EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Financial markets
Securities markets

TARGETED CONSULTATION DOCUMENT

SELECTION OF A UNIQUE PRODUCT IDENTIFIER FOR PUBLIC TRANSPARENCY IN OVER-THE-COUNTER ("OTC") DERIVATIVES TRANSACTIONS

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudge the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

You are invited to reply **by 9 January 2024** at the latest to the **online questionnaire** available on the following webpage:
https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-otc-derivatives-identifier-public-transparency-purposes_en

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses**.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage: https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-otc-derivatives-identifier-public-transparency-purposes_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-otc-derivatives@ec.europa.eu.

INTRODUCTION

Scope and purpose of this consultation

The provisional agreement on the reform of the Markets in Financial Services Regulation (MiFIR) is expected to be published in Q1 of 2024. The provisional agreement would reform the scope of pre- and post-trade transparency reporting for over-the-counter (OTC) derivatives, including by specifying the classes of OTC derivatives subject to pre- and post-trade transparency.

OTC Derivatives subject to the pre- and post-trade obligations ("in-scope derivatives") must be subject to the clearing obligation laid down in Article 5(2) of Regulation (EU) No 648/2012 (EMIR) and must also de facto be centrally cleared (i.e., none of the counterparties can be exempt from the central clearing obligation) and must be denominated in Euro, Japanese yen, US dollars or British pounds sterling.

When it comes to interest rate derivatives, the scope of pre-and post-trade transparency is furthermore confined to contractual tenors of 1, 2, 3, 5, 7, 10, 12, 15, 20, 25 or 30 years.

As regards credit default swaps, in-scope derivatives comprise the following two asset classes, even if not covered by the clearing obligation:

a) single-name credit default swaps that reference a global systemically important bank and that are centrally cleared

b) credit default swaps that reference an index comprising global systemically important banks

The provisional agreement stipulates that identifying reference data for in-scope OTC derivatives must be reported to European Securities and Markets Authority (ESMA). The identifying reference data reported to ESMA includes a unique product identifier and "identifying reference data" that uniquely identify the product.

ESMA uses the unique product identifiers and the identifying reference data it receives to establish a reference data library ("RDL"). The RDL contains all product attributes that form part of a unique product identifier, meaning that the identity of a unique product can be established by linking the unique product identifier (and potentially other identifying reference data for that product) with the product attributes contained in the RDL.

A unique product identifier, alongside any other relevant identifying reference data, can be used for reporting and public transparency requirements. This reference data can also be consolidated by a consolidated tape provider (CTP) to identify the product which is the object of a reported quote or transaction. A CTP will furthermore disseminate "trade level" data (e.g., price, quantity) which is also required as part of the public transparency reporting requirements. The reference data, which relates to product attributes, changes less frequently than the trade level data published by the CTP. For this reason, the reference data is collected and managed separately and published centrally by ESMA in the Financial Instrument Reference Data System ("FIRDS"). This implies that FIRDS is ESMA's RDL.

The FIRDS RDL has several features that are impacted by the choice of unique product identifier. The FIRDS unique product identifier (currently the ISIN) uniquely identifies the 'product attributes' record. FIRDS is a multi-asset RDL, supporting all products within the scope of MiFIR. This includes shares, fixed income, as well as exchange traded and OTC derivatives. The aim of the FIRDS RDL is that any changes in the product attributes dataset have minimal impact on market participants, as all changes in product attributes are made centrally at the level of the unique product identifier and/or the other identifying reference data in the RDL.

Why are we consulting?

According to Article 27 of the provisional agreement identifying reference data for OTC derivatives "*shall be based on a globally agreed unique product identifier and on any other relevant identifying reference data*".

