ISDA Safe, Efficient Markets

July 24, 2013

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Dear Sir

Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts

1. **Introduction**: The International Swaps and Derivatives Association, Inc. ("**ISDA**")[1] is grateful for the opportunity to respond to the consultation paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts ("the **Consultation Paper**") released by the Monetary Authority of Singapore ("**MAS**") on June 26, 2013. Our response to the Consultation Paper is derived from these efforts and from consultation with ISDA members operating in Singapore and Asia. Individual members will have their own views on different aspects of the Consultation Paper, and may provide their comments to MAS independently. ISDA will continue to consult with its membership and we hope to be able to have continued dialogues with MAS on the nature and extent of these concerns as well as any other concerns that might be identified.

As there are a number of other jurisdictions that are scheduled to commence their reporting by the end of this year or early next year, such as Hong Kong, Australia and the Europe, the reporting commencement date of October 31, 2013 will be difficult to achieve due to resource constraints. We have listed below the challenges and bottlenecks the industry will face in meeting the October 31 reporting commencement date. We request the deferment of collateral reporting until 6 months after it has been implemented by the European Market Infrastructure Regulation ("EMIR"). This will allow issues to be worked out in Europe prior to implementation in Singapore.

[1]ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org.

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2. **Reporting of Specified Derivatives Contract**:

Challenges to meeting the reporting commencement date:

2.1 The reporting commencement date of October 31, 2013 provides a very short timeframe for the industry to meet their reporting obligations. There is a need to ensure the technology and infrastructure will be able to deliver the required information. There exist dependencies on service providers to deliver the reporting requirements as well as the technological builds required to report into a TR for those firms that do not currently report into any TR. Firms usually require at least 4 weeks to test the feeds via the User Acceptance Test ("**UAT**") and a subsequent 2 weeks for data staging.

2.2 Due to the multitude of jurisdictions requiring testing, firms will need to engage in concurrent simulation tests for these jurisdictions and resolve any IT-related issues arising from each jurisdiction with a limited bandwidth. Firms face resource constraints as these resources will need to be deployed for testing and implementing the various reporting regimes as well as the implementing and testing of the Singapore reporting regime. It will be extremely difficult for firms to meet an October 31 reporting commencement date. For firms that have not participated in trade reporting in any other jurisdiction, this may pose an even larger challenge.

2.3 The industry also utilizes middleware providers to deliver their reporting obligations, firms will need to coordinate and work with these middleware providers to meet the October 31st deadline. To a degree, there is a dependency by the industry on these middleware providers being able to deliver the required solution for trade reporting. These middleware providers may need to make modifications, which in turn, will require firms to test these modifications. Even for a simple concept such as transactions "booked in" Singapore, would require a modification by the middleware provider and will require time and resources by the industry to test these modifications. Additionally, these middleware providers may have committed resources to meet the reporting requirements in other jurisdictions such as Hong Kong, Australia and Europe and may not have the needed resources to accommodate the reporting requirement in Singapore. These middleware providers will need to be able to deliver a fully working and compliant version of their software in time for testing and before the 'go-live' date. Additionally, firms will need to ensure they have updated their existing interfaces with the various middleware providers.

2.4 Within a bank, there will be release windows whereby technology changes will need to be aligned and scheduled to. If Singapore moves closer to the implementation date of EMIR there is a possibility EMIR's implementation schedule has been given higher priority.

2.5 As the trade reporting requirements have not been finalized, there is an inherent risk of a significant amount of change required after the trade reporting requirements have been finalized from a technological perspective and service providers' perspectives. There is concern that the October 31 deadline will not allow sufficient time to conduct proper dress rehearsals and will compress cross-bank testing into a short time frame.

2.6 We would like to request for the reporting commencement date to begin, on October 31, 2013 with a 3 months grace period ("**the interim reporting period**"), to enable firms to begin reporting as the necessary technological changes are instituted in their firms. The industry requires some lead time from the issuance of the final guidelines before the trade reporting regime can be implemented. As you are aware, there are yearend freezes on information technology ("**IT**") changes, which will prevent a firm from making any IT changes at yearend. We would like to suggest the possibility of a contingency deadline to account for the possibility of a slippage in trade reporting commencement date. As different firms face different constraints, each firm will need to ascertain the amount of work required to implement the reporting requirement. As a result, not all firms will be able to meet the October 31 deadline and may require the additional 3 months period. These firms should not be penalized if they meet their reporting requirements within the 3 months period.

2.7 As firms will need to secure the required resources for testing and implementing the trade reporting requirements, we would like to request the proposed scope for the initial phase (as specified below) as well as the reporting commencement date be confirmed and communicated to the industry as soon as possible. If the proposed interim reporting period is acceptable, we request confirmation no later than end of August to allow firms sufficient lead time to develop, build and deliver the initial phase reporting scope.

