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September 12, 2011

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Re: Canadian Securities Administrators (CSA) Consultation Paper 91-402 on Derivatives: *Trade Repositories* (the TR Consultation Paper)

The International Swaps and Derivatives Association, Inc. (**ISDA**)[1] welcomes the opportunity to respond to the Consultation Paper published by the CSA on June 23, 2011 setting forth the CSA Derivatives Committee's (**Committee**) framework for proposed

[1] Since 1985, ISDA has worked to make the global over-the-counter ("OTC") derivatives markets safer and more efficient. Today, ISDA is one of the world's largest global financial trade associations, with over 800 member institutions from 56 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.

Information about ISDA and its activities is available on the Association's web site: www.isda.org.

rules for the reporting of over-the-counter (**OTC**) derivatives transactions and the operation of trade repositories. We are pleased to share these comments with the CSA, in addition to our comment letter[2] submitted to the CSA in connection with Consultation Paper 91-401 setting forth the CSA Derivatives Committee proposals regarding the regulation of OTC derivatives (the **OTC Derivatives Consultation Paper**).

ISDA is actively engaged with providing input on regulatory proposals in the United States, the United Kingdom, Europe and Asia. Our responses to the questions posed in the TR Consultation Paper are derived in part from these efforts and from consultation with ISDA members operating in Canada and build upon our comments in the January 2011 Comment Letter. Our comments are organized as follows:

- Section I discusses the advantages of, and prospect for, establishing a single global trade repository for each asset class of derivatives.
- Section II presents our suggestions for future action relating to block trade exception rules, which we regard as a critically important element of any trade reporting regime. This section will consider TR Consultation Paper Questions #3 - 6.
- Section III addresses reporting of trade information in real time and considers TR Consultation Paper Question #2.
- Section IV addresses certain other considerations raised by the TR Consultation Paper.

I. Global Trade Repositories

ISDA agrees with the Committee that the availability and transparency of transaction and aggregate market data information is one of the most important components of OTC derivatives regulatory reform. As noted in the OTC Derivatives Consultation Paper, the industry has made significant strides in establishing and using trade repositories. In fact, since publication of the OTC Derivatives Consultation Paper, ISDA has led industry efforts to further enhance trade reporting. For example, the ISDA Commodities Steering Committee (**CMSC**) has chosen Depository Trust & Clearing Corporation (**DTCC**) Deriv/SERV and EFETnet to partner with the CMSC on the next stage of development of the Commodity Derivatives Trade Repository and the ISDA Rates Steering Committee (**RSC**) has chosen DTCC to partner with the RSC on the next stage of development of the Interest Rate Trade Repository.

[2] Letter from ISDA to the CSA dated January 14, 2011 may be found at http://www2.isda.org/regions/canada/ (**January 2011 Comment Letter**).

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These efforts have been undertaken with a view to providing a single global trade repository for each asset class of derivatives accessible by all regulators. Many of the provisions on reporting transactions in various jurisdictions are conceptually similar but differ in specific implementation. Because market participants will have significant issues complying with multiple sets of regulations if applied to the same transactions, we urge the policymakers to seek international harmonization in derivatives regulation through memoranda of understanding (**MOU**) or other international cooperative measures. We are concerned that without such international outreach there could be an unhelpful drain on regulatory resources as different regulators seek to regulate overlapping parts of the global derivatives business. To this end, the U.S. Commodity Futures Trading Commission (**CFTC**) in its recently released Final Rules Regarding Registration and Regulation of Swap Data Repositories (**Final Rule**)[3] outlined procedures for foreign regulators to gain access to the data held and maintained by trade repositories subject to CFTC oversight (**SDR**). Significantly, the rules discussed below appear to be very much in line with the Committee's recommended approach to supporting foreign regulator access to Canadian trade repository data to assist them in achieving their regulatory, supervisory, and oversight responsibilities outlined in Section 4.3 of the TR Consultation Paper.[4]

The Commodities Exchange Act broadly requires a registered SDR, upon request and after notifying the CFTC, to make available all data obtained by the registered SDR, to "Appropriate Foreign Regulators." As clearly detailed in the Final Rule, the Appropriate Foreign Regulator term is defined by reference to foreign regulators with an existing MOU or other similar type of information sharing arrangement executed with the CFTC. A foreign regulator without an MOU with the CFTC may be deemed an "Appropriate Foreign Regulator" by the CFTC on a case-by-case basis. Importantly, the Final Rule significantly amends the proposed rule to facilitate Appropriate Foreign Regulator access to SDR data. For example:

- The proposed rule required an Appropriate Foreign Regulator when filing a request for access to set forth in sufficient detail the basis for its request. The Final Rule merely requires an Appropriate Foreign Regulator to certify that they are acting within the scope of their jurisdiction.

