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BY EMAIL

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Dear Sirs and Madams,

RE: Joint Consultation Paper on enhancements to the OTC derivatives regulatory regime for Hong Kong to–(1) mandate the use of Unique Transaction Identifiers for the reporting obligation, (2) revise the list of designated jurisdictions for the masking relief of the reporting obligation and (3) update the list of Financial Services Providers under the clearing obligation (the "Consultation Paper")

The International Swaps and Derivatives Association, Inc. ("**ISDA**") welcomes the opportunity to respond to the Consultation Paper, which covers important matters to our members and puts forth well-considered proposals to ensure that the Hong Kong OTC derivatives regulatory regime remains aligned with the overall goals of the Hong Kong Monetary Authority ("**HKMA**") and Securities and Futures Commission ("**SFC**") (collectively, "**the Regulators**"), as well as the broader objectives of the regional and supranational regulatory community. ISDA wishes to express at the outset its gratitude for the continued constructive and efficient engagement with the Regulators and their peers on these issues over a number of years to date.

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 71 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and

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commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses 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 website:www.isda.org. Follow us on Twitter @ISDA.

ISDA is actively engaged with providing input on regulatory proposals in North America, the European Union ("**EU**") and across the jurisdictions encompassing the Asia-Pacific. Our response is derived from this international experience and dialogue, in addition to consultation with our members operating in the Asia-Pacific region.

Our responses are limited to matters (1) and (2) in the Consultation Paper relating to the reporting obligation, namely mandating the use of the Unique Transaction Identifier ("**UTI**"), and revising the list of jurisdictions for the masking relief. These comments represent the view of the majority of our members, however members may also have alternate or additional views which they may wish to share separately with the Regulators.

Question 1: Do you have any comments or concerns about our proposals to mandate the use of UTIs in OTC derivatives trade reporting, in particular, the interim measure and to allow counterparties to bilaterally agree on the responsibility to generate a UTI prior to adopting the list of factors recommended in the Technical Guidance? If you foresee any operational difficulties in implementing the proposals, please provide specific details.

UTI Generation – The Importance of Harmonisation

ISDA and its members are strong supporters of local, regional and global efforts to implement and harmonise the use of UTIs. ISDA has been deeply engaged with regulators across the Asia-Pacific region for a number of years now on this matter, while facilitating open and constructive dialogue with the industry as various waypoints have been reached in establishing the overall global UTI framework.

Member feedback to date has mostly been concerned with potential changes to the determination of the UTI generator resulting from the UTI Technical Guidance published by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions ("**CPMI-IOSCO**"). These changes may involve resourcing, time and testing to implement new systems, data and processes to capture counterparty and regulatory information relevant to the new UTI generator determination logic. This information may not have been previously necessary under existing industry practices for determining UTI generation responsibility.

Members understand the rationale for the Regulators' proposal that counterparties may first bilaterally agree who will generate the UTI, before reverting to the CPMI-IOSCO generation party logic. This would benefit smaller entities which cannot easily ingest UTIs from their counterparties, and would also avoid situations where under the CPMI-IOSCO logic, reporting requirements for trades "conducted in" Hong Kong would require parties to know where their counterparty's trader is located for reporting purposes, which may be difficult to ascertain.

However, members have stressed that the ultimate goal and most efficient way to meet UTI objectives globally is harmonisation, and therefore express their primary support for a consistent approach to the implementation of all aspects of the UTI, across each reporting jurisdiction and regime. While members sincerely appreciate the Regulators' well-intentioned proposals to provide flexibility for market participants through the ability to bilaterally agree the UTI generation responsibility, this would unfortunately risk creating a precedent to deviate from the CPMI-IOSCO generation logic and the broader global framework, which should be implemented in full and without inconsistency to achieve its maximum regulatory benefit.