Reporting Scope:

2.8 Due to the various reporting implementation timelines in other jurisdictions, the industry would like to propose a phase-in approach for the reporting requirements (also referred to as "**initial phase**"). By phasing-in the reporting requirements, this would allow the industry to begin reporting by the interim reporting period. Certain firms will still be unable to report by the interim reporting period and will approach MAS directly. We would like to recommend that all other reporting obligations that are not part of the initial phase be no later than July 1, 2014. We hope to be able to work with MAS on this front and to arrive at a mutually agreeable implementation date that would allow firms to be fully compliant with the Singapore reporting regime. We seek MAS's understanding in extending the deadline for the industry to provide feedback on the implementation timeline for the other reporting requirements and the reporting data fields that have been deferred to the later date. As an industry, the final trade reporting requirements will provide certainty regarding the information required and the corresponding infrastructure build and resource needed. However, due to the short timeframe, we are unable to provide the needed feedback on the data reporting fields and would strongly urge MAS to consult the industry before making those data fields mandatory. Similar to the Hong Kong reporting regime, we would like to request MAS considers an interim reporting framework for the initial phase until MAS has had the opportunity to consult with the industry on the other reporting requirements and data fields. MAS may also wish to consider deferring the reporting commencement date for other financial entities until after the initial phase has been implemented. This would allow any issues or problems to be resolved by the reporting parties in the initial phase before it is rolled out to the wider industry.

2.9 We request that only the US Commodity Futures Trading Commission's ("**CFTC**")

minimum Primary Economic Terms ("**PET**") data fields be reportable as an initial phase. As some firms are currently reporting to the CFTC, these firms have existing infrastructure to meet the US reporting requirements. Additional time, resource and infrastructure changes will be required to implement the reporting data fields that are not currently reported to the CFTC. The use of the CFTC mandatory data fields will allow these firms to leverage off their existing infrastructure and enable them to meet the interim reporting period. Even with the reporting of the CFTC minimum PET data fields, this will still require some system developments, such as a change to the internal reporting logic by the reporting entities and identifying transactions to be reported to MAS before the appropriate data can reported by the reporting commencement date. Firms may need to on-board new entities to their internal global reporting platforms and will need to ensure the connectivity of these entities to the middleware providers and TRs. As certain firms will be implementing a global solution for Singapore, it is important to ensure sufficient time for testing as this will minimize the associated delivery risks, such as ensuring a robust connectivity between the firms, middleware provider and the TR. Firms will also need to create a business requirement document ("**BRD**") for the TR, which defines how the TR product will interact with the firm's processes and systems as well as the BRD provided by the TR, which defines how the product works within the TR.

2.10 Additionally, firms who are not currently reporting to the CFTC will require more time, resource and infrastructure changes to implement these data fields that are currently not supported in their existing systems. These firms would not be a registered with the CFTC and would not be able to populate their trade reference identifier with a Unique Swap Identifier ("**USI**"). In such an instance, for the initial phase, we propose they be allowed to use their own trade reference identifier, although this will be dependent on the TR being able to accept that trade reference identifier in its existing form and not in a particular format. As the TR is unable to support the data fields proposed in the Consultation Paper by October 31 deadline, the firms who are not currently reporting to the CFTC, will need to build their infrastructure to meet the minimum CFTC PET data fields for the reporting commencement date. Further infrastructure build for the subsequent phasing-in of the other required reporting data fields will require time to build and implement.

Exclusions

2.11 The scope of reportable transactions should be limited to only vanilla products that are "booked in Singapore" that are CFTC reportable product types and based on the ISDA-defined taxonomy[2] as an initial phase.

2.12 To meet the deadline for the initial phase and the limited timeframe, we would like to propose the following optional exclusions. However, due to the different setup of the various firms, some firms may be able to report the exclusions and others may not. Hence for those firms that choose to report these exclusions, we respectfully request that no penalty apply to those firms.

[2] http://www2.isda.org/identifiers-and-otc-taxonomies/

2.13 We propose the exclusion of exotics over-the-counter ("**OTC**") derivatives products for the initial phase. For products under the Securities and Exchange Commission ("**SEC**"), we would like to propose that these products be reportable on an optional basis.

2.14 For initial phase, we also propose the exclusion of prime broker transactions, cleared transactions and transactions with the private banking division as such transactions may be captured in a different booking system and the linkage to a global reporting solution may not occur in time to meet the initial phase deadline. We propose optional reporting for the categories of transactions mentioned above.

2.15 For transactions that are "traded in Singapore" we propose that these transactions be excluded from the initial phase of the reporting requirement. We seek greater clarity in definition and a consistent application of this concept by the industry prior to it being implemented in the second phase.

Exemption of inter-branch and intra-branch transactions:

2.16 We believe inter-branch transactions (transactions between branches of the same legal entity); and intra-branch transactions (transactions between desks in the same legal entity) should be excluded from the scope of reportable transactions. Intra- and inter-branch transactions will contribute to double counting in position reporting and transactional details and would provide no additional benefit as these parameters will be captured under the legal entity that will be reporting their position and transaction-level data. We seek clarity from MAS on this issue.

