

**Testimony of Tara Kruse
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Before the
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Committee on Agriculture
Subcommittee on Commodity Exchanges, Energy, and Credit
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Chairman Scott, Ranking Member Scott and Members of the Subcommittee, thank you for the opportunity to testify today.

It's now more than six years since the Group of 20 (G-20) nations gathered in Pittsburgh and agreed to a set of commitments to reform the over-the-counter derivatives market. A central component of those commitments was the reporting of derivatives to trade repositories in order to increase transparency and enable regulators to spot risk concentrations. Recognizing derivatives markets are global, the G-20 committed to implement consistent standards on a global basis in order to avoid fragmentation and regulatory arbitrage.

Over the past few years, substantial efforts have been made toward realizing this commitment. Today, virtually all derivatives trades in the U.S. are reported to a trade repository. An increasing number of jurisdictions around the world have also imposed such a requirement.

However, while the letter of the commitment is being realized, the spirit of this sound public policy goal is not.

U.S. regulators have struggled to fully understand and optimize the data being reported. Also, they are not in a position today to receive a complete picture of global risk exposure. This comprehension is impeded by a lack of regulatory endorsed, globally consistent standards that facilitate efficient, accurate data reporting that is suitable for aggregation and systemic risk analysis.

Contributing to the challenge is the fact that each regulator has developed a unique set of reporting requirements and devised its own list of reportable fields. This not only makes reporting complex and costly for derivatives users, but it means the data cannot be aggregated to obtain a clear view of global derivatives trading activity.

This is not just a case of divergent reporting rules between different countries. There are also differences in reporting requirements within the same jurisdiction. For instance, the CFTC and

¹ Today, ISDA has over 850 member institutions from 67 countries. These members comprise a broad range of 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, such as exchanges, clearing houses and repositories.

SEC require different data to be reported and have set different parameters to determine which trades should be subject to reporting. These differences are unnecessary and prevent regulators from meeting the G-20 objective of monitoring and mitigating systemic risk. They also run counter to regulators' commitment to implement consistent global standards.

Let me illustrate this important problem with a simple analogy. Imagine if every car dealership in the U.S. and around the world was required to report basic facts about each and every car sold, including the car's size. Due to differences in regulatory oversight of all of these dealerships, some dealers reported size as the car's weight. Others as the number of passengers it held. Yet, others as its length or its horsepower.

As the example makes clear, the answer here is not to require more data to be reported. Instead, regulators should work together and with the industry to agree on globally consistent reporting requirements, as well as data and messaging standards. ISDA stands ready to help in this regard. We've worked to develop standard taxonomies and a standard messaging language, and we are currently leading an industry initiative to develop standard product identifiers.

ISDA and its members would suggest several concrete steps that could be taken to improve data reporting and systemic risk monitoring, while at the same time reducing cost and complexity for reporting parties.

- **CPMI-IOSCO Should Lead Global Data Harmonization**

Agreement on common standards should be achieved in coordination with the Committee on Payments and Market Infrastructure (CPMI) and International Organization of Securities Commissions (IOSCO) which have established a Harmonization Group comprised of global regulators. CPMI-IOSCO has issued consultations on standard transaction and product identifiers, as well as other data elements. Consistency on these standards is paramount to achieving greater harmonization. It's important the CFTC and SEC are aligned with this global initiative and do not engage in further overlapping and potentially contradictory data proposals.

- **Data Fields Should be Specified and Based on Existing Market Standards**

Regulators should work with industry initiatives, such as ISDA's Symbology project², to ensure regulatory requirements closely align with prevailing industry defined terms and practices. All data elements required by regulators to meet their objectives should be explicitly defined in the regulations. Existing derivatives messaging standards, such as Financial products Markup Language³ (FpML), should be leveraged where possible.

