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March 7, 2016

By Electronic Mail

Chris Kirkpatrick
Secretary
Commodity Futures Trading Commission
1151 21st St NW
Washington, DC 20581

Re: Staff Request for Comment Regarding “Draft Technical Specifications for Certain Swap Data Elements,” dated December 22, 2015

Dear Mr. Kirkpatrick,

Markit appreciates the opportunity to comment on the Commodity Futures Trading Commission (“CFTC” or “Commission”) staff request for comment regarding Draft Technical Specifications for Certain Swap Data Elements (“Request for Comment” or “RFC”).¹ Markit (NASDAQ: MRKT)² is a global financial information services company, offering independent data, valuations, risk analytics, trade processing, and related services across regions, asset classes and financial instruments. Markit is invested in US financial markets, earning approximately half of its global revenues from business activities in the US and with over 1700 employees in the US, including over 700 people in New York, 500 in Boulder, and 400 in Dallas.

Markit’s derivatives processing platforms are widely used by market participants, swap execution facilities (“SEFs”), and brokers to increase operational efficiency, reduce cost, and ensure legal certainty. Globally over 2,000 firms use the various Markit trade processing platforms that process, on average, 90,000 derivative transaction processing events per day. Markit’s trade processing platforms form an important element of derivatives workflows, particularly in the credit, interest rate, equity, and foreign exchange asset classes. In September 2015, Markit acquired DealHub, enhancing its trade processing offerings in the foreign exchange (“FX”) asset class, including regulatory reporting.³

¹ Draft Technical Specifications for Certain Swap Data Elements, Dec. 22, 2015, available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf>.

² Please see www.markit.com for further information.

³ Markit Completes Acquisition of DealHub, Sept. 4, 2015, <http://www.businesswire.com/news/home/20150904005095/en/Markit-Completes-Acquisition-DealHub>.

Markit's Reference Entity Database ("RED") platform⁴ has been providing legally verified reference data across asset classes⁵ to the industry. Markit's reference data for credit default swaps ("CDS") has been servicing the credit derivatives industry for more than a decade and is an integral part of credit workflows. The RED platform has two core components.

First, there are Reference Entity Database Codes or "RED6 Codes." The RED6 Code is a six-digit code that corresponds to a particular reference entity or index and series combination. Markit expends substantial resources updating the RED6 database to account for new reference entities used in CDS transactions and to update the metadata associated with a particular RED6 code to account for corporate actions e.g., mergers and acquisitions, rights issues and spin offs, etc.

Second, there is the nine-digit RED Pair Code or "RED9 Code" that represents a particular pairing of a unique reference obligation with a reference entity. Markit RED legally verifies the relationship between reference entities, credit agreements, loan facilities (if applicable), and reference obligations which trade in the CDS market, known as pairs. The legal verification process is managed by a leading international law firm with extensive derivatives experience. The RED9 Code is updated by Markit when, for example, an issuer of a particular reference obligation or a guarantor is substituted.

These RED codes are market standards and are deeply embedded in the pre- and post-execution credit trading workflows. These identifiers are also widely used in risk analytics, pricing and valuations, trade confirmations, electronic trading, clearing, settlement and trade allocations. Markit's RED codes are uniquely placed to assist the CFTC in managing its swap data challenges (particularly as they relate to credit).

Markit trade processing platforms also facilitate firms' compliance with several regulatory requirements across jurisdictions. Specifically, the MarkitSERV platforms facilitate the electronic confirmation of a significant portion of derivatives transactions worldwide, submit them for clearing to 16 clearinghouses globally, and, for many counterparties, report derivatives details to trade repositories (also known as "swap data repositories" or "SDRs") in the United States, Canada, Europe, Japan, Hong Kong, Singapore, and Australia, as well as reporting on behalf of the G15 banks on a voluntary basis as a part of an OTC Derivatives Regulator Forum initiative. The RFC, should it lead to new rules amending part 43, 45, or 46 of the Commission's regulations, would affect Markit because Markit acts as a leading third-party reporting agent for reporting counterparties to swaps trades that fall under the CFTC's jurisdiction. Any new rules would affect Markit's third-party reporting agent service for its customers and, as a result, the cost of delivering these services to customers.

⁴ Markit RED Primer, http://www.markit.com/assets/en/docs/products/data/indices/credit-index-annexes/Markit_RED_Primer.pdf.

⁵ For CDS, LCDS, ABCDS, Bonds and Loans.

I. General comments

Markit strongly supports the Commission's goal to conduct effective oversight of its share of a global derivatives market that has more than \$550 trillion in notional amount outstanding.⁶ As noted by the Commission recently, the swap asset classes where Markit is a particularly competitive third-party reporting agent, the interest rate and credit asset classes, enjoy superior data quality than those where Markit is not active.⁷ We believe our processing and reporting services have made a positive contribution to improving data quality and transparency and are proud of that contribution. We are eager to continue to work with the Commission improve the quality of the swap data it receives.

We provide these comments to assist the staff determine how to best ensure the Commission fulfills "its regulatory mandates, including systemic risk mitigation, market monitoring and market abuse prevention"⁸ while not imposing undue costs on reporting counterparties and the third-party reporting agents they rely on for regulatory reporting, confirmation, and other trade processing services. In providing our comments, when we refer to the "Commission," we do so inclusively of the Commission and Commission staff operating under delegated authority.

In general, we believe the Commission should act through the Committee of Payments and Market Infrastructures ("CPMI") and International Organisation of Securities Commissions ("IOSCO") Harmonisation Group to implement regulatory reporting policy changes it deems necessary to fulfil its regulatory mandates. These are mandates it shares largely in common with other market regulators.

We would recommend that the Commission utilize, to the maximum extent possible, the existing global industry standards as they are used in the existing confirmation process. We would also emphasize that global harmonization of new data reporting requirements should extend to the timeframe to that when the global new requirements become effective. A single global build, in terms of implementation time and substance, would be substantially more cost-effective than multiple local builds from our perspective.

