By E-mail

6 November 2015

Markets Policy & Infrastructure Department
Monetary Authority of Singapore
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Dear Sirs

Policy Consultation on Margin Requirements for Non-Centrally Cleared OTC Derivatives

Introduction

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] and the Asia Securities Industry & Financial Markets Association ("**ASIFMA**")[2] welcome the opportunity to provide comments on the Policy Consultation on Margin Requirements for Non-Centrally Cleared OTC Derivatives ("**Consultation Paper**") issued by the Monetary Authority of Singapore ("**MAS**") on 1 October 2015. Individual ASIFMA and ISDA

[1] Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, Today, ISDA has over 850 member institutions from 68 countries. These members comprise of 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, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

[2] ASIFMA is an independent, regional trade association with over 80 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

members may have their own views on the Consultation Paper, and may therefore provide their comments to MAS directly.

ASFIMA, ISDA and their members strongly support the goals of strengthening resiliency in the non-centrally cleared derivatives market by establishing margin requirements. While the Consultation Paper is an important step forward for establishing a detailed set of requirements for the collection and protection of margin in the OTC derivatives market in Singapore, it is important that the MAS continues to focus on the practical issues relating to the implementation of any rules and the overall purpose of reducing systemic risk. This submission is intended to continue the constructive ongoing dialogue between the MAS and derivatives market participants and to focus on the practical concerns and risks surrounding the implementation of the margin rules, including the harmonisation of such rules with those of foreign regulators.

We hope that our comments in this submission will assist the MAS with its preparation of the new margin regulations ("**Margin Rules**"), which the MAS will consult on at a later date after considering feedback from the Consultation Paper.

We have set out our detailed responses to questions raised in the Consultation Paper in the template provided by the MAS. This is set out in Appendix 1 to this submission. Any terms not defined in Appendix 1 are as defined in the Consultation Paper.

ASIFMA and ISDA thank the MAS for the opportunity to respond to the Consultation Paper and welcome further dialogue with the MAS on any of the points raised. Please do not hesitate to contact Keith Noyes, Regional Director, Asia Pacific of ISDA at (knoyes@isda.org, +852 2200 5909), Jing Gu, Assistant General Counsel, Asia of ISDA at (jgu@isda.org, +65 6653 4173) or Erryan Abdul Samad, Counsel, Asia of ISDA at (eabdulsamad@isda.org, +65 6653 4170) if you have any questions.

Yours sincerely,

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Appendix 1

RESPONSE TO CONSULTATION PAPER

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

Consultation topic:	Policy Consultation on Margin Requirements for Non-Centrally Cleared OTC Derivatives
Name[1]/Organisation: [1]if responding in a personal capacity	Asia Securities Industry & Financial Markets Association ("**ASIFMA**") The International Swaps and Derivatives Association, Inc. ("**ISDA**")
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Confidentiality	
I wish to keep the following confidential:	Not Applicable *(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)*

General comments:

We welcome the opportunity to provide comments on the draft subsidiary legislation which the MAS will consult on at a later date. We request that adequate time be provided to market participants to consider the consequences of the proposals and provide feedback.

Margin rules and requirements should be consistent among different jurisdictions.

In order to ensure the efficient functioning of the global derivatives market and to eliminate operational risks, we strongly support a harmonised and consistent set of rules across jurisdictions and consistent with the framework proposed in the paper (the "**BCBS/IOSCO Paper**") issued in September 2013 by the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**"). We encourage national regulators to harmonise their margin rules. Otherwise, the market will become increasingly fragmented and its liquidity impaired as counterparties struggle to meet inconsistent margin requirements of various international regulators and the MAS. Moreover, for margin requirements, inconsistent rules will potentially be incompatible in practice. International consistency will also prevent regulatory arbitrage and lead to a more level playing field between competitors in different jurisdictions.

Question 1. MAS seeks comments on the proposed product scope, whether any other products should be exempted from margin requirements and the basis for such exemptions.

We support the MAS' proposal that physically-settled FX forwards and swaps should be exempted from the margin requirements. This is in line with the BCBS/IOSCO Paper.

Broad product set for margin calculation.

ISDA has written to BCBS, IOSCO and the regulators in the US, EU and Japan ("**Product Set Letter**") addressing the need for ISDA members to have the flexibility to use a product set that is broader than the minimum product set required by applicable regulations.[1] The Product Set Letter is attached as Appendix 2 to this submission.

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[1] ISDA letter to the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, the European Securities and Markets Authority, the European Banking Authority, the European Insurance and the Occupational Pensions Authority, the Commodity Futures Trading Commission, the Financial Services Agency, Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, Farm Credit Administration and Securities and Exchange Commission re: Broad product set for swap margin calculation, dated 15 May 2015.

ISDA and its members will have the option of using the broad product set in their implementation of applicable margin rules, including development of models and supporting systems. To the extent that deemed compliance / substituted compliance / equivalence does not apply to trades, ISDA and its members need the flexibility to adopt broad product sets that include the various definitions of derivatives that apply to each of their counterparties in their respective jurisdictions. This is necessary because it is not possible, in the available time frame, to build systems that can determine margin based on a different product set for each party to a swap.

As a result, ISDA members will follow the following procedure to determine the product set for margin calculations for a counterparty pair under the applicable margin rules: For any counterparty pair, the parties may choose to use a broader product set than the set required by either party's applicable regulation. Netting within this broad product set will be permitted to the same extent, and under the same conditions, that would apply to netting of products subject to the margin rules. The broad product set will be used for VM and/or IM and will include derivatives as defined by the rules applicable to each counterparty in its respective jurisdiction.

Please refer to the Product Set Letter for our detailed discussions on this point.

Exchange of principal of cross-currency swaps should be exempt from IM requirements.

We request that the MAS confirm that IM requirements do not apply to the fixed physically settled FX transactions associated with the exchange of principal of cross-currency swaps. This is in line with the BCBS/IOSCO Paper.

Physically-settled commodity forwards should be exempt from the margin requirements.

We request that the MAS exempt physically settled commodity forwards from the margin requirements. We note that those trades are not subject to the proposed margin rules in the US and Japan.

Amended trades, novations and new trades resulting from portfolio compressions should be exempt from margin requirements.

The Consultation Paper proposes that the IM and VM requirements shall only apply to new contracts entered into after the relevant phase-in dates, so that derivatives entered into prior to the entry into force of the relevant phase-in dates ("**Legacy Derivatives**") are excluded. Therefore, we request that the MAS extend this to Legacy Derivatives that are amended in a non-material manner, novations and new derivatives that result from the portfolio compression of Legacy Derivatives.

The Margin Rules should exclude Legacy Derivatives that are subject to non-material amendments. So long as such amendment does not create any new significant exposure under the Legacy Derivative, the act of amending the derivative (or the occurrence of a life-cycle event) should not bring it within the scope of the Margin Rules.

A novation of a Legacy Derivative that has all the same material terms as the Legacy Derivative (except the new counterparty) should be excluded from the margin requirements. Such a novation is a continuation of the Legacy Derivative, and should be exempt from the margin requirements on the same grounds that Legacy Derivatives are exempt.