[3] 76 Fed. Reg. 54538 (September 1, 2011). The Final Rule may be found at the CFTC's website: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-20817a.pdf.

[4] "Foreign regulators will be approved for access to a Canadian trade repository provided that they are party to an international agreement such as an information sharing memorandum of understanding with the appropriate Canadian regulator or if they have been otherwise approved for access based on statutory authority in the regulators home jurisdiction and have appropriate policies for maintaining data confidentiality. The Committee recommends establishing cooperation agreements with regulators of foreign countries whose legal and supervisory frameworks for trade repositories are equivalent to those in operation in Canada."

- The proposed rule required an SDR to provide access to the requested swap data *only if* the SDR is satisfied that the Appropriate Foreign Regulator is acting within the scope of its authority. The Final Rule eliminates this limitation on regulator access by requiring an SDR to grant access to SDR swap data once the SDR notifies the CFTC of the request.

It is important to note that prior to receipt of any requested data or information from a registered SDR, an Appropriate Foreign Regulator must execute a "Confidentiality and Indemnification Agreement" with the registered SDR. This might lead home country regulators to prefer having their own trade data repositories.[5] However, the CFTC also noted that section 752 of the Dodd-Frank Act seeks to ''promote effective and consistent global regulation of swaps'' and provides that the CFTC and foreign regulators ''may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest."[6] Cognizant of these considerations, the Final Rule provides that "confidential swap data reported to, and maintained by, an SDR may be appropriately accessed by an Appropriate Foreign Regulator without the execution of a Confidentiality and Indemnification Agreement when the Appropriate Foreign Regulator is acting in a regulatory capacity with respect to an SDR that is also registered with the Appropriate Foreign Regulator" as well as other arrangements that would allow an Appropriate Foreign Regulator to access SDR data without the execution of the Confidentiality and Indemnification Agreement.[7]

Notwithstanding the above, the industry recognizes that certain considerations, such as the possibility that no suitable trade repository will be developed for certain derivative transactions entered into by Canadian counterparties, might lead Canada to prefer having its own trade repository. If the development of a local data repository is pursued, it is critical that the data it requires uses the same format and parameters as that of other global trade repositories. Further, the ability to accept trade feeds from global trade repositories so that market participants can efficiently feed their trade data through one channel is crucial.

If a local trade repository requires market participants to provide the trade data separately, not utilizing the global trade repositories, it is important that the local trade repository allows trade feeds from existing commonly used electronic confirmation platforms. The trade data that is required should also specifically follow global standards,

[5] The CFTC acknowledged in the Final Rule at 54544 that "the Confidentiality and Indemnification Agreement requirement set forth in section 21(d) and § 49.18 may be difficult for certain domestic and foreign regulators to execute with an SDR due to various home country laws and regulations."

[6] Final Rule at 54544.

[7] Id.

as this will lead to significant cost savings for all market participants and reduce the risk of errors associated with transmitting, aggregating and analyzing multiple sources of potentially incompatible trade data.

We also urge policymakers to minimize duplicative reporting, recordkeeping and other requirements in overlapping regulations. Avoiding overlap is important with respect to reporting, particularly if the overlapping data cannot be easily reconciled. In the absence of international coordination to reduce redundant reporting or, where unavoidable, the establishment of standard data so that redundant records can be easily reconciled, overlapping and inconsistent reporting regimes may result and serve to obfuscate rather than clarify the true nature and size of the global derivatives markets for international regulators. We strongly encourage global regulators to cooperate with one another in order to devise systems that efficiently operate together and provide each such regulator with access to the data that is relevant to the performance of its responsibilities.

For the reasons outlined above and in our January 2011 Comment Letter, we believe leveraging a single global trade repository to the maximum extent possible is superior to multiple, regionally based trade repositories and that a workable global framework is well within reach.

Lastly, we agree with the Committee's recommendation that provincial securities or derivatives legislation be amended to include approved trade repositories in the definition of market participant as this would enable regulators to exercise oversight over the trade repositories.

II. Block Trades: Exception to Real Time Reporting

Question #3: What is the appropriate block trade threshold for the Canadian market?

Question #4: What is the appropriate publication delay for block trades?

