FAO Svein Andresen,
Secretary General, Financial Stability Board

By email to fsb@bis.org

31 July 2012

ISDA Response to the Third Financial Stability Board Progress Report on Implementation of OTC Derivatives Market Reforms

Dear Svein,

The International Swaps and Derivatives Association (ISDA) would like to take this opportunity to respond to the Financial Stability Board's Third Progress Report on Implementation of OTC Derivatives Market Reforms, as published on 15 June 2012 ("the Progress Report").

We welcome the commitment from the FSB "to put additional focus on the readiness of infrastructures to provide central clearing, platform trading and reporting of OTC derivatives, the practical ability of industry to meet the requirements and the remaining steps for industry to take."

In terms of infrastructure readiness and the ability of industry to comply, part of the challenge lies in addressing the elements of the reform package in a coherent sequence. While we appreciate that the FSB is focused on "full implementation of market changes by end-2012 to meet the G20 commitment in as many areas as possible", we believe that rulemaking by individual jurisdictions should be carefully sequenced. In our recent submission[1] to the CFTC on its Proposed Schedule of CFTC Title VII Rulemaking, we outline a set of principles that we believe are of broader relevance to global reform efforts:

- Rules should be sequenced to take into account the interdependencies between different pieces of legislation or the different rules within a given legislative text.
- Rules that rely heavily on prerequisite rules should only be finalised after the prerequisite rules are adopted.
- There should be adequate time between rulemakings to allow authorities and market participants to devote sufficient time and attention to each rule.
- There should be adequate time between related rules for market participants to begin to implement prerequisite rules and for authorities to gather the data needed to inform related rules.
- The approach followed should take account of the implementation challenges faced by different classes of market participants and with respect to different asset classes, with phasing in as appropriate.

As for the substance of the reform package, we continue to believe that there are strong grounds to take a more cautious approach to exchange and electronic trading of standardised OTC derivatives and very much support the FSB's call to authorities to "take action to explore the benefits and costs

[1] http://www2.isda.org/attachment/NDU3Ng==/SIFMA%20ISDA%20Comment%20on%20Proposed%20CFTC%20Rulemaking%20Schedule%20%283%29.pdf

of public price and volume transparency". As the FSB will be aware, ISDA's own study on the costs associated with Swap Execution Facilities for Interest Rate products[2] indicated that while the SEF concept is useful – as is the European Commission's proposed Organised Trading Facility (OTF) – the potential cost implications of *mandating* a particular form of execution for participants in swaps markets could be significant. We further believe that clearing and reporting to trade repositories are prerequisites to determining which OTC derivatives contracts are sufficiently liquid for the purposes of exchange and electronic trading; hence rules dealing with clearing and trade repositories should take precedence over those focused on the execution of OTC derivatives contracts.

We also suggest that the FSB focus more on the issue of extraterritoriality. While the FSB encourages jurisdictions to put in place legislation that is "flexible enough to respond to cross-border consistency", we remain concerned that significant uncertainties remain as to the regulatory treatment of cross-border business. A key tenet of the G20 commitments was to deliver reform in a way that would avoid protectionism, fragmentation and regulatory arbitrage, a goal that is equally important as the individual components of the reform package

Concretely, we believe it should be possible for regulators to delegate aspects of regulation in cross-border transactions to regulators in other jurisdictions, subject to reasonable provisions around equivalence and substituted compliance. This is particularly important when it comes to clearing and collateralisation obligations for situations where firms deal with third-country counterparties. More effective cooperation between regulators in different jurisdictions will ultimately enhance compliance with the new rules, providing certainty as to the regulatory regime that applies and establishing a level playing field.

I would like to conclude by emphasising that ISDA squarely supports financial regulatory reform, including measures to enhance regulatory transparency and deliver centralised clearing of standardised trades. We have worked actively and engaged constructively with policymakers around the world to achieve this goal and remain at your disposal to discuss any of the points raised in this submission.

Yours sincerely,

Robert Pickel
Chief Executive Officer
International Swaps and Derivatives Association

[2] http://www2.isda.org/attachment/MzczMw==/ISDA%20Mandatory%20Electronic%20Execution%20Discussion%20Paper.pdf

Annex 1: Detailed commentary

Trade Repositories

ISDA's view remains that a single global trade repository per asset class would provide regulators and market participants with a more comprehensive view of activity. In particular, there would be neither redundancy of platforms nor any need for additional levels of data aggregation while reducing the risk of errors and providing greater transparency. Furthermore, we believe that a single global trade repository would avoid the risk of errors associated with transmitting, aggregating and analyzing multiple sources of potentially incompatible and duplicative trade data. A single global trade repository per asset class would also reduce the risk of reporting to multiple repositories in different jurisdictions and minimise the burden on firms to potentially have to build and comply with multiple messaging formats and protocols.