Portfolio compression is designed to reduce complexity in the derivatives market and has been generally encouraged by regulators. However, if the result of portfolio compression of Legacy Derivatives would cause the resulting trades to be subject to margin requirements, it would severely reduce the incentives of market participants to run portfolio compression. In addition, excluding such new trades would be consistent with the MAS' proposals, since the exposure with respect to the new derivatives would be materially similar to that under the Legacy Derivatives, which are excluded from the margin requirements.

MAS Covered Entities should have right to include Legacy Derivatives in margin calculations and models.

Notwithstanding the above, we request that the MAS confirm that MAS Covered Entities shall retain the discretion to include Legacy Derivatives in their margin calculations and models, provided such entity does not engage in "cherry picking" of particular trades. Parties should have the option to document their Legacy Derivatives under the same CSA as new transactions entered into after the relevant phase-in dates, so that all of the transactions entered into under that CSA will be subject to the same margin rules.

Uncleared trades with CCPs should be exempt from margin requirements.

While the MAS' proposals in the Consultation Paper only apply to non-cleared derivatives, they do not contain an exemption for non-cleared derivatives entered into by counterparties with CCPs. Such trades typically arise in the context of customer position management upon the insolvency of a clearing broker. These trades will be subject to extensive CCP requirements, which will in turn be subject to review by the MAS. These derivatives are also part of the process of constructing robust and efficient risk management processes for CCPs. Therefore, it would be appropriate to add uncleared trades with CCPs to the list of trades that are excluded.

Clarifications requested.

In addition, we request that the MAS clarify how it intends to determine the QCCP status of a CCP and whether it would be sufficient for a home regulator to determine such status or if such status would need to be determined conclusively by the MAS. We note that each CCP would have it own set of risk parameters and considerations to assess its QCCP status and that CCPs would also be subject to the rules of their home regulators.

Question 2. MAS seeks comments on the proposed entity scope, and whether there are any other types of entities that should be subject to margin requirements, and the basis for such inclusions.

We broadly agree with the list of entities proposed to be subject to the margin requirements, but note that these would be subject to our comments below, as well as our comments on the proposed threshold amounts and the manner in which the thresholds are calculated below. We understand that the MAS will separately consult on the subsidiary legislation to put in place the margin requirements and request that the proposed thresholds be open to consultation and that adequate time be provided for market participants to consider the consequences of the draft subsidiary legislation and provide feedback.

Change in status of an MAS Covered Entity's counterparty

We request that the Margin Rules make clear that where an MAS Covered Entity's counterparty changes its status such that transactions with such counterparty become subject to stricter margin requirements, the MAS Covered Entity should comply with the stricter margin requirements only for transactions entered into with that counterparty after the counterparty changes it status. Where an MAS Covered Entity's counterparty changes its status such that transactions with such counterparty become subject to less strict margin requirements, the MAS Covered Entity may comply with the less strict margin requirements for transactions entered into with that counterparty after the counterparty changes its status, as well as for any outstanding transactions entered into after the applicable compliance date set out in paragraph 10.3 to 10.6 of the Consultation Paper and before the counterparty changed its status. We understand this is the position set out in the final rule regarding margin and capital requirements for covered swap entities issued by the Prudential Regulators in the US (the "**PR Margin Rule"**).[2]

Question 3. MAS seeks comments on the thresholds and exemptions in paragraphs 3.4 and 3.5, and the way these thresholds and exemptions should be determined.

We strongly encourage the MAS to harmonise the Margin Rules, including the thresholds and exemptions, with those of other major financial centres with established margin regimes.

The goal of the Margin Rules is to reduce counterparty credit risk and mitigate potential risk. This goal should generally not be undermined by a limited exemption for licensed financial institutions where the exposure of their uncleared OTC derivatives transactions

[2] See page 219 of the PR Margin Rule available at https://www.fdic.gov/news/board/2015/2015-10-22_notice_dis_a_fr_final-rule.pdf

booked in Singapore fall below a certain threshold, provided that the threshold is calibrated to ensure that significant counterparty credit risks remain subject to the proposed risk mitigation measures. In this regard, we are of the view that only systemically important non-bank entities should be subject to the margin requirements and that the thresholds should be calibrated to reflect this.

We welcome the proposed exemption for sovereigns, central banks, public sector entities, multilateral development banks and the Bank for International Settlements. These entities do not pose systemic or counterparty risk in the same way that private actors do and it would not be appropriate to impose the same collateral requirements on them. We agree with the MAS' proposal that these counterparties be exempted from the margin requirements.

Question 4. MAS seeks views on whether investment funds domiciled in Singapore should be subject to margin requirements, and the factors that should be taken into consideration in formulating the margin requirements for such investment funds.

Thresholds should be calculated on a per fund basis.

The MAS' proposed definition of licensed financial institutions includes fund managers where they are legal counterparties to the relevant transaction. A legal counterparty has been defined as an entity who is signatory to an ISDA master agreement and the credit support annex ("**CSA**") of the transaction.

In practice, however, a fund manager could enter into multiple ISDA master agreements in its capacity as agent for and on behalf of its clients (which may or may not be licensed financial institutions themselves). In this regard, we believe that fund manager should not be viewed as a legal counterparty for the current purposes as they are acting in the capacity of an agent and hence should not be subject to the margin requirements. We also request that the MAS confirm that the "legal counterparty" referred to in footnote 12 of the Consultation Paper refers to the party to the transaction and not the signatory to the agreement (which could be an agent).

When calculating the threshold for investment funds, we are of the view that it would not be appropriate to aggregate the derivative exposures of multiple investment funds that have appointed the same entity as agent for the reason stated above. Where investment funds have established a trust, we propose that any thresholds be calculated at the fund level and not at the trustee level. In the case of umbrella funds, we similarly suggest that any thresholds should be calculated at the sub-fund level. We further propose that it be made clear that investment funds are exempted from the Margin Rules where they are not legal counterparties.

Investment funds with the same manager should be treated as distinct.

We should be grateful if the MAS would also clarify that investment funds managed by the same investment advisor or manager would be treated as distinct entities, subject to the conditions set out in paragraphs 3.6(a) and (b) of the Consultation Paper.

Clarifications requested.

We observe that the MAS has proposed a limited exemption for "licensed financial institutions" in Singapore from the margin requirements, should the exposure of their uncleared derivatives transactions booked in Singapore fall below a certain threshold, but has not proposed a similar exemption in respect of "overseas regulated financial firms". We request that the MAS consider whether a similar threshold should be proposed in respect of overseas non-bank regulated financial firms.

We request that the MAS clarify the meaning of "investment fund" in the Consultation Paper and whether this would refer to "collective investment schemes".

Question 5. MAS seeks comments on the proposed margin obligations (including operational requirements) on MAS Covered Entities, specifically on the options of (i) a post-and-collect requirement; and (ii) a collect-only requirement, and the pros and cons for the suggested option.

"Collect-only" versus "collect-and-post" requirement

Our members have not reached a consensus as to whether a "collect-only" or "collect-and-post" regime is preferable. While a "collect-only" regime is welcomed by certain members due to the reasons stated below, other members are concerned that a "collect-only" regime may increase the risk of the Singapore margin regime not being deemed equivalent by the regulators of other major jurisdictions.