Question #5: Would a uniform block trade threshold across asset classes be acceptable or should thresholds be determined based on asset class? If block trade thresholds should be determined based on asset class, what thresholds would be suitable for specific asset classes?

Question #6: If block trade thresholds are determined by asset class and given the changes inherent in liquidity conditions, how often should these be assessed? (As per the CFTC's two tests proposal for example?)

As we detailed in our January 2011 Comment Letter, ISDA considers the development of appropriate block trading exceptions from the requirement for real time

public dissemination of OTC derivative information to be of critical importance to the successful implementation of real time reporting of data. ISDA welcomes the Committee's recognition that any reporting regime should seek to balance the benefits of post-trade transparency against the harm that may be caused to market participants' ability to hedge risk based on this disclosure. ISDA also supports the Committee's recognition that minimum block trade size thresholds, reporting delays, and limited disclosure of transaction data may be used, in combination with one another, to balance transparency and liquidity.

Our January 2011 Comment Letter discusses the relationship between transparency and liquidity and we appreciate the Committee's acknowledgment of that relationship in the TR Consultation Paper. The following builds on the general comments we previously provided in an attempt to inform and guide future study of the development of an appropriate block transaction exception framework.

A. General Recommendations

In defining block trade exception rules, market governing bodies have three general mechanisms at their disposal: (1) minimum block trade size thresholds, (2) trade reporting delays, and (3) limited disclosure. Section 1.3 of the Block Trading Study describes these mechanisms as follows:

> Minimum block trade size thresholds – By definition, block trade exceptions require clear definitions of the criteria that qualify transactions as block trades subject to special reporting requirements. This threshold or "minimum block size" is commonly a function of the average trade size or the cumulative distribution of trades for a specific instrument. Market regulators frequently target a percentage of transactions that will qualify as block trades, but also take into consideration a wide range of market factors (e.g. average daily trade volume).
>
> Trade reporting delays – Reporting delays of appropriate length allow market participants to hedge the market risk of block trades during the delay period. The delay mechanism is most effective when instruments or contracts are very liquid and either fungible or highly standardized, and minimum block sizes are set at reasonable levels. If these requirements are met, participants are able to hedge entirely the market risk of block trades during the reporting delay.
>
> Limited disclosure – Many products do not have sufficient liquidity to ensure that risks from a block trade can be sufficiently hedged during a relatively short reporting delay period. In many cases, markets permit participants in block trades to report limited information regarding block trades. The most common form is a volume dissemination cap – the market is informed that a transaction above the cap has occurred, but not the exact size of the transaction. Markets may also grant

volume dissemination caps for more liquid products in cases where the block trade is a multiple of the block minimum. The limited disclosure mechanism ensures that price discovery remains intact for block trades while protecting post-block trade hedging needs from being anticipated by other market participants.

To develop appropriate and well-calibrated block trading exceptions from real time public dissemination of OTC derivative information, ISDA believes that significant detailed research on swap markets, in this case focusing on the Canadian OTC swap market, must be performed before the appropriate block size threshold and reporting delays for particular swap transactions can be determined. The *ISDA/SIFMA Block trade reporting for over-the-counter derivatives market study* (**Block Trading Study**)[8] was prepared by ISDA and the Securities Industry and Financial Markets Association (**SIFMA**) to begin the research process. It explores the goals of transparency, the importance of block trade reporting exceptions and the experience of other markets with transparency regimes and then uses trade-level data to identify unique characteristics of the OTC interest rate and credit derivatives markets. ISDA believes that, while the Block Trading Study is a significant contribution to the analysis undertaken to date on this subject, substantial additional research into appropriate block trade exceptions is still required. To this end, we strongly support the Committee's intention to collect and analyze additional data on the Canadian OTC swap market.

ISDA recommends that the analysis to determine minimum block size threshold levels should be performed separately for the Canadian OTC swap market, different asset classes in this market and likely for different products within each asset class, as the appropriate test for one product may not be appropriate for another product.

We disagree with any approach that would provide for a uniform block trade threshold or even asset class thresholds if such thresholds are established without reference to whether the class or category of swaps (**swap instruments**) share the same liquidity characteristics. Although we recognize the need to balance precision with simplicity, we believe that too simplistic an approach will be damaging to liquidity. As described in Section 4.1 of the Block Trade Study, attempting to classify "swap instruments" based solely on ostensibly similar characteristics, such as denomination in the same major currency or the same general tenor, will likely prove inappropriate. For example, average daily trading volume per reference entity for single-name corporate credit default swap (**CDS**) is three trades per day, while average daily trading volume per reference entity for CDS written on high yield indices is 20 trades per day. For interest rate products, it may be more advisable to retain the critical tenor division but also allow for additional swap instruments in the interest rate product market. Therefore, we strongly encourage further study of establishing block trade exceptions based on swap instrument groupings with sufficient granularity to tailor reporting requirements

[8] The Block Trading Study may be found at: http://www2.isda.org/functional-areas/research/studies

appropriately to the characteristics of instruments with comparable liquidity characteristics.