Single-sided reporting:

2.17 The industry supports a single-sided reporting regime. However, due to the short timeframe allowed and the need to develop a reporting hierarchy for Singapore, we propose that firms are allowed to utilize the existing CFTC reporting hierarchy in the initial phase. As not all firms will be subject to the US reporting regime, we propose firms have the ability to either report all transactions booked to their Singapore entity until a reporting hierarchy has been put into place or to report the transactions according to the CFTC reporting hierarchy. For firms to be able to report all transactions booked to a firm's Singapore entity, will require enhancements by middleware providers to deliver this reporting solution. It should be noted that the use of the CFTC reporting hierarchy will result in certain transactions not being reported in the initial phase. For example: for a transaction between the US branch of a US swap dealer ("**SD**") and a Singapore specified person, if the CFTC reporting hierarchy determines that the US SD is the reporting entity, this transaction will not be reported in the initial phase as the US SD would not be obligated to report this transaction as it would not be a Singapore entity.

2.18 The reporting hierarchy should be based on the reporting hierarchy used in the US as it allows for consistency in the logic used to determine a reporting party across jurisdictions. Once the reporting hierarchy has been finalized, the single-sided reporting regime should be implemented with sufficient lead time for the industry to implement the Singapore reporting

hierarchy into their systems. Please note, due to the short timeframe and the need to develop a Singapore hierarchy, as the industry moves from the initial phase to single-sided reporting, a specified person will only be a reporting party to some of the transactions and its counterparty will be the reporting party for the other transactions.

UTI

2.19 The generation of the UTI requires a pre-agreement amongst counterparties as to which party to the transaction will generate the UTI. As this process requires time to setup and agree pre-trade, it will require additional time for firms to meet this reporting requirement. As such, for the initial phase, we would like to request that the UTI is not a mandatory data field. In situations when a UTI is not available, we seek clarity on an acceptable alternate form of a trade reference identifier. As an UTI may not always be generated at the time of execution or within the proposed T+1 timeframe, we seek clarity that in such instances a firm may use its own trade reference identifier until the UTI may be generated. Please note, this would mean transactions will not be matched and paired by UTI at the initial phase.

Reporting timeframe

2.20 We believe the proposed timing of reporting should be extended to two days, i.e. T+2 11.59pm Singapore time, after the execution, modification or termination of the transaction. This is to account for transactions which may be executed outside the trading business hours. As these transactions are traded late in the day, they may not make the end of day batch cycle and will need to be place in the following day's batch cycle. As firms may be reporting to a TR not located in Singapore, time zone differences with the end of day batch for a particular TR may result in a firm not being able to meet a T+1 reporting requirement. From an implementation perspective, if the reporting timeframe is specified to a particular jurisdiction, this would enable firms to use a single timeframe as opposed to applying multiple timeframes, depending on where the reporting party resides.

Back-loading

2.21 As mentioned earlier, back-loaded transactions should not include transactions which are "traded in Singapore" as firms would not have the necessary information to identify the transactions according to the "traded in Singapore" criteria. Consequently, we would like to propose that only "live" transactions as of the date firms begin reporting and are "booked in Singapore" will be back-loaded. We would also like to propose a snapshot of all transactions as of the date a firms begins reporting, without regard to maturity, be back-loaded. This would mean that any subsequent trade events for the transactions will not be captured in the back-loaded data. This would be consistent with the CFTC, Japan Financial Services Agency ("**JFSA**") and Hong Kong Monetary Authority ("**HKMA**") in their requirement for back-loaded transactions. For certain firms, they may not be able to populate certain data fields as the necessary information is not stored in their existing infrastructure. As such, infrastructure changes will be needed and may require manual updates for these back-loaded transactions.

Roadmap

2.22 As mentioned earlier, we would like to recommend that all other reporting obligations that are not part of the initial phase be deferred to a later date. We seek MAS's understanding in granting this deferral period as it would allow the industry time to carefully consider and evaluate the necessary developmental requirements on their end. We hope to work with MAS to achieve its policy requirements and attain a practicable implementation solution for the industry.

Clarifications: the industry seeks clarification on the items below:

2.23 For the reportable events during the transaction life cycle, we seek further clarification and guidance on what constitutes "modification". For example: would modifications such as assignments/ novations, change in swap end date, change in cash flows or rates or corporate action affecting securities or securities on which the swap is based be reportable? In the instance of a swaption being exercised upon exercise date, would the underlying swap be considered a "new" transaction or a "modified" transaction?

2.24 For the reportable events during the transaction life cycle, we seek further clarification and guidance on what constitutes "termination". For example: would the exercise of an Optional Early Termination transaction be a reportable transaction, or a partial or mutual unwind be a reportable transaction?

2.25 In the Fifth Schedule, one type of exempted persons is "any central government or agency of central government that is not incorporated for commercial purposes in a country other than Singapore"[3]. We seek clarification on whether sovereign wealth funds and foreign government pension funds will fall under the above definition.