The implementation of a "collect-only" regime would not preclude market participants from contractually agreeing to post margin separately. A "collect-only" regime would minimise issues relating to the conflict and overlap of margin rules and give market participants more flexibility to deal with their margin arrangements (particularly when their transactions are booked outside of Singapore). In this respect, we note that the BCBS/IOSCO Paper states that that the "margin requirements in a jurisdiction may be applied to legal entities established in that local jurisdiction … in relation to the initial and variation margins that they collect."[3] Under the margin proposal in Japan, a covered Japanese entity is only required to collect margin from a non-Japanese counterparty and is not required to post margin to a non-Japanese counterparty.

[3] Page 23 of the BCBS IOSCO Paper, available at http://www.bis.org/bcbs/publ/d317.pdf

In addition, a "collect-only" regime would minimise the risks associated with market participants having to post margin to counterparties in Non-Netting Jurisdictions ("**Non-Netting Jurisdictions**" are those for which a clean netting opinion is not possible or jurisdictions which do not provide sufficient safeguards with respect to collateral. In those jurisdictions, the MAS Covered Entities would face an increased risk if there was a requirement to post under the Margin Rules.

Clarifications requested.

In relation to the condition in paragraph 4.1(b) of the Consultation Paper for a transaction to be "booked in Singapore" when determining whether an MAS Covered Entity is subject to the margin requirements, we should be grateful if the MAS could provide further guidance on the term and align the term with the existing definition of "booked in Singapore" in the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013.

In relation to the meaning of "overseas regulated financial firm" in paragraph 4.1(c)(ii) of the Consultation Paper, we should be grateful if the MAS would provide clarification on the scope of this term by reference to an objective publicly available source (for instance, a G-SIB or CFTC swap dealer). This would avoid imposing a significant administrative burden on MAS Covered Entities, which would have to conduct diligence on all of their financial counterparties globally to determine whether they are overseas regulated financial firms. Reference to an objective and publicly available source would greatly reduce such administrative burden on MAS Covered Entities and reduce uncertainty.

Margin is generally calculated on a net basis across all trades in a portfolio and not on a gross basis that would let market participants consider specific trades or groups of trades individually. We further note that a portfolio could contain trades booked in Singapore as well as other jurisdictions. Collateral is usually called based on a market participant's net exposure across its entire portfolio. This effectively means that the total collateral balance cannot be attributed to specific trades or groups of trades, given the mix of positive and negative exposures in the portfolio i.e. the sum of individual trades or groups of trades of a portfolio would not add to the total net portfolio exposure. Requiring market participants to have a separate netting set exclusively for Singapore trades would have significant and adverse cost implications for trades booked in Singapore and is not a feasible solution. In this regard, we request that the MAS provide further information and guidance on the manner in which collateral should be calculated for trades that are booked-in Singapore.

Foreign branches of locally-incorporated MAS Covered Entities

As the MAS has identified in paragraph 4.3 of the Consultation Paper, in contrast to equivalent requirements in Europe and the US for EU and US entities respectively, the MAS' proposed margin requirements would not capture transactions booked in the foreign branches of locally-incorporated MAS Covered Entities for which the MAS is the primary regulator (or their foreign subsidiaries) and it is therefore possible that risk could build up in such entities. Indeed, as the foreign branches of Singapore incorporated MAS Covered Entities would not be captured by the EU rules (other than where the counterparty was another non-EU bank branch or an EU entity with its own EU obligations) or US rules (except where the MAS Covered Entity is a swap dealer or security based swap dealer or when dealing with a counterparty subject to US rules), there is the possibility of a variance with the US and EU margin rules such that these locally incorporated MAS Covered Entities may avoid margin rules altogether for some types of transactions booked outside Singapore and it is possible that this could incentivise the build-up of risk in the way that the MAS describes in the Consultation Paper. We have received feedback from certain members that foreign branches of locally incorporated MAS Covered Entities should not be exempted from the proposed margin rules. These members have expressed concerns that this proposed approach may potentially create issues in relation to an un-level playing field between global banks and locally incorporated entities, equivalence assessment and implementation of substituted compliance regimes by other regulators in respect of Singapore. However, we have also received feedback from other members who strongly support the MAS' proposal with respect to paragraph 4.3 of the Consultation Paper, as MAS as home regulator will be able to maintain adequate oversight of the overseas operations through its close supervision of the local financial groups.

Question 6. MAS seeks comments on the proposed thresholds set out in Section 4.

Thresholds should be harmonised.

The MAS has proposed that the threshold by which an MAS Covered Entity becomes subject to the IM requirements will be S$13 billion ("**13B Threshold**") (calculated by reference to the entity's (and its counterparty's) group aggregate gross notional uncleared derivatives exposure). We welcome MAS's proposal in respect of the 13B Threshold which is consistent with the threshold specified in the BCBS-IOSCO Paper and the numbers proposed by the European supervisory authorities (the "**ESAs**") and the Japanese regulator. Consistency with regulators in other jurisdictions for purposes of harmonisation of the margin rules is needed to keep Singapore market participants on an even footing with their peers and competitors. We understand that the MAS will separately consult on the subsidiary legislation to put in place the margin requirements and request that the proposed thresholds be open to consultation and that adequate time be provided for market participants to consider the consequences of the draft subsidiary legislation and provide feedback.

The threshold calculations should exclude indirectly cleared transactions.

The Consultation Paper does not clearly address the treatment of indirectly cleared OTC-derivatives under the thresholds. Indirectly cleared transactions are not generally viewed as uncleared for regulatory purposes. We have interpreted the MAS' proposals as excluding such indirectly cleared derivatives from the threshold calculations, but request that the MAS clarify this in the Margin Rules.

Intra-group trades should be excluded from the 13B Threshold calculations.

We request that the MAS confirm that intra-group transactions would not be included in the 13B Threshold calculations whether or not they qualify as "intra-group transactions". Intra-group transactions should be excluded because the 13B Threshold is determined on a group-wide basis and generally intra-group transactions are not recognised for group-wide financial measurements. In addition, the MAS recognises that such transactions cause less risk than transactions between groups and has proposed that intra-group transactions be excluded from the margin requirements as "such transactions do not transfer risks in or out of a corporate group".

The MAS has in paragraph 2.2 of the Consultation Paper stated that the proposals are "to reduce the build-up of systemic risk arising from uncleared derivatives". However, the volume of intra-group transactions is not a good indicator of systemic risk. As a result, intra-group transactions should not be included in determinations as to whether a group is required to exchange or collect IM.

The minimum transfer amount should apply to VM and IM separately

Paragraph 4.9 of the Consultation Paper proposes that all margin transfers be subject to a *de minimis* minimum transfer amount of no more than S$800,000. We request that the minimum transfer amount of S$800,000 apply separately to IM posted by each party and to VM. These amounts will be calculated separately, potentially with different frequencies, and will be subject to different reconciliation and netting requirements. As a result, the processes for determining and settling IM and VM will be separate. It will therefore pose significant operational difficulties for the minimum transfer amount to be calculated for both IM and VM together. In addition, IM or VM with a value of less than $800,000 will not pose systemic issues that need to be of concern to the regulators. As a result, we propose a minimum S$800,000 for IM posted by each party and the same, but separate, minimum transfer amount for VM. In this respect, we note that the Japan margin proposal applies a minimum transfer amount of JPY 70 million separately to IM and VM.

Question 7. MAS seeks comments on the proposed IM calculations and requirements, particularly, but not limited to, the recalculation frequency and requirements of IM, data history for IM calculation and the recalibration and back-testing requirements of the IM model.

