ISDA® Safe, Efficient Markets

By E-mail

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Dear Sir,

Guidelines on Exchange of Margin for Non-centrally Cleared OTC Derivatives Transactions

Introduction

The International Swaps and Derivatives Association, Inc. ("**ISDA**" or "**We**")[1] is grateful for the opportunity to provide comments on the draft guidelines on exchange of margin for non-centrally cleared OTC derivatives transactions ("**Draft Guidelines**") published by the Financial Supervisory Service (the "**FSS**" or "**You**") on 14 December, 2016. This response represents the majority view of our members on the Draft Guidelines. While our members have sought to form a consensus on the Draft Guidelines, individual members may have their own views on certain issues and may provide their comments to the FSS independently.

ISDA strongly supports the goals of strengthening resilience in the non-centrally cleared derivatives market by establishing margin requirements. We note that the Draft Guidelines represent an important step forward for establishing a detailed set of requirements for the exchange and protection of margin in the OTC derivatives market in Korea. This submission is intended to continue the constructive ongoing dialogue between the FSS and derivatives market participants and to focus on the practical concerns and risks surrounding the implementation of the margin requirements, including the

[1] Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 66 countries. These members comprise of a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

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harmonisation of such requirements with those of foreign regulators. We hope that our comments in this submission will assist the FSS with its preparation of the final margin guidelines for non-centrally cleared OTC derivatives in Korea (the "**Korean margin guidelines**").

We have divided our response into three parts. Part A focusses on international harmonisation, and identifies areas where alignment with international standards are needed. Part B includes other substantive comments on the Draft Guidelines. Part C includes some drafting comments and clarification points on interpretation of the Draft Guidelines. Each part is structured based on the order in which the provisions appear in the Draft Guidelines.

PART A. INTERNATIONAL HARMONISATION

In order to ensure the efficient functioning of the global derivatives market and to eliminate operational risks, we strongly support Korea adopting rules that are harmonised and consistent across jurisdictions, and are broadly comparable to the final policy framework that establishes minimum standards for margin requirements for non-centrally cleared derivatives as proposed in the paper (the "**BCBS-IOSCO Framework**") issued in March 2015 by the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**"). Without this harmonisation, the market will become increasingly fragmented and its liquidity impaired as counterparties struggle to meet inconsistent margin requirements of various international regulators. Moreover, for margin requirements, inconsistent rules will potentially be incompatible in practice. International consistency will also prevent regulatory arbitrage and lead to a more level playing field between competitors in different jurisdictions.

Transition period (Section II paragraph 3.2.4)

We welcome the transition period for financial companies to comply with the VM requirements but submit that 3 months would not be sufficient, given the time required for repapering documentation and making system changes. We note that Hong Kong, Singapore and Australia have all provided a 6-month transition period (from 1 March, 2017 to 31 August, 2017) when implementing their margin requirements. With a shorter transition period of 3 months, financial companies would find it extremely challenging, if not impossible, to meet the implementation timeline for Korea. This is because financial companies are faced with a later publication of final guidelines and the unavailability of substituted compliance when a foreign financial company (including Korean branches of foreign banks) is trading with an Korean entity. In cases where substituted compliance is not available, they will have to create documentation that is compliant with specific Korean margin guidelines and will only be able to do so after the guidelines are published, subjecting them to greater time pressure and also logistical challenges. Introducing an earlier implementation date that is misaligned with other regulators in Asia would also be contrary to the principle of international harmonisation, and staggered implementation dates would result in market fragmentation and reduced liquidity, most likely to the disadvantage of those subject to the Korean margin guidelines.

We also note that the Financial Services Commission has recently proposed amendments to the Financial Investment Business Regulation ("**FIBR**") to provide for securities lending to be used as a way to provide Korean securities as collateral, and the re-use of such collateral will be permitted under the amended FIBR. Such changes are much welcomed and would have a huge impact on how market

participants exchange collateral and use Korean securities to meet the VM requirements. The amendments are not expected to come into effect prior to March 2017. Market participants would find it extremely challenging to get ready for Korean margin guidelines by June 2017 as they will be left with very little time to draft and negotiate new documentation that is compliant with both the Korean margin guidelines and the new FIBR, and get their collateral management systems ready for such legislative changes.

We therefore request the FSS to align its implementation timetable with those of Hong Kong, Singapore and Australia by providing a 6-month transition period.