With respect to proprietary industry-accepted uniform identifiers in general, the Commission should encourage their inclusion in part 45 swap data reports by avoiding imposing undue costs on reference data vendors that produce them.⁹

⁶ See Global OTC derivatives market, http://www.bis.org/statistics/d5_1.pdf (last visited Mar. 5, 2016).

⁷ "Although the total gross notional value of an entity's dealing activity determines its swap dealer registration status, reliable and complete notional data was not available for FX Derivatives, Equity swaps, and Non-Financial Commodity swaps [...]" CFTC Swap Dealer De Minimis Exception Preliminary Report, at 18, Nov. 2015, http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.

⁸ RFC at 7.

⁹ See Markit Comment Letter re CPMI-IOSCO Consultative Report on Harmonisation of the Unique Product Identifier, Feb. 24, 2016, at 2

II. Executive summary

With respect to proprietary industry-accepted uniform identifiers, we recommend that:

- The Commission encourage the submission of industry-accepted uniform identifiers to SDRs by clarifying through staff interpretation that either (i) proprietary reference data is excluded from the Commission's part 43 real-time reporting rules or (ii) SDRs extend the protections provided for data disseminated through their SDR to proprietary reference data they acquire. Moreover, we would not be opposed to a general approach whereby proprietary swap identifiers deemed valuable to the Commission would be required to be obtained by SDRs on a "fair and reasonable" or cost-based standard, provided that such proprietary industry-accepted uniform identifiers are not subject to additional costs, particularly in the form of diminished value of the intellectual property associated with the identifier for its creator. (see answer to RFC question ("RFCQ") 8)
- The fact that there are industry-accepted uniform underliers for credit is a feature of the credit markets that is beneficial to market participants and promotes the financial integrity of the credit markets. The Commission should not eliminate proprietary industry-accepted uniform underliers through heavy-handed regulation that would, for example, compel industry-accepted uniform identifiers to be made public without protections to firms that expend resources to ensure the quality of identifier and the reference data that underpins it. (see answer to RFCQ 9)
- Before the Commission takes the step of mandating the creation of a central reference representation maintenance authority, the Commission should try to leverage existing industry-accepted identifiers that service a broader need for precise reference data in certain asset classes, e.g., credit. (see answer to RFCQ 12)
- We do not think the Commission or any regulator should compel the use of any particular index identifier or reference data source for any or all asset classes. (see answer to RFCQ 13)

In the Appendix to this comment letter we provide technical comments on specific data elements presented by the RFC. We can extract three general comments on these technical issues. First, we agree that "[c]ertain of the reportable data elements presented herein are not applicable to all swaps, even within a particular asset class, and would not be germane to the reporting of certain transactions or events."¹⁰ Second, we would

<https://www.markit.com/Company/RegulatoryResponsesFile?CMSID=c9bd439f0c5248ccbdd79e9d8e74c429>

¹⁰ RFC at 7.

recommend an asset-based or product-based focus, as appropriate, for new data element reporting requirements. Finally, we caution against requiring that entity-level data be submitted to SDRs on a transactional basis.

III. Discussion

RFCQ 8. What are the challenges to reporting industry accepted uniform identifiers? How can those challenges be addressed?

In his November 4, 2015 speech to the Futures Industry Association's ("FIA") Futures and Options Expo, Chairman Massad lamented "a lack of standardization in how many fields are reported."¹¹ Chairman Massad followed up this observation with an example of the different ways a specific credit default swap ("CDS") index is reported, e.g., CDX-NAIGS19V1-5Y, CDX.NA.IG.19-V1: 5YR, CDX.NA.IG.19-5Y, CDXIG-19_V1_125_5YR_DFS_NR, MARKIT CDX.NA.IG.19 12/17, CDX.NA.IG.19 12/17, etc.¹² Each one of these data elements corresponds to a particular series (series 19) of a particular CDS index (CDX.NA.IG). The fact that this particular index series is represented in different ways in the CFTC's swap data records makes the aggregation of positions difficult, if not impossible, and would therefore impede market and risk surveillance.

The Commission's regulatory reporting rules correctly focus on requiring reporting and public dissemination of pricing data, not industry-accepted reference data.¹³ The difference between pricing data and reference data is that the latter is used to facilitate processing and settling transactions whereas the former is used to describe the economics of a transaction.

As a rule, SDRs do not acquire proprietary industry-accepted reference data, including uniform identifiers, used by market participants to process their transactions. SDRs and therefore the CFTC do not have access to proprietary reference data, like RED codes, in the absence of a license. The Commission could enhance its ability to aggregate swap positions with a verified common underlier through the use of a single RED6 code that corresponds to a unique reference index and series combination. To re-use the example used by Chairman Massad and described above, the Markit RED6 code for CDX.NA.IG series 19 version 1 is 2I65BYCV5.

This challenge could be addressed through the CFTC's access to Markit's proprietary RED code. This could be done if SDRs had licenses in place to acquire RED codes. Currently, Markit does not have in place an agreement with any SDR that allows the SDR

¹¹ Keynote Remarks of Chairman Timothy Massad before the Futures Industry Association Futures and Options Expo, Nov. 24, 2015, <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-33>.

¹² Id. available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/cdx_slide_massad110415.pdf.

¹³ See e.g., Appendix A to 17 CFR 43; Appendix 1 to 17 CFR 45.

to receive RED codes from reporting counterparties. Markit has attempted to reach agreements with SDRs to provide them with licenses to acquire and disseminate to the CFTC RED codes but those negotiations have not yielded a single license to date.

