ISDA®

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BY POST AND BY E-MAIL

3 June 2009

General Manager
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600
consumercredit@treasury.gov.au

Dear Sir/Madam,

Margin lending provisions - Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009

The International Swaps and Derivatives Association, Inc. ("**ISDA**") is grateful for the opportunity to respond to the request by the Corporations and Financial Services Division of the Commonwealth Treasury ("**Treasury**") for submissions in relation to the Exposure Draft of the *Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009* (the "**Bill**") which was released for public comment on 7 May 2009 by the Minister for Superannuation and Corporate Law, Senator Nick Sherry. This response is limited to the margin lending provisions of that Bill.

By way of background, ISDA, which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985, and today has over 820 member institutions from 57 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities.

ISDA supports the submission dated 29 May 2009 made by the Australian Financial Markets Association to the Treasury regarding the Bill to the extent that it relates to matters concerning the wholesale derivatives industry.

In particular, ISDA emphasises the possibility of an adverse impact if a regulatory regime is introduced which is both additional to, and overlapping with, the current regulation of the wholesale derivatives market in Australia. ISDA understands that the Australian financial regulators recognise the importance of the Australian over-the-counter (OTC) derivatives market. In particular ISDA notes the following statement made by the three Australian financial authorities (the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission and the Reserve Bank of Australia) in their joint report on the Australian over-the-counter derivatives market published on 22 May 2009:

> "Although the Australian market remains relatively small, it plays an important part in the overall functioning of the Australian financial system. The OTC derivatives market contributes to price

> discovery, and facilitates bespoke hedging solutions and the establishment of tailored risk positions. Furthermore, any disruption to activity in this market could have spillover effects in other linked markets."

Accordingly, ISDA hopes that sufficient care is taken in the drafting of the Bill to ensure that it does not introduce an additional layer of regulation into the Australian wholesale derivatives market to that which is already in place.

ISDA would be happy to speak with the Treasury in relation to any further developments in relation to the Bill, to clarify any issues raised in this submission or generally to discuss any future regulatory developments in the derivatives market in Australia. In the meantime, if you or your colleagues have any questions regarding our comments, please do not hesitate to contact Mr Keith Noyes (knoyes@isda.org; +852 2200 5900) or Ms Jacqueline Low (jlow@isda.org, +65 6538 3879) of ISDA or Mr Scott Farrell (scott.farrell@mallesons.com; +612 9296 2142) of Mallesons Stephen Jaques.

Yours faithfully,

For the International Swaps and Derivatives Association, Inc.

Keith Noyes
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