



ISDA New York Office
360 Madison Avenue – 16th floor
New York, NY 10017
United States
Tel: 1 212 9016000
Fax: 1 212 9016001
Email: isda@isda.org
Website: www.isda.org

ISDA European Office
One Bishop's Square
London E1 6AO
United Kingdom
Tel: 44 20 30883550
Fax: 44 20 3083555
Email: isda@isda.org
Website: www.isda.org

Mr Michel Prada
Chairman, Technical Committee
IOSCO
C/ Oquendo 12
28006 Madrid
Spain

19 October 2007

Dear Mr Prada,

ISDA support for industry initiatives concerning regulation of cross-border capital markets transactions

In advance of the IOSCO Technical Committee Conference of 8-9 November 2007 in Tokyo, and in follow-up to the letter addressed to you by ISDA on 5 April 2007, ISDA would like to write to you to express our support for a number of industry initiatives that you will be aware of, concerning regulation of cross-border capital markets transactions. The drive towards a more 'global' approach to regulation of capital markets remains a key priority for the wholesale financial services industry.

ISDA, as an international organization, has a natural interest in regulation that creates opportunities for global efficiencies to be introduced, easing the compliance burden falling on institutions operating in many different jurisdictions. We believe that such regulation can benefit the wider global economy, increasing competition between firms, reducing compliance costs, and ultimately, reducing the cost of capital.

ISDA would in particular like to commend to you a number of specific priorities highlighted by several groups¹ that have been working hard to demonstrate the potential of a 'global' regulatory framework.

1. Direct Access for Foreign Firms and Foreign Securities conducting cross-border business with sophisticated (institutional) investors

ISDA believes that, where firms wish to conduct business on a cross-border basis with local institutional and qualified investors, who are sufficiently experienced, knowledgeable and

¹ Initiatives driven by IIF/SIFMA, ICSA, and the EU-US Coalition on Financial Regulation

sophisticated to protect their own interests, exemptive relief from local authorisation and conduct of business rules would be appropriate.

At present, local authorisation requirements in many jurisdictions are such that even if the ‘home’ jurisdiction regulation to which firms are subject is similar to that in the ‘host’ jurisdiction into which they are trying to offer services to institutional investors, the only way to obtain this authorisation is to establish a branch. This obstacle potentially deprives local institutional investors of the opportunities created by greater competition between service providers in their markets, and creates additional (unnecessary) costs for ‘foreign’ firms. Local notification requirements and conduct of business rules (that may be superfluous given the sophisticated nature of the counterparties involved) can also create impediments (again, often where ‘home’ jurisdiction regulation is of a similar standard).

ISDA believes that, for institutional business, an exemptive approach to cross-border provision of services would be of benefit to all major financial centres, to institutional investors present in these centres, and to cross-border financial services providers doing business with them.

2. Convergence or Standardisation regarding definition of counterparties

Convergence or standardisation in definition of investors, in particular, wholesale sophisticated investors, would reduce complexity and uncertainty for firms operating across several jurisdictions (in terms of ensuring compliance with local rules) and indeed their clients, and significantly reduce the costs of operating in several different global jurisdictions.

Concerted action by regulators on this issue would also, of course, facilitate direct access for firms to institutional investors, as explained in point 1 above.

The global OTC derivatives business may fairly be characterized as privately negotiated agreements among sophisticated counterparties. Creating harmonization in the definition of wholesale eligible counterparties would provide numerous benefits towards facilitating the cross-border flow of capital while eliminating unnecessary regulatory requirements which impose costs on both regulators and the regulated while providing few discernible benefits. IOSCO provides an ideal forum for addressing the local sensitivities which accompany attempts to classify investors, and ISDA fully supports actions to standardize or converge investor classification rules in a manner which enhances market efficiency.

3. Rules for disclosure of significant shareholdings

While we endorse the view of the IIF on a consistent approach to disclosure of shareholdings across different jurisdictions, we would particularly like to stress one related issue: the potential for damage caused by misconceived attempts to treat cash-settled derivatives as though they were shareholdings.

ISDA believes that IOSCO is uniquely well-placed to address this issue.

ISDA believes that any action in this area should recognize the following principles:

- a. Disclosure of significant shareholdings should only be required where transfer of voting rights in publicly traded shares is effected*

It is entirely appropriate that anyone who has entered into an agreement to acquire shares should disclose that fact to the market at the appropriate time. To treat cash-settled derivatives, however, as though they entail such an agreement is unhelpful in two ways: it ‘second-guesses’ the contractual terms (which do *not* provide for delivery of shares or voting rights) and risks providing misleading information to the market as to the true state of affairs (since the possession of a cash-settled derivative cannot be said to be a shareholding). Furthermore, as a consequence of the economic purpose and nature of cash-settled derivatives being fundamentally different from that of equity, blunt requirements to disclose cash-settled derivative positions indiscriminately are fraught with technical difficulties. Ultimately, such measures have the potential to be damaging to the market in equity derivatives and consequently to firms wishing to manage risk efficiently.

As to the issue of removing economic exposure while maintaining voting rights (with a view to influencing a company’s governance, in order to profit on another investment), while this raises serious issues, any policy in this area should be considered very carefully. The ability of an investor to hedge (or partially hedge) the economic effects associated with a position are a powerful and beneficial tool, and rules should not circumscribe that ability unnecessarily.

- b. Disclosure of significant shareholdings should be based only on end of day net positions*

ISDA is concerned that shareholders should not be required to comply with an excess of immaterial disclosures, when the real target of these disclosure requirements is changes in the structure of voting control. As such, ISDA urges that intraday positions should not be reportable, and that netting of positions (particularly with regard to lending/borrowing of stock and derivatives) at the end of the day should be permitted, for the purpose of end of day disclosures.

ISDA remains at your disposal if you would like any information on these issues, or our interest in these issues.

Yours sincerely,



Robert Pickel
Executive Director and CEO
International Swaps and Derivatives Association©

Cc : - *the members of IOSCO Technical Committee;*
- *EU Commissioner Charlie McCreevy;*

- *David Wright, Director of Financial Services Policy and Financial Markets, DG Internal market, European Commission;*
- *US Treasury Secretary Hank Paulson; and*
- *US Treasury Deputy Assistant Secretary Mark Sobel*