Recital 19b of the provisional agreement provides that "*Trading venues should be obliged to provide ESMA with reference data for transparency purposes including identifiers of OTC derivatives. The identifier currently used for derivatives (ISIN) has proved cumbersome and ineffective for public transparency and should be remedied by using identifying reference data based on a globally agreed unique product identifier, such as the ISO 4914 Unique Product Identifier (UPI). The UPI has been developed as an identification tool for OTC derivative products, with the intention to bring increased transparency and aggregation of data across the global OTC derivative markets. However, this unique identifier may not be sufficient and may need to be complemented by additional identifying data. Therefore, the Commission should specify by means of a delegated act the identifying reference data to be used with regard to OTC derivatives, including a unique identifier and any additional identifying reference data.*"

The co-legislator has therefore already made three determinations:

(i) compliance with the pre-and post-trade transparency obligations shall comprise using a unique product identifier

(ii) the current ISIN is not effective for compliance with the pre- and post-trade transparency obligations for in-scope OTC derivatives

(iii) any chosen unique product identifier may need to be complemented by "additional identifying reference data"

This consultation will therefore cover two issues:

a) what is the most suitable unique product identifier to be used for compliance with the transparency requirements applicable to in-scope OTC derivatives

b) are there any "additional identifying reference data" to be considered in addition to the unique product identifier

Who should respond to this consultation?

The target audience of this consultation are participants in the in-scope OTC Derivatives value-chain. This comprises a) companies that use interest rate and credit derivatives to hedge interest rate and credit risk that arises in the course of their business, b) investment firms and asset managers that use interest rate and credit derivatives to hedge investment portfolios, c) investment firms that act as counterparties to the two categories above, d) investment firms that invest in interest rate or credit derivatives, e) trading venues that offer trading in interest rate and credit derivatives, trade reconciliation service providers as well as CCPs that clear interest rate and credit derivatives.

ISSUE 1

What is the most suitable unique product identifier for pre- and post-trade transparency for in-scope derivatives?

A unique product identifier enables the communication of many product attributes in a single data field. This implies that a unique product identifier must link to a single RDL. For example, the CPMI and IOSCO concluded that a unique product identifier should assign a distinct code to each unique product, with the product attributes associated with each code discoverable by reference to standardized tables (the "RDL")[1].

As mentioned above, the rationale for a unique product identifier for in-scope OTC Derivatives is that all product attributes that form part of the identifier must link to a reference data library (RDL).

For example, the RDL for the unique product identifier for interest rate swaps contains all the product attributes that distinguish this type of product from other types of in-scope OTC derivatives. This means that the RDL would need to contain the following product attributes (using the example of a fixed-to-float interest rate swap):

i. the asset class (interest rates);

ii. the instrument type (swap);

iii. product type (e.g., fixed-float);

iv. the notional schedule (e.g., constant or amortising);

v. the notional currency (e.g., EUR);

vi. the delivery type (e.g., cash);

vii. the reference rate (e.g., EUR-EURIBOR);

viii. the reference rate term (e.g., 6 months);

ix. the term of contract (e.g., 5 years).

As a tool for pre- and post-trade transparency reporting, a unique product identifier allows market participants (and a potential provider of a consolidated tape in in-scope OTC Derivatives) to aggregate derivatives' quotation or transaction data at various levels of product attributes, providing enhanced transparency of market activity and facilitating price discovery in the markets for in-scope OTC Derivatives.

The unique product identifier allows the potential provider of a consolidated tape to aggregate quotations or transactions by any given product attribute contained in the RDL. This would allow the consolidated tape provider to aggregate not just all interest rate derivatives transactions with the same unique product identifier, but, for example, to

[1] CPMI and IOSCO, Technical Guidance: Harmonisation of the Unique Product Identifier, (Sept. 2017), available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf.

aggregate all transactions referencing the same underlying interest rate, e.g., EUR EURIBOR, 6 MO (attributes (vii) and (viii) above).

The inclusion of unique product identifiers in public reports published by trading venues assists in increasing the standardization of public reporting for in-scope OTC Derivatives across various trading venues and thereby facilitate a more efficient consumption of quotes and transactions.

FIRDS is a RDL based on a set of product attributes for products to be reported to ESMA. Using the above example of a fixed-to-float interest rate swap, FIRDS comprises the values for each attribute for that product, *i.e.*, the asset class value would be 'rates', the reference rate would be 'EUR-EURIBOR', the Term of Contract would be '5 Years'… etc. This set up ensures that the attribute data relating to a product identifier in each published/reported trade can be linked to identify the product being traded.

When it comes to in-scope OTC derivatives, the search and aggregation benefits provided by a unique product identifier could be realised by means of two unique product identifiers, the Unique Product Identifier (UPI – ISO 4914) and the International Securities Identification Number (ISIN - ISO 6166).