ISDA also recommends that the appropriate publication delay for block trades should reflect the amount of time it is expected to take a risk intermediary to hedge its block exposure without undue market impact. This delay should be calibrated to reflect the liquidity characteristics of the relevant product. Narrowly-tailored, product-specific block trade exceptions, as described above, might lessen the need for longer reporting delays. Nonetheless, reporting delays based on the liquidity of the instrument in question should be considered.

Likewise, block trade data disclosure to the market should be tailored to reflect market characteristics. For example, certain commodity markets are generally smaller, less liquid and therefore less anonymous than markets in equity, credit, currency and interest rate derivatives. Any data disclosures to the market are therefore likely to have a more pronounced effect on such commodity markets. It is likely that such data disclosures will be easier to reverse engineer, meaning that it is possible, if not likely, that market participants will not be able to act anonymously. This will make them less willing to assume or warehouse market risk and less willing to quote market based prices for transactions, thereby negatively impacting liquidity, price discovery and, most importantly, access to these markets.

Lastly, we suggest that new rules for trade reporting should be introduced cautiously, as the impact on market liquidity for OTC derivatives is unpredictable. Introducing revised rules to serve as additional limitations on the availability of the block trade exception over time does not risk damage to market liquidity in the same way that the immediate introduction of rules that provide for only limited availability of the exception would. Regardless of the methodology eventually selected to determine block size thresholds, it is important that specific block size thresholds be updated frequently, at a minimum of once every three months, to reflect the latest market data, because liquidity in OTC markets can change quickly. Likewise, we suggest that the Committee consider implementing a mechanism for the immediate reassessment of block size thresholds in periods of market stress.

III. Real Time Reporting

Question #2: What is required to enable Canadian derivatives market participants to be able to report derivatives transaction information in real time and how long will it take to achieve this functionality?

A. Unique Identifiers

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As we discussed in our January 2011 Comment Letter, there are many practical issues to be addressed in requiring mandatory real time reporting and we believe that virtually all existing systems would have to be significantly overhauled to facilitate real time reporting or even "near real time" reporting for bilaterally traded derivatives. Compliance with reporting rules is likely to be more operationally sound and less costly if regulators adopt one set of uniformly-applied unique identifiers within the derivatives industry for legal entities/counterparties (**LEI**), products and transactions (**USI**). We applaud the Committee's support for the development of international standards for unique identifiers to assist in the management of information relating to OTC derivatives trading.

For LEIs, we strongly recommend that a single ID be implemented and that one entity administer the unique ID system to avoid the development of inconsistent standards. The solution needs to be international, and the entity operating the LEI issuance should be not-for-profit and operate on the principle of cost recovery. The industry should decide on the appropriate model for cost recovery. Additional input is needed to decide the right key minimum elements and their definition, which should also be determined by the industry. We strongly urge that international regulators coordinate to ensure this standard identifier system is enacted and enforced on a consistent, global basis.

ISDA has already communicated to US regulators its willingness to assume responsibility for developing the product identifiers for OTC derivatives products that reflect the FpML standard.[9] In the first instance, this work will focus on product identifiers for cleared products. ISDA/FpML[10] is currently working on a pilot project with certain derivative clearing houses to provide a normalized electronic data representation through an FpML document for each OTC product listed and/or cleared. This work will include the assignment of unique product identifiers. We believe that before the requirement for the mandatory reporting of trading activity is implemented, the

[9] ISDA comment letter, dated February 7, 2011, to CFTC's Proposed Rulemaking on: 1) 17 CFR Part 43 Real-Time Public Reporting of Swap Transaction Data; 2) 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements; and 3) 17 CFR Part 23 Reporting, Recordkeeping, and Daily Trading Records Requirements for SDs and MSPs (**February 2011 Comment Letter**).

[10] FpML is the open source industry standard for the OTC derivatives industry, developed under the auspices of ISDA. FpML/ISDA is an active member of the ISO 20022 Registration Management Group, working with other standard bodies to harmonize financial industry standards under ISO. For more information on FpML, see ww.fpml.org.

industry standardization effort will need to have been completed and the industry given sufficient time to adopt these changes.