- **Domestic Regulators Should Align on Data Rules**

The CFTC and SEC rules should be aligned. Given both agencies developed reporting rules in response to the same piece of legislation, the rationale for issuing different requirements is difficult to comprehend. The split between swaps and security-based swaps is a creation of the U.S. regulatory system which undermines the ability of the

² <http://www2.isda.org/functional-areas/symbology/>

³ <http://www.fpml.org/>

CFTC and SEC to aggregate their data and provide Congress with a holistic view of risk in the US derivatives market.

- **Reporting Requirements Should be Rationalized and Streamlined**

Regulators should determine what data they need to monitor systemic risk and simplify reporting requirements accordingly. Certain data fields are currently required to be reported or proposed to be required that offer little insight into risk. This increases the volume of data that needs to be analyzed, to little benefit, and increases the cost and complexity of reporting which undermines data quality. Regulators should agree on a meaningful set of globally consistent data fields that enables them to meet their regulatory objectives. Further, regulators should assign the sole responsibility for the reporting of accurate data for a transaction to a single party which is best situated to provide timely, complete data.

I'd like to address these issues in more detail. Before I do, I would like to stress that ISDA supports the intent of the G-20 and the Dodd-Frank Act to improve transparency in derivatives markets and to ensure regulators have the information they need to monitor systemic risk. ISDA has worked with its members to drive implementation of this objective, for example, in its work to develop common taxonomies and messaging standards. ISDA's work to drive implementation is also exemplified by the recent establishment of the ISDA Symbology project to develop a common product identifier for regulatory and reference data purposes. This initiative will incorporate the recommendations made by CPMI-IOSCO.

This is consistent with our mission statement: ISDA fosters safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. In fact, our strategy statement was recently modified to emphasize the importance of a safe, efficient market infrastructure for derivatives trading, clearing and reporting.

Since ISDA's inception 30 years ago, the Association has worked to reduce credit and legal risks in the derivatives market and to promote sound risk management practices and processes. This includes the development of the ISDA Master Agreement, the standard legal agreement for derivatives, and related collateral documentation as well as our work to ensure the enforceability of netting.

1. CPMI- IOSCO Should Lead Global Data Harmonization

The implementation of trade reporting was intended to improve transparency in the derivatives markets and mitigate systemic risk. G-20 leaders also committed to take action at the national and international level to raise standards together to implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism and regulatory arbitrage. Progress has been made on the former objective, but full realization of this goal cannot be achieved without significant advancement on the latter.

Under the CFTC's Parts 43, 45 and 46 regulations reporting to trade repositories has been live in part since December 31, 2012 and reporting across asset classes and by all U.S. participants to swaps has been in place since April of 2013. Data regarding swaps that were live on or after the enactment of the Dodd-Frank Act or which have been transacted since have been and continue to be reported to trade repositories. Despite the availability of swap data to the public and to the CFTC, questions remain regarding whether the CFTC is collecting the most useful data set and whether such data is consistent and accurate enough to monitor market risk.

The successful implementation and oversight of the Legal Entity Identifier to uniquely identify parties to a transaction is proof that global regulatory collaboration can result in standards that are extremely valuable to market risk analysis. With the LEI as precedent, ISDA strongly supports the ongoing efforts of the CPMI-IOSCO Harmonization Group to develop recommendations for global standards for trade identifiers (UTI), product identifiers (UPI) and other reportable data elements. ISDA worked with its members to develop industry standards for trade identifiers and product identifiers in the absence of global regulatory standards and developed best practices to improve the consistency of reporting. Although these have been used successfully by a majority of market participants for reporting across the globe, comprehensive use can only be achieved through regulatory endorsement and mandates.

ISDA has provided substantive feedback to the first three derivatives data consultations issued by CPMI-IOSCO, including one on an initial batch of other data elements (the "ODE Consultation")⁴, such as notional and clearing status. The CFTC is currently taking comments on a Draft Technical Specifications for Certain Swap Data Elements ("Technical Specifications"). While we commend the CFTC for addressing the acknowledged and necessary corrections in its data rules, it is not being done in concert with other regulatory reforms. Despite the CFTC's role as co-chair of the Harmonisation Group and the active participation of CFTC staff in its sub-groups, for many of the data elements which were also part of the ODE Consultation, the Technical Specifications asks different questions and makes different proposals for the naming of data elements as well as their descriptions and allowable values.

