ISDA® Safe, Efficient Markets

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Dear Oliver,

Re: ASIC Reporting - Proposal to Shift to 'Lifecycle' Reporting for CFDs, Margin FX & Equity Derivatives

The International Swaps and Derivatives Association, Inc. ("**ISDA**") [1] appreciates the opportunity to provide feedback to the Australian Securities and Investments Commission's ("**ASIC**") communication to ISDA that it intends to make an excluded derivative determination under subrule 2.2.8(3) of the ASIC Derivatives Transaction Rules (Reporting) 2013 ("**Rules**") to require transactions in contracts for difference ("**CFDs**"), margin FX and equity derivatives to be reported to derivative trade repositories on a 'lifecycle' method ("**the Proposal**").

ISDA is actively engaged with providing input on regulatory proposals in the United States (the "**US**"), Canada, the European Union (the "**EU**") and Asia-Pacific jurisdictions. ISDA's response is derived from this international experience and constant dialogue, and reflects the views of both member firms in the Asia-Pacific region and from further afield. As OTC derivatives tend to be cross-border in nature, we believe it is important to highlight the importance of ensuring that regulatory requirements are consistent both within and across

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 68 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, 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 website: www.isda.org. Follow us on Twitter @ISDA.

jurisdictions, implemented with maximum efficiency and combined with ample time to ensure a smooth and orderly implementation.

In relation to the Proposal, while members agree that ASIC already has the ability to require transactions to be reported on a 'snapshot' and/or 'lifecycle' basis under the Rules, members nevertheless consider that there are relevant and important matters to take into account before any potential determination of any derivative as being an Excluded Derivative (as defined in the Rules) is made. These matters are set out below.

Terminology

Members note that while the term 'lifecycle' appears in the title of Rule 2.2.8, this term does not appear to be clearly defined within the Rules, frequently asked questions ("**FAQ**"), regulatory guidance or elsewhere within the ASIC derivative transaction reporting regime. This is also the case for the term 'snapshot'. Therefore, for the sake of consistency and avoidance of confusion, if ASIC proceeds with the Proposal, members would suggest that ASIC consider further clarifying these terms to ensure that they are well-understood within the context of the Rules and broader Australian derivative transaction reporting regime.

Regulatory Objective and Mechanism

Members have always supported, and will continue to support, a robust regulatory reporting regime which enhances the transparency of information available to relevant authorities and the public, promotes financial stability, and supports the detection and prevention of market abuse. Based on previous communications from ASIC, members understand that in the case of the Proposal, ASIC is primarily seeking to detect and prevent instances of market abuse, presumably based on current market concerns. However, members question whether the intended mechanism to achieve this objective is the most fit-for-purpose, and also request clarity on matters relating to product classification, as detailed below.

Contracts for Difference

In the case of CFDs, while such a classification exists for this product type within the ISDA Taxonomies[2], it is found only within the equity asset class, and is not mirrored in the Appendix to ASIC Regulatory Guide 251 *Derivative transaction reporting* ("**RG 251**"), which "lists the types of derivatives in each asset class for which information about reportable transactions and

[2] https://www.isda.org/2018/02/20/final-isda-taxonomy-v1-0-and-final-isda-taxonomy-v2-0/

positions must be reported to a trade repository"[3]. RG 251.66 additionally states that the list in the appendix is aligned with the ISDA Taxonomies, however in the case of CFDs and a number of other equity derivative products (such as equity forwards), this would not appear to be the case. Members would therefore encourage ASIC to take this opportunity to review the alignment of the products listed in RG 251 against the ISDA Taxonomies, to eliminate any potential ambiguity or confusion.

Members would also query why CFDs would be separately listed by ASIC in the communication, if these only fall within the equity asset class in the ISDA Taxonomies, noting that ASIC has already proposed that all equity derivatives be required to be reported on a 'lifecycle' basis. Clarity from ASIC is requested on these queries.

