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20 March 2015

Dear Sirs

Draft Frequently Asked Questions (Draft FAQs) and Draft Supplementary Reporting Instructions (Draft SRIs) – Comments

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) welcomes the opportunity to provide comments on the draft Frequently Asked Questions (“**FAQs**”) and Supplementary Reporting Instructions (“**SRIs**”) as issued by the Hong Kong Monetary Authority (“**HKMA**”) and sent to ISDA on 18 February 2015.

ISDA is actively engaged with providing input on regulatory proposals in the United States (the “**US**”), Canada, the European Union (the “**EU**”) and the Asian jurisdictions, including Singapore and Australia, among others. Our comments are derived from this international experience and constant dialogue, and reflect the views of firms in the Asia-Pacific region. As over-the-counter (“**OTC**”) derivatives tend to be cross-border in nature, we wish to highlight the importance of attaining efficiencies and minimising regulatory divergence through globally-consistent requirements, methodologies and practices, to the extent possible.

We are appreciative of the opportunity to provide input on these documents, which will assist Hong Kong reporting entities in preparing for compliance with their reporting obligation. We hope to continue to facilitate the dialogue between the industry and the Hong Kong regulatory authorities to develop best practices and address any implementation issues that may arise from trade reporting. Further, we would be grateful if the HKMA would clarify

whether a revised version of the FAQ and SRIs will be published prior to being finalised, and any associated timeframe for doing so.

Our comments are in relation to the suite of documents sent to ISDA on 18 February 2015 as well as several other matters raised by firms, including our letter to the Hong Kong regulatory authorities of 23 December 2014 (“**December response**”). While firms have sought to form a consensus on the issues raised in this response, certain firms may provide their comments to the HKMA independently. We set out our response along thematic lines, with a number of general comments in addition. We have also proposed some minor drafting suggestions to the suite of documents.

Terms defined or given a particular construction in the draft FAQs and SRIs have the same meaning in this response unless a contrary definition appears.


Yours faithfully

For the International Swaps and Derivatives Association, Inc.



Keith Noyes

Regional Director, Asia Pacific



Rishi Kapoor

Director, Policy, Asia-Pacific

COMMENTS ON DRAFT FAQs AND DRAFT SRIs AND OTHER RELATED MATTERS**1. SPECIFIC DRAFTING MATTERS**

- 1.1. We note that paragraph 1 of the Draft SRIs refers to the document (including Annexes) being published under rule 21(2) of the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules (“**Rules**”). We submit that it may be more appropriate to refer to rule 20(2) of those Rules.
- 1.2. We also seek clarification on the use of the word “or” between subrules 21(3)(a) and (b) of the Rules. If the HKMA’s intention, per the title of the rule, is to set requirements around the reporting of transactions entered into during the concession period by no later than the last day of the grace period, we clarify whether the word “or” should be replaced by “and”.
- 1.3. We note that our response letter to the HKMA and Hong Kong Securities & Futures Commission (“**SFC**”) conclusions and consultations document of November 2014 (“**November paper**”), we requested clarification around what constitutes “key economic terms” in the context of nexus transactions entered into on an electronic trading platform. We appreciate the HKMA’s casting of this phrase as referring to “pricing parameters”, and suggest that for added clarity, question 25 of the FAQs have the emphasised wording added:

“In such case, the Hong Kong trader will be regarded as being responsible for the decision to enter into these transactions. On the other hand, if the parameters of the key economic terms were set by a trader outside Hong Kong, but were last modified by a Hong Kong trader *in a manner that alters the pricing parameters of the transaction* before the transaction was executed, then the Hong Kong trader will be regarded as responsible for the final decision to enter into the transaction, and accordingly the transaction should also be reported.”

2. DATA FIELDS: “REFERENCE BRANCH OF TRADE PARTY” AND “DESK ID”

- 2.1. We would like to raise a concern about the recent inclusion of these data fields as mandatory data fields for reporting. These concerns centre around the issues described below.
- 2.2. Firms have allocated technical resources and set technical builds to prepare for the upcoming Hong Kong reporting obligation on the basis of a predictable, near-final set of rules as published in November 2014, and associated documents such as the HKTR Administration and Interface Development Guide (“**AIDG**”). Further, firms

have been undertaking these preparations based on the understanding, in the current version of the AIDG, that reporting of these data fields is on an optional basis.