Markit has faced two issues in negotiating these licenses with SDRs. The first issue relates to whether proprietary reference data is within the scope of the Commission's part 43 rules. Some SDRs have contended that if Markit's customers provided them with RED codes that these reference data codes would have to be stripped of proprietary protections in order to be reported in "real-time" pursuant to the Commission's part 43 rules. We do not think this is the Commission's intent in promulgating its part 43 or even part 45 rules since these rulemakings focus on pricing data necessary to understand the economics of a transaction, not reference data. Nor were the costs of this radical interpretation of the Commission's rules to reference data vendors considered in the promulgation of these rulemakings. These include the costs, in terms of diminished value of the intellectual property over proprietary reference data that follows in the absence of public dissemination without any licensing protections.¹⁴

We note that the Commission has allowed CFTC-registered SDRs to have in place protections to protect the proprietary nature of SDR services, including SDR data-related services.¹⁵ This policy follows from the principle that data that SDRs are not purely non-proprietary utilities, they still operate as for-profit companies and need to be able to offer services responsive to market forces. This is a principle we recommend that the Commission apply in any policy relating to proprietary industry-accepted uniform identifiers going forward.

The Commission encourage the submission of proprietary industry-accepted uniform identifiers to SDRs by clarifying through staff interpretation providing either (i) proprietary reference data is excluded from the Commission's part 43 real-time reporting rules or (ii) SDRs should extend the protections provided for data disseminated through their SDR to proprietary reference data they acquire.

This brings us to the second issue we have faced in negotiating RED code licenses with SDRs. Some SDRs have correctly interpreted part 43 rules as not covering proprietary reference data. These SDRs nevertheless do not feel compelled to agree to these licenses, even at a very nominal fee since they are not required to do so and they do not want to pay even a nominal fee to acquire non-mandatory RED codes. We hope to

¹⁴ We note that "licensing protections" and "public dissemination" are not mutually exclusive.

¹⁵ See e.g., BSDR Sample User Agreement, <http://www.bloombergsdr.com/assets/img/BSDR%20LLC%20-%20User%20Agreement%20SAMPLE%20v.051214.pdf>, last visited Feb. 15, 2016 ("BSDR and its affiliates own all intellectual property rights regarding the [SDR] Services and derivative works created there from. User acknowledges that the Services, related materials and software were developed, compiled and arranged by BSDR and its affiliates through expenditure of substantial time, effort and money and constitute valuable intellectual property and trade secrets. User shall not recompile, disassemble, reverse engineer, make or distribute any other form of, or create derivative works from, the [SDR] Services, or use any of BSDR's or its affiliates' marks or trade names without prior written consent.").

resolve this issue without Commission intervention. The Commission could encourage a resolution by mandating or encouraging SDRs to acquire industry-accepted reference data, e.g., RED codes, that would be made available to SDRs under a “fair and reasonable” or cost-based fee standard.

To be explicit, we would not require the Commission to pay any fee to use RED as needed to perform its statutory mandates. Moreover, **we would not be opposed to a general approach whereby proprietary swap identifiers deemed valuable to the Commission would be required to be obtained by SDRs on a “fair and reasonable” or cost-based standard, provided that such proprietary industry-accepted uniform identifiers are not subject to additional costs, particularly in the form of diminished value of the intellectual property associated with the identifier for its creator.**

RFCQ 9. If there is not an industry accepted uniform identifier for a particular index, how should the index be represented in swaps data?

As described above, there are currently industry-accepted uniform identifiers for particular credit index and series combinations, i.e. RED codes.¹⁶ We understand that other asset classes lack industry-accepted uniform identifiers. We think the reason why credit has an industry-accepted uniform identifier is because, unlike other asset classes, there is a need for quality reference data to help facilitate the processing of credit derivatives trades. Credit derivative transactions, unlike transactions in other asset classes, can have shifting underliers and the mapping between a particular reference entity and the reference obligations underlying a CDS transaction are important to understand with precision. This need for reference data precision is what has created a market for Markit RED codes.

The fact that there are industry-accepted uniform underliers for credit is a feature of the credit markets that is beneficial to market participants and promotes the financial integrity of the credit markets. The Commission should not eliminate proprietary industry-accepted uniform underliers through heavy-handed regulation that would, for example, compel industry-accepted uniform identifiers to be made public without protections to firms that expend resources to ensure the quality of identifier and the reference data that underpins it. Such heavy-handed action would eliminate the commercial incentive for Markit to continue its RED service and with no commercial alternative likely to emerge due to similar economics for other reference data vendors. The consequence of the elimination of RED, in particular, would be significant new costs and risks to credit market participants. We stress that the quality of a reference data service created as a result of regulator mandates is likely to be lower than that provided by a commercial reference data vendor because the latter is accountable to market forces to produce a quality product at competitive price point.

¹⁶ See e.g., Markit RED Index Codes, 2011, http://www.markit.com/cds/announcements/resource/markit_red_%20index_codes_22032011.pdf.

RFCQ 11. What are the challenges presented when an identifier for an index is changed? Do you have recommendations for addressing these challenges?

New RED9 codes are assigned when Markit issues a new series or credit index. The RED6 identifier for a particular index and series combination does not change.

RFCQ 12. Do the benefits of mandating a publically available standard reference representations and possibly a central maintenance authority outweigh the potential effect on innovation and competition in the creation of new indices or index identifiers?

We think that before the Commission takes the step of mandating the creation of a reference representation central maintenance authority (“RRMA”), the Commission should try to leverage existing industry-accepted identifiers that service a broader need for precise reference data in certain asset classes. We think the Commission could do so, as suggested above in our answer to RFCQ 8 through staff interpretations of its existing rules. An RRMA may not have the commercial incentive to develop reference data to support standard reference representations in the same way a commercial reference data vendor would, resulting in two classes of reference representations: (1) a lower quality service operated by an RRMA and (2) a higher quality service operated by a commercial reference data vendor. The Commission should be sensitive to the impact that that a RRMA would have on the reference data markets more broadly.

RFCQ 13. Would using a single source for each index identifier and/or asset class be preferable to using multiple index providers? If so, why, and which providers would you recommend and why?