Events triggering recalculation and exchange or collection of IM.

The MAS has proposed in the Consultation Paper for IM to be recalculated and exchanged or collected in any of the following circumstances: (i) when a new contract is executed with a counterparty; (ii) when an existing contract with a counterparty expires;

(iii) when the IM model is recalibrated due to changes in market conditions; and (iv) when no IM recalculation has been performed in the last 10 days.

We generally support the requirement for IM to be recalculated and exchanged or collected in the above circumstances, but propose that the requirement under limb (iv) above be amended to "10 Business Days" for greater alignment with the proposed margin rules of other major jurisdictions, such as the EU.

Appropriate time periods for IM calculation, calls and collection should be permitted.

Paragraph 4.6 of the Consultation Paper proposes that MAS Covered Entities ensure that IM is exchanged or collected within two business days following the recalculation of their IM obligations. We are concerned that the Consultation Paper does not allow enough time for collection of IM. The Margin Rules needs to allow greater amounts of time for the call and collection of collateral and to address time zone issues. Two business days following recalculation would be considered, in practice, as a very short period for IM to be exchanged or collected, especially in relation to non-cash collateral.

There are several key steps to consider in the timing of margin call and settlement: trade, margin calculation, margin call/agreement, and settlement.

We note that there are various factors that may impact the timing of IM calculation. Foremost, many counterparties have offices and branches in different jurisdictions and transact with counterparties located in different jurisdictions and different time zones. A proper calculation of IM required to be collected can only be made when the books of all market participants are closed and valuations completed. This is especially critical because IM thresholds are calculated on a group-consolidated basis, so all branches and offices of a counterparty must be closed in order for the calculation to be correct. In addition, IM is generally more difficult to calculate than VM due to complex calculations and trade reconciliation.

We highlight that the timing of parties' agreement to a margin call would depend upon the location of the counterparty's operational processes. As a result, the margin calls and settlements of an MAS Covered Entity that trades globally will be impacted by time zone differences.

In addition, the settlement period for collateral will depend on the specific type of collateral that is the subject to the transaction. For instance, cash will settle on the next business day but Japanese government bonds have a settlement cycle of three days. For IM, it may be possible to reduce settlement times by using a tri-party collateral agent (thereby internalising settlement), but (a) this would increase concentration risk on the big tri-party agents, and (b) smaller counterparties may not be willing or able to use tri-party agents due to a variety of reasons including technological and infrastructure requirements and cost.

For the above reasons, we propose that margin be called and collected as soon as it is operationally feasible to do so, within defined time limits. For IM, we propose that calculation and call of IM be within two business days (i.e. T+2) and that settlement of IM be within two business days. The total time between trade and settlement is proposed to be four business days (i.e. T+4). This proposal would allow for flexibility for the variety of factors impacting the call and settlement timelines, without allowing counterparties a longer time period than strictly required within their set of circumstances.

ISDA has written to BCBS and IOSCO on the above points and the full letter is attached as Appendix 3 to this submission.[4] Please refer to the attached letter for further information in this regard.

Market participants should have flexibility in recalibrating IM models to reduce pro-cyclicality and make other appropriate adjustments.

Paragraph 5.5(d) of the Consultation Paper requires the quantitative model to be recalibrated at least semi-annually and be subjected to regular back-testing and stress testing programmes.

Market participants should have the flexibility to adjust their models to minimise pro-cyclicality, subject to the internal governance process of the relevant market participant proposed in paragraph 5.5(c) of the Consultation Paper. A period of market dislocation could result in an increased demand for margin and such an increased demand could create a spiral that causes counterparties to demand larger amounts of collateral, causing distressed markets to become even more illiquid. In a paper published by the Bank of England, the authors stated that "the analysis [in the paper] suggests that model calibrations which give higher weight to recent data are more pro-cyclical".[5]

Consequently, we propose that the model instead be recalibrated annually, subject to a review by the internal governance system of the relevant market participant. We suggest that the internal governance system, amongst other things, (i) monitor the coverage of the model through conducting quantitative impact studies after the execution of each recalibration, (ii) determine if an update to the model is needed, and (iii) recommend a phase-in schedule for changes to the model affecting posted IM amounts.

We further request that the MAS confirm that in the event the IM model requires recalibration, that affected parties would be given a grace period to top up IM.

No requirement to agree on the margin calculation method and quantitative model.

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[4] ISDA letter to Basel Committee on Banking Supervision and the International Organization of Securities Commissions re: Timing issues for margin delivery in proposed margin requirements for uncleared swaps, dated 24 September 2015.

[5] Financial Stability Paper No. 29 – May 2014, "An investigation into the pro-cyclicality of risk-based initial margin models", David Murphy, Michalis Vasios and Nick Vause, Bank of England.

Paragraph 5.4 of the Consultation Paper proposes that counterparties must agree on the specific margin calculation method and the quantitative model to be used (if applicable). Paragraph 5.4 also provides that the calibration data and parameters for calculating IM should also be agreed upon and recorded in writing or other equivalent permanent electronic means. We request the MAS to confirm that by identifying which model will be used in their documentation parties would satisfy this requirement to agree on and record margin calculation method. A proposal which requires more detailed information on margin calculation method and that the quantitative model be specified in the agreement would impose an unnecessary administrative burden.

Market participants should have the flexibility to switch IM models and flexibility on independent validation.

A market participant should have the flexibility to switch between the IM models it uses for, amongst others, the reasons described below:

(i) the need to obtain approvals for the IM model in each jurisdiction;

(ii) changes to the size of portfolio (e.g. portfolio growth may warrant investment into a full margining infrastructure);

(iii) smaller entities may not be able to justify developing, implementing and maintaining margining infrastructure;

(iv) dealings with clients who do not use the same IM model.

We request that the MAS provide further information and guidance on the circumstances in which market participants are able to use more than one IM model and switch between IM models. We further request that the MAS confirm that market participants will be able to use an internal team that is independent from their front office to validate their IM models.

No requirement for MAS approval for quantitative IM models.

Paragraph 5.5(a) of the Consultation Paper proposes that any quantitative model used for IM purposes must be approved by the MAS and that each MAS Covered Entity that intends to use a quantitative model must notify the MAS and provide the relevant documentation. Paragraph 5.5(b) of the Consultation Paper further proposes that third party-provided models must be approved for use by each MAS Covered Entity seeking to use the model and that the MAS' approval for an MAS Covered Entity may not be taken as implied approval for a wider set of institutions. We query whether this requirement for pre-approval by the MAS is necessary, particularly when bearing in mind the short phase-in period. To the extent that the MAS requires that market participants make such approval applications, we request that the MAS provide further information and clarification on the procedural aspects of how this would be done and the timeframe anticipated for the approval process.

We note that the industry has developed IM models, such as the ISDA SIMM Model, that could be used by market participants. In relation to such industry models, we request that the MAS clarify if these would still be subject to MAS' approval. In the event that the use of an IM model is also subject to the approval of another regulator, this could give rise to the situation where one regulator (such as the home regulator of a market participant) has approved the model but another regulator (such as the MAS) has not.