To the extent that trade repositories are created in different jurisdictions, we encourage regulators to continue to work together on standards to allow data aggregation. We note that the Progress Report recognises that more work is required at international level and fully support this. Furthermore, we welcome the work of the OTC Derivatives Data Experts Group (ODEG) to define the data required for assessment of systemic risk, market surveillance and for resolution purposes. In response to the specific categories identified by ODEG, ISDA notes that work is continuing within each asset class to make more transaction-level information available. Furthermore, ISDA continues to support the idea of a single "Counterparty Exposure Repository" to provide an aggregated risk view for regulators of, amongst other things, the net mark-to-market exposure for each counterparty portfolio, the corresponding collateral and a firms' calculation of net exposure after the application of collateral. ISDA has developed an initial high level roadmap for the provision of exposure information. Further discussion will be needed regarding the proper infrastructure for this information.

We also note and welcome ODEG's suggestion that certain data could be sourced from other centralised data sources to the extent that it avoids the unnecessary build of duplicative data sources.

We remain concerned that local legal restrictions on the sharing of confidential trade information will delay progress on trade repositories. We recognise that various authorities are working on this issue and establishing criteria for cross border access to data in trade repositories. However, there are still a number of obstacles that need to be overcome in this regard. We welcome the fact that the FSB urges national and regional authorities to work together to find solutions.

As a more general comment, we also highlight the importance of ensuring that trade repositories continue to act first and foremost as a tool for monitoring systemic risk, rather than simply becoming part of the transaction reporting infrastructure, important though that is in itself.

Below we provide a summary of current developments by asset class:

- **Credit Derivatives:** The credit derivatives market continues to develop the 'DTCC Credit Global Trade Repository' in order to comply with new regulatory rules and in doing so the industry is looking to leverage current infrastructure where possible. The new credit repository will be released over several phases. Phase I was released on 30 April 2012. In this release, all electronically confirmed trades are sent to the global repository in anticipation of eventual use of the repository to satisfy local reporting requirements in different jurisdictions. Phase II will add real-time, primary economic terms (PET), valuations and confirmation reporting. Upon go-live of Phase II firms will be able to submit transactions to the repository, containing the above additional functionality. As precise reporting requirements are defined in different jurisdictions, further functionality will be added to the repository to enable firms to comply with local reporting requirements. In addition, there is progress and communication on-going with the various CCPs and their future interaction with the repository

- **Interest Rate Derivatives:** The DTCC Global Trade Repository was fully launched and live from December 2011 with major global dealers submitting to DTCC and TriOptima in parallel until May when DTCC became the sole repository for these dealers. DTCC is currently (since 15 June 2012) providing weekly public reports which give anonymous aggregate trade statistics on a number of criteria. A suite of reports are currently available to regulators giving trade information on a disclosed firm and counterparty basis.

  Work is on-going to provide enhanced trade reporting for regulators, including daily T+1 reporting, per-trade detail reporting, and enhanced trade pairing reporting for the submitting participants population. Trade position reporting to the new IR TRR will leverage electronic confirmation data from key trade affirmation platforms for trades confirmed on that platform. Positions for the remaining population will continue to be reported directly by participants. It is also anticipated that pdf (or similar) copies of non-electronic confirmations will be provided to the IR TRR facility in order to meet reporting requirements of emerging financial reform legislation. Additionally a subgroup of the ODRF is working with DTCC and the industry to refine the public reports that are currently available.

- **Equity Derivatives:** The industry enhanced the repository by adding new position level data fields such as Underlying type and identifier, Trade Date, Option Type, Settlement Type and Currency to the reporting in November 2011. This has enabled the Equity Derivatives Reporting Repository ("EDRR") to provide reporting on location, currency and sector as well as start reporting at an entity level. The G15 Dealers are now working with DTCC to develop a Global Trade Repository ("GTR") which will replace the EDRR and provide for more effective reporting of information in compliance with regulatory requirements that are being developed in multiple jurisdictions. As part of this work, during May and June 2012, industry has commenced providing authoritative records from Markitwire to the GTR for Equity Options and Variance Swaps for Index and Share underliers. Work continues to

provide appropriate reporting to relevant regulators subject to existing data disclosure rules and regulations.