Cleared Transactions

2.26 For cleared transactions, if a specified person chooses to report those transactions, our preference is to report the counterparty to the transaction at the time of the snapshot. Once a transaction as been accepted by a central counterparty ("**CCP**"), the CCP is the counterparty to the transaction. If the counterparty to the transaction, before it is cleared, is required, this will require enhancement to the IT systems as it would require firms to capture the "original" counterparty before the transaction has been accepted by the CCP. It would not be possible to report this data in the initial phase, if it is a requirement. Should cleared transactions be reported twice, for example: would the transaction between Bank A and Bank B be reported as a terminated transaction and the "new" trade between Bank A and CCP is reported? Or would one transaction between Bank A and the CCP be acceptable?

2.27 For transactions which are indirectly cleared, we seek clarification on what will be reportable. For example: Party A, which is the reporting party executes a transaction with

[3] Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013*, Section 2(1), Page 35, June 2013

Party B. Party A then novates this transaction to their clearing agent as an intra-branch novation, i.e., the clearing member for the CCP is another desk within the Party A's legal entity. In this instance, would Party A be required to report the terminated transaction between the reporting party and Party B if the clearing agent is not a specified person?

2.28 For reporting of cleared transactions, firms will need to check with the various CCPs to ensure they are able to report to the TR directly on behalf of the clearing members. If the CCP is unable to repot directly to a TR then time and resources will be required to built in the feed from these various CCPs for trade reporting.

3. Section 2(1) of the SF(RDC)R - Definitions:

Booked:

3.1 In the section 2(1) of the Draft Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 ("**SF(RDC)R**"), we would like to suggest that the term "booked" should refer to the specified person, as defined in Section 124 of the Securities and Futures (Amendment) Bill 2012 ("the **SFA Bill**"), being the contracting party to the specified derivatives contract. A simple test should suffice, such as if the transacting party is the Singapore branch of a foreign entity or a Singapore entity, this would be considered a "booked in" Singapore transactions. As the balance sheet contains a summary of a financial balances of a specified person on a specific date, depending on the tenure of the derivatives contract, this may not include derivatives contracts as it may be considered an off balance sheet item.

3.2 In section 125 of the SFA Bill, imposes a reporting obligation on a specified person "who is a party to a specified derivatives contract" or a specified person who is an agent of "a party" to a specified derivatives contract. Section 5(1) of the SF(RDC)R states that "for the purposes of the definition "specified derivatives contract" in section 124 of the Act, the following derivative contracts are prescribed as specified derivatives contracts - (a) a derivatives contract or class of derivatives contract listed in the First Schedule and is traded in Singapore by a specified person; or (b) a derivatives contract or class of derivatives contract listed in the First Schedule and is booked in Singapore by a specified person". As a party is undefined, we seek further clarification on a "party" will interact with the concept of "booked in Singapore". For example: if "booked in Singapore" means the balance sheet of the party, then under the reporting obligation 125(1), would this mean the transaction must be booked on the balance sheet of the specified person and the specified person must be a party to the contract? This concept does not translate well to an agent as it then infers that the transaction must be booked onto the balance sheet of the agent and the agent is a party to the specified transaction.

Business Day:

3.3 The term "business day" in Section 2(1) of the SF(RDC)R is not necessary as it is defined in Section 8(6)(a) and 8(6)(b) of the SF(RDC)R. We would like to suggest either the removal

of the term "business day" in Section 2(1) or it should contain the same definition as stated in Section 8(6)(a) and(b).

Credit Derivatives Contract and Interest Rate Derivatives Contract:

3.4 We understand that the intent is not to cover securitized products such as: credit linked notes and bonds. We seek clarity that securitized products will not be categorized as a credit derivatives contract or an interest rate derivatives contract. We seek clarity if participatory notes, which are fully funded, non-leveraged and listed should be included in the definitions of "derivatives contract".

3.5 The term "credit derivatives contract" in Section 2(1) of the SF(RDC)R has the meaning of a contract "related to a credit or credit-linked instrument or whose cash flows are determined by reference to an underlying bond, loan or other credit agreement"[4]. We seek clarity on what will be considered a credit-linked instrument.

3.6 The definition of a "derivatives contract" in Section 2(1) of the SFA Bill excludes any securities or any futures contract[5], however, part (c) and (d) of the definition of "securities" in Section 2(1) of the Securities and Futures Act ("the **SFA**") includes any right, option, derivatives and rights under a contract for difference. Part 2(1) of the SFA states that:

"securities means -
(c) any right, option or derivative in respect of any such debentures, stocks or shares;
(d) any right under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in –
(i) the value or price of any such debentures, stocks or shares;
(ii) the value or price of any group of any such debentures, stocks or hares, or
(iii) an index of any such debentures, stocks or shares;[6]"

However, under the SFA Bill, "option contract"[7] and "swap contract"[8] excludes securities. As such, the exclusion of "securities" from the "option contract" and "swap contract" is circular and does not work. However, under the SFA Bill, the definition of "forward

[4] Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013*, Section 2(1), Page 3, June 2013.