Insofar as the MAS intends to introduce the approval requirement, we request that the MAS confirm that after an IM model has been approved by a home regulator or follows the ISDA SIMM Model, market participants that intend to use that model need only notify the MAS and need not seek further approval from the MAS. We further request that the MAS confirm that such notification by a market participant need only be performed on a one-off basis in respect of all transactions that will use that model.

"Zero counterparty risk".

The MAS has in paragraph 5.7(c) of the Consultation Paper provided that uncleared derivatives for which a firm faces zero counterparty risk require no IM to be exchanged or collected and may be excluded from the IM calculation. We request that the MAS provide further information and clarify how this relates to the threshold calculations and exemptions proposed by the MAS.

Parties should be permitted (but not required) to include non-derivative assets in the model.

Counterparties often have exposure to the same risk factors in multiple markets. Therefore, we support the MAS' proposal in paragraph 5.7(b) of the Consultation Paper that quantitative IM models be allowed to account for diversification, hedging and risk offsets within well-defined asset classes, as IM models would be most effective if they are allowed to capture parties' exposure with respect to risk factors across various types of assets, including non-derivatives.

In order to permit netting among such assets, the assets would have to be a part of the same netting set and covered by the same legally enforceable netting agreement. In addition, certain products may be viewed as derivatives in one jurisdiction but not in another, and parties should be permitted to include such products to achieve global consistency. For instance, if two parties have exposure to equity risk to each other, one by way of equity options, and another by way of equity swaps, the parties should be able to take this into account in the models. This type of modelling would present a more accurate reflection of the actual exposure of each counterparty with respect to certain risk factors, and would eliminate the posting of redundant margin, which would only decrease liquidity in the derivatives markets.

Question 8. MAS seeks comments on the proposed VM calculations and requirements.

Appropriate time periods for VM calculation, calls and collection should be permitted.

The MAS has proposed that VM should be calculated at least daily and the full amount of VM exchanged or collected within two business days following the execution of a new uncleared derivatives contract.

We recognize and support the goal of exchanging margin on a daily basis. However, we feel that the timing proposed by the MAS needs to be adjusted in order to facilitate the collection of margin from entities trading across time zones.

As noted at Question 7 above (and in Appendix 3[6] to this submission), there are various factors that may impact the timing of margin calculation, particularly in respect of an MAS Covered Entity that trades globally. In addition, the timing of parties' agreement to a margin call would depend on the location of the counterparty's operational processes and hence would be impacted by time zone differences. The settlement period for collateral will also depend on the specific type of collateral that is the subject to the transaction.

For the above reasons, we propose that margin be called and collected as soon as it is operationally feasible to do so, within defined time limits. For VM, where an MAS Covered Entity is also subject to IM requirements, we propose that calculation and call of VM be within two business days (i.e. T+2) to account for time zone differences and that settlement of VM be within one business day. The total time between trade and settlement is proposed to be three business days (i.e. T+3). Where an MAS Covered Entity is not subject to IM requirements, we propose that calculation and call of VM be within two business days (i.e. T+2) and that settlement of VM be within three business days since these transactions would likely involve less sophisticated firms with less developed infrastructure. The total time between trade and settlement is proposed to be five business days (i.e. T+5).

Calculation should be on a net basis across those uncleared derivatives entered into after the compliance date.

Paragraph 5.10 of the Consultation Paper proposes that VM be calculated on an aggregate net basis across <u>all</u> uncleared derivatives that are executed under a single, legally enforceable netting agreement. We would like to clarify with the MAS that paragraph 5.10 is not intended to impose the proposed margin requirements retroactively to swaps entered into prior to the compliance date which are documented under the same netting

[6] ISDA letter to the Basel Committee on Banking Supervision and the International Organization of Securities Commissions re: Timing issues for margin delivery in proposed margin requirements for uncleared swaps, dated 24 September 2015.

agreement as transactions executed after the compliance date. Otherwise, the industry would be required to enter into a new master agreement in addition to new credit support documentation. This documentation burden is unnecessary and would significantly increase the implementation and compliance demands for all market participants. Parties should be able to use a new credit support arrangement (or other contractual arrangements), in lieu of a new master agreement, to distinguish between pre- and post-compliance date swaps for purposes of application of the margin rules. Thus, for example, a single netting agreement could have two CSAs: one for pre-compliance date swaps and one for post-compliance date swaps.

Question 9. MAS seeks comments on the proposed range of eligible collateral and corresponding schedule-based haircuts

We have no comments on the proposed range of eligible collateral and corresponding schedule-based haircuts.

The MAS has proposed to require MAS Covered Entities to establish and document internal policies and controls to ensure that collateral collected is not "overly concentrated" in an individual issuer, issuer type or asset type. We request that the MAS provide clarification as to the meaning of "overly concentrated" and how this will be assessed.

Question 10. MAS seeks comments on the proposed application of the 8% schedule-based standardised FX mismatch haircut when cash is used to meet the VM requirements in the case of an FX mismatch (i.e. where the collateral is denominated in a different currency from the settlement currency of the underlying derivative transaction).

Cash collateral should not be subject to the 8% haircut.

We request that the MAS make clear in the Margin Rules that the 8% FX haircut does not apply to cash IM or cash VM. The imposition of an 8% FX haircut on cash collateral would not be consistent with the margin requirements proposed in other major jurisdictions (for instance, the EU) and could skew competition in favour of other such jurisdictions that do not mandate such a requirement. Cash funds denominated in all major currencies are liquid at the point of counterparty default, and there are robust markets in the major currencies that allow conversion or hedging to the currency of termination or transfer at a relatively low cost making the imposition of an FX haircut unnecessary.

Haircut to be determined by reference to termination currency and transfer currency.

The MAS has proposed that the 8% FX mismatch haircut apply where collateral is denominated in a different currency from the <u>settlement currency</u> of the underlying derivative transaction. We note that determining the 8% FX mismatch haircut by reference to settlement currency as proposed in the Consultation Paper would require market participants to develop new operational structures in order to identify the settlement currency for each trade in a portfolio, lead to a significant increase in the volume of margin calls by market participants and also increase the potential for disputes to arise.

In this regard, we propose that the haircut instead apply where non-cash IM posted is denominated in a different currency from the termination currency (where the agreement includes a termination currency). For eligible non-cash IM collateral, we request that the MAS align its requirement with the PR Margin Rule by providing that the haircut should not apply where such collateral is denominated in a single termination currency designated as payable to the non-posting counterparty under a master netting agreement. In this respect, we note that the PR Margin Rule accommodates agreements under which each party has a different termination currency as long as the non-posting counterparty does not have the option to select among more than one termination currency as part of the agreed-upon termination and close-out process.[7] Where the agreement does not identify a termination currency, the haircut will apply to the market value of all the non-cash assets posted as collateral for IM and parties may specify different termination currencies for each party. As to VM, where the agreement between the two counterparties includes a transfer currency, a haircut of 8% will apply to the market value of the non-cash assets posted as collateral for the unsettled VM where the collateral is denominated in a currency other than the transfer currency of the VM.[8] Where the agreement does not identify a transfer currency, the haircut will apply to the market value of all the non-cash assets posted as collateral for the unsettled VM. Similarly, in respect of the FX haircut applicable to non-cash VM, parties should be allowed to specify different transfer currencies for each party. Our proposed change is consistent with the way by which the FX mismatch haircut is defined in the draft regulatory technical standards (the "**EU RTS**") on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Art. 11(15) of Regulation (EU) No 648/2012.[9] As the EU RTS is still in draft form and the industry is also in the process of clarifying how the FX haircut will be applied under the PR Margin Rule, for global consistency purposes, we request MAS to finalize its rules regarding the FX mismatch haircut only after the publication of the EU RTS and any further clarification from the US Prudential Regulators regarding this issue.