Margin FX

A similarly unclear situation exists with respect to the proposal to require 'margin FX' to be reported on a 'lifecycle' basis. While acknowledging that ASIC expects these products to be reported, members would also benefit from further definition, guidance and clarity from ASIC on how these products should be classified and reported, to ensure consistency in reporting across the industry. For example, while the term 'margin FX' does not appear within RG 251 or the ISDA Taxonomies, one option may be for ASIC to consider effectively classifying 'margin FX' as a series of FX forwards, which do hold a classification within these documents. Alternatively, ASIC may wish to consider classifying 'margin FX' as a separate type of FX derivative sub-product.

We would encourage and welcome further discussions between ASIC and the industry on these matters prior to any final decisions being taken, as there may also be implications for reporting from a cross-border harmonisation and consistency perspective. ISDA maintains a strict governance process around the addition of new products to the ISDA Taxonomies, and therefore a move to classify 'margin FX' as a new type of FX derivative sub-product within RG 251 and the Australian regime may trigger work on the ISDA side, to assess whether it is appropriate to also incorporate this into the ISDA Taxonomies.

Equity Derivatives

In the case of the proposal to require all equity derivatives to be reported on a 'lifecycle' basis, members are trying to reconcile ASIC's market abuse concerns with this broad, product-indifferent approach. ASIC has stated that it is considering requiring "more granular lifecycle reporting for shorter-term trades that are opened and closed within a day", however by proposing to require all equity derivatives to be reported on a 'lifecycle' basis, this would

[3] ASIC RG 251.66; https://download.asic.gov.au/media/2948586/rg251-published-13-february-2015.pdf

appear to purport that this is the usual trading dynamic for the entirety of the equity derivative products found in the ISDA Taxonomies listed below:

- Equity swap;
- Equity portfolio swap;
- Equity CFD;
- Equity option;
- Equity forward; and
- Equity other.

While equity CFDs may certainly be predominantly opened and closed intraday, members do not believe other products such as equity portfolio swaps or options have this short-term characteristic. Even if such a characteristic does exist for these products, it is very unlikely to constitute the majority of trading in them. For other products such as equity forwards, to open and close a position in a day would seem to contradict the very purpose of these products.

Members believe there is an opportunity and impetus for ASIC to further hone and refine any proposed amended regulatory reporting requirements, by fitting and balancing the regulatory action with the regulatory concern. If ASIC has specific investor protection and/or market abuse concerns with respect to particular products, providers or consumers, a one-size-fits-all approach covering all equity derivatives may not be the optimal way to address these concerns, and may have the effect of disproportionately impacting sectors of the market which seldom or never open and close an equity derivative within one day.

Implementation Impact

Based on feedback received from members, ISDA expects the impact of the Proposal as drafted to be varied, depending on reporting entities' systems setup and current reporting arrangements and mechanisms. In particular, while some members advised that they are already currently reporting on a 'lifecycle' basis under the Australian reporting regime, a small number of members advised that this functionality has not been built, in the absence of a regulatory requirement to do so in Australia to date.

For those entities, a required shift to 'lifecycle' reporting would be a monumental change, involving significant and wide-ranging changes to systems architecture, technology, procedures, testing, validations, processing, external connections and interfaces, reconciliations and matching at a minimum. The shift would also be very costly, resource-intensive and time-consuming. While members did not provide specific estimates of overall cost, they are of the strong view that the proposed 3-month implementation period would be manifestly inadequate to successfully manage and implement a change of this scale, as detailed later in this submission.

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Minimising Unintended Impacts: A Licence-Based Approach

Taking into account the above feedback on equity derivatives, members believe that ASIC may wish to explore a more targeted and effective solution, by choosing to set additional 'lifecycle' reporting requirements on specific Australian financial services licensees as licence conditions, as opposed to an industry-wide requirement which could potentially indiscriminately impact all market participants in the equity derivatives space, regardless of whether they open and close positions intraday or not. Members believe that through setting individual licence conditions, ASIC would still be able to achieve its stated objectives of detecting and preventing any potential instances of market abuse, while avoiding imposing unnecessary cost, regulatory burden and compliance requirements on those sectors of the industry for which there is minimal regulatory concern.

ISDA and its members would very much welcome and support further discussions with ASIC as to how to minimise unintended market impact while ensuring that its regulatory objectives can be met, through the imposition of individual licence conditions.