[5] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 2(1), Page 5.

[6] http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%2225de2ec3-ac8e-44bf-9c88-927bf7eca056%22%20Status%3Ainforce%20Depth%3A0;rec=0, Securities and Futures Act, Section 2(1).

[7] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 2(1), Page 7-8.

[8] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 2(1), Page 9.

contract"[9] does not exclude securities and will need to be amended to include the exclusion of securities. The same issue will arise for "forward contract" if the amendment to exclude securities is added. For the definitions of "securities" to be used in Section 2 of the SFA, limbs (c) and (d) need to be carved out. There is no carve out for "forward contract"[10] in Section 2 of the SFA Bill and this should be amended to include the exclusion of "securities".

Forward Contracts

3.7 We seek clarification that physically-settled commodity transactions will be out of scope of the trade reporting regime. Section 2(1) of the SFA Bill states:

"forward contract" –

(a) Means a contract under which one party agrees to transfer title to a specified underlying thing, or a specified quantity of a specified underlying thing, to another party at a specified future time and at a specified price payable at that time, whether or not there is any intention –
   (i) To effect an actual delivery of the underlying thing;
   (ii) To effect a settlement of any difference in the price or value of the underlying thing or, if the contract relates to 2 or more underlying things, of any difference in the price of one or more of the underlying things' or
   (iii) To effect a settlement determined with reference to the underlying thing or, if the contract relates to 2 or more underlying things, determined with reference to one or more of the underlying things; but

(b) Does not include a futures contract;"[11]

As the definition of "forward contracts" may include physically-settled commodity transactions, we would like to propose to MAS to exclude physically-settled commodity forward transactions from the reporting requirement. This would be consistent with the approach taken by the CFTC which excludes "any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled"[12].

Foreign Exchange ("**FX**") Derivatives Contracts

3.8 We seek clarification that FX spot transactions will be excluded from the scope of reportable transactions.

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[9] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 2(1), Page 6.

[10] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 2(1), Page 6.

[11] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 2(1), Page 6.

[12] http://www.law.cornell.edu/uscode/text/7/1a, *The Commodity Exchange Act*, Section 7 U.S.C. 1a(47)(B)(ii).

Maturity:

3.9 We would like to suggest the addition of "in accordance with its terms" to the definition of "maturity" in Section 2(1) of the SF(RDC)R. This would provide clarity that the maturity is calculated with reference to agreed termination dates.

Traded in Singapore:

3.10 In the SF(RDC)R, the term "traded in Singapore" is defined as "the execution of the specified derivatives contract by the trading desk that is physically located in Singapore of the specified person" [13]. As different firms have different setups depending on the functionality and business unit of the bank, for example, within the investment banking business unit, there will be instances in which the trader is part of a "trading desk" across jurisdictions and not limited to Singapore only. In such an instance, the trades executed by this trader will not be captured as the trading desk is not physically located in Singapore. Conversely, if this "trading desk" is considered as physically located in Singapore, then as part of the reporting requirement, it will then capture the trades executed by traders in other locations but belonging to the same desk.

3.11 The concept of trading desk may not extend into the private banking world as the setup for that type of business unit tends to be different from the investment banking unit of a bank. The concept of trading desk may also not apply to holders of capital markets service license ("**CMSL**") as they currently do not report their transactions based on the MAS 610 and may be setup differently from a bank.

3.12 As such, we seek further clarity on the definition of "traded in Singapore" and we believe examples may be able to provide additional clarity for this concept. This would allow the industry to have a consistent understanding of the concept "traded in Singapore" and would allow the industry to implement a consistent approach across the market. As further clarity and understanding is required, we believe the "traded in Singapore" reporting requirement should be deferred to a later date. We would like to request the reporting requirement for transactions "traded in Singapore" be excluded from the initial phase. MAS may wish to consider the approach taken in Hong Kong, whereby only "booked" transactions are mandated for an interim period. While we understand the need for the "traded in Singapore" concept, it is equally important that the concept of "traded in Singapore" is operationally practicable. We hope to work with MAS to achieve its policy requirements and attain a practicable implementation solution for the industry.

3.13 Here are some examples in which we seek guidance on the "traded in Singapore" concept
(a) if a Singapore trader books a transaction onto the London branch of the bank and this transaction was subsequently re-booked by a London trader to the New York branch of the bank, would this transaction and subsequent re-booking be reportable?
(b) a transaction is executed by a Singapore trader and booked into the London branch of the

[13] Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013*, Section 2(1), Page 4, June 2013.

bank. Subsequently, this trader moves to London, will this transaction still be reportable in Singapore?

(c) if a trader is employed by a bank based in Singapore but is located in another jurisdiction and books into the London branch of the bank, would this be a reportable transaction?