Substituted compliance (Section IV paragraph 2)

ISDA commends the FSS for trying to find a solution to address cross-border issues. However, the industry is concerned that the substituted compliance framework could only be relied upon if both parties are foreign entities (including Korean branches of foreign entities or foreign subsidiaries of Korean entities). In this regard, we note that Korean branches of most foreign banks will be subject to the margin regimes of their home jurisdictions as well as the Korean margin guidelines. Excluding transactions between foreign entities (including Korean branches of foreign entities) and Korean entities from such framework would be contrary to the intent of principle 7 of the BCBS-IOSCO Framework, which was formulated to address the application of duplicative rule sets in a cross-border context where a foreign entity (or its local branch) trades with a local entity .

Even slight differences in two rule sets could present market participants with profound challenges in implementation, resulting in heightened compliance and operational burdens, increased costs and changes in trading patterns. For example, a trade between a foreign bank and its Korean subsidiary may be subject to intragroup exemption under the foreign margin requirements. If the conditions for intragroup exemption under the Korean margin guidelines are not fully met due to some slight differences in risk management standards of the two jurisdictions, such trade would be subject to margining in Korea, leading to an unintended outcome that makes compliance more complex.

Further, if full substituted compliance is not available, parties will have to spend a significant amount of time to negotiate and enter into new credit support documentation that incorporates the Korean margin guidelines. Any such documentation would inevitably be complex in structure as parties will have to identify and follow the strictest standard of the duplicative rule sets. We submit that the proposed substituted compliance framework in the Draft Guidelines would increase costs, operational and compliance complexities for the industry, and would undermine any intended benefits associated with reduced systemic risks.

We would like to note that any material inconsistencies between Korean future legislation on margin requirements and the Korean margin guidelines published by the FSS may have an impact on comparability assessments and may necessitate amendments to the parties' then existing credit support documentation, which would further complicate documentation and compliance.

Other regulators in Asia, including Hong Kong, Singapore and Australia, have all provided a full substituted compliance framework under which: (i) foreign entities (including local branches) are allowed to comply with foreign margin rules that are deemed or assessed to be comparable; and (ii)

local entities are allowed to comply with foreign margin rules to which their counterparties are subject if such rules are deemed or assessed to be comparable. We submit that FSS should harmonise its approach to substituted compliance to be in line with other Asian regulators.

We strongly urge the FSS to expand its proposed framework to Korean entities so that they would be allowed to follow the margin rules of a foreign jurisdiction that is deemed equivalent or is recognized to be equivalent by the FSS after its comparability assessment.

PART B. SUBSTANTIVE COMMENTS ON THE DRAFT GUIDELINES

Section I. General Provisions

"central counterparty" (Section I paragraph 3.3)

We seek clarification from the FSS that OTC derivatives cleared by foreign central counterparties that are not authorized by the Financial Services Commission in Korea under Paragraph 3 of Article 186-3 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act would not be subject to the Korean margin guidelines.

"financial group" (Section I paragraph 3.11)

We seek clarifications from the FSS that the definition of "financial group" refers to a group of entities for which consolidated financial statements are prepared. It is important that this definition is consistent with international standards for the purposes of (i) determining the aggregate month-end average notional amount under section I paragraph 3.13 and section II paragraph 3.1.2 and (ii) determining whether the intragroup exemption under section IV paragraph 1 could be relied upon by a financial company.

Section II. Application of margin exchange

Product scope (Section II paragraph 1)

We request confirmation from the FSS that, with respect to a foreign financial company, only those trades that are booked in the Korean branch of such company would be subject to the Korean margin guidelines.

We further request confirmation from the FSS that inter-branch transactions (transactions entered into between Korean branch and a foreign branch or head office of the same legal entity) fall outside the scope of the Korean margin guidelines. We submit that inter-branch transactions are entirely internal risk management arrangements within the same legal entity and are not addressed in the BCBS –IOSCO Framework.

We also request confirmation from the FSS that FX spot transactions and physically-settled commodity forwards are not subject to the Korean margin guidelines. With regards to physically-settled commodity forwards, ISDA notes that physically-settled commodity forwards are not subject to the margin requirements in the US, Japan, Singapore and Hong Kong. Such trades are often entered into for

hedging purposes and subjecting such trades to margining would disincentivize end users from using hedging and managing their risks.

ISDA notes that equity options are excluded from the US margin requirements. In the EU and Hong Kong, implementation of margin requirements for equity options are subject to a 3-year delay. ISDA urges the FSS to harmonise its implementation timetable for such products with foreign timelines and consider implementing a similar delay for equity options in Korea.