ISDA believes the CFTC has missed an important opportunity to focus its resources on inputting to global harmonization goals and instead has replicated or repurposed those efforts. Any further consultation or proposed rulemaking by the CFTC with respect to its reporting regulations should align with and be fully-inclusive of all information from the efforts of the Harmonisation Group with the goal of a single industry-wide transition to the globally recommended data standards of CPMI-IOSCO determined in accordance with its responsibilities as assigned by the Financial Stability Board⁵.

2. Data Fields Should be Specified and Based on Existing Market Standards

Limitations on the usefulness of the collected data to analyze systemic risk is not attributable to missing data as much as it is about the quality and consistency of the data that is collected. Each

⁴ http://www2.isda.org/attachment/NzkzNA==/CPMI-IOSCO%20Response_ODE_9%20Oct%202015_FINAL.pdf

⁵ http://www.fsb.org/wp-content/uploads/pr_140919.pdf

relevant national regulator has issued its own version of reporting requirements and its own list of reportable data fields that are not always based on existing industry standard terms, definitions and messaging standards for derivatives. In some cases, the trade terms required to be reported are not explicitly specified in the regulations but instead left to SDRs and market participants to determine. These approaches complicate the task of reporting and undermine data quality since parties are required to interpret the data desired by the regulator or transform the data in a way that may not align with how the economics of the trade were agreed between the parties and represented in the legal confirmation for the transaction.

Regulators would make significant headway in improving the rules if they follow three principles:

1. Use of industry standards where possible
2. Provide appropriate oversight and commitment to market participants so they can develop industry-based solutions
3. Be specific when developing data requirements

Regulators should use industry standards where possible

The market can't trade without certain convention and standards, just like our interstate system can't function without consistent and specific traffic rules. The marketplace has already developed data and trading conventions that can be readily applied on a global basis to support the data harmonization efforts. The following standards already exist for (i) the name, definition and values of the key economic terms of derivatives transactions and (ii) messaging representation of these data elements for reporting. Global standards for trade reporting should be aligned with, and benefit from, these existing industry standards.

Product definitions

ISDA product definitions are incorporated by reference into confirmations for derivations transactions. The terms they define are the market standard references, providing legal certainty to counterparties on the economic terms of their transactions. The CFTC, SEC and other global regulators should align with these terms and definitions for the sake of specificity, accuracy, and efficiency. There is no value in redefining the framework for legal agreement of derivatives transactions for the purposes of reported data. Rather, the reported data should seek to mirror the terms and values as they are agreed and confirmed between the parties to the transactions to ensure harmonization between the execution confirmation and reporting processes.

Using alternative terms, definitions and values for reported transactional data requires parties to transform their trade data to represent it in an inconsistent manner solely for the purposes of reporting. This greatly increases the challenge of reconciling SDR data back to a reporting counterparty's source systems or the confirmation, and inhibits bilateral reconciliation since a non-reporting counterparty will not have transformed their data in accordance with the relevant reporting regulations. These challenges are further exacerbated when the parties are required to represent the data for the same trade differently when reporting to multiple jurisdictions. It is not practical for parties to create, report and maintain several different data representations of the same trade without impinging on the clarity and certainty of the transactions terms. Aligning reporting regulations with the applicable established product definitions is the more accurate and appropriate baseline for representing reported data.