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[7] However, the PR Margin Rule also provides the single termination currency condition does not rule out an eligible master netting agreement establishing more than one discrete netting set and establishing separate margining and early termination provisions for such a select netting set with its own single termination currency. See page 123 of the PR Margin Rule.

[8] We note that it is not entirely clear what "transfer currency" means in the draft EU RTS and the industry is currently seeking clarification from the EU regulators on this definition.

[9] The second consultation regarding the EU RTS is available at https://www.eba.europa.eu/regulation-and-policy/market-infrastructures/draft-regulatory-technical-standards-on-risk-mitigation-techniques-for-otc-derivatives-not-cleared-by-a-central-counterparty-ccp-

This change would align the Margin Rules with the proposed margin requirements in the EU.

In connection with the above, we request that the MAS make clear in the Margin Rules that parties can designate a termination and a transfer currency for each party that can match the collateral they are expecting to post. This is important because there are funding challenges if firms are forced to post in a termination or transfer currency which does not match what is available to them.

These issues are discussed in detail in ISDA's responses to the ESAs on the Second Consultation Paper regarding draft regulatory technical standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP ("**July 2015 Responses**")[10]. Please refer to the July 2015 Responses for further information.

Collateral treatment requirements should not apply to margin that is not required to be collected under the Margin Rules

To the extent that the Margin Rules permit counterparties to post collateral greater than the minimum applicable requirements, we request that parties retain the discretion to determine whether the eligibility and other requirements should apply to the collection of margin that is not required by the Margin Rules. We further request that the Margin Rules explicitly recognise that the same principle applies in other cases where the Margin Rules permit parties to agree not to exchange margin (if applicable).

Imposing the eligibility and other requirements on collateral posted voluntarily would have significant consequences for all collateral arrangements. Credit support arrangements with persons that are otherwise exempt from the Margin Rules, for example, would have to be extensively re-negotiated. In many cases, it may not be feasible to maintain voluntary collateral in accordance with the Margin Rules, thereby restricting the ability of parties to negotiate additional protections where necessary to address credit risk in an appropriate way. Given the absence of discussion of this topic in the Consultation Paper, we request that the MAS give our comments due consideration when drafting the Margin Rules.

Question 11. MAS seeks comments on the proposed safe-keeping of IM collateral.

IM should be made available in a "timely manner".

[10] ISDA letter to the European Securities and Markets Authority, the European Banking Authority and the European Insurance and the Occupational Pensions Authority re: Second Consultation Paper regarding draft regulatory technical standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP, dated 10 July 2015.

Paragraph 7.1(a) of the Consultation Paper proposes that MAS Covered Entities be required to safe-keep the IM collected from counterparties in a manner such as to ensure that the IM collected is immediately available to the collecting party where the posting counterparty defaults.

We support the creation of robust segregation regimes, but the "immediately available" standard will not be possible to apply in practice and should instead be replaced with a requirement for IM to be provided in a "timely manner". Many jurisdictions impose stays or other restrictions on the availability of IM upon bankruptcy of the posting party. For example, under the EU Bank Recovery and Resolution Directive, the resolution authorities will have the power to suspend the enforcement of security interests for a period ending at midnight on the business day following publication of the notice of the taking of resolution action.[11] Similarly, in the US, derivative counterparties of a bank insured by the FDIC are subject to a stay in exercising termination rights until 5:00 pm on the business day following appointment of a receiver.[12] If the MAS imposes an "immediately available" standard without regard to local bankruptcy stays, MAS Covered Entities would be effectively prohibited from entering into derivatives with counterparties in any jurisdictions that prevent immediate access to collateral upon a bankruptcy. In this respect, we note that the revised margin rules proposed in the EU have replaced the "immediately available" standard with "available to the posting counterparty in a timely manner."[13]

Further to the above, we note that Paragraph 7.2 of the Consultation Paper proposes that IM be either held with an independent third party custodian under a trust arrangement or held under other legally enforceable arrangements to protect the posting party in the event of default of the collecting party. For IM held at a third party custodian, IM will only be available to the collecting party after the custodian goes through its required procedures. These procedures include the necessary operational steps for transferring the IM and may include verification of the legitimacy of the collecting party's claim for IM. Custodians may also insist on payment of their fees before releasing collateral from custodial liens. In addition, the parties may also agree that the posting party has a right to object to release of the collateral by the custodian if the posting party can claim that the demand is not appropriate. The imposition of an "immediately available" requirement would

[11] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, Art. 70. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0059&from=EN

[12] 12 U.S.C. §1821(e)(10)(B).

[13] Paragraph 4 of Article 1 SEG provides that "The segregation arrangements shall ensure that the initial margins are available to the posting counterparty in a timely manner in case the other counterparty defaults. Available at https://www.eba.europa.eu/documents/10180/1106136/JC-CP-2015-002+JC+CP+on+Risk+Management+Techniques+for+OTC+derivatives+.pdf

conflict with these operational and verification processes, which serve a useful purpose in safeguarding the IM, as well as standard custodial liens.

Question 12. MAS seeks comments on examples of the types of legally-enforceable safe-keeping arrangements that may be put in place under paragraph 7.2 (b).

We support the MAS' proposal in paragraph 7.2(b) of the Consultation Paper that IM collateral could also be held under other legally enforceable arrangements to protect the posting party in the event of default of the collecting party. As some entities lack the ability to create certain types of security interests, flexibility is required. Other entities may be limited by the nature of their assets. Structures other than the one proposed in the paragraph 7.2(a) of the Consultation Paper merit further consideration by the MAS so long as they achieve the goal of significantly mitigating counterparty risks. For instance, title transfer and charge-back of margin is a structure that is commonly used in the market and provides protection to counterparties. The Margin Rules should permit flexible segregation arrangements, so long as they sufficiently mitigate counterparty risk.

We note that paragraph 7.2 of the Consultation Paper requires IM to be held (a) with an independent third party custodian under a trust arrangement or (b) under some other legally enforceable arrangement that ensures that IM is legally segregated from the collecting party's proprietary money and assets. In respect of the former, we are of the view that cash IM held by a third party custodian should be viewed as being adequately safeguarded without needing to be held under a trust arrangement so long as the cash IM is held in an account that is not the property of the collecting party. This is because in practice, cash is often placed on deposit with custodians, or reinvested in suitable investments upon agreement of the parties. In respect of paragraph 7.2(b), we request that the MAS confirm that the segregation requirement does not exclude the holding of cash IM by an independent third party custodian in a deposit account.

Several additional clarifications of the segregation criteria for cash IM would be helpful. The Margin Rules should make clear that cash IM will be deemed appropriately segregated if it is held in an account with the collecting party that is protected in the event of insolvency by a regulatory regime that protects client money or other legal means.

We request that the MAS confirm that individual segregation will not be mandated where IM is held with an independent third party custodian and we request the MAS to clarify that an omnibus level of segregation will be sufficient.

