by, or collected from, one party only.

Fully collateralised. The collateral agreement(s) between the parties which apply to the uncleared derivatives transaction or relevant portfolio of uncleared derivatives transactions state that initial margin and variation margin are required to be posted by, and/or collected from, both parties.

Conclusion

ISDA and its members recognize the importance of the Harmonisation Group's work towards global data harmonisation, and strongly support the initiatives of CPMI and IOSCO to promote global standards for OTC derivatives reporting. We appreciate the opportunity to provide this supplemental feedback for consideration by the Harmonisation Group. Please let me know if you would like to discuss the content of this letter or if I can provide any further information that may be helpful.

Sincerely,



Tara Kruse
Co-Head of Data, Reporting and FpML
International Swaps and Derivatives Association, Inc.

Appendix A – Jurisdictional Comparison of Collateralisation Fields

	CANADA	CFTC	EMIR	EMIR reviewed RTS-Art 3b	Singapore (proposed)	Australia
Uncollateralised	Uncollateralised.	There is no credit arrangement between the parties or the agreement between the parties of an uncleared swap states that no collateral (neither initial margin nor the variation margin) has to be posted at anytime.	The reporting counterparty to such derivative contract is not posting any collateral (neither initial margin nor variation margin) at any time.	Where no collateral agreement exists between the counterparties or where the collateral agreement between the counterparties states that the reporting counterparty does not post neither initial margin nor variation margin with respect to the derivative contract, this shall be identified as an uncollateralised contract.	Field value of "Uncollateralised" proposed, but no definition proposed by MAS.	Collateralisation field requires "A notation to indicate whether the Reportable Transaction is collateralised by one or both counterparties to the Reportable Transaction." No values are specified.
Partially Collateralised	Variation only required to be posted by both parties.	The agreement between the parties states that both parties will regularly post variation margin.	The agreement between the counterparties states that either one or both counterparties will regularly post variation margin and either they do not exchange initial margin at all or only the reporting counterparty receives initial margin.	Where the collateral agreement between the counterparties states that the reporting counterparty only posts regularly variation margins with respect to the derivative contract, this shall be identified as a partially collateralised contract.	Field values of "Partially" and "Partially not posting" proposed, but no definitions proposed by MAS.	Collateralisation field requires "A notation to indicate whether the Reportable Transaction is collateralised by one or both counterparties to the Reportable Transaction." No values are specified.
One-way collateralised	One party will be required to post some form of collateral.	The agreement between the parties of an uncleared swap states that only one party to such swap agrees to post initial margin, regularly post variation margin or both.	The agreement between the counterparties states that only the reporting counterparty to such derivative contract agrees to post initial margin, regularly post variation margin or both with respect to the derivative contract.	Where the collateral agreement between the counterparties states that the reporting counterparty posts the initial margin and regularly posts variation margins and that the other counterparty either posts only variation margins or does not post any margins with respect to the derivative contract, this shall be identified as a one-way collateralised contract.	Field values of "One way" and "One way not posting" proposed, but no definitions proposed by MAS.	Collateralisation field requires "A notation to indicate whether the Reportable Transaction is collateralised by one or both counterparties to the Reportable Transaction." No values are specified.
Fully Collateralised	Initial and variation margin required to be posted by both parties.	The agreement between the parties of an uncleared swap states that initial margin must be posted and variation margin must be regularly posted by both the parties.	The agreement between the counterparties states that initial margin must be posted and variation margin must regularly be posted by both counterparties.	Where the collateral agreement between the counterparties states that both counterparties post initial margin and regularly post variation margins with respect to the derivative contract, this shall be identified as a fully collateralised contract.	Field values of "Fully" and "Fully not posting" proposed, but no definitions proposed by MAS.	Collateralisation field requires "A notation to indicate whether the Reportable Transaction is collateralised by one or both counterparties to the Reportable Transaction." No values are specified.