Messaging standards

The other key to leveraging existing trade representation is through the use of established reporting standards that are designed from, and align with, the ISDA product definitions. FpML is the predominant messaging standard for OTC derivatives, facilitating both the electronic confirmation and electronic reporting of transactions. Significant enhancements have been made to FpML to support both global and jurisdictional reporting regulations. Although there are obvious benefits to doing so, reported data does not have to be submitted electronically via FpML for the reporting regulations to benefit from the standards it has established for uniformly identifying certain trade terms and values. For instance, FpML developed the only industry standard values for “Business Days” which are the geographical and non-geographical calendars by which payment dates and settlement dates are adjusted (e.g., NYSE Business Day). The CFTC recognized this, referring to FpML for these values in its Technical Specifications for its redefined “Holiday Calendars”, but does not fully embrace the standard by aligning with the FpML data elements and scheme for all supported data fields.

Rather than inventing its own methods, the Commission and global regulators should align with both the ISDA product definitions and FpML. There is simply no need or value to reinvent the terminology, definitions or representations of swap data. Instead, efforts to develop new standards will reduce rather than improve the quality of the data available to meet the regulatory mandates which require the collection of derivatives data. The CFTC and global regulators should use these existing standards to their benefit, allowing them to increase the clarity, accuracy and usefulness of the collected data.

Regulators should provide appropriate oversight and commitment to market participants so they can develop industry-based solutions

ISDA continues its efforts to drive data standardization, including through its Symbology project⁶ to create an open source standard for derivatives product identification that works for pre-trade, trading and post-trade workflows. We encourage the participation of regulators in industry initiatives and feel strongly that an open and regular dialogue between regulators, industry associations like ISDA, and market participants will expedite the development and implementation of global data standards.

Regulators must be specific when developing data standards

Contrary to the approach of all other global regulators, both the CFTC and SEC include requirements in their trade reporting rules to provide data for which the Commissions have not explicitly specified the trade terms required to be reported. Since data cannot be reported electronically to a trade repository if the set of data fields are not supported, these catch-all buckets leave trade repositories and the industry to assess what data must be reported to comply with a requirement for, for instance, “any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade”⁷ or “any other data elements...that are necessary for a person to determine the market value of the transaction”⁸.

⁷ Appendix 1 to CFTC Part 45 regulations

⁸ §242.901(d)(5) of SEC’s Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information

Some derivatives products are highly standardized and it may be possible to determine a uniform set of data fields that could apply in these cases, but some derivatives are customized and a finite list of potential data elements and values cannot be determined. Either way, any differences in interpretations between trade repositories and reporting entities regarding these unspecified requirements will reduce the quality of the data. ISDA has consistently urged the Commissions to explicitly define their data requirements as determined by the way in which they intend to assess the data, rather than allocate such decisions to trade repositories and market participants.

3. Domestic Regulators Should Align on Data Rules

The reporting regulations of the CFTC and SEC are different, including the data this is reportable and the parameters to determine which trades are subject to reporting. Considering that the Commissions have issued these rules in response to their obligations under the same piece of legislation, the Dodd-Frank Act, the rationale for the divergence in their rules is difficult to comprehend.

For instance, it is illogical that each Commission should have a different definition for who is a U.S. Person, and as a result, a divergent position as to which transactions pose risk to U.S. markets and, thus, are subject to reporting. Based on their divergent definitions, it is possible that a particular counterparty may only be required to report either its swaps or its security-based swaps. The Commissions should be expected to agree on a single definition for U.S. Person and a uniform approach to their requirements for reporting of cross-border swaps and security-based swaps, which carefully considers whether the derivatives transactions of parties that are not domiciled in the U.S. pose a genuine risk to the U.S. markets that cannot be mitigated by the oversight of the relevant foreign regulator(s).

The artificial line between swaps and security-based swaps is unique to the U.S. and undermines the ability of the CFTC and SEC to aggregate their data and provide Congress with a holistic view of the risk in the U.S. derivatives market. Other regimes look at the derivatives market holistically and within the same jurisdiction have not issued different trade reporting regulations and different data fields for segments of the derivatives market (aside from those that are appropriate to a particular asset class). For example, in Canada, there are 13 securities regulators, each with its own securities legislation and independent oversight of the trading activity in its province or territory. Despite having separate trade reporting regulations, these authorities managed to agree to a defined, uniform list of data fields.