- 2.3. However, without an updated published AIDG and sufficient lead time to be consulted with and prepare for these two new data field requirements, firms would face significant difficulties in incorporating these two new data fields into their books of work. Accordingly, we would strongly encourage the HKMA to reconsider its intention to make such data fields mandatory. We further note the sensitivities this causes from a data flow-through perspective, as we have been given feedback that reporting entities, middleware providers and infrastructures would all face significant challenges in being able to capture and provide this information from the commencement date of the Rules, as such data are generally not exchanged or agreed upon as part of the transaction.
- 2.4. We note that mandating these data fields also gives rise to operational difficulties in respect of firms' delegated reporting offerings, as it requires delegates to know the location of the trader of the delegating entity, which is not currently built into the system logic.
- 2.5. We request that the HKMA allow these data fields to remain optional at least until such data fields are made mandatory for reporting in other regional and global jurisdictions. This will allow the Hong Kong regulatory authorities to take account of international experience and learnings in respect of the optimal way to populate and report these data fields, and also has the benefit of maximizing operational efficiency by allowing firms to leverage global builds to put in place scalable reporting solutions, thereby reducing jurisdiction-specific builds at additional cost.
- 2.6. As we have outlined in our February 2015 paper "Improving Regulatory Transparency of Global Derivatives Markets: Key Principles" ("**Paper**"), one of the key principles for standardizing, aggregating and sharing data across borders is for regulatory reporting requirements for derivative transactions to be harmonized within and across borders. To this end, regulators around the world should identify and agree on the trade data they need to fulfil their supervisory responsibilities, and then issue consistent reporting requirements across jurisdictions.
- 2.7. This point in respect of standardisation was put to the Monetary Authority of Singapore ("**MAS**") during its consultation phase in July 2014 on additional data fields. In the interests of jurisdictional comity, the MAS accepted this point and incorporated into their final rules the equivalent set of data fields to those required by the Australian Securities and Investments Commission ("**ASIC**") for its reporting regime in Australia. This means that institutions are able to comply with far greater ease and data competency. We would request that the HKMA consider aligning its

required data fields to the extent possible with those of both ASIC and the MAS, for these reasons as well as those put forward in the Paper.

- 2.8. We would like to reiterate our appreciation of the HKMA's consultative approach to the design of the OTC derivatives trade reporting regime thus far, and hope that this would continue in the same manner for subsequent phases of trade reporting. We appreciate the importance of trade reporting for regulatory transparency purposes and furthering the G20's objectives. We remain committed to complying with the reporting obligation, and welcome any engagement and consultation with the Hong Kong regulators on future aspects of trade reporting including any future mandatory data fields.

3. IDENTIFIERS FOR TRANSACTIONS REQUIREMENTS

- 3.1. We note the importance of having 'shared and paired' transaction identifiers to facilitate matching in trade repositories, and note that universal transaction identifier ("UTI") requirements are being discussed on a global level in terms of consistency and data aggregation. In particular, we commend the HKMA for its decision not to mandate a jurisdiction-specific construct for the UTI, which would add additional layers of complexity and cost to firms, particularly those trading on a cross-border basis. We further applaud the HKMA for its decision to consider the proposals of its global regulatory peers in the US and EU for a solution to transaction identification, as discussed in the December response.
- 3.2. However, for transactions not subject to reporting under the US or the EU regulatory regimes, and where one is not provided by a platform, central counterparty ("CCP") or matching service, our reading of the suite of draft documents would lead us to understand that an internal identifier will not be able to be used, even on a temporary basis, from the commencement of the Rules. If this understanding is correct, firms would face significant constraints in obtaining USIs or UTIs generated according to the prescribed criteria under these regimes.
- 3.3. While global efforts are underway to facilitate a consistent approach to the pairing and sharing of UTIs (including guidelines for determining the circumstances in which a firm would be a UTI 'generator' or UTI 'consumer'), we are cognisant that in the Asia-Pacific region particularly, these arrangements are still being developed by firms, and are not yet agreed with counterparties. In relation to USIs, there is also the operational challenge for a Hong Kong reporting entity which is not a CFTC reporting counterparty ("RCP"), of obtaining the USI (and sending it to the HKTR as the UTI) from the US RCP, since the US is a single-sided reporting regime.
- 3.4. Particularly for institutions of smaller size, coming to terms with the complexity of how to operationalise the UTI is a large task. This is even more pronounced in the