- **Commodity Derivatives:** In June 2011, the ISDA Commodities Steering Committee selected DTCC/EFETnet to partner with them in building the Commodities Trade Repository. We have now completed the work with DTCC to deliver OTC financial oil trades into a Trade Repository – this was completed ahead of the agreed delivery date, with all firms who had made a commitment to the ODSG submitting their records. Work is now continuing to develop submissions for other product sets in pursuance of Dodd Frank requirements which will enhance the first phase of work done under the voluntary ODRF reporting. The FSB may be aware that other trade repository providers are intent on providing services in the market, predominantly ICE and CME and although these were not vendors selected through the ISDA RFP process, firms will engage with all SDRs to ensure full compliance with the provisions of the Dodd Frank Act and other regulation in the most efficient manner.

In addition, the DTCC recently began user testing on its **Foreign Exchange** Repository that has been developed in conjunction with the GFMA.[3]

Standardisation

As noted in Appendix IV of the Progress Report, the Standardisation Matrix has been developed as a tool to provide supervisors with important insights into levels of standardisation across each asset class and, over time, will indicate trends and progress towards increased standardisation within an asset class. It should be noted that as of Q3 2011 the G14 has increased to G15 dealers and all 15 dealer firms are contributing to the standardisation submissions. Furthermore in the case of credit, equity and rates the matrices have been enhanced, as of the Q4 2011 submissions, to show absolute trade count for the various Execution, Product/Legal and Processing columns.

As of the date of this response, the G15 Dealers have now, for credit, rates and equity derivatives, submitted data for Q2, Q3 and Q4 2011, with submissions for Q1 and Q2 2012 due by 30 September 2012. For Commodity Derivatives data has now been submitted for Q4 2011 and Q1 2012 while Foreign Exchange has submitted data for Q4 2011 and Q1 2012. It is important to note that as indicated in Table IIIa.2 there is a high level of utilisation of electronic platforms where they exist and for some asset classes, notably credit and, to a slightly lesser extent, rates, this constitutes coverage of a significant (97.8% for credit and 87.6% for rates) proportion of transacted volume. For other asset classes the product mix is more diverse and/or complex in nature causing the level of standardisation of legal contracts and therefore electronic eligibility to be lower. Furthermore, it should be noted that in the case of both equity and financial commodity derivatives, the asset classes viewed as a whole are extremely standardised such that a significant proportion of the vanilla standard products are transacted on exchanges. The remaining portion that constitutes OTC and is therefore the subject of the data submissions described herein is by its very nature predominantly non vanilla. Notwithstanding this, the industry continues with various projects, across all asset classes, designed to increase the level of standard legal forms of documentation for a

[3] http://www.dtcc.com/news/press/releases/2012/press_release_dtcc_begins_user_testing.php

greater suite of products. For example, in commodities, the Commodities Major Dealers Group (CMD) has conducted regular surveys on availability and usage of standard forms of documentation while for equity derivatives work continues on developing a new framework for documentation using the 2011 ISDA Equity Derivative Definitions published on 8 July 2011.

In addition to the work described above, the industry continues to work towards increased product and process standardisation through a variety of projects including, but not limited to, the following:

- Standard Credit Support Annex - work is ongoing to publish a Standard Credit Support Annex ("SCSA"). The SCSA implementation plan has been revised to incorporate several amendments which have been added in the past few months. Adoption of the SCSA is not mandatory and market participants will be free to adopt on the basis of economic considerations. The first phase of implementation will permit volunteer firms to use the SCSA and the targeted go-live for early adopters is currently scheduled for September 2012.

- On 5 March 2012 ISDA published the 2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions. This supplement is designed to update the US Muni CDS documentation to reflect similar changes to those made to corporate and sovereign CDS in the Big and Small Bang Protocols. ISDA published and implemented a Muni CDS Protocol, in addition to publishing a revised Credit Derivatives Physical Settlement Matrix with three new "standard" Muni CDS transaction types. The market practice changes set out in the Protocol took effect on 3 April 2012 and aligned the US municipal CDS market with the corporate and sovereign CDS markets. MarkitSERV and other vendors have released electronic templates in support of these changes.

- In June 2012 processing of corporate action events for Equity Options and Variance Swaps was made available to industry participants through the Markitwire platform.