While undermining the ultimate benefit of a harmonised UTI, a potentially fragmented UTI generation party logic across jurisdictions may also lead to unintended outcomes. For example, if an entity with Hong Kong reporting obligations trades with an entity subject to EU reporting obligations and the logic used by each entity to determine which is the UTI generator (for each jurisdictional reporting obligation) is not the same, there is a risk that both parties may independently determine that it is they who are the UTI generator for one or more of the relevant regimes, resulting in unnecessary duplication, bifurcation and confusion around which UTI to use, consume and/or report. Remediation may involve manual intervention and extra resourcing, and such issues would likely be exacerbated in any subsequent phases of UTI implementation, such as implementation in other regions.

In a situation where Hong Kong was the only jurisdiction to provide flexibility in determining the UTI generation responsibility, the volume of counterparties may not justify the cost and system implications of providing flexibility for bilateral agreement. For some reporting entities and their counterparties, the number of their trades subject only to Hong Kong reporting obligations are limited. Nevertheless, bilateral agreements would need to be executed at a granular legal entity level and reporting systems may need to be modified to accommodate those bilateral agreements, meaning a significant implementation cost impact for a potentially limited number of counterparties.

Members are therefore seeking to avoid a potential situation where a well-intentioned, thoughtful and practical proposal has the unintended consequence of inadvertently undermining a global harmonisation effort. Global consistency is necessary to keep build costs relatively low, and helps to ensure seamless pairing and sharing of UTIs with a quick turnaround. Members would therefore prefer to globally implement a potentially more challenging but standardised CPMI-IOSCO UTI generation logic, over a more flexible but

fragmented jurisdiction-by-jurisdiction logic. To that end, we remain in strong support of the Regulators' dialogue with its peers across the Asia-Pacific region as mentioned in paragraph 43 of the Consultation Paper, and seek to reiterate the paramount importance of consistent and harmonised implementation.

Ensuring Future Consistency with CPMI-IOSCO

We would like to recommend that the Regulators (and other regulatory authorities in other jurisdictions) make direct reference to the CPMI-IOSCO framework in their final rules, rather than replicating or restating any aspect(s) of the current framework. This will avoid discrepancies between any future amendments to the CPMI-IOSCO UTI framework and local requirements, and ensure that the Hong Kong UTI regime automatically evolves with the CPMI-IOSCO Technical Guidance.

Overseas and Cross-Border Considerations

Members are strongly supportive of the Regulators' proposals to provide transitional arrangements to continue using the Unique Swap Identifier ("**USI**") and Unique Trade ID ("**TID**") on an interim basis until 6 months after both the United States ("**US**") and EU have adopted the international standard on UTIs, as noted in paragraph 7 of the Consultation Paper. In this respect, members would be grateful of the Regulators' clarification that "adopted" refers to the date of full, complete implementation and go-live. Market participants are likely to need at least 6 months after local US and EU UTI requirements have taken effect in their home jurisdictions to ensure that only Hong Kong-compliant UTIs are generated for future Hong Kong reporting obligations, and conduct testing to remediate any impacts on similar cross-border UTI processes.

We also take this opportunity to note that there are other jurisdictions besides the US and EU which may have UTI requirements[1], and which should also benefit from the transitional arrangements. We would encourage the Regulators to take this into consideration in their drafting of the final rule framework.

More broadly, members also actively encourage the Regulators to maintain close dialogue with regulatory authorities across all jurisdictions on their implementation plans and timing. In particular, it would be helpful for the Regulators to ensure that those authorities also intend to fully align their UTI frameworks with all aspects of the CPMI-IOSCO Technical Guidance.

Data Field Designation and Submission

In relation to the specific data field designated for reporting of the new CPMI-IOSCO UTI under the Hong Kong regime, members would like to suggest that the TID field be used. This

[1] Examples put forward by members include Canada and Israel.

is because reporting entities may not have built and/or implemented systems and processes to submit the 'Bilateral Comments' data field, given that the requirement to report this field is currently deferred. In practice, where a transaction is not reportable under the US nor the EU regimes and a separate transaction identifier is created, this has still typically been reported in the TID field. Members would be less supportive of the creation of another new data field for reporting the new CPMI-IOSCO UTI.

Members would also support clarification from the Regulators that the entire UTI should be reported in one data field only, and not split across two or more data fields.