With respect to USIs, we suggest that regulators state clear objectives rather than be prescriptive as to what the exact implementation will be, because it would be extremely difficult to define upfront an exact implementation that would cover all use cases. If international regulators can agree upon and state clear objectives, then the industry will work quickly to come up with implementation solutions as it has previously done.

As highlighted above, the industry has invested significant time and resources in building real time reporting solutions. Nevertheless, if real time reporting is to be effectively implemented, it should be phased-in based on entity type, transaction type, asset class, availability of necessary technology, and cost. Further, we stress that it will be necessary to understand what products and transactions may be exempt from reporting requirements (*e.g.* certain energy commodities) to properly comment on what will be required to enable Canadian derivatives market participants to be able to report derivatives transaction information in real time and how long will it take to achieve this functionality.

B. Reporting Data

The Committee suggests that market participants be required to "submit three categories of information to trade repositories: transaction data that contains the initial terms of an OTC derivative transaction (creation data), transaction data that reflects changes in contract terms or counterparty positions (continuation data) and valuation data disclosing updated market values of transactions and positions." We make a number of specific recommendations regarding the set of information that the CFTC identified to be reported in Section III(a) of our February 2011 Comment Letter and we refer the Committee to those specific comments as illustrative of our general views.

In addition to the recommendations and suggestions outlined in the February 2011 Comment Letter, we would add the following comments that are particularly responsive to the considerations raised in the TR Consultation Paper:

- Regulators should clearly specify the data elements required for recordkeeping and reporting in addition to the information to be reported in real time. This would provide more clarity and avoid the risk of inconsistencies when specifying those data elements.

- Real time reporting requirements should be limited to new trading activity. For example, transactions resulting from portfolio compression exercises do not reflect trading activity and therefore contain no market information.

We would further suggest that an inventory of activity that should be excluded from real time public reporting is established by asset class with input from industry groups.

- We agree with the Committee that the information required to be publicly disseminated cannot identify the participants to a swap or provide information specific to the participants. Such information would include the title and date of any master agreement, and premiums associated with margin, collateral and independent amounts. Additionally, bilaterally executed trades may contain a premium over market value that, while not associated with margin collateral or independent amounts, would need to be excluded from real time public reporting in order to prevent the price of the trade being misinterpreted by market observers.

- We suggest that the following requirement be clarified: "The second type of data that should be submitted is the full signed legal agreement of the counterparties including all the terms of the transaction (i.e., the legal confirmation)."
    - To the extent that the Committee is considering establishing a documentation warehouse of sorts, we think that there is little to no value in dynamic monitoring by regulators of changes in the overall pool of master agreement or credit support documents used by market participants. There are also a wide range of product-specific definitions and of course the individual trade confirmations that are also relevant. Therefore, a centralized effort to capture documentation would need to be much wider than the master agreement, would be duplicative of existing industry investments, would not provide regulators with particularly meaningful data given the slow rate of change in these documents, and would not provide any information above and beyond that which could already be readily obtained from regulated firms.

- With respect to continuation data, the Committee recommends adhering to the internationally accepted practice with respect to continuation data reporting for each class of derivatives once it has been established and references the CFTC's life cycle and snapshot approaches. We note our concerns with these approaches in Section II(f) of our February 2011 Comment Letter and propose an alternative approach that would achieve the objective of maintaining up-to-date swap data, but at the same time provide the reporting party with the ability to comply with the reporting requirement in a timely manner.

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- With respect to valuation data, we fully support the need for the supervisory and regulatory community to have access to valuation data. However, we caution that the reporting of valuation data on a transaction or swap level may prove to be impossible for bilateral uncleared swaps because of the portfolio nature of the collateralization process in the OTC derivative market.[11] With this in mind, ISDA recommends the creation of a "Counterparty Exposure Repository" as described in Section IV(b) of the February 2011 Comment Letter. We propose that this is a more appropriate alternative to requiring valuation data on a transaction or swap level due to the portfolio nature of collateral. The Counterparty Exposure Repository would contain the net mark-to-market exposure for each counterparty portfolio and the corresponding collateral providing surveillance of portfolio level risk, which we believe provides a true picture of the risks a party is running. We would also request that the Committee provide clarity with respect to what was intended to be captured by the phrase "any available collateral information."