Entity scope (Section II paragraph 2)

ISDA understands from previous discussions with the FSS that multilateral development banks such as Asian Development Bank (ADB), World Bank and European Bank for Reconstruction and Development (EBRD)_are to be excluded from the margin guidelines and suggest that this is made clear in the Korean margin guidelines.

ISDA also notes that the definition of "public institutions" does not include similar types of entities that are incorporated outside of Korea. Public sector entities, whether incorporated locally or overseas, are excluded from the margin requirements in Hong Kong, Singapore and Australia. We thus request the FSS to adopt similar approach and exclude foreign public sector entities from the Korean margin guidelines.

With respect to Export-Import Bank of Korea, ISDA notes that it is operationally difficult for a counterparty to distinguish those trades that are transacted for hedging purposes from those that are transacted for profit-making purposes, and that such information has to be provided by Export-Import Bank of Korea to its counterparty prior to the entry of each trade. ISDA suggests that Export-Import Bank of Korea should either be excluded from the Korean margin guidelines entirely or be subject to such guidelines in full.

ISDA notes that, under Singapore margin requirements, a covered entity with an aggregate month-end average notional amount of uncleared derivatives contracts booked in Singapore below SGD 5 billion is not subject to the margin requirements. Similarly, Australia has provided relief to financial institutions with a small derivatives exposure by imposing a AUD 3 billion qualifying level for VM requirements. The regulators adopt such approaches so as not to unduly burden entities that do not pose systemic risks as the cost of subjecting such entities to margin requirements would far outweigh any potential benefits achieved. We request the FSS to consider similar approach to introduce a minimum threshold to exclude financial companies with a small derivatives exposure booked in Korea from the VM requirements.

Identification of counterparties

A financial company will not have any relevant knowledge relating to the derivatives business of its counterparty and, in particular, it will not be possible to obtain reliable information about the aggregate month-end average notional amount of a counterparty's derivatives positions at any time (other than by way of representations provided by that party). Accordingly, to align with the requirement in other jurisdictions, ISDA requests that the Korean margin guidelines provide that financial companies are entitled to rely in good faith on representations or information given to them by their counterparties,

including in industry standard disclosure documents such as the ISDA Regulatory Self-Disclosure Letter.

Threshold calculation (Section II paragraphs 3.1.2 and 3.2.2)

We note that the thresholds for IM and VM are to be calculated by reference to the months in the second quarter (April, May and June) of each year under section II paragraphs 3.1.2 and 3.2.2 respectively. Such calculation period is inconsistent with the Requirement 8 of Element 8 under the BCBS-IOSCO Framework, which recommends the use of the months March, April and May of each year. All foreign regulators have also implemented their margin standards based on such recommended calculation period. We strongly urge the FSS to align its calculation period with international standards to avoid the need for market participants to compute whether they would breach the thresholds twice, adding unnecessary operational and compliance burdens.

Definition of "new contract" (Section II paragraph 3.2.3)

We note that the VM requirements apply to "new contracts" entered into after the relevant implementation date, and that the transition period under section II paragraph 3.2.4 applies to all VM phase-in dates. We suggest the following changes to Section II paragraph 3.2.3 to make clear that "new contracts" are those entered into on or after the relevant transition period:

"*The exchange of variation margin is applied to new contracts concluded after each implementation date of margin, after taking into account the transition period under 3.2.4.*"

Section III. Calculation and exchange of margin

Cash as eligible collateral (Section III paragraph 1.1 table 3)

We note that "deposit" is included as a type of eligible collateral in table 3. The treatment of cash in custody accounts is well understood in financial markets. Cash is either reinvested in a suitable asset at the direction of the holder of the custody account or is placed on deposit with the custody bank and reflected as a liability on the custody bank's balance sheet. For the avoidance of doubt, we would like to seek FSS' confirmation that "deposit" includes cash deposits held in a general deposit account with a custodian.

Settlement currency (Section III paragraph 1.1 table 3)

ISDA would welcome clarification on the definition of "settlement currency" in footnote 5 of table 3. The definition refers to "the currency for paying margin under an agreement to exchange margin between two parties" and section III paragraph 1.6 provides that an FX haircut would be applied if the currency of the collateral is different from the settlement currency, except that no haircut would be applicable for VM cash.