Local Consistency

Members also have concerns about the potential ramifications of the Proposal in terms of maintaining regulatory consistency across the various derivative products subject to reporting in Australia. The Proposal, as currently drafted, may have a bifurcating effect, whereby a subset of products is mandated to be reported according to a particular method, while flexibility is retained in respect of the remaining products. Indeed, ISDA and its members are not aware of any other G20 derivatives reporting regime globally which adopts and requires a separate approach in respect of a subset of products. More importantly, such an approach introduces additional complexity, controls and resource requirements, and may lead to further such bifurcations in the future, complicating matters even further.

Members do acknowledge that there do not appear to be any impediments under the Rules to stop them from internally building on the Proposal further by shifting from 'snapshot' reporting to 'lifecycle' reporting across their entire product set, however caution that to do so may potentially lock them into an approach in respect of products which may subsequently become Excluded Derivatives in the future which are required to be reported on a 'snapshot' basis, thereby rendering their shift to 'lifecycle' reporting futile.

Combining this with the fact that since the inception of the derivative transaction reporting regime in 2013 ASIC has provided flexibility on the reporting method which reporting entities may adopt, members would strongly encourage ASIC to maintain consistency and flexibility in the regime as much as possible, and minimise any further Excluded Derivative determinations to the extent possible. Ultimately, members believe that consistency and

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maintenance of flexibility will yield better results for ASIC through higher-quality data, which can be more effectively aggregated, analysed and compared.

International Consistency

Members note that the majority of transaction reporting regimes globally allow or require 'lifecycle' reporting, particularly in the US and EU. To the extent ASIC is able to align any local 'lifecycle' reporting requirement with similar requirements and practices in those regions, it can have confidence in a timely implementation, increased efficiency for reporting parties, lower regulatory and operational risk for reporting entities, and ultimately, better quality and consistency of data reported to ASIC. We would encourage ASIC to liaise with its overseas counterparts, to identify and avoid any shortcomings, issues, negative impacts or operational concerns experienced in those regions at the time of implementation.

Implementation Timing

We understand that ASIC has proposed to make the excluded derivative determination in August 2018, with an effective date expected to be around November 2018. While this is provided for in the Rules, at a practical level, members advise that 3 months for implementation of such a significant change would be manifestly inadequate, and would be very likely to lead to unsuccessful implementations, errors, mis-reporting, under-reporting, or a combination of all of these and more. Just as importantly, this would also largely and negatively impact the quality of data reported, undermining ASIC's long-standing objective of improving data quality.

Members who would need to change internal architectures to support 'lifecycle' reporting have advised that due to the scale and complexity of the Proposal and current books of work for 2018, the earliest date that could ensure a smooth and successful implementation with minimal negative impact would be July 2019. Members note that books of work for 2018 are already full with preparations for regulatory changes announced well in advance, such as the implementation of new asset classes and data fields under the Singaporean derivatives reporting regime, and the Depositary Trust and Clearing Corporation's ("**DTCC**") complete system rearchitecture. IT resources have already been planned and deployed to support these major changes, again signifying that to proceed with the intended date of the Proposal would lead to alarming levels of operational risk for those members.

Members would request ASIC to reconsider its proposed timing and consider the above proposed date which would minimise the potential for negative impact, unacceptable levels of operational risk and ultimately ensure a successful go-live.

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Conclusion

Thank you again for the opportunity to provide feedback and comments to the Proposal. The industry will always support ASIC's objectives in detecting and preventing market abuse, and would further encourage this to be achieved in the most successful, targeted, effective, consistent, inexpensive and impact-minimising manner. Ensuring a successful implementation requires sufficient definition and clarity regarding the products involved, sufficient time to prepare and sufficient collaboration across all stakeholders involved with derivative transaction reporting, including ASIC, trade associations, reporting entities, middlewares, service providers and trade repositories. To that end, ISDA and its members remain supportive of further dialogue and engagement by ASIC with industry, to arrive at a safe, efficient reporting regime with requirements which further ASIC's regulatory objectives in the most efficient and successful way.

Yours sincerely,

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