IV. Additional Considerations

We are encouraged by the Committee's acknowledgement of the privacy and confidentiality issues presented by the reporting of data to trade repositories, particularly in the context of foreign counterparties to cross-border transactions. The Committee suggests that, "For situations where a foreign counterparty's home jurisdiction laws prohibit one party disclosure without explicit consent it is possible that an industry driven solution may be required to be developed." While we continue to study these issues, it is our preliminary view that the best approach is for the industry to work with global regulators to develop a legislative framework that permits the relevant disclosures to be made without breaching any confidentiality requirements. An "industry driven solution" would require a protocol by which counterparties voluntarily amend their master agreements to include such consent. However, counterparties may be unlikely to adhere to such a protocol since they have little or no incentive to amend these favorable provisions.

The Committee recommends that OTC derivative transactions entered into prior to the date the new reporting rules become effective that have outstanding contractual obligations (**Pre-existing Transactions**) be required to be reported within 180 days from the effective date of the reporting rules. While we agree with the Committee that it is appropriate to establish a compliance date that is later than the effective date of the reporting rules, it is our view that a reasonable period of time for achieving such compliance would be no less than 12 months (or potentially longer) following the date

[11] See February 2011 Comment Letter Section IV (a) for general comments regarding collateral in uncleared and cleared transactions.

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that all final rules become effective. Compliance with the rules will require a significant data "backloading" exercise, which will need time to be implemented. Requirements could be phased in based on the state of readiness of each particular asset class (including, where applicable, by specific products within an asset class) and market participant type. The industry should not be required to implement costly reporting infrastructure based on proposed rules. Additionally, we note that Pre-existing Transaction information, while relevant to regulators for purposes of their systemic risk assessment, is not relevant to the public in general and to publicly disclose such information is unnecessary.

The Committee also states that, at a minimum, "The information reported on Pre-existing Transactions should contain the principal economic terms of each reportable transaction, including the relevant date of the transaction and the identity of the parties to the contract."[12] ISDA strongly supports the recordkeeping and reporting objectives for Pre-existing Transactions. However, we urge the Committee to carefully consider how it defines "principal economic terms". Too broad a definition may lead a large number of participants to retroactively create data, as some principal economic terms may not currently be captured in their systems. As an example, a requirement to report the "time of execution", which is typically not recorded in the OTC market, would be in some cases impossible to recreate.[13] Accordingly, the Committee should require that market participants provide only the data elements that are currently available to them, in the form available, thereby avoiding recreation, reformatting and reorganization of past data.

We strongly urge the Committee to reconsider their recommendation that "records for all OTC derivative transactions should be retained by each counterparty and the relevant trade repository for a period of seven years from the date the transaction terminates or expires." We believe that a seven year period is excessive and would expose market participants to unnecessary costs and burdens. We recommend that, at a minimum, further analysis and consultation is performed on the costs and benefits of holding these records for the life of a swap plus seven years, as we believe this new requirement could impose a heavy cost burden to implement and maintain, for only a small incremental benefit. Record retention periods should also be globally consistent.

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[12] Similarly, with respect to the precise nature of the information to be retained, we would ask the Committee to provide further clarity or guidance as to the Committee's expectations relating to retention of the following information: "all documentation relating the terms of the transaction as well as any data necessary to identify and value the transaction" and "information relevant to the price of the transaction."

[13] As an alternative, please note that market participants do record trade dates: the "trade date" of a Pre-existing Transactions could be used instead of execution time, at least until market participants are able to "time-stamp" trades.

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To the extent that the Committee determines that it is not possible to provide unambiguous definitions relating to such matters as "collateral information" or "Canadian referenced derivatives", we would encourage the Committee to resolve any resulting legal and regulatory uncertainty by including appropriate safe-harbor provisions for market participants making demonstrative, good faith efforts to comply with applicable reporting and record keeping requirements.

Finally, we have not yet had an opportunity to study the "Report on OTC Derivatives Data Reporting and Aggregation Requirements" which was recently released by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions. To the extent that the Committee has indicated that it will rely on this report in developing rules for the Canadian market, we would ask that the Committee provide the industry with the opportunity to digest this report in order to provide the Committee with comments on the implications of adopting any recommendations that may be contained in the report for the Canadian markets.

* * *

ISDA appreciates the opportunity to provide its comments on the TR Consultation Paper and looks forward to working with the Committee as it continues to consider the issues outlined in the TR Consultation Paper. Please feel free to contact me or ISDA's staff at your convenience.

Sincerely,

Katherine Darras

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