We do not think the Commission or any regulator should compel the use of any particular index identifier or reference data source for any or all asset classes. The reason that there may be particularly dominant reference data vendors in particular asset classes is a function of, among other things, the fixed costs associated with developing a competitive reference data offering. It may be more cost effective in certain circumstances for reference data vendors to acquire a license to use reference data from another vendor than to develop their own reference data service.

* * * * *

Markit appreciates the opportunity to provide these comments to the Divisions. We would be happy to elaborate on or further discuss any of the points addressed above. If you or your respective staffs have any questions, please do not hesitate to contact the undersigned or Salman Banaei at salman.banaei@markit.com.

Yours sincerely,



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Appendix – Comments on Specific Data Elements

RFCQ 1. Are there challenges associated with identifying the Ultimate Parent and/or Ultimate Guarantor of a swap counterparty? If so, how might those challenges be addressed?

We would recommend the Commission explore capturing ownership and guarantor-related data at an entity level and note that there are two mechanisms in place for the Commission to gather this kind of data at an entity level making capturing this data at a transaction level questionable.

First, the Commission's Form 40/40S, applicable to those with a "reportable position" in futures or swaps and captures granular information about ownership of entities and positions. E.g., question 9 of the Commission's Form 40/40S asks "List all the parents of the reporting trader (including the immediate parent and any parent(s) of its parent) and, separately, all persons that have a 10 percent or greater ownership interest in the reporting trader (commodity pool investors are deemed to have an ownership interest in the pool)."¹⁷

If there are any gaps in this pre-existing data collection, the Commission should address those gaps through amendments to the Form 40/40S or the kinds of entities that have a Form 40/40S reporting obligation before requiring a new, transaction-level data collection. A key benefit of the Commission's existing Form 40/40S data collection is that it already covers a large proportion of the entities important to the Commission (i.e. those with significant positions in futures or swaps) and the Commission has decades-long experience processing and incorporating data from the Form 40/40S and can therefore quickly and effectively put this data to use.

Second, the LEI Regulatory Oversight Committee recently issued a consultation that would consider the collection of data on the direct and ultimate parents of legal entities in the Global LEI System.¹⁸ If there are any gaps that become evident in the Global LEI System direct and ultimate parent data collection, the Commission should attempt to address those concerns through its influence there before independently requiring a new, transaction-level data collection. A key benefit of relying on the Global LEI System for the collection of ownership information is that the Global LEI System could capture data on non-US entities that do not do business with any US entities, ensuring comprehensive coverage.

¹⁷ Ownership and Control Reports, Forms 102/102S, 40/40S, and 71 Final Rule, 78 Fed. Reg. 69,178 (Nov. 18, 2013), at 69,262, available at <http://www.cftc.gov/idc/groups/public/@Irfederalregister/documents/file/2013-26789a.pdf>.

¹⁸ Consultation document on collecting data on direct and ultimate parents of legal entities in the Global LEI System, Sept. 7, 2015, http://www.leiroc.org/publications/gls/lou_20150907-1.pdf.

Given the existing (Form 40/40S) and proposed (Global LEI System) entity-level mechanisms that can be leveraged for gathering parent and guarantor data, we think the marginal cost of a transaction-level data collection would generally outweigh the marginal benefit of a transaction-level mechanism for collecting this data. We would therefore recommend that in any proposed swap data rulemaking, the Commission identify any data gaps and solve them within the context of these two entity-level mechanisms and avoid a transaction-level data collection.

RFCQ 5. Should the allowable values for Counterparty ID be modified for counterparties that are natural persons? If so, how?

Trusts and natural persons can't register for an LEI, so the Counterparty ID field would need to be extended to allow them to submit another identifier. Additionally, because many regulators do not require entities under their jurisdiction to obtain an LEI, this non-LEI mechanism to obtain a Counterparty ID could extend to these kinds of counterparties, a fringe benefit to global regulators and the Commission.

RFCQ 7. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Counterparty ID*

Not all counterparties will have an LEI, limiting valid values to only be valid LEIs will mean trades facing such entities would not be possible to report. Additionally, "current" LEIs limits this further and puts onus on the reporting party to ensure counterparties LEIs are still current, no additional benefit is gained from stopping lapsed LEIs which still uniquely identify the counterparty, but could cause delays for the reporting counterparty if the other side has let this lapse.

- *Special entity/utility special entity indicator*

We think this data element is best captured at an entity-level.

- *Third Party Reporter ID/ Submitter ID*

We understand that the Third Party Reporter ID is provided under the Submitter ID field. Non-trading, third-party reporting agents such as MarkitSERV generally do not have LEIs and so cannot currently report an LEI in this field. If the Commission seeks to make obtaining an LEI as a pre-condition for a firm to provide third-party regulatory reporting services, we note this would have to be done in conformity with the Administrative Procedures Act and, as we noted in our general comments, should be coordinated globally.

- *Ultimate Parent / Ultimate Guarantor*

Please see our response above to RFCQ 2.

- *Counterparty Dealing Activity Exclusion Type*

We think the most efficient way to capture this data, if the Commission decides to collect this information at an entity level, is that parties should not need to explicitly state when no exclusion applies. The presumption should be that if no exclusion is given, then this should be assumed that no exclusion applies.

- *US Person Indicator for Ultimate Guarantor and US Person Indicator for Ultimate Parent*

Please see our response to RFCQ 1 above.

- *Prime Brokerage Indicator*

We understand that the Commission would expect that both the executing broker (EB) – prime broker (PB) trade and the PB – client trade to be flagged Y. If that is the case the label for this data element appears odd because the PB does not act as PB for the EB.

RFCQ 11. What are the challenges presented when an identifier for an index is changed? Do you have recommendations for addressing these challenges?

Where a standard value does not exist then we would recommend that the value agreed in the confirmation should be used.

RFCQ 14. How should currencies that do not have ISO 4217 codes be represented?

We recommend that the ISO currency should be used and the delivery location should differentiate, consistent with our response to the CPMI-IOSCO ODE consultation. Creating artificial currency values is unhelpful for data quality and not consistent with confirmations.