Question 13. MAS seeks comments on the proposal that all collateral arrangements need to be reviewed periodically with updated legal opinions to ensure that the arrangements continue to be legally enforceable.

The MAS has proposed in paragraph 7.3 of the Consultation Paper that the collateral arrangements be reviewed periodically with updated legal opinion to ensure that the arrangements continue to be legally enforceable.

While we support the requirement for obtaining proper legal advice with respect to collateral arrangements, we believe the Margin Rules for legal opinions should be altered as follows:

(i) Legal opinions/advice should only address segregation.

Further to the MAS' proposed language in paragraphs 7.1 and 7.3 of the Consultation Paper, legal opinions would be required as to the following matters: (i) that IM is immediately available to the collecting party in the event of the posting party's default; and (ii) that the IM is subject to legally enforceable arrangements that protect the posting party to the extent possible under applicable law if the collecting party becomes bankrupt.

Neither "immediate availability" nor "protection" are legal concepts, but rather determinations made by counterparties after taking into account operational issues and any relevant risk tolerance. The notion of "protection" is unclear from a legal perspective, as it is not clear what standard such protection is required to meet. "Immediate availability" is also problematic, as it would necessarily be subject to insolvency stays, potential legal actions and operational matters. As a result, legal opinions cannot address "immediate availability" or "protection."

We propose that the opinions (or views, as discussed below) should address segregation directly. Thus, we would suggest that the legal opinion (or view) that should be required is that the IM will not become part of the proprietary assets of the collecting party in an insolvency proceeding of the collecting party.

(ii) Parties should be required to have a well-founded legal basis rather than opinions.

Rather than requiring opinions, the Margin Rules should instead require counterparties to have a well-founded legal basis that IM is held under a trust arrangement or segregated (as proposed in paragraph 7.2 of the Consultation Paper).

The segregation arrangements may vary between different counterparties and may vary over time. Obtaining a formal legal opinion for each different arrangement would be extremely expensive and time-consuming. A party should be able to establish basic segregation parameters, subject to legal advice, so that the party can have a well-founded legal basis that operations within those parameters will achieve segregation. In many cases, the internal lawyers and the staff overseeing the IM arrangements will be much better placed than outside lawyers to determine compliance with segregation requirements.

Either party will, of course, have the option of requesting an opinion of external or internal counsel, but it should not be required by the Margin Rules.

(iii) Parties should be able to rely on industry-wide legal advice.

The Margin Rules should make it clear that counterparties may rely on standard industry-wide legal advice developed by market participants. Counterparties should not be required to obtain bespoke legal advice with respect to each new segregation arrangement, which could prove time-consuming and expensive. If industry-wide legal guidance is available with respect to certain standard segregation arrangements, such arrangements will be faster to implement and easier for both counterparties and regulators to analyze. ISDA currently works to provide derivatives markets with certain industry standard opinions, including netting opinions on insolvency, and similar standardized industry guidance will enhance the efficiency of the derivatives market with respect to segregation arrangements. In addition, counterparties should be able to rely on suitable opinions obtained by service providers such as custodians.

(iv) Opinions are not required to be refreshed for each trade.

The Consultation Paper proposes that legal opinions would have to be updated "periodically". We would appreciate clarification from the MAS that appropriate legal advice would only be required at the time the segregation arrangements are established, and not at the inception of each trade.

Question 14. MAS seeks comments on the proposal to permit a one-time re-hypothecation of non-cash IM collateral and the liquidity implications of such a proposal.

We support the MAS' proposal to permit the re-hypothecation of IM.

We note, however, that the MAS has proposed that non-cash IM shall only be re-hypothecated to a third party in accordance with the conditions prescribed in Annex D of the Consultation Paper and that once non-cash IM has been re-hypothecated to a third party in accordance with Annex D, no further re-hypothecation of IM by the third party be permitted. We note that this would be operationally challenging to monitor and that in practice, a one-time right to re-hypothecate collateral would be of very limited use.

Question 15. MAS seeks comments on the proposed treatment of intra-group transactions.

We strongly support the MAS' proposal that intra-group transactions receive a general exemption from margin requirements. However, we propose that such exemption apply automatically to transactions that satisfy such requirement, rather than requiring market participants to apply for such exemption, which would be unnecessary and administratively burdensome.

Intra-group transactions simply do not raise the same systemic and counterparty risk issues that are raised by derivatives with third parties. The financial health of any group member is very closely linked to that of other group members, and as a result the critical issue for mitigating systemic and counterparty risk is protection against potential exposure to the group overall. The Consultation Paper implicitly recognise that corporate groups, rather than individual corporate entities, should be the focus of risk analysis for IM because the MAS' proposed thresholds are calculated based on exposures at a group-consolidated level rather than on the exposure of individual entities. However, we request that the MAS clarify the meaning "regulators in other jurisdictions" to avoid unintended consequences.

Please also see our responses to Question 6 above.

Question 16. MAS seeks views on the proposed treatment of cross-border transactions, and whether there are other arrangements that may better address concerns of level playing field and regulatory arbitrage. Please elaborate on the rational for the suggested option.

Exemption for counterparties located in jurisdictions that have not implemented margin requirements for all regulated financial firms, have different implementation schedules or have unclear netting laws.

In relation to the MAS' proposal that an MAS Covered Entity only be subject to margin requirements where its total exposure to counterparties from jurisdictions that have not implemented margin requirements for all regulated financial firms, have different implementation schedules or have unclear netting laws ("**Threshold Jurisdictions**"), exceeds a threshold, we note that it is not clear from paragraph 9.4 of the Consultation Paper how these jurisdictions would be determined. We hence request that the MAS clarify how these jurisdictions will be prescribed (and whether this would be done by the MAS or determined by market participants).

We note that it is also not clear from paragraph 9.4 of the Consultation Paper how the thresholds would be set. In this regard, we recommend that the MAS provide a 5% (measured by notional amounts) de minimis exemption from the margin requirements for an MAS Covered Entity's OTC derivatives transactions with counterparties in Threshold Jurisdictions ("**Threshold Parties**"). We recommend that the threshold be calculated as a proportion of the MAS Covered Entity's exposure to Threshold Parties, as compared to the aggregate exposure of the MAS Covered Entity's group (including entities that are not MAS Covered Entities), measured by notional amounts. We strongly encourage the MAS to engage in discussions and consult with market participants on the manner in which the thresholds should be determined. We further encourage the MAS to consider the results of the second Quantitative Impact Study (QIS 2) when determining the manner in which the thresholds should be formulated.

While these OTC derivatives transactions are important for individual Threshold Parties and Threshold Jurisdictions, the 5% aggregate notional limitation would ensure that the exempted transactions are quantitatively immaterial to the MAS Covered Entity. Absent an exemption, the margin requirements will disrupt established trading relationships, skew competition in favour of local dealers or those supervised by jurisdictions that do not impose their margin regulations in the affected jurisdictions, and curtail hedging and financial flows to those jurisdictions.