UPI (ISO 4914)

The ISO 4914 UPI is an identifier developed to facilitate effective aggregation of OTC derivatives transaction reports to trade repositories (aka "regulatory reporting") on a global basis, enabling public authorities to monitor the build-up of systemic risk. The reporting of the ISO 4914 UPI for regulatory reporting required under EMIR starts in 2024 in the European Union,[2] the United States[3] and several Asian financial centres[4]. The

[2] In the European Union, the UPI is currently mandated for EMIR trade repository reporting, but only to the extent that there is no ISIN. Under the EMIR Refit (Regulation (EU) 2019/834 and, in particular, Article 6(2) of Commission Implementing Regulation (EU) 2022/1860) a derivative shall be identified and reported using an ISIN where it is admitted to trading or traded on a trading venue or when it is traded on a Systematic Internaliser and its underlying is admitted to trading or traded on a trading venue or is an index or basket composed of instruments traded on a trading venue. This rule will apply from 29 April 2024. There is currently no requirement in MiFIR to use the UPI for transparency reporting for in-scope OTC derivatives, hence the co-legislator included the above- mentioned empowerment to adopt a delegated act mandating a unique product identifier, potentially along with other identifying reference data as part of the provisional agreement.

[3] For example, by order of 24 February 2023, the United States Commodity Futures Trading Commission ("CFTC") has designated the DSB UPI for use in swap recordkeeping and in swap transaction reporting, 88 FR 11790, Pp 11790-11793, 17 CFR 45, available at: Federal Register: Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting. The CFTC expects compliance with its order by no later than **January 29, 2024**.

[4] The Australian securities regulator (ASIC) has announced that the data element 'Unique product identifier' must be reported as a UPI from the UPI system under the draft amended ASIC Rules on regulatory reporting from **1 April 2024**. ASIC Consultation paper 361 Proposed changes to simplify the ASIC Derivative Transaction Rules, available at: CP 361 Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation | ASIC. The Singaporean securities regulator (MAS) has announced that UPI regulatory reporting will commence in their jurisdictions in **October 2024,** Response to Public Consultation on Proposed Amendments to the Securities & Futures (Reporting of Derivatives Contracts) Regulations, following the consultation of 2021, available at: Response paper to consultation on proposed amendments to the SFRDCR.pdf (mas.gov.sg). In Japan,

United States also requires the UPI for public transparency (CFTC, Part 43) reporting. The ISO 4914 UPI has been considered, therefore, as a potentially appropriate identifier also for compliance with pre-and post-trade transparency reporting for in-scope OTC derivatives required under MiFIR.

However, as noted in recital 19b of the provisional agreement, the ISO 4914 UPI may not include sufficient product attributes to achieve the goal of the pre- and post-trade transparency rules. Notably, the ISO 4914 UPI does not contain information on the term of an in-scope derivatives contract (spot starting) or the forward term of a forward starting contract. For pre- and post-trade transparency, the term of an in-scope OTC derivative is an essential attribute of the product as an interest rate derivatives trader would typically search for the price of a 10-year swap on a given reference rate (e.g., the six-month EURIBOR) or a 5-year swap starting in 2 years from now on any given reference rate.

ISIN (ISO 6166)

The ISO 6166 ISIN provides an alternative globally agreed standard for identification of OTC derivatives products that contains additional attributes that may be helpful to support attaining the goal of price transparency. As mentioned in recital 19b above, the ISO 6166 ISIN is currently used for pre- and post-trade transparency reporting in MiFIR, including for in-scope OTC derivatives. The main advantage of the ISIN (for pre- and post-trade transparency) is that it contains the term of the contract. But the ISIN currently also contains each contract's individual expiry date which allows users to derive the forward term of the contract. However, the inclusion of the expiry date in the ISIN is also the main disadvantage of the ISIN as explained below.

When it comes to price discovery and price comparison for some OTC derivative products deemed the same by market participants (for example the above fixed to float EUR EURIBOR interest rate swap), stakeholders have reported that the ISIN identifier has proven ineffective, notably on account of the individual contractual maturity date (the 'Expiry Date') being one of the product attributes in the product identifier. The inclusion of the 'Expiry Date' as an ISIN attribute means, for the most important category of OTC derivatives (interest rate swaps), that a new ISIN is issued daily. This means that a given product, e.g., a five-year swap on six-month EURIBOR, has a different ISIN every business day of the year.