scenario when a firm is the consumer of a counterparty's UTI, where the firm is dependent on the counterparty to provide it with a UTI in a timely manner to fulfil its mandatory reporting obligations. Where such a UTI is not received within the required timeframe, we submit that it will be of more regulatory value to have the transaction reported with an internal identifier, rather than the HKTR rejecting this transaction for reporting purposes due to an empty data field.

- 3.5. The task of agreeing methods for UTI generation for Hong Kong reporting, including the global standards being developed by the industry, is further complicated by the fact that while some firms may start reporting from the commencement date of the Rules, some firms may defer the reporting of their transactions until the end of the concession period.
- 3.6. At the same time, the industry acknowledges there will be circumstances where firms may use electronic platforms, transaction matching services and CCPs to assist in the provision of a UTI that conforms to the US or EU prescribed criteria for UTI generation. Accordingly, we consider that the proposal below strikes an appropriate balance between requiring global UTIs where available, and allowing sufficient time for firms to agree the UTI arrangements with their counterparties.
- 3.7. We respectfully request the HKMA to reconsider its decision to remove the use of an internal unique transaction reference (“UTR”) as a ‘fallback’ option. We suggest that the use of the US and EU UTIs (“USI” and “TID”) are required only in the following circumstances:
 - Where a counterparty to the transaction is required to report the transaction to a swap data repository (“SDR”) approved by the US Commodity Futures Trading Commission (“CFTC”) or a trade repository approved by the European Securities and Markets Authority (“ESMA”); or
 - Where a transaction is executed, matched or cleared on an electronic platform, transaction matching service or CCP respectively, which provides a USI or TID to the counterparties to the transaction as part of its service.
- 3.8. For other cases, we submit that the requirement for firms to generate a USI or TID according to the respective prescribed criteria be optional, and that firms be permitted to use a UTR for an interim period of time. We note that this is the position adopted by the MAS in Singapore, which notably will not require ‘shared and paired’ UTI before 1 February 2016, with no backloading requirement.
- 3.9. We appreciate that the Hong Kong regulatory authorities’ use of the USI and TID is in part a response to a recommendation in our December response. While we maintain that the USI and/or TID be allowed for reporting, we believe additional

time may be required for the Asia-Pacific market to attain the level of readiness required to support the USI and/or TID being mandated for all transactions, including those which are not reportable under either the US or EU regimes nor readily obtainable through a platform, CCP or matching service.

- 3.10. Global efforts are in progress to agree a consistent, stable standard for UTI generation, however incorporating industry guidelines into systems, educating all sectors of the industry and the resulting implications for firms agreeing arrangements with counterparties to operationalise UTIs requires time. Therefore, we respectfully request that the industry be permitted to continue to report internal identifiers where no USI or TID is required or provided, at least until global standards on UTI generation have been agreed, while firms settle arrangements for generating, communicating and matching UTIs with their counterparties. If the HKMA would prefer to have more definition around the dates, we would suggest again, in line with our comments above about standardization across the jurisdictions, that the implementation date of the UTI ‘sharing and pairing’ requirement be aligned with that mandated by the MAS, which is 1 February 2016.