RFCQ 21. Where a swap uses “post pricing” (e.g., the pricing is determined by an average price over time, volumetric weighted average price, closing price, opening price), how should the Price data element be expressed before the numerical price value is determined for each type of post-priced swap?

Our experience has shown that post-priced swaps are most common in the equity asset class. To address this issue, the Commission would have to choose whether the reporting counterparty reports: (a) an incomplete dataset in a timely manner and adds the missing data later, or (b) delay the reporting requirement for this field until the dataset is complete.

We believe that the former approach might be more appropriate as it can ensure timely reporting and would also be easier to handle from a reporting perspective.¹⁹

RFCQ 22. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

Price fields vary by product more so than by asset class. It would be beneficial to report the existing standard product structures and have the SDRs or the Commission transform this data into a consumable format rather than each reporting counterparty trying to map existing standard product structures into price and additional price fields. For example a basis (floating versus floating) swap typically has a spread or a spread on each leg and could also have an upfront fee, whereas a fixed versus floating swap typically has a fixed rate and could also have a spread but could also have an upfront fee. Trying to map two or three economic fields into a pair of price fields is likely to lead to ambiguity and reduce data quality, whereas allowing existing economic fields to be reported as they are confirmed will create consistency and higher quality while avoiding a new unnecessary cost on market participants.

RFCQ 23. What challenges exist for reporting of static and/or varying notional amounts, such as a schedule for accreting or amortizing swaps? Do you have recommendations for addressing these challenges?

We would recommend that the notional schedule be required upfront and either the SDR or the Commission infer the current notional. We currently send the original trade report including the original notional and the entire notional schedule for variable notional swaps (“VNS”) (a.k.a. amortizing, accreting and roller-coaster swaps). However, today the SDR does not consume the notional schedule and instead requires that reporting counterparties update the notional each time the notional changes per the schedule already sent. This is not an elegant solution as the information has already been provided and this additional step leads to errors in the reported notional. We note that this treatment of notional amounts could drastically misrepresent the actual risk of the trade. If the notional were to increase or decrease over the life of the trade, using a single period notional to represent the risk of the trade could be very misleading.

Additionally, mark-to-market cross-currency swaps have a constant notional currency and a variable notional currency. There is no established process for updating the mark-to-market (“MTM”) notional value of cross-currency swaps.

MTM swaps are typically reported with a constant currency amount along with a variable currency amount, as required by the DDR but the variable currency amount is not available for forward starting MTM cross currency swaps and updating the variable

¹⁹ See Markit Comment Letter Re CFTC Review of Swap Data Recordkeeping and

Reporting Requirements, May 27, 2014, at 19

<http://www.markit.com/Company/RegulatoryResponsesFile?CMSID=b32b2d4015cf4f7d8719851ae784ff89>.

notional values presents a challenge because the reporting counterparty (or its agent) needs to have the MTM value as it is updated (typically each quarter). This value could equally be inferred from the constant notional amount and the FX rates on the MTM fixing date. It is because of this we believe this data adds little to no value to the Commission.

Today, reporting firms need to update these variable values directly at the SDR but Markit is currently looking into new functionality to enable firms to update us with this information so that it can be passed to the SDR. Nevertheless, we question the utility of this data, given that the notional exposure “size” is given by the constant notional amount and the variable notional amount is a function of that value and the spot FX rate on a given day at a given time. We add that the above inferred approach is standard practice for legal confirmations.

RFCQ 24. How should the reported notional amount reflect embedded leverage that may alter the “effective” notional amount of the swap?

In our experience embedded leverage is quite rare and trades containing such would typically be confirmed on paper and reported to an SDR as exotic swaps and would generally not be reported through MarkitSERV platforms. These transactions, while supportable by FpML, are so rare that we do not support their confirmation currently and reporting is only available through the generic template. Another example of this kind of transactions, are accumulators that involve the use of a “gearing factor,” which triggers based on market conditions. These swap features could be captured in a separate data element rather than trying to adjust the notional amount, which could lead to misleading data records.

RFCQ 25. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Notional Amount*

We note that not all products have a notional amount in currency units. For example, there are some equity swaps that are defined in terms of variance amount or number of shares and commodity swaps defined by commodity units. The CFTC should offer clear guidance around these exceptions which should be in line with guidance from other regulators.

Also for VNS the Commission should ask for “step date” and “step amounts” and for MTM cross-currency swaps the Commission should just ask for the constant currency amount. We add that the above is standard practice for legal confirmations.

- *Notional Currency*

We recommend guidance on the currency to be specified in this data element where there is not a currency notional on the trade e.g. certain equities and commodities.

RFCQ 27. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Additional Fixed Payment Type*

With respect to the allowable values for this data element:

- “Exchanges” are not fixed payments they are notional exchanges and should not be captured in the “Additional Fixed Payment Type” data element;
- “Brokerage” is not between the bilateral parties to the trade;
- “Unwind” isn’t a fixed payment it is a termination fee;
- “Correction” is not a fixed payment;
- “Cancellation” is not a fixed payment it is a termination fee;
- “Novation fee” does not occur between the original bilateral trade parties. It is between the transferor and transferee which is today only reported on a real-time public report rather than under part 45; and
- “Premium exchange,” “compression,” “partial termination,” and “full termination” are not considered fixed payments.

RFCQ 34. Is a single Order ID sufficient to access historical order information? If not, what other identifier(s) would be sufficient to access historical order information?

RFCQ 35. What challenges exist for reporting this type of order information for a particular swap traded on or subject to the rules of a SEF or DCM? Do you have recommendations for addressing these challenges?

Post-trade processing systems today do not support many of these data elements. Therefore should this information be required then sufficient phase in should be allowed, not less than twelve months from when the rules are finalized.

We note that for voice an execution timestamp accurate to the nearest second is impossible.