(d) if a trader from another branch of the bank is posted to Singapore on a short term basis or vice versa, would the Singapore branch of the bank be required to report these transactions?

3.14 As mentioned in Section 2.2 of this paper, as Section 125 of the SFA Bill imposes a reporting obligation on a specified person "who is party to a specified derivatives contract" or a specified person who is an agent of "a party" to a specified derivatives contract, we seek clarity in how the concept of "party" would interact with the concept of "traded in Singapore". For example: if a trader located in Singapore books a transaction in the bank's London branch, would this trader in Singapore be captured as a "party"? The bank's Singapore branch would not be the contracting party to the transaction to the transaction as it would be the London branch of the bank any may be argued as not being the "party" to this particular transaction and therefore not a transaction that is "traded in Singapore".

3.15 Section 125(3)(c) of the SFA Bill specifies the conditions in which a specified person acting as agent enters into a specified derivatives contract. In such an instance, is the intent for the agent to meet the provisions in Section 125(3)(c) and the "traded in Singapore" concept?

3.16 As different firms are setup differently, we have some concerns with the concept of "traded in Singapore", particularly in relation to identifying transactions that are reportable under the reporting obligation. As firms are currently not reporting interest rate and credit derivative transactions based on the "traded in Singapore" concept, time, resource and infrastructure build will be needed to identify these transactions for reporting to a TR). Consequently, back-loading of transactions based on the concept of "traded in Singapore", will not be possible as a firm would not have the necessary information to identify the relevant transactions. Given the need to begin reporting in jurisdictions such as Australia and Hong Kong by the end of 2013, there is a concentration in operation risk as these jurisdictions and Singapore will be 'go live' at about the same time period.

4. **Non-Financial Specified Person ("NFSP")**:

4.1 We seek clarification on the calculation of the reporting threshold amount for a NFSP in Section 6(2)(a)(iii) of the SF(RDC)R. Is the reporting threshold applied individually to the aggregate gross notional of specified contracts "booked in Singapore" and "traded in Singapore" or should the reporting threshold apply to both the "booked in Singapore" and "traded in Singapore" transactions.

4.2 We seek clarification on how the quarter-end figure is calculated in Section 6(2)(b) of the SF(RDC)R. Will this be calculated for all specified derivatives contracts "booked in" and

"traded in" Singapore during a quarter or still outstanding as at the end of a quarter, i.e., a "snap-shot" of all specified derivatives contract on the last day of the quarter.

4.3 In Section 6(4) of the SF(RDC)R, a person may cease to report their transactions if his aggregate gross notional amount of specified derivatives contracts is "traded in" and his aggregate gross notional amount of specified derivatives contracts is "booked in" Singapore. If the intent in 6(2)(iii) of the SF(RDC)R is to aggregate both "booked in" and "traded in", then the test applied to the cessation of trade reporting should also apply to the aggregate of both "booked in" and "traded in". As it is currently drafted, it infers that the cessation test is applied separately. In such an instance, how would the threshold be calculated if a transaction is both "booked in" and "traded in" Singapore? We seek clarity on the calculation methodology for the cessation of trade reporting.

4.4 Section 8 of the Consultation Paper states that a NFSP will report transactions according to the data fields in the Third Schedule while a specified party will report according to the data fields in the Second Schedule. In the instance whereby a NFSP delegates its reporting requirement to a bank, we seek clarity that the bank will be allowed to report the NFSP's transactions according to the Second Schedule. As the reporting systems will be configured to meet the requirements of a specific schedule, it would impose additional developmental work to identity and report the NSFP's transactions in a different format.

5. **Drafting Issues**:

5.1 Section 9(1) of the SF(RDC)R, should be amended to extend to specified persons acting as agent of a party to the specified derivatives contract as stated in Section 125(2) of the SFA Bill, where the party is a person specified in the Fifth Schedule or its counterparty is a person specified in the Fifth Schedule. As it is currently worded, an agent who is a specified person who enters into a specified derivatives contract as agent of an entity exempted in the Fifth Schedule will still be required to report that transaction.

5.2 For Section 1(d), 2(d), 3(d), 4(d) and 5(d) of the SF(RDC)R, we seek clarification that the term "modification" to the specified derivatives contracts should include any termination of the specified derivatives contract.

5.3 In paragraph 19 of the Consultation Paper, there is a typographical error, i.e., financial entities should commence reporting on 31 January 2014 instead of 31 January 2013. For NSFPs, the date should be 30 April 2014 instead of 31 April 2013.

5.4 In paragraph 8(2)(b) and 8(4)(b), it should refer to the Third Schedule instead of Second Schedule for a NSFP.

5.5 We would like to suggest adding the term "whichever is earlier" to Section 4(1) of the SF(RDC)R, to read as "every specified person shall ensure that all relevant books and other information as may be required by the Authority for the purposes of the Act, including transaction information, as the case may be, are kept for a minimum of 5 years, whichever is

earlier"[14].