4. RECORD KEEPING REQUIREMENTS

- 4.1. We note that our December response to the November paper highlighted significant industry concerns around the proposed scope of record keeping obligations. We would kindly request the HKMA to consider using the draft FAQ to address the concerns raised by the industry regarding record keeping, particularly in the areas of concern identified in that response letter.
- 4.2. We wish to reiterate the industry’s concerns that as currently drafted, the record keeping requirements remain too broad in scope, and that limitations in current technology make it practically and logistically very difficult to develop the sophisticated systems required to comply with the requirements around record keeping as currently drafted. As non-exhaustive examples, the record retention period under the Rules is five years from the termination or maturity of the relevant transaction, whereas under Dodd Frank, the record retention period is five years from the date that the record is created. Additionally, other communication records (such as messenger and email systems) do not generally specify transaction references or counterparty IDs in their structures.
- 4.3. We would request and encourage the HKMA to give further consideration to our comments in our December response, particularly the ‘Recordkeeping obligation’ section including paragraphs 4.7 to 4.10. We reiterate our strong encouragement that the Hong Kong regulatory authorities align the recordkeeping obligations imposed in Hong Kong with those imposed in comparable jurisdictions.

4.4. As a second preference, if the HKMA is not prepared to narrow the scope of record keeping requirements, then we would suggest postponing the effective date of the record keeping requirements to allow sufficient time to implement the system and necessary controls. Such postponement should account for existing search capabilities in relevant systems with respect to the ‘readily searchable and identifiable’ requirement and the large overall scope of change required to current IT systems, the significant degree of complexity of build, the sheer size of data storage and retention implications and the impact that jurisdiction-specific requirements would have on firms’ resourcing.

5. CONSISTENCY IN AMENDMENTS

5.1. The industry is of the view that amendments to “non-amendable” fields as proposed in paragraph 12 of the SRIs should be dealt with in a consistent manner. In particular, distinguishing between an amendment made as a result of an “error” and an amendment made as a result of an “update” involves a level of subjectivity which systems cannot currently cater for, making automation of these amendments a challenge. We would suggest using one standard approach, which is a withdrawal event together with a backloading event.

5.2. Similarly, we advocate a standardised approach to error corrections as proposed in section C.11 of the SRIs, which would minimise subjectivity and promote consistency in application, leading to a more robust data set for regulatory purposes. The SRIs reference the snapshot approach being allowed only if “the error is not significant in terms of the transaction in question, the financial position of the reporting institution and the impact on industry statistics”. Given the subjective nature of this requirement, we would kindly request that the ability to use snapshot reporting be tied to an objective criteria, such as whether the error correction is to a non-amendable field or not.

6. MASKING OF COUNTERPARTY IDENTITY

6.1. We note the requirement to supplement transactions reported to the HKTR with counterparty identifying particulars within 1 month of the customer’s consent being obtained, as drafted in Q43 of the FAQs. In this respect, we would request the HKMA to take into account the fact that while the legal entity identifier (“LEI”) of a counterparty can be supplemented in historical transaction reports with a relative degree of ease, supplementing additional counterparty particulars for a firm’s entire set of historical transactions involves additional complexity and verification. We would therefore request that the HKMA consider permitting reporting entities a 3-month timeframe to supplement all counterparty identifying particulars following customer consent. We would also appreciate clarification that supplementing

counterparty information for historical trades which have matured or expired is not required, regardless of whether the counterparty data was masked because of the prohibitive legal or regulatory limitation, or the counterparty consent limitation.

7. GENERAL COMMENTS AND OTHER MATTERS

- 7.1. We request, as a general comment, that when making any changes to the interface with the HKTR, the HKMA take account of the dependencies of reporting entities on various middleware providers and infrastructures that facilitate trade reporting to the HKTR. Specifically, firms are building their reporting systems and processes according to current specifications and system requirements of these providers, which are in turn dependent on current specifications for reporting as stipulated in the various manuals, guides, procedures and related documentation issued by HKMA and the HKTR. For example, any changes to the way particular data fields are reported (such as the data field used for reporting a particular element of a transaction) would require data field changes on the part of these providers, which require lead time before firms are able to commence testing and reporting.
- 7.2. We note that our December response sought clarification on the proposed treatment of the types of transactions listed in section 3.5 of that response (such as privately-negotiated block trades and certain exchange-for-physical transactions involving futures and/or options). To the extent that these are not addressed in the draft FAQs or SRIs, we would request that the HKMA provide additional clarification on how these transaction types should be treated.