For block trade election indicator, if the SDR determines block size then the SDR not the reporting counterparty should set this flag.

RFCQ 37. Are the proposed data elements appropriate in identifying which swaps are executed as component legs of a package transaction?

We believe that the Package/Strategy ID is the only data element that would be required in order to identify which swaps are executed as a component leg of a package transaction and links all component legs which are part of the same package.

RFCQ 38. Are there any unique characteristics to certain types of package transactions that Staff should account for in devising data elements?

We note that for a package swap that contains non-CFTC components, the Commission may receive a single swap flagged as a package as all other components would not be reportable to the Commission.

RFCQ 39. Should the data elements provide pricing for each component of a package transaction, or is it sufficient to only provide (1) pricing for the swap components only; or (2) price for the entire package?

We think that the first option, providing for the swap components only is sufficient for the Commission and its staff to meet their oversight responsibilities. We think this data would be more useful to the Commission. For example, we think that reporting a swap transaction that happens also to be a spread over Treasuries for the pricing it is more useful, to use the normal swap price field e.g., a fixed rate of 1.12%, rather than, e.g., a data record that shows an 8 bps spread over Treasuries for the package. Not least because there appears not intention by the global regulatory community to define all possible package transactions as the options are extensive.

RFCQ 40. Should the data elements specifically identify the types of non-swap instrument component legs in the package transaction?

We would not recommend specifically identifying the types of non-swap instrument component legs. This would require reporting systems to have knowledge of component legs that are not reported and previously would not have access to, this would require a substantial build to reporting systems (including those of third party reporting agents) to allow them to now handle and have knowledge of trade types they have never previously been built to handle.

RFCQ 41. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Package Trade Price*

Reporting systems today do not receive, utilize or generate a package trade price. Given that trades are not currently reported at the package level today, it is unclear to what a package price refers to. Is it one component trade, if so which one? Or is the package trade price referring to all component trades? In this case, does the package trade price become an additional trade element for all the components or would there be a separate package report that would contain this price.

If each component under the Commission's remit are reported with the component prices and the package ID is also reported, we would think that the Commission should have the pricing information it needs to conduct its oversight functions. If not, market participants

would benefit from a clearer articulation of what oversight functions are not possible with this data.

- *Package Contains Non-CFTC Swap Components*

We refer to our comments to RFCQ 40 and would add that this data element would require a reporting system to have knowledge of trade types it has never been built to process previously, otherwise it would rely upon users to identify at time of booking that some legs are unknown to the reporting system and flagging accordingly. This latter approach would be prone to error and lead to additional reporting to correct package data that contains non-CFTC swap components.

RFCQ 43. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Clearing Exemption Type and Mandatory Clearing Indicator*

We would recommend instead of a “Clearing Exemption Type” that the Commission simply add a data element for “Mandatory Clearing Indicator.” We would ask that the Commission provide additional rationale for a specific “Clearing Exemption Type” data element in any future rulemaking.

- *Intent to Clear Indicator*

In lieu of a separate data element, we would recommend that the Commission provide the following allowable values for the extant Clearing Indicator field: (1) not cleared (“NC”); (2) intended to-be-cleared (“ITBC”); (3) cleared (principal) (“CP”); and (4) cleared (agency) (“CA”).

RFCQ 44. To represent that the reporting counterparties and the SDRs have confirmed data accuracy, is there a methodology better than reporting the Data Accuracy Confirmation by Counterparty data element?

We would recommend that if the Commission requires the Data Accuracy Confirmation by Counterparty data element, that in instances where swap data has been confirmed through the use of a confirmation platform, such as MarkitSERV, that also provides third-party reporting services, that this be deemed sufficient to complete this data element. In other words, we believe that where the swap has been confirmed and reported by a third-party confirmation platform, there is no need for both sides to review and provide an indicator for this data element as they have already explicitly agreed to the central bilateral trade record upon which the reporting is based.

RFCQ 45. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Part 43/45/46*

This information should be easily discernible by the Commission based upon the message types already reported to the SDR today, and doesn't add any additional information or value for the commission beyond what should already be available to the commission.

- *Data Accuracy Confirmation by Counterparty*

Please see our response to RFCQ 44 above.

- *Date and time of last open swaps reconciliation with CP*

This data is not captured in existing trade or reporting workflows today. It is generally not practicable for firms to update a central confirmation service with this data on a potentially daily basis. This is also unnecessary when you already have a centrally agreed upon swap data record that reflects the legal agreement of the transaction. If the Commission feels this is a valuable data element for non-cleared, non-electronically confirmed trades, then we would recommend the Commission provide that for these paper trades an indication of a date alone is adequate.

- *Dissemination ID*

We note that the part 43 public dissemination report is typically provided with the same USI as the part 45 position reports. After receiving the part 43 data, the SDR generates an ID for the public dissemination record. This would mean to include a Dissemination ID for in the part 45 data records, the reporting counterparty would need to consume and report back to the SDR the same Dissemination ID it produced. If this data element is to be required, it should be generated by the SDR – not the reporting counterparty.

RFCQ 46. Are there any challenges for reporting the updated next reset date as the floating leg resets over time?

The reset date schedule is agreed to and reported at the inception of the swap transaction as a parametric swap representation. Therefore the next reset and fixing dates are easily obtainable from the existing reported data. Accordingly, we believe that requiring an additional update to report the next reset date would be burdensome to reporting entities without commensurate benefit. If the Commission requires the reporting of this data element, it should be generated by the SDR.

In terms of existing reporting services, including this data element would prove challenging because no action occurs within the platform on these reset dates that would independently trigger a report to be sent. Accordingly, a third party reporting agent would need to build functionality to be able to send reports out on a schedule with no action

occurring on the trade within the system. This would result in significant costs with little commensurate benefit.

We question the RFC's emphasis on the reset date,. We note that it is the fixing date when the actual rate for a swap is observed and set. In any event, the fixing date is typically an offset from the reset date and is also specified in the original parametric representation of the swap that has already been reported.