To the extent the MAS adopts a collect and post regime, in respect of OTC derivatives transactions with counterparties in jurisdictions which have unclear netting laws ("**Non-Netting Parties**"), we submit that the proposed exemption should be extended to cover any counterparty located in a jurisdiction in which netting, collateral or third party custodial arrangements may not be legally effective, including in the counterparty's insolvency. We note that without enforceable netting, collateral or third party custodian arrangements there is the risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned in the event of insolvency, which will result in an increase in the risk in posting collateral, or that an MAS Covered Entity may not be able to effectively foreclose on the margin in the event of a counterparty default. Use of a third-party custodian in a different jurisdiction may not remedy issues with the legal enforceability of collateral: a Non-Netting Party may be subject to local insolvency proceedings and such proceedings may affect the treatment of margin posted by or held (directly or indirectly) by the Non-Netting Party. Because of these issues, imposing margin requirements on OTC derivatives transactions with Non-Netting Parties will severely limit such transactions and cause significant disruptions in financial markets, preventing hedging and financial flows between Singapore and Non-Netting Jurisdictions. Moreover, requiring collateral posting may prevent parties from using more effective alternative mitigations such as using limits to contain exposures, re-pricing trades, selling options and using short dated trades.

Should the MAS not adopt the 5% exemption proposed above, we request that (assuming the MAS adopts a collect and post regime) MAS Covered Entities be exempted from the obligation to post margin to a Non-Netting Party. This is because if the counterparty is in a Non-Netting Jurisdiction, an MAS Covered Entity may be prevented from applying collateral to the obligations of the Non-Netting Party and may, in addition, face difficulties in recovering the collateral. As a result, posting margin to a Non-Netting Party may increase risk to the MAS Covered Entity rather than decreasing it. Moreover, exempting MAS Covered Entities from posting will avoid problems with segregation of collateral in the Non-Netting Jurisdiction.

Question 17. MAS seeks views on the proposed approach for the application of deemed compliance, particularly for cross-border transactions.

Margin regimes based on BCBS/IOSCO Paper should be comparable.

We note that the European, Japanese and US regulators have proposed margin requirements based on the BCBS/IOSCO Paper and other jurisdictions may issue similar rules in the near future. We recommend that, with respect to jurisdictions that adopt margin requirements that conform to the BCBS/IOSCO Paper, the MAS perform a comparability assessment and confirm that an MAS Covered Entity will be "deemed compliant" for the purposes of the Margin Rules where it complies with the margin rules of such jurisdictions. Such treatment would be a fitting recognition of the extensive consultative process by which the BCBS/IOSCO Paper was developed. In addition, we suggest that such comparability assessments be made as soon as possible after the Margin Rules are finalised and before the phase-in dates of the Margin Rules. This will greatly facilitate the implementation of the Margin Rules. If the MAS is not able to make such a determination as soon as a jurisdiction issues final rules based on the BCBS-IOSCO Framework, then the MAS should make a two year transitional comparability determination.

The MAS should base its comparability assessments on similarity of outcome to the BCBS/IOSCO margin framework, employ an open and transparent process in considering applications for deemed compliance, and allow parties to avail themselves of deemed compliance based on whether a transaction is subject to the comparable jurisdiction's margin requirements.

No requirement for MAS Covered Entities to collect eligible collateral and hold them in a manner consistent with the Margin Rules.

The MAS' proposal that MAS Covered Entities "collect the types of eligible collateral and hold them in a manner consistent with the [Margin Rules]" is not consistent with an outcomes-based approach to the assessment of margin regimes. We do not propose that the MAS adopt this standard of comparability assessment as foreign jurisdictions may impose different criterion for collateral.

Clarifications requested.

We request that the MAS provide further information and clarifications on how the comparability assessments will be performed.

We further note that the deemed compliance requirement under paragraph 9.5(b) of the Consultation Paper involves an MAS Covered Entity, trading with a <u>foreign counterparty</u>, to be "<u>required to comply</u> with… comparable home- or host-margin requirements". This may not occur frequently in practice as it is more often the case that the foreign regulatory regime would not impose direct obligations on the MAS Covered Entity (e.g. it would impose direct obligations on the foreign counterparty), but that the MAS Covered Entity would have exchanged margin with its counterparty in accordance with the foreign margin regime. In addition, it is possible that a foreign counterparty could be an MAS Covered Entity. For instance, a Singapore incorporated MAS Covered Entity may trade with the Singapore branch of an EU bank (which is an MAS Covered Entity but also a foreign counterparty incorporated outside Singapore). We should be grateful if the MAS would provide clarification as to whether the Singapore incorporated MAS Covered Entity would be deemed to have complied with the Margin Rules where both counterparties to the transaction have complied with the EU margin rules (assuming these apply). We believe that the deemed compliance regime proposed by the MAS should cover such a transaction, since comparable margin rules will apply to the transaction. This interpretation of the meaning of "foreign counterparty" would minimise duplication and conflicts with the margin requirements of other jurisdictions.

Question 18. MAS seeks comments on the proposed phase-in schedule for margin requirements to apply to MAS Covered Entities.

Margin requirements only apply where both MAS Covered Entities have been phased-in.

We request that the MAS provide clarification as to the relevant MAS Covered Entity's counterparty (the Consultation Paper currently provides that the counterparty would be an "another covered entity") when determining if the phase-in thresholds would apply to the first-mentioned MAS Covered Entity. We further request that the MAS confirm that the margin requirements would only apply, where both parties to the relevant derivatives transaction are MAS Covered Entities, if both MAS Covered Entities are currently subject to the margin requirements. For instance, if a bank licensed under the Banking Act enters into a trade with a merchant bank approved under section 28 of the MAS Act on 1 February 2017, the VM requirements should not apply since the commencement date for merchant banks is 1 March 2017.

Extension of transition period

The proposed phase-in schedule is too short given that the draft Margin Rules have not yet been issued and given the operational, regulatory and documentation challenges including the need for models to be approved by the MAS.

After the rules are final, it will be necessary for market participants to have sufficient time to allow for the legal, operational, risk management and technological enhancements necessary to effectively and safely implement these new regulations. In particular, market participants will need time to build, test and receive approvals for IM models that are very new to the market. The regulators will also need time to formalise the regulatory approval processes for IM models across multiple jurisdictions. Moreover, the ability of the market to make the necessary enhancements will depend on the outcome of the deemed compliance/ substituted compliance/ equivalence determinations, and this could further slow the implementation process.

We support the MAS' proposal for a transition period to apply and request that the transition period be extended to 12 months.

We note the requirements in the BCBS/IOSCO Paper regarding the interaction of national margin regimes that regulatory arbitrage opportunities be limited, a level playing field maintained and for global regulators to work together to ensure sufficient transparency regarding the application of margin requirements during the phase-in period. It is important that the phase-in schedule and any transition period are implemented in a co-ordinated fashion by global regulators in order to ensure that these aims are achieved.

Clarification of transition period

We seek clarification as to how this would be put in place in practice i.e. whether the margin requirements would apply retrospectively to in-scope trades at the start of the relevant implementation period. For example, an MAS Covered Entity may become subject to the VM requirements from 1 March 2017 and enter into in-scope trades during the period of 1 March 2017 to 31 August 2017. In this regard, it is not clear whether in-scope trades entered into by the MAS Covered Entity during the period of 1 March 2017 to 31 August 2017 would be subject to the VM requirements on and from 1 September 2017 or whether the VM requirements would only apply to in-scope trades entered into by the MAS Covered Entity from 1 September 2017. We urge that the MAS confirm that the margin requirements would not apply retrospectively to in-scope trades entered into during the transition period. Such back-loading would create unnecessary operational and administrative challenges for market participants.