6. **Client Consent**:

6.1 The industry strongly supports legislative changes to allow banks to report client identifying data without breaching banking confidentiality. It would aid the industry greatly if MAS were to provide temporary exemptions to banks to report counterparty identifiers on a masked basis in the interim period from the trade reporting commencement date to the effective date of any legislative amendment to the Banking Act to provide statutory exemption for trade reporting purposes. We seek confirmation that counterparty consent granted under the ISDA 2013 Reporting Protocol[15] will be sufficient for firms to report counterparty identifiers for the purposes of trade reporting.

6.2 For transactions which are "traded" but not "booked in" Singapore, it is possible that a Singapore branch of a foreign bank may be asked to report transactions booked in its sister branch or head office. In such an instance, the Singapore branch of the foreign bank may not have obtained the necessary consent from the counterparty as it is not the client of the Singapore branch of the foreign bank. In such an instance, would masking be allowed?

6.3 For trades which are subject to the governance of overseas regulations and there exists an impediment for a reporting entity to report such transactions to Singapore. We request consideration be given to allow the masking of counterparty identifiers when a reporting entity holds reasonable belief that statutory or regulatory provisions will preclude the reporting of counterparty identifiers. The request for masking will be based on a consistent approach by the reporting party in its application to all other foreign reporting requirements. In certain jurisdictions, a regulator may only verbally indicate that trade reporting to a foreign regulator is not allowed, in such instances, a legal opinion will not be able to capture the impediment to the reporting of client data.

6.4 For counterparty's who do not agree to disclosure of their counterparty identifiers, we seek the ability to mask these particular counterparty identifiers' on a case-by-case basis.

6.5 In instances in which client consent has not yet been obtained, we request the masking of the counterparty identifiers of these transactions for back-loaded transactions.

7. **Substituted Compliance**:

7.1 The industry supports substituted compliance. We encourage MAS to work with other regulators in the region to attain substituted compliance for their respective jurisdictions.

[14] Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013*, Section 2(1), Page 4, June 2013.

[15] Please refer to http://www2.isda.org/functional-areas/protocol-management/protocol/14

Given that foreign firms will be subject to reporting obligations in their home jurisdiction, the ability to apply substituted compliance will reduce the implementation costs as these firms will not need to undertake additional developmental costs and may rely on their home jurisdiction reporting requirement. Substituted compliance will also reduce potential duplicative reporting, particularly for cross border transactions.

7.2 Pursuant to Section 128 of the SFA Bill, a specified person may access substituted compliance only if (a) it complies with the reporting regime of its counterparty and (b) the jurisdiction of the counterparty has been a "relevant reporting jurisdiction"[16]. This limits substituted compliance as a specified person and their counterparty have to be from the same jurisdiction before substituted compliance is recognized. For example: if we assume there is substituted compliance with Australia and an Australian entity transacts with a European entity and books the transaction in Singapore, the Australian party to this transaction would not be able to rely on substituted compliance even if it complies with the Australian reporting regime. We would like to propose that the substituted compliance be amended such that a specified party will be able to rely on its home jurisdiction's reporting regime and apply it's home jurisdiction to all its counterparties regardless of where the counterparty is located. As MAS has yet to specific any foreign jurisdiction as a "relevant reporting regime", we respectfully request a list of "relevant reporting jurisdictions' be published by MAS. This would enable the Singapore branches of foreign banks to apply for substituted compliance, where appropriate, prior to the commence of the reporting regime in Singapore.

7.3 Section 20 of the SF(RDC)R states that substituted compliance is "predicated on MAS having full access to data reported by such person under a comparable reporting regime"[17]. If such power is exercised, we seek clarification from MAS that reporting to a foreign jurisdiction via a TR would be sufficient. For example: the data being reported under the CFTC reporting regime via DTCC would suffice or would these transactions need to be 'tagged' as trades subject to the MAS reporting obligation.

8. **Queries on information required in the Second Schedule**:

8.1 We seek clarity on certain data fields in the Second Schedule. We would like to request additional time to study these data fields in greater detail. The queries listed below are based on initial feedback only.

8.2 We seek clarity on which of the data fields are mandatory data fields and which are optional data fields. In certain situations, it may not be possible to populate a particular data field, for example: for the data field "date of confirmation", this will be difficult to ascertain the exact timing particularly for paper confirmations, as this may only be available when the

[16] http://www.parliament.gov.sg/sites/default/files/Securities%20and%20Futures%20(Amendment)%20Bill%2031-2012.pdf, Securities and Futures (Amendment) Bill 2012, Section 128, Page 132.

[17] Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013*, Section 2(1), Page 7, June 2013

confirmation has been affirmed and some systems do not track this information.

8.3 For the UTI, will block trades be reportable? If so, will there be a need to create a UTI for the block trade if allocations do not occur within the reporting timeframe? We propose that this data field should not be a mandatory data field at this time.