RFCQ 47. Is there a different methodology for Staff to know the updated next reset date that is more efficient than the reporting of the Next Reset Date data element?

Please see our response to RFCQ 46 immediately above.

*RFCQ 53. What are the challenges to reporting the following collateral information:
(a) eligible currencies, securities and haircuts;
(b) other types of eligible collateral and valuation;
(c) rehypothecation election; and
(d) segregation of posted collateral in a triparty custodial account?
Do you have recommendations for addressing these challenges?*

We would suggest that if these data elements are to be reported they be reported on a portfolio basis, not a transactional basis, since a portfolio-level approach is closer to how market participants exchange collateral.

RFCQ 54. What are the challenges to reporting Independent Amount/Initial Margin and Variation Margin amounts separately? Do you have recommendations for addressing these challenges?

We would recommend that the Independent Amount be reported on a transactional basis if and only if the Independent Amount is agreed to and confirmed as a transactional level. The general rule should be that Independent Amounts be reported at the portfolio level.

RFCQ 56. Should Netting Set valuation, collateral and margin information be reported at the transaction level or only at the aggregated portfolio level?

We would recommend these data elements be reported at a portfolio level as a general rule.

RFCQ 60. Are there other ways to resolve the challenges encountered by Staff in understanding swap events? If so, please provide details regarding how these potential solutions illustrate both: (i) all of the events impacting a swap and (ii) the current status of a transaction?

We believe new event version data elements would have little to no value for the Commission. Confirmation platforms that are event based such as DSMatch have

sufficiently managed swap events for many years with the use of a single event ID and new events, modified events, and cancel of events. The RFC's compression examples are currently handled using bulk processing ID and compression flags. This functionality is successfully being used to control CFTC real-time public reporting under part 43 of the Commission's rules and could be applied to part 45 reporting. We add that RFC's compression examples are currently handled using bulk processing ID and compression flags.

We note that the Commission allows for snapshot reporting, an approach that seems at odds with this and other data elements described in the RFC.

We also question the distinction between bilateral and multilateral compressions in the RFC. Some rationale would enable us to better provide comment on this issue and provide potentially more cost-effective alternatives. We understand that making this distinction would be burdensome for market participants who may or may not have knowledge of the specific mechanism by which a compression occurred. We would be willing to provide more cost-effective alternatives if the Commission provided further rationale for these data elements.

RFCQ 61. What are some of the challenges with the Event Types listed below? If so, please provide suggestions to address them.

The event types are too granular; it would prove difficult to distinguish between some of the event types with a possibility that multiple event types applying to a single event.

- *Trade/force*

This is not an event we are familiar with. Sufficient time would be needed to be provided before this this event is adopted and made mandatory.

- *Novation 3-way*

The description provided fails to mention remaining party.

Novation step-in is typically the term used by a transferee. Novation step out is typically the term used by a transferor.

- *Novation 4-way*

There are challenges with implementing this data element. In a classic four way novation with two transferors and two transferees, the transferee (step-in bank) will typically know just the entity they are going to face. This transferee would not know it is a four way novation. The transferor (step-out client) will typically not know it is a four way novation either.

Also there is a four way EE (step-in) novation where there is a transferor, a remaining party, and transferee but the step-in party pays the transferor the fee from a different entity to that that will face the remaining party. In a five way novation which is the combination of the classic four way novation (four way remaining party or “RP”)) and the four way “EE” described above. In this scenario, the client steps out, the bank changes the entity facing the step-in, the step-in pays the fee to the step-out from a different entity than that that will face the new RP entity. We would be happy to walk the commission through these novation flows in further detail.

- *Option/Assignment*

As mentioned above, we would appreciate better understanding these data elements so we could provide more informed comment.

- *End of life / maturity and end of life / option*

This would not be reportable as it is an intrinsic component of a swap contract. Including this data element as a mandatory data element we believe adds little value for the Commission. The Commission or an SDR could derive this element themselves.

- *Modification / reference change*

We would like further clarification on this data element.

- *Modification / increase*

We would like to better understand whether this data element is limited to increase in notional or another increase in exposure.

- *Error / cancel event*

We would like to better understand how this would differ from the voiding of an event.

RFCQ 62. Is there any uncertainty regarding how Reporting Counterparties should determine whether an event is price-forming or not?

Generally we believe there are well established market practices regarding what constitutes price forming versus non-price forming that have developed under Commission rules. For example, in prime brokerage the EB-PB trade is typically considered price forming and is reported under part 43 whereas the PB-client trade is not publically reported.

“Publicly reportable swap transactions” under part 43 of the Commission’s rules encompass only price forming trades. A pre-allocation block trade (or “bunched order”) should therefore be publically reported and flagged as a pre-allocation swap but the

individual allocations shouldn't be. There is a complication however, if the block is deemed not reportable as it does not have a US jurisdictional nexus, e.g. European bank versus European asset manager but then the block is allocated in part to a USUS fund, what should one do? We understand that some firms take the view that one's part 43 report the US splits in this circumstance but it is misleading as there was no execution(s) in that (those) size(s) in the US.

64. Do the descriptions suggested for Event Types clearly convey when an event is price forming in nature or not

The descriptions for the Event Types could be further clarified. We note that the particular Event Type is not sufficient in determining whether a swap is price forming.

65. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below.

- *Event ID*

Event ID is a data element included in reports under part 43 but generally not under part 45. We would recommend a sufficient delay in implementing this if it becomes a mandated part 45 data element. Where a third party confirmation service is used a reporting counterparty should use the Event ID provided to avoid duplication.

- *Event Type*

Please see our answer to RFCQ 64 above.

- *Event Date Timestamp*

This is handled under European Securities Markets Authority ("ESMA") requirements,²⁰ by using the existing Execution Date Timestamp as the time of the event. ESMA has also added a new field Original Execution Date Timestamp corresponding to the time the trade was originated. We suggest harmonizing with these ESMA requirements if the Commission decides to mandate these data elements.