- Since 31 December 2011, 3 supplements to the 2006 ISDA Definitions have been published which provide various amendments to existing floating rate definitions or establish new floating rate definitions for a variety of currencies, including Australian Dollars, Indian Rupee, Chinese Renminbi, Columbian Peso and Sterling.

Data Standards

In addition to our broader work on standardisation, we continue to push ahead with work to standardise Identifiers for data aggregation and reporting to trade repositories and strongly advocate common industry standards to facilitate data aggregation and analysis by regulators for legal entities, products and for trade identifiers. To be useful for data aggregation, these standards should be unique and global in nature. We therefore welcome the FSB's work on the LEI and the industry development of a standard product classification system in consultation with relevant regulatory bodies. For Unique Trade Identifiers we see differing specifications emerging in the US and Europe and are working with the respective regulators to come to one global standard for trade identifiers as well.

ISDA's work on identifiers spans a number of areas:

- **Legal Entity Identifier (LEI):** ISDA, as part of the global coalition[4] of trade associations working on LEI, is in full support of the continued dialogue with the regulators worldwide under the direction of the FSB, to come to a unique LEI solution, leveraging the LEI work done by the industry. A focus with regard to OTC derivatives has been the phasing of LEI readiness for the Global Trade repositories in the different asset classes. ISDA supports the designation of the industry-recommended providers for the CFTC Interim Compliant Identifier (CICI) and believes it is a critical step to allow a timely implementation of the swap data record keeping and reporting rule. Support for LEI and the CICI has readily been integrated within the FpML Standard. ISDA continues to work in concert with regulators and industry participants to support the launch of a global LEI system by March 2013 that is aligned with the recommendations the FSB outlined in its report to the G20.

- **Product Classification**: The ISDA OTC taxonomies (product classifications) for all asset classes have been published after a public comment period and are freely available on the ISDA website. In addition a rules-of-operations document that outlines the process for future changes to the taxonomies has been published. We expect the taxonomies to evolve once reporting has started and will be looking for feedback from the different international regulators. The credit and interest rate taxonomies have been integrated within the FpML standard[5], which is used for reporting to the repositories. The FpML product groups are in the process of integrating the equity, FX and commodity taxonomies. In addition we are looking at synergies with ISO in this area and provide input to ISO financial classification standards.

- **Unique Product Identifiers:** ISDA worked on product identification for uniform or standardized products as a next step following the taxonomies, with a goal to develop an overall UPI solution that in first instance supports the requirement for a granular dissemination of data by the trade repositories in application to the Dodd-Frank Act. Further progress in this area requires feedback and input from the regulators on the intended usage of the UPIs and should leverage work completed to date by regulators including the CFTC. Similar to the other identifiers and as stated previously, also in the case of the Product Identifiers, we are looking for a global solution. A fragmentation in approach would greatly diminish the value of product identifiers.

- **Trade Identifiers:** An ISDA-led technical working group with representation from different sectors of the industry produced key documentation needed to implement Unique Swap Identifiers (USI), which is the CFTC requirement for Unique Trade Identifiers. We

---

[4] The coalition brings together The British Bankers Association, Customer Data Management Group (CDMG), The Clearing House Association, Enterprise Data Management Council, The Financial Services Roundtable, the Futures Industry Association (FIA), the Global Financial Markets Association (representing the Association for Financial Markets in Europe (AFME), the Asia Securities Industry & Financial Markets Association (ASIFMA) and the Securities Industry and Financial Markets Association (SIFMA)), the Global Regulatory Identifier Steering Group (GRIS), the Investment Company Institute (ICI), and the International Swaps and Derivatives Association (ISDA).

[5] www.fpml.org: Financial Products Markup Language (FpML) is an open standard, freely available, driven by the industry to provide standardization and facilitate automation of the derivatives lifecycle. Focus areas include standards for reporting to Trade Repositories and Clearing of OTC derivatives.

are currently working with regulators in different jurisdictions to harmonize the requirements for Unique Trade Identifiers and would welcome for the FSB to play a coordinating role in the establishment of global Unique Trade Identifiers, similar to the role the FSB is playing in the definition of a global LEI.

Central clearing

ISDA and its members continue to embrace the G20 objectives for expanding central clearing by employing safe and sound methods. In support of this goal, we are employing a phased-in approach to extend the scope of central clearing in several respects. First, we continue to make progress in centrally clearing more transactions that are currently eligible. Second, we are working with clearinghouses to bring greater transparency to methodologies to evaluate candidate products and plans for expanded central clearing offerings. Third, we are working with clearinghouses and supervisors to identify and resolve the key impediments and challenges to developing central clearing arrangements that will feasibly extend access to all eligible market participants.