Under the BCBS-IOSCO Framework, an FX haircut is recommended if the currency of the derivatives obligation differs from that of the collateral asset. The relevant derivatives obligation for each margin type reflects the different natures of VM and IM.

For example, with respect to IM, the relevant derivatives obligation would be the potential future payment of the "close-out amount" under the 2002 ISDA Master Agreement, which would be paid in the specified "termination currency". Therefore, the currency of the derivatives obligation should refer to such "termination currency". Accordingly, in regards to IM, most jurisdictions require FX haircut to be applied if the currency of the collateral is not the termination currency designated by the parties under the relevant contract.

With respect to VM, the relevant derivatives obligation would be the regular settlements of margin calls, which would be paid in the collateral currency agreed by the parties in the ISDA Master Agreement, the credit support document or the individual trade confirmations. Accordingly, for non-cash VM, most jurisdictions impose a FX haircut only when the currency of the collateral differs from the currencies agreed in the relevant contract (including individual derivative contract, governing master netting agreement or credit support annex).

We recommend the FSS to align with the approach taken by international regulators in implementing the BCBS-IOSCO Framework and impose a FX haircut on: (i) non-cash VM if the currency of the collateral differs from the currencies agreed in the relevant contract (including individual derivative contract, governing master netting agreement or credit support annex); and (ii) IM if the currency of the collateral differs from the termination currency agreed in the relevant contract.

Eligible collateral (Section III paragraph 1.3)

We request clarification from the FSS on the rationale for requiring a financial company to manage market risks by designating eligible collateral in two or more currencies. Other jurisdictions impose eligibility conditions on collateral such as concentration limits, appropriate haircutting of eligible collateral and avoidance of "wrong way" risk, and we recommend the FSS to consider similar measures that are more aligned with international standards.

Haircut under internal standards (Section III paragraph 1.5)

We request confirmation from the FSS that, so long as the haircut as agreed by counterparties under paragraph 1.4 for a type of eligible collateral would be more conservative than that in Table 3, the requirement for consistent haircut to be applied for each type of eligible collateral under paragraph 1.5 would not restrict a financial company from agreeing different haircuts with different counterparties. This is because certain counterparties may not agree on the internal standard of a financial company, but this should not prohibit the financial company from using the internal standard with other counterparties. We further request the FSS to make this clear in the Korean margin guidelines.

Quantitative model (Section III paragraph 2.1.1)

We request confirmation from the FSS that a financial company could use a quantitative model developed by a third party (and not only by itself), such as the ISDA SIMM© model, which is already being used globally by Phase 1 banks.

Quantitative model (Section III paragraph 2.1.2, table 5)

We request the FSS to reconsider condition (ii) in table 5 and amend the requirement to use data from the last 5 years. The US rules require the IM model to be calibrated using historical data from a period of no less than 1 year and no more than 5 years. The EU and Hong Kong rules require the IM model to be calibrated based on historical data from a time period of no less than 3 years and no more than 5 years. Singapore and Australia rules require the IM model to be calibrated based on historical data of a period of no more than 5 years. The requirements under the Draft Guidelines would be the strictest of all international standards if implemented in its current form. We note that certain data sets may lack 5 years' worth of data and flexibility might be required in those cases.

Non-netting jurisdictions (Section III paragraphs 2.1.3 and 2.2.2)

We request clarification from the FSS that a "country that does not permit a netting contract" under section III paragraphs 2.1.3 and 2.2.2 means a jurisdiction where a netting agreement is unenforceable upon the insolvency or bankruptcy of a counterparty.

We note that a financial company is recommended to exchange IM and VM on a gross basis with non-netting counterparties under section III paragraphs 2.1.3 and 2.2.2 respectively. Exchanging collateral on a gross basis would greatly increase counterparty risk due to over-collateralisation, and would also result in higher settlement risk and Herstatt risk when posting multiple currencies. We note that Hong Kong, Singapore and Australia have provided exemptions in relation to both IM and VM requirements where netting of derivatives is questionable or unenforceable upon insolvency or bankruptcy of a counterparty, and urge the FSS to adopt a similar approach.