8.4 In the event of compressions, which UTI should be used? DTCC uses an event ID to link the trades.

8.5 If the LEI is not available, we propose to use SWIFT BIC, AVOX ID, DTCC ID or the internal counterparty ID as an alternative.

8.6 We seek clarity on the information required for the data field "Identity of Beneficiary", for example: if payment is made to a third party who is not a party to the transaction, would this be considered the beneficiary? If there is more than one beneficiary, would a list of beneficiaries be allowed? For certain products that are sold to retail clients, the trade is booked on a consolidated level and not on an individual level based on each individual retail client. The Treasury's booking system may not capture the individual client names as the transactions are booked on a consolidated level. There are challenges in populating this data field as the beneficiary information for trust and funds may not be readily available or feed into the reporting platform. We propose the data field "Identity of Beneficiary" be removed or included as an optional reporting data field as there are significant technological and/or operational impediments in obtaining such data.

8.7 As there are different types of brokers such as prime brokers, executing brokers, intermediary brokers, clearing brokers and voice brokers, we seek clarity on which broker should be reported for the data field "Identifier for Broker or Specified Person".

8.8 We seek clarity on the information need to populate the data field "Price/Spread". For example: for an IRS with a Libor +10bps, would the spread of +10bps be the information required? As for FX options, price is usually quoted in terms of volatility, would this be what is reportable? For FX options, the volatility agreement is usually not recorded in the booking system and is usually an agreed price between the traders. There will also be instances where the price is agreed verbally between two traders and will not be captured in the booking system. For credit derivatives, would the premium be acceptable as a "price/spread"? For options, would the strike price be acceptable? For interest rate derivatives, would fixed rate be acceptable?

8.9 We seek clarity on the information required for "Execution Timestamp". When a contract is not executed on a trading venue, what information will be required in such an instance?

8.10 For back-loaded transactions, information on "Date of Confirmation" may not be possible as this information may not have been captured for historical transactions. For paper confirmations, would the "Date of Confirmation" be the date on which the confirmation is sent to the counterparty or the date on which the counterparty affirms the transactions. As not all counterparties will affirm their transactions in a timely manner, it will not be difficult

to populate this data field by the reporting timeframe. Additionally, in certain asset classes, such as foreign exchange ("**FX**") transactions, confirmations are sometimes exchanged and not affirmed, particularly for transactions between banks. We would like to propose that the "Date of Confirmation" data not be a mandatory field.

8.11 We seek clarification on the information required for the "Identifier of Execution Venue". When a transaction is executed via a broker but not executed via voice, would this data field be populated by the broker's LEI or pre-LEI, if available?

8.12 We seek further clarity on the data field "Whether The Contract Is Verified". We are not certain what information is required, i.e., is there an expectation that transactions executed via voice or electronic on an execution venue are required to be verified?

8.13 For the "Clearing Timestamp" data field, we seek clarity that this would be the date and time of novation of a transaction to a CCP.

8.14 We seek further clarity on the data field "Grade" and the information required to populate this field.

8.15 As the data field "Master Agreement date and type" is a field required under EMIR, we request that this data field be reportable after EMIR's implementation as well. Please note it would be an operational challenge to indicate the exact timing for master agreement date as most booking systems do not track when the master agreement was signed or the type of master agreement signed. For example: if the date of agreement is July 1, 2013 but the master agreement was signed at a later date, which date is the master agreement date to be reported?8.17 For the data field regarding collateral, would the internal counterparty code assigned to the counterparty be sufficient? As collateral information is also required under EMIR, we would like to request the implementation of collateral occur after EMIR has implemented its collateral reporting requirement. This would allow the issues that arise from the EMIR implementation to be resolved prior to implementation in Singapore.

8.16 We seek clarification for the data field "Collateral Portfolio Code for Specified Person" to mean the counterparty as the specified person or the reporting party as the specified person?

8.17 We seek clarity on the information to be provided for the data field "Value of Collateral for the Specified Person". Depending on the firms' setup, some firms handle collateral on a global level for a particular counterparty. Consequently, it would be difficult to provide collateral data even at a branch level as this information only exists on a consolidated global level.

8.18 For the data field "Currency of Collateral Value for Specified Person", if more than one currency used for a portfolio of transactions, should all the currencies be reportable or converted to a single currency? If a securities are used as collateral, would the notional of the security be the reportable information in this field?

8.19 For the data field "Level of Collateralization", in situations where the collateral threshold is

zero but the Minimum Transfer Amount ("**MTA**") (for example: USD 250,000), and only exposures in excess of the MTA needs to be collateralized, will this be considered a partial collateralization?

ISDA appreciates the opportunity to provide comments on the proposed trade reporting regime in the Consultation Paper. If you have any questions on this submission, please contact Cindy Leiw (cleiw@isda.org, +65 6538 3879) or Keith Noyes (knoyes@isda.org, +852 2200 5909) at your convenience.

Yours faithfully,
For the International Swaps and Derivatives Association, Inc.

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