As flagged in our covering letter and in previous submissions to the FSB, ISDA remains concerned that policymakers acting on a regional and national basis have yet to fully resolve questions about the treatment of cross-border entities, whether operating through branches or subsidiaries. A key tenet of the G20 commitments was to deliver reform in a way that would avoid protectionism, fragmentation and regulatory arbitrage, a goal that is equally important as the individual components of the reform package.

In this context, it should be possible for regulators to delegate aspects of regulation in cross-border transactions to regulators in other jurisdictions, subject to reasonable provisions around equivalence and substituted compliance. This is particularly important when it comes to clearing and collateralisation obligations for situations where firms deal with third-country counterparties. More effective cooperation between regulators in different jurisdictions will ultimately enhance compliance with the new rules, providing certainty as to the regulatory regime that applies and establishing a level playing field. We comment in further detail on the CFTC's approach to cross-border transactions under a separate heading.

As for the practical implementation of the clearing mandate, the Progress Report considers potential differences in scope of the obligation, flagging the issue of intra-group transactions.

ISDA notes that intra-group transactions are an established part of derivatives business in Europe and internationally. This reflects the preference often expressed by clients and regulators in individual states for these clients to deal with locally based entities. Centralised portfolio management – achieved through intragroup derivatives transactions – then allows banks to manage risk in a consolidated way and allows regulators to scrutinise a consolidated risk position in the financial institutions that they supervise.

As we have stated previously, a clearing requirement for intragroup transactions would increase operational risk (because of the number of clearing transactions with the CCP that would ensue, for different entities) without enhancing counterparty risk management in material terms. We therefore

support efforts to establish an appropriately defined exemption from central clearing for intra-group transactions.

We also take this opportunity to highlight our recent work on CCP resolution. We appreciate the difficulty for policymakers to achieve optimal CCP resolution settings, the fact that no loss allocation system can avoid allocating potentially significant losses to participants and the genuine importance of this work to the safe implementation of mandatory central clearing for standard OTC derivatives. We await the imminent CPSS-IOSCO consultation on CCP resolution.

Exchange and electronic trading

Industry awaits the outcome of rulemaking in both the US and EU that will set the framework for trading venues that are eligible for satisfying the trading obligation. We continue to believe that that framework should accommodate diversity and that appropriate limits should be set on what is subject to a mandatory execution requirement, taking account of the liquidity of a particular contract or market. Indeed, geographical variation in the depth of OTC derivatives markets perhaps goes some way to explaining the differences in approach to this limb of the G20 commitment across different jurisdictions; there has been a certain degree of progress in Japan, and some more obvious progress in the EU and US, but even in the EU and US liquidity of OTC derivatives markets is neither absolute nor constant. We also particularly welcome the FSB's call for further work on the costs and benefits of public price transparency as comprehensive CBA work is missing in both the US and European context.

Capital requirements

ISDA has been closely following the international work on prudential treatment of exposures to CCPs, and notes the revised draft rules released by the Basel Committee's Risk Measurement Group (RMG) on 2 November 2011 ("BCBS 206"). Responses to the 2 November revised proposals ("BCBS 206") were provided on 25 November 2011. ISDA's response included another illustrative study to demonstrate the industry's concern with the employment of the CEM in the hypothetical capital calculation, which is used to measure the riskiness of banks' default fund exposures to CCPs.

In short, we remain concerned that the BCBS 206 proposals discourage the propagation of central clearing (counter to the G20's policy objective) and fail to provide incentives for CCPs to invest in the improvement of their risk systems and methodologies, thereby increasing systemic risk.

Following the November consultation, we understand that the Basel Committee on Banking Supervision ("BCBS") subsequently requested that the RMG form a dedicated working group together with representatives of CPSS and IOSCO to consider alternative capital treatment methodologies for the default fund exposure in order to address the unintended consequences resulting from mandating the CEM.

ISDA wrote to the RMG on 27 April 2012 to assist this work. This letter contained three parts. First, we offer credible potential alternatives to the CEM methodology. Second, it sets out key

considerations under separate subject titles regarding the capitalisation of default fund exposures, including an estimation of the size of the overstated CEM derived hypothetical capital requirement. An important related matter addressed is the fact that capitalisation for default contributions should be capped to the legal obligations of the bank. Third, we raise several matters, again under separate subject titles, which make it evident that the remainder of the work around the CCP framework is not just "work for the Qualifying CCPs and the CEM issue", but that there are additional hurdles to implementation. If these hurdles are not resolved shortly they will put back the date when capital efficient adoption of the framework can be achieved. As it stands, an implementation date of 1 January 2013 will cause significant capital drag in clearing and exchange-trading of derivatives.