We also request confirmation from the FSS that a financial company could rely on both internal and external legal reviews under footnote 13. We further note that footnote 16 refers to both internal and external legal opinions and request the FSS to adopt the same approach for netting opinions. Financial companies should be allowed to make their own individual assessment on whether a jurisdiction is "netting-friendly" in accordance with the method they use to determine this for capital adequacy purposes. The rationale for this suggestion is that the regulatory capital rules give firms a significant incentive to treat a jurisdiction as "clean" for netting (following the requisite legal analysis), and so if a firm is taking the regulatory capital cost of designating a jurisdiction as "dirty" for netting, the same analysis should be capable of being used for the purposes of the Korean margin guidelines.

If the treatment of a counterparty for regulatory capital purposes is different from that for margining purposes, a financial company may be subject to punitive costs. Where a financial company is subject to margin requirements when trading with counterparties in a jurisdiction that is "dirty" for netting for regulatory capital purposes, such company would have to fund the cost of margin but would not get any regulatory capital benefit for the margin posted in such jurisdiction.

Finally, we request clarifications from the FSS on what would suffice as "an agreement to limit maximum losses" under footnote 13, and its exact meaning.

Calculation of IM (Section III paragraph 2.1.5)

We note that calculation of IM is required to be done "before beginning the transaction after executing the contract in relation to OTC derivatives transaction", and seek clarification to which period this is intended to refer. As provided under the same paragraph, calculation of IM is only required if the

portfolio exposure has changed as a result of the occurrence of certain events, including execution of a new contract, cancellation or termination of an existing contract. It would be impossible for a financial company to comply with the current wording as IM can only be calculated after a transaction has been entered into.

IM model approval (Section III paragraph 2.1.6)

We welcome the approach that allows a financial company to use a quantitative model approved by a foreign regulator after notifying the FSS of its intent to do so. We request confirmation from the FSS that model approval granted by a foreign regulator can be in the form of a deemed approval. For example, if under the foreign rules (such as Hong Kong), an entity is permitted to use an industry-wide quantitative model after notifying its home regulator, such notification will be deemed as an approval granted by a foreign regulator for the purpose of the Korean margin guidelines.

Settlement timing (Section III paragraph 4.3)

We note the reference to Korean time in section III paragraph 4.3. To account for the location of the parties' operational processes and types of collateral to be exchanged, we submit that the timing for margin delivery should refer to "Local Business Day" as defined in the relevant credit support documents between the parties, and not Korean business day. We also request the FSS to clarify that, where the two parties are located in different time zones, "T" shall refer to a day that is: (i) a business day of the later time zone; and (ii) a business day for both parties. This would provide flexibility in case the call and settlement timelines are not met for reasons beyond the parties' control, without allowing counterparties a longer time period than strictly required within their set of circumstances.

Failure to meet settlement deadline (Section III paragraph 4.4)

Section III paragraph 4.4 requires the parties to "record and manage the cause and possible solutions in its internal documents" in case of a failure of the parties to meet the settlement deadline. ISDA request clarifications from the FSS on the nature of such internal documents.

Custody and treatment of IM (Section III paragraph 5)

We request further clarifications from the FSS on how the Korean custodial infrastructure could meet the IM requirements and note that the industry should be given an opportunity to discuss any implementation issues prior to the implementation of the IM requirements.

Access to, and availability of, IM (Section III paragraph 5 table 7)

We note the requirement for IM collected to be "immediately available" to the collecting party where the posting party enters insolvency. We support the creation of robust segregation regimes, but the "immediately available" standard will not be possible to apply in practice and should instead be replaced with a requirement for IM to be provided in a "timely manner". Stays, moratoriums or other restrictions on the availability of IM upon insolvency of the posting party may have an impact on when IM will be available.

In addition to restrictions under insolvency proceedings, certain aspects of custodial arrangements may also affect when IM will be available and it is submitted that such factors should not affect the ability of financial companies to enter into arrangements with third party custodians. Such factors include a custodian's procedures for collateral transfer operations and verification of a party's claim for IM, steps a custodian takes to release an lien on client's assets, or timing considerations in relation to instructions to the clearing system where the IM is held.

We also note that other regulators in the EU, Hong Kong and Singapore have adopted the "timely manner" standard and thus urge the FSS to follow such approach.

Unenforceable collateral jurisdictions (Section III paragraph 5.3)

ISDA would welcome an exemption from the VM and IM requirements if the collateral arrangements are questionable or not legally enforceable upon default of the counterparty. Imposing margin requirements on non-centrally cleared derivatives transactions with counterparties located in jurisdictions where custodial infrastructure is under-developed or where collateral arrangements are unenforceable would therefore not only expose financial companies to additional risk, but would also disrupt established trading relationships and severely limit hedging and financial flows between Korea and those jurisdictions. In this respect, we note that the margin rules in Australia, Hong Kong and Singapore have included an exemption from the IM and VM requirements if the collateral arrangements are questionable or not legally enforceable upon default of the counterparty.