Some market participants voiced concerns that the ISINs are not suitable for the price discovery in interest rate swaps, as the daily issuance of new ISINs does not allow for price comparisons across a time series (i.e., of prices across more than one day).

In light of the above, Neither the ISO 4914 UPI nor the ISO 6166 ISIN appear to be entirely suitable unique product identifiers for pre-and post-trade transparency reporting of in-scope OTC derivatives. While the ISO 4914 UPI is not sufficiently granular, the ISO 6166 ISIN is too granular.

the Japan Financial Services Agency (JFSA) makes the use of UPI mandatory for regulatory reporting as of **7 April 2025,** Available at : https://www.fsa.go.jp/en/news/2023/20230901/20230901.html.

Options to resolve the deficiencies of both the UPI and the ISIN as unique product identifiers for in-scope OTC derivatives.

The following table summarises the differences in product attributes between the ISO 4914 UPI and the ISO 6166 ISIN (again, using the example of a fixed to float EUR EURIBOR based interest rate swap)

Product attributes	UPI	ISIN
	ISO 4914	ISO 6166
	QZ0B7849XHTK	**EZXZJNVG5VR7**
CFI	SRCCSC	SRCCSC
UPI	-	**QZ0B7849XHTK**
Asset Class	Rates	Rates
Instrument Type	Swap	Swap
Underlying Asset Type	Fixed-Float	Fixed-Float
Notional Schedule	Constant	Constant
Single/Multi-Currency	Single	Single
Delivery Type	Cash	Cash
Notional Currency	EUR	EUR
Reference Rate	EUR-EURIBOR	EUR-EURIBOR
Reference Rate Term	6 MONTH	6 MONTH
Term of Contract	-	5 YEAR
Expiry Date	-	21.11.2028

Three observations are relevant in this comparison:

(i) all product attributes of the ISO 4914 UPI are a subset of the product attributes of the ISO 6166 ISIN;

(ii) the ISO 4914 UPI identifier code (in the example QZ0B7849XHTK) itself is a product attribute of the ISO 6166 ISIN; and

(iii) the ISO 6166 ISIN has two product attributes beyond the ISO 4914 UPI, the term of the swap contract and its expiry date.

As noted above, the reference data published in FIRDS (the ESMA RDL) corresponds to the product attributes contained in the ISIN for each product reported. In the case of a fixed-to-float interest rate swap, FIRDS contains the values for each attribute for that product, i.e., the asset class value would be 'rates', the reference rate would be 'EUR-EURIBOR', the Term of Contract would be '5 Years', etc. The ISIN reference data in FIRDS relating to a product identifier in each published/reported trade can then be linked to identify the product being traded.

The Commission's services therefore consult on the relative merits of two possible options to resolve the ISO 4914 UPI's or the ISO 6166 ISIN's deficiencies as a unique product identifier for pre-and post-trade reporting of interest rate swaps:[5]

Option 1

Using the ISO 4914 UPI as the basis for the unique product identifier while adding the attributes 'Contract Term' (for spot starting interest rate swaps) and 'Forward Term of Contract' (for forward starting interest rate swaps) as additional identifying reference data fields.

Option 2

Using the ISO 6166 ISIN as the basis for the unique product identifier while removing the attribute 'Expiry Date' from the ISIN and adding the attribute 'Forward Term of Contract' for forward starting interest rate swaps.

[5] The inclusion of the 'Expiry Date' as an ISIN attribute for credit default swaps does not result in new ISINs issued daily and therefore does not prevent price comparisons across a time series. Consequently, the Commission's options focus on interest rate swaps.