We currently await feedback from the June BCBS meeting, where we understood the capital framework for CCPs was discussed once more.

Alongside capital standards for CCPs, we note that there is a significant level of on-going work on the prudential framework that applies to participants and activity in OTC derivatives markets, which ISDA is closely engaged in:

- In May 2012 the BCBS published the Fundamental Review and ISDA will be submitting its response by the deadline in September 2012.

- On 30 November 2011, BIS issued a Consultation Paper on the treatment of CVA and DVA for OTC Derivatives. ISDA responded[6] and has subsequently carried out a survey showing wide differences in the treatment of CVA and DVA in the industry. The industry met with members of the RMG in London on 29 May 2012 to present industry views and a follow up letter was submitted on 5 June 2012 setting out some methodology on which the Industry had reached agreement.[7]

- On 3 April 2012 ISDA responded[8] to the EBA, ESMA, EIOPA Joint Discussion Paper on Risk Mitigation Techniques for Trades Not Cleared by a Central Counterparty and will be responding to the BIS-IOSCO consultation on bilateral margin, as published on 6 July 2012. We are concerned about the potential impacts associated with proposals that have been put forward; indeed, our earlier impact assessment work on margin requirements for uncleared transactions, submitted to the CFTC in July 2011[9], indicated that additional margin required by the CFTC's proposed rulemaking could be as high as $1.0 trillion and hundreds of billions of additional liquidity would need to be secured for financial entities and dealers. We will be updating our analysis in the context of the BIS-IOSCO consultation. Additionally, returning to the issue of intra-group transactions, we firmly believe that margining requirements – if there are any – should be limited to variation margin.

[6] http://www2.isda.org/attachment/NDA0Mw==/ISDA%20BCBS%20214%20Letter%20and%20Response.pdf
[7] http://www2.isda.org/attachment/NDQ0NQ==/DVA_Index.pdf and http://www2.isda.org/attachment/NDQ0Ng==/DVA_Netting%20Set.pdf
[8] http://www2.isda.org/attachment/NDI3OA==/Response%20to%20EBA%20on%20Risk%20Mitigation%20Trades%20Not%20Cleared%20by%20CCP.pdf
[9] http://www2.isda.org/attachment/MzM2MA==/ISDA-SIFMA%20Uncleared%20Margin%20CFTC%20Comment.pdf

Extra-territoriality

As highlighted in the cover letter to this submission, we are concerned that progress on resolving issues of extra-territoriality has been slow. In previous submissions to the CFTC[10], we have outlined several broad principles, which we have adapted below for the consideration by regulatory authorities more broadly:

- Registration with a given regulatory authority should be on the basis of the business with customers in that jurisdiction, and it should be solely local customer business that is subject to any attendant regulation.

- To the extent registration is to be required, registration requirements should be adapted for overseas entities whose home countries have enacted and implemented comparable registration regulations that do not conflict with local regulations. In determining comparability, ISDA urges an "in substance" assessment of comparability that does not require a one-to-one matching of discrete regulations. So, for example, in circumstances where swap dealers are in some other capacity comprehensively regulated (*e.g.*, as a bank or broker-dealer authorized to deal swaps), and so in some fashion registered, the comparability requirement would be met. (Without deference to home country regulation, registration may be prohibitively expensive, operationally impractical and impossible to achieve within the time frame set for implementation. Such circumstances will promote regulatory arbitrage and separation of markets.)

- Where registration regulations in different jurisdictions conflict with one another, regulators should consider principles of international comity in determining whether and to what extent those entities should be regulated by authorities outside their home jurisdiction. Of course, the home country regulator has the greatest interest in, and is in the best position to, regulate such entities.

- Intergroup transactions should not count for purposes of determining whether swaps markets regulations apply. These are simply mechanisms for risk allocation within corporate groups, rather than new positions.

ISDA stresses that principles of restraint and regard for comity are vital in this context; the G20 commitments were underpinned by the acceptance that regulatory reform should not open the door to regulatory arbitrage nor cause greater fragmentation, hence clear, internationally consistent solutions to questions of extraterritoriality are necessary.

---

[10] http://www2.isda.org/attachment/MzM0NQ==/CFTC-SD-MSP-registration.pdf