Section IV. Others

Substituted compliance (Section IV paragraph 2)

We welcome the deemed substituted compliance framework under footnote 19. We note that this approach has also been adopted by Hong Kong and Singapore. We request confirmation from the FSS that the margin standards implemented by the BCBS-IOSCO Working Group on Margin Requirements (WGMR) members jurisdictions[2] would be deemed as equivalent from the day they publish their final (not draft) standards, and all financial companies may follow the relevant foreign requirements instead of the Korean margin guidelines. We believe that the scope of the deemed substituted compliance regime should be extended to cover transactions with Korean entities (please refer to our discussion on this point in "Part A. International Harmonisation" at page 3).

PART C. OTHER DRAFTING COMMENTS & CLARIFICATION POINTS

"variation margin" and "initial margin" (Section I paragraphs 3.1 and 3.2)

We suggest replacing "collateral collected" with "collateral exchanged" in both definitions.

"aggregate month-end average notional amount" (Section I paragraph 3.13)

[2] These jurisdictions are: Australia, Canada, the European Union, Hong Kong, India, Japan, Mexico, Russia, Singapore, Switzerland and the United States.

We suggest that the definition of “aggregate month-end average notional amount” be made clear with clear cross-references to section II paragraph 3.1.2.

Entity scope (Section II paragraph 2)

ISDA further seeks clarification from the FSS on the application of footnote 6, and especially on how it would be applied with respect to collective investment schemes and asset management companies.

ISDA also seeks clarification from the FSS on whether offshore collective investment schemes that are managed by an offshore asset management company would be subject to the Korean margin guidelines if they transact with Korean financial companies.

Transitional period (Section III paragraph 3.2.4)

We note that financial companies, when trading with one another, may not have credit support agreements in place for certain counterparties and thus request clarification from FSS that transition period under Section III paragraph 3.2.4 would still apply to such trading relationships, and the financial companies are able to use measures other than existing credit support agreements to manage their exposure to OTC derivatives transactions during the transition period pursuant to footnote 11.

Standard model formula (Section III paragraph 2.1.1 table 4)

We suggest that the reference to “underlying assets” (in the formula for calculating gross initial margin) be clarified to refer to “underlying asset class” instead.

We further suggest replacing footnote 1 of table 4 in its entirety with the following wording to add clarity and consistency in the way how terms are used in the Draft Guidelines, which makes reference to the "netting agreement", which is defined under section I paragraph 3.7:

“*The portion of net current replacement cost of a netting agreement with a given counterparty in the numerator and gross current replacement cost of that netting agreement in the denominator*.”

IM bilateral threshold (Section III paragraph 3.1.1)

We suggest that the following wording be added to the end of paragraph 3.1.1 to make clear the amount to be exchanged once the KRW 65 billion bilateral threshold is breached:

“*If the initial margin to be exchanged exceeds KRW 65 billion, the parties must exchange an amount that is equal to or greater than the difference between the initial margin and KRW 65 billion.*”.

Legal reviews (Section III paragraph 5.3)

ISDA notes that a financial company must perform an independent legal review on the enforceability of the collateral arrangements based on the jurisdiction of the counterparty. We suggest that the reference to “the legal system of the country where the counterparty belongs to” be removed. This is because enforceability of IM segregation arrangements is not tied to one jurisdiction or the jurisdiction of the counterparty only. Parties also have to perform legal reviews on insolvency concerns relating to the collateral provider, the collateral taker and the custodian. It should be noted that legal opinions on

an industry-wide basis have been obtained by ISDA from external independent legal counsels to assist entities with meeting the legal review requirement under international margin regimes.

We look forward to continuing our dialogue with you. Please do not hesitate to contact Keith Noyes, Regional Director, Asia Pacific (knoyes@isda.org, +852 2200 5909), Hyelin Han, Assistant Director, Policy, Asia Pacific (hhan@isda.org, +852 2200 5903) and Melody Ma, Counsel, Asia Pacific (mma@isda.org, +852 2200 5908) for questions related to this response.

Yours faithfully,

For the International Swaps and Derivatives Association, Inc.

Keith Noyes

Regional Director, Asia-Pacific