The Importance of Infrastructures

Given the modern dynamics of trading, central clearing, other post-trade processes and risk management, it is also crucial to note that infrastructure providers (e.g. trading platforms, clearing houses, confirmation/affirmation platforms and service providers) are used extensively throughout the industry, and across all asset classes. Some of these infrastructures provide UTI generation services, and wherever so, members have built their systems to consume UTIs from them. This is a positive outcome which centralises UTI generation, minimises complexity and increases efficiency, and therefore should be supported. We also strongly encourage the Regulators to give further thought to how they may incentivise those infrastructures which do not currently provide such UTI generation services to do so. This is particularly important given the central role which infrastructures play in the upper hierarchy of the CPMI-IOSCO UTI generation party logic, and further regulatory dialogue with non-UTI generating infrastructures would be welcomed.

The central role of these infrastructures in modern pre-trade and post-trade processes also means that to ensure an orderly UTI implementation, it is critical that they also adopt any changes to local rules and current processes resulting from the CPMI-IOSCO UTI framework. Just as for reporting entities, significant system changes are likely to be needed to accommodate new requirements, along with standard testing and follow-up remediation work. Some of these infrastructures do not currently offer a CPMI-IOSCO compliant UTI in the required format, particularly with respect to including the LEI as the UTI prefix. Notwithstanding this, and perhaps more importantly from a policy perspective, it would be much more operationally complicated and costly for firms to generate their own UTIs to replace non-compliant infrastructure UTIs, and this should be avoided wherever possible. Rather, the Regulators are encouraged to work with such infrastructures to understand the timelines which they need to become CPMI-IOSCO compliant, and ensure that this is factored into go-live timing and contingency planning.

Question 2: Will you have any difficulties adopting the use of UTIs in OTC derivatives trade reporting in the proposed timelines as stated above? If so, please provide specific details.

ISO WG 5 and the UTI Standard

One important waypoint ahead of the industry is the expected completion of the work of the International Organisation for Standardisation ("**ISO**") working group[2] tasked with publishing, finalising and maintaining the UTI Standard. Matters of critical importance to the successful establishment and maintenance of the UTI Standard are currently being discussed at the working group, and the detail of the Standard's final form may have a significant impact on how UTI implementations proceed across all jurisdictions.

Members would seek to avoid an unfortunate situation where a local UTI build is completed to comply with currently available information and timelines, only for another build to be required later if the publication of the UTI Standard requires further changes at the jurisdictional level. We would therefore encourage the Regulators to remain fully aware of developments within the ISO working group, and to meaningfully consider the potentially costly implications for Hong Kong UTI generation, communication, matching and reporting of implementing a local UTI requirement ahead of the finalisation of the UTI Standard. We also take this opportunity to frame the UTI Standard against the broader UTI Governance framework, the arrangements for which are currently being established under the auspices of the Financial Stability Board ("**FSB**"). In 2018, it was agreed by the FSB and market participants alike that the UTI Governance framework should be established and in place at the outset of UTI implementation.

Reporting Deadline Considerations

Members wish to raise some potential challenges which may arise as the determination process for UTI generation responsibility evolves. One such challenge may arise if a Hong Kong reporting entity follows the CPMI-IOSCO UTI generation party logic and determines that its counterparty is the UTI generator. This makes the entity dependent on the counterparty to generate the UTI in the time, manner and format required for Hong Kong reporting, potentially even if the counterparty has no Hong Kong reporting obligations itself. Despite laudable efforts to align the time, manner and format required for Hong Kong reporting with global standards and an entity's best efforts, the case would still remain that the entity cannot and should not report the bilaterally agreed UTI until it has been received from the counterparty.

Members would encourage the Regulators to consider the resulting implications of this dependency on the counterparty for UTI generation and communication in the context of the T+2 reporting deadline in Hong Kong. Members will make best efforts to obtain compliant UTIs from their counterparties within the reporting deadline and report them as soon as

[2] TC68/SC8/WG5: https://www.iso.org/committee/6534796.html

practicable after that, however they would also support a flexible regulatory approach which accounts for any practical difficulties in doing so at the client and transaction level. Such difficulties may be exacerbated where less sophisticated counterparties are involved, which may be unfamiliar or inexperienced with UTI, reporting and/or confirmation processes. Such entities are likely to have a higher implementation burden to achieve compliance, and their operational and general ability to comply with the totality of the UTI requirements, both on and after go-live, is a very important factor for the Regulators to take into account.