In contrast, the SEC and CFTC recently issued concurrent but separate consultations on data standards for their respective reporting regulations. They took entirely different approaches to addressing the matter. In accordance with long-standing suggestions from ISDA and the industry, the SEC has proposed a rule requiring security-based swap data repositories to provide data to them using existing data standards such as FpML, which is the open source XML standard for electronic dealing and processing of OTC derivatives. Meanwhile, the CFTC has created its own trade terminology, definitions and allowable values which are not fully harmonized with either existing industry standards or the proposal of the SEC.

4. Reporting Requirements should be Rationalized and Streamlined

More data is not better data

There is a regulatory misconception that collecting more data will better inform an understanding of market risk. However, requiring dozens of data fields for a single transaction significantly complicates the ability to analyze trade data and meaningfully assess market risk by overloading databases with transaction terms that are not pertinent to a distinction of risk. For instance, whether payments are calculated taking into account New York business days vs. London business days or knowing which version of an ISDA Master Agreement was executed between the parties will not lead to any opportunities to mitigate risk. Rather, reporting of non-essential data fields, many of which are not agreed as part of the swap execution, makes it harder for regulators to focus on the key economics of the transactions that are relevant to price transparency or an understanding of the risk of the transaction. Instead of collecting vast amounts of data for which the value and application of each field toward systemic risk analysis is undetermined, the regulators should look at their desired end-state and work backward to ensure the right data is collected that meets a well-considered approach to global risk analysis.

In order to focus on meeting their primary objective to mitigate market risk, the Commissions should focus on obtaining a restrained, defined set of globally consistent core economic data fields that allow them to analyze the concentration of risk in certain products, against certain underliers or by certain market participants.

Placing reporting burden on end-users

The U.S. was the first to implement a single-sided reporting model under which one party is responsible for reporting the data to a swap, and rightfully placing the bulk of the cost, burden and liability for reporting on more sophisticated market participants. However, despite the obvious benefits, the U.S. is not a truly single-sided reporting regime. Rather, due to the requirement placed on SDRs by the Dodd Frank Act to confirm the accuracy of reported data *with both counterparties*, SDRs are required to build functionality for non-reporting parties and to supplement or verify the reported data.

This requirement in the Dodd-Frank Act replicates the bilateral confirmation process and places an indirect obligation on all parties to reportable derivatives transactions in the U.S. to onboard to all SDRs used by their counterparties and build the associated functionality required by each SDR. This is dual-sided reporting in disguise, placing an enormous and costly burden on end-users to build functionality that does not actually improve the quality of the data. Dual-sided reporting in the European Union has not resulted in better data quality and these variations of duplicative reporting obligations in the U.S. will not either. Instead, the reporting party should be solely accountable for the accuracy of the data it reports to an SDR.

Summary

The goal of improved regulatory transparency in the derivatives market is an important one, and it is one that ISDA fully supports.

In order to improve the quality of the data available to the regulators to meet their G-20 commitments for transparency and risk mitigation, the industry needs global regulators to:

- Improve data quality by adopting a defined set of core economic data fields that:
 - are relevant to the primary objectives of trade reporting;
 - are domestically and globally harmonized in accordance with the recommendations of CPMI-IOSCO;
 - align with existing industry defined terminology (i.e., product definitions published by ISDA); and
 - leverage existing derivatives messaging standards, like FpML.
- Allow a single reporting counterparty to be solely responsible for the accuracy of the reported data.

Rather than issuing their own proposals for changes and the expansion of their data reporting regulations, the Commissions should focus on improving data under their existing regulations by providing the clarity and improvements requested and suggested by the industry. Significant changes to the data fields should only be implemented in accordance with the recommendations of the CPMI-IOSCO Data Harmonisation Group. The recommendations of that forum are expected to be completed in 2017; U.S. regulators should contribute to the expedition of those efforts and not engage in further overlapping and potentially contradictory data proposals.