The following table summarises the result of the two options:

Product attributes	OPTION 1	OPTION 2
	UPI +	MODIFIED ISIN
	ISO 4914	ISO 6166
	QZ0B7849XHTK	EZXZJNVG5VR7
CFI	SRCCSC	SRCCSC
UPI	-	QZ0B7849XHTK
Asset Class	Rates	Rates
Instrument Type	Swap	Swap
Underlying Asset Type	Fixed-Float	Fixed-Float
Notional Schedule	Constant	Constant
Single/Multi-Currency	Single	Single
Delivery Type	Cash	Cash
Notional Currency	EUR	EUR
Reference Rate	EUR-EURIBOR	EUR-EURIBOR
Reference Rate Term	6 MONTH	6 MONTH
Term of Contract	-	5 YEAR
Forward Starting Term	-	1 YEAR
Term of Contract	5 YEAR	-
Forward Starting Term	1 YEAR	-

ISSUE 2

Are there any "identifying reference data" to be considered in addition to the unique product identifier?

The Commission's services note that Option 1 means that the "additional identifying reference data" required for public transparency reporting would be separate from the unique product identifier for in-scope OTC derivatives while, with Option 2, these "additional identifying reference data" would be incorporated into the unique product identifier for in-scope OTC derivatives. Put simply, Option 2 would not need additional "identifying reference data".

This difference might result in a series of operational impacts, notably for the FIRDS RDL:

The current FIRDS design operates on a unique product identifier that comprises all attributes of the products within the RDL. Under Option 2 this operational continuity would be ensured because the unique product identifier for in-scope OTC derivatives would be changed to comprise the two required additional attributes of 'Contract Term' and 'Forward Contract Term'. Option 2 would therefore produce a unique product identifier whose product attributes correlate with the FIRDS RDL's product attributes.

With Option 1, on the other hand, the correlation between the FIRDS RDL and the product identifier would be broken, because the UPI does not uniquely identify the product within the RDL. Instead, the unique OTC derivative product could be identified only by the combination of UPI and two additional product attributes ("identifying reference data") which would not be part of the unique product identifier.

This consultation therefore seeks to explore the impact that the two options would have on the operation of the FIRDS RDL and market participants.

Furthermore, the current FIRDS RDL covers several asset classes (e.g., equity, fixed income and derivatives) and its design assumes that the same identifier is used across all asset classes and products. Option 1 would require that OTC derivatives will have an identifier that is separate from the other asset classes within the RDL: UPI applies to products under the heading of in-scope of OTC derivatives and ISIN for all remaining asset classes. On the other hand, Option 2, apart from the addition of two product attributes, would leave the FIRDS design largely intact.

Stakeholders are therefore also consulted on the operational impacts that this may have on the FIRDS RDL and their own reporting arrangements and systems.

Consultation questions

Question 1. For reporting reference data of in-scope OTC derivatives for the purpose of public transparency which option do you prefer?

- Option 1: mandating UPI plus additional identifying reference data
- Option 2: mandating ISIN and requiring a change to the ISIN attributes to include the above-mentioned two additional product attributes 'Term of Contract' and ''Forward Starting Term'
- Don't know / no opinion / not applicable

Question 2. If you prefer option 1:

a) Do you agree with the proposal to mandate additional identifying reference data alongside the UPI (ISO 4914), such as 'Term of Contract' and 'Forward Term of Contract' for interest rate derivatives?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

b) Do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the UPI plus certain additional identifying reference data, instead of only reporting a unique product identifier?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

Question 3. If you prefer option 2:

a) Do you agree that modifying the ISIN by replacing the 'Expiry Date' attribute with the 'Forward Term of Contract' for OTC derivative types which have daily ISINs (e.g., interest rate derivatives) addresses the problems identified with the use of the ISIN for the purposes of public transparency reporting?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

b) Do you foresee any challenges and / or cost impacts in terms of system changes required to provide ESMA with the modified ISIN, instead of the existing ISIN?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

c) Please indicate for which specific types of interest rate swaps the problem of daily ISIN arises that require this remedy:

d) Are there other types of OTC derivatives, apart from the interest rate swaps identified in question 3 (b) and (c), for which the integration of the attribute 'Expiry Date' results in unnecessary daily ISINs and which require modification of their ISIN definition?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your reasoning:

Question 4. Are there any other additional identifying reference data that are neither part of the UPI or the ISIN attributes that appear relevant to enhance the above stated aims of price transparency and price formation for in-scope OTC derivatives – interest rate derivatives and/or credit default swaps?

- Yes
- No
- Don't know / no opinion / not applicable