- *Event USI Version*

This data element appears unnecessary and we would appreciate further clarification on the problem it intends to solve. The Event USI Version data element would lead to added complications where one trade or event is being reported from multiple systems, e.g., a bank's risk system and a third party confirmation platform, potentially causing race

²⁰ See e.g., EMIR Validation Table, https://www.esma.europa.eu/sites/default/files/library/emir_validation_table.xlsx.

conditions between the two systems. Introducing such race conditions greatly increases the amount of rejected reports that would be required to be resubmitted.

- *Message Type*

As with Event USI Version discussed above, this data element can also create race conditions where the trade or event would be reported by multiple systems without either knowing whose report will be processed first by the SDR, meaning that both would send for the Message Type data element a “NEW” value. One would be processed while the second would receive a rejection and need to resubmit with a Message Type of CORRECT, creating additional unnecessary noise in the SDRSDR data for the Commission.

- *Transferee and Transferor*

We note it is possible to have multiple transferees or transferors to a novation.

- *Price Forming Event*

This field appears to be duplication of a part 43 report data element. We ask if this is a new indicator or is merely reproducing the part 43 data element. Some additional clarification would enable us to provide better comment.

- *USI Impact*

We do not see what additional information this field provides to the Commission because this data element can already be derived from the Event Type data element. Additionally, as noted in our discussion above regarding USI Version and Message Type, this data element creates a race condition between multiple reporting systems, with both initially reporting the USI Impact as Create.

- *USI Version*

We would appreciate further rationale on the purpose of this data element. Events may occur outside of a reporting system, that said reporting system is not privy too, thus it would be impossible for that reporting system to be able to ensure it is reporting the correct USI Version. For example, if a trade is agreed and subsequently increased, then the party is onboarded onto a third party confirmation platform and the trade backloaded, which then reports all future events, the third party confirmation platform would be required to have knowledge of events that occurred prior to the trade being known to the system to be able to report the USI Version.

- *USI Namespace and USI Transaction ID*

We would generally agree with the approach taken by the recent Harmonisation Group consultation regarding Unique Transaction Identifiers (“UPI”).²¹ As described in our comment letter to the UTI consultation, we would caution that the structure and format of the UTI, we would recommend the approach to a USI or UTI namespace be flexible while providing a clear framework for the UTI generation.²² For example, by requiring maximum length, restricting certain special characters from being used and having a framework to provide an appropriate prefix or namespace that ensures uniqueness across generating firms the adoption of the UTI could be achieved in a seamless manner.

When MarkitSERV generates an ID / UTI for a transaction, it ensures its uniqueness by using a platform identifier (i.e., MarkitWire or DSMatch) that is suffixed by a number that is ensured to be unique within that population, that can be used across multiple jurisdictions and that is consumable across all mechanisms. In addition, MarkitSERV uses a unique UTI prefix to ensure that the UTI is unique to the wider pool of global UTIs.

RFCQ 66. How should swap data reporting adapt to changing indices/benchmarks and/or bespoke indices/benchmarks used for the floating leg(s) of a swap?

This should not require a mass update of all existing trades by the reporting counterparties, but covered by an amendment to the definition of the existing floating rate option. Confirmations are not typically updated as market practice is to use successor language.

RFCQ 67. Should swap data reporting select the multiplier approach or the effective notional approach? Please provide reasons for your selection

We believe these transactions are rare but if applicable and necessary we believe the multiplier approach is the best approach. Notwithstanding this the value should only be required where the multiplier is not one. It is of little value to require parties who do not trade these swaps to hardcode a new field to one.

RFCQ 68. Please provide feedback on any aspect of the draft technical specifications for the data elements presented below

- *Fixed Rate*

We would ask for clarification as to the level of granularity for this data element, e.g., whether this is to be disclosed to the 10 dp level?

- *Floating Rate Index*

²¹ See Harmonisation of the Unique Transaction Identifier, at 20-22, <http://www.bis.org/cpmi/publ/d131.pdf>, Aug. 2015.

²² Markit Comment Letter to CPMI-IOSCO, at 16, Sept. 30, 2015, <http://www.markit.com/Company/RegulatoryResponsesFile?CMSID=163ac5df1fe4481892acff417353dfef>.

We would recommend that standard values be used to facilitate data aggregation.

- *Day Count Convention*

We believe there is duplication in some of the specified day count conventions. For example, we ask what is the difference between 30E/360 (known), 30E+/360 (unknown) and 30E/360.ISDA (legacy from 2000 definitions)? What is the difference between ACT/ACT (ICMA) and ACT/ACT (ISMA)?

RFCQ 69. How should the spot component of a jurisdictional foreign exchange swap transaction be represented?

RFCQ 70. What are the swap data elements best suited to link the spot and forward components of a foreign exchange swap?

There are three general ways that FX swaps can be represented in systems. A FX swap can be represented in a system as a single record that includes both the near and far leg. An FX swap can also be represented as two records, one for each leg and linked via a reference. The last representation method would involve two records without reference linking the two.

From a reporting point of view, Markit DealHub actually stores a swap as a single record so we need to “break” the reporting into two reports, one for each leg. Where we generate the USI as the reporting party we include a reference that links the two legs together.

We do not see a distinction between a near leg spot or near leg forward from a reporting point of view. The fact that the spot is part of a swap supersedes it being a spot FX transaction that would otherwise be non-reportable.

We always include a reference that is common to the two legs of the swap so there is no problem finding the linked legs we report. We would recommend that the best manner to maintain referential integrity is to report FX swaps as two separate legs.

RFCQ 79. Are there any other data elements that reporting counterparties require in order to accurately reflect all of the economic terms of a swap transaction or adhere to existing reporting regulations?

The list of data elements provided seems extremely comprehensive but the Commission should be aware that not all data elements are applicable to all products and unnecessary fields should not be required on inapplicable products.