Novations

We thank the Regulators for the clarifications provided in paragraphs 32 and 33 of the Consultation Paper. With respect to paragraph 38, members would like to seek clarity on the following trading scenario:

- A trade is executed before the new Hong Kong UTI requirements take effect in April 2020, and is reported under the Hong Kong regime without a UTI under current rules;
- It is not reportable under the US or EU reporting regimes, and therefore it does not carry a USI or TID; and
- It is novated after the new UTI requirements have taken effect in April 2020.

Members understand that the new trade is expected to be reported with a CPMI-IOSCO-compliant UTI, however would appreciate further clarity on whether the Prior UTI field would need to be completed, having regard to section C.12 of the Supplementary Reporting Instructions. [3]

Question 4: Are you aware of any jurisdiction which should not be removed from the Designated List? If so, please provide specific details of the relevant legal or regulatory requirements with supporting information and other proof.

Members may have separate, bilateral feedback to share with the Regulators on the Designated List. ISDA is also attempting to reach out to regulators in specific Asia-Pacific jurisdictions where official clarification is needed that no barriers to reporting to trade repositories, both domestic and foreign, remain. It is important to note that in the absence of such official and formal clarity, some members may continue to have concerns around whether barriers to reporting full data have been fully removed in those jurisdictions.

[3] https://hktr.hkma.gov.hk/ContentDetail.aspx?pageName=HKTR-RPT-Administration-and-Interface-Development-Guide

Question 5: Do you have any comments or concerns about our proposed implementation timeline to gazette the revised Designated List no earlier than 1 October 2019? If so, please provide specific details.

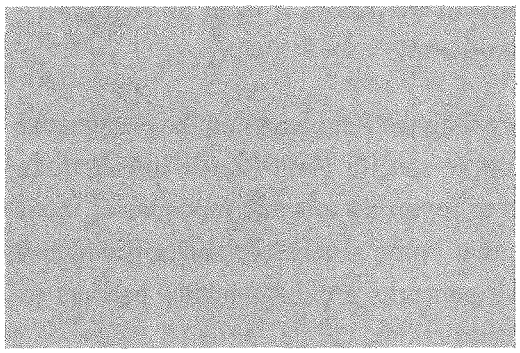
Members support a gazettal date which allows for sufficient preparation, does not conflict with other deliverables, minimises operational risk and ensures the best chance of optimal implementation. Having regard to these factors, members would suggest that the revised list be gazetted no earlier than 1 January 2020. Members note that certain reporting obligations will commence in other jurisdictions on 1 October 2019, with Brexit expected to follow shortly thereafter and IT change freeze periods shortly after that. Therefore, we would suggest that a gazettal date of no earlier than 1 January 2020 will allow for a smoother implementation which does not risk potentially conflicting with other major implementations and events expected in October.

Related to this, and given the number of jurisdictions proposed to be removed from the list on one date and the consequent cost of unmasking a potentially large volume of transactions, the Regulators may wish to consider whether a slightly longer grace period of 6 months for unmasking existing historical transactions would be appropriate, one a one-off basis.

* * *

Thank you again for providing ISDA the opportunity to respond to this Consultation Paper, and we look forward to continuing our dialogue with you over the coming weeks and months on these important policy issues. We understand that the next steps for the Regulators would be to consider all feedback and then issue a conclusions paper in due course, however if ISDA can be of any assistance in the interim, please do not hesitate to contact [redacted]

Yours sincerely,



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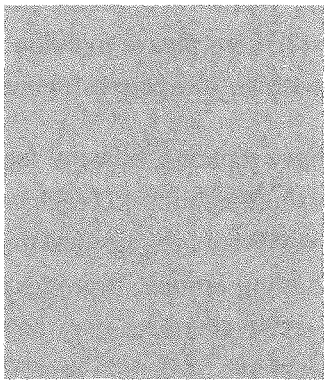

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