

**By E-mail**

March 23, 2018

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Dear Sirs and Madams

### **Consultation Paper on Draft Regulations for Mandatory Trading of Derivatives Contracts**

#### *Introduction*

The International Swaps and Derivatives Association, Inc. (“**ISDA**”)<sup>1</sup> and Global Foreign Exchange Division (“**GFXD**”) of the Global Financial Markets Association (GFMA)<sup>2</sup> welcome the opportunity to provide comments on the Consultation Paper on Draft Regulations for Mandatory Trading of Derivatives Contracts (“**Consultation Paper**”) issued by the Monetary Authority of Singapore (“**MAS**”) on February 21, 2018. Individual ISDA and GFXD members may have their own views on the Consultation Paper, and may therefore provide their comments to MAS directly.

We understand the proposal to require the trading of over-the-counter (“**OTC**”) derivatives on organised markets complements the proposed extension of the markets regime to OTC derivatives market operators in Singapore. We appreciate that this proposal is in line with the G20 objectives for OTC derivatives reform and also intends to achieve consistency with regulatory reform in the EU and US where trading obligations for OTC derivatives products have already been implemented in similar regard.

We hope that this submission will highlight certain key concerns of market participants and be helpful to MAS in the drafting and finalising of the Securities and Futures (Trading of Derivatives Contracts) Regulations (“**SF(TDC)R**”). We look forward to furthering our dialogue with MAS on issues and practical concerns that may arise in connection with the proposed implementation of the trading obligation in Singapore.

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<sup>1</sup> Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 875 member institutions from 68 countries. These members comprise 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](http://www.isda.org).

<sup>2</sup> The Global Foreign Exchange Division (GFXD) of the GFMA was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25 global FX market participants (Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, Nomura, RBC, RBS, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac), collectively representing over 80% (according to Euromoney league tables) of the FX inter-dealer market.

*General comments*

Prior to addressing the specific comments on the draft SF(TDC)R, we have set out certain general observations and comments on the proposed trading obligation. We hope that such comments will be helpful to MAS in understanding the concerns of market participants.

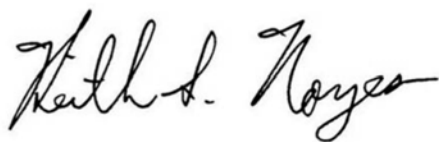
*Responses to specific questions*

We have also set out our responses to the specific questions raised in the Consultation Paper in the template provided by MAS. This is set out in Appendix 1 to this submission. Any terms not defined in Appendix 1 are as defined in the Consultation Paper.

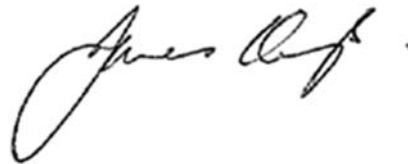
We are grateful to MAS for the opportunity to respond to the Consultation Paper and welcome further dialogue with MAS on any of the points raised. Please do not hesitate to contact Keith Noyes, Regional Director, Asia Pacific at ([knoyes@isda.org](mailto:knoyes@isda.org), at +852 2200 5909), Hyelin Han, Assistant Director, Public Policy, Asia Pacific at ([hhan@isda.org](mailto:hhan@isda.org), at +852 2200 5903) or Jing Gu, Senior Counsel, at ([jgu@isda.org](mailto:jgu@isda.org), at +65 6653 4173) if MAS has any questions or comments.

Yours sincerely,

**For the International Swaps and Derivatives Association, Inc. and Global Foreign Exchange Division of the Global Financial Markets Association**



Keith Noyes  
Regional Director, Asia-Pacific  
ISDA



James Kemp  
Managing Director  
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Appendix 1

RESPONSE TO CONSULTATION PAPER

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

<p><b>Consultation topic:</b></p>	<p><b>Consultation Paper on Draft Regulations for Mandatory Trading of Derivatives Contracts</b></p>
<p><b>Name<sup>1</sup>/Organisation:</b></p> <p><sup>1</sup>if responding in a personal capacity</p>	<p>The International Swaps and Derivatives Association, Inc. (<b>ISDA</b>) and Global Foreign Exchange Division (<b>GFXD</b>) of the Global Financial Markets Association (GFMA)</p>
<p><b>Contact number for any clarifications:</b></p>	<p>Keith Noyes, Regional Director, Asia Pacific at (+852 2200 5909) or Hyelin Han, Assistant Director, Public Policy, Asia Pacific at (+852 2200 5903) or Jing Gu, Senior Counsel at (+65 6653 4173)</p>
<p><b>Email address for any clarifications:</b></p>	<p>Keith Noyes, Regional Director, Asia Pacific at (<a href="mailto:knoyes@isda.org">knoyes@isda.org</a>), Hyelin Han, Assistant Director, Public Policy, Asia Pacific, at (<a href="mailto:hhan@isda.org">hhan@isda.org</a>) or Jing Gu, Senior Counsel at (<a href="mailto:jgu@isda.org">jgu@isda.org</a>)</p>
<p><b>Confidentiality</b></p>	
<p><b>I wish to keep the following confidential:</b></p>	<p>Not Applicable</p> <p><i>(Please indicate any parts of your submission you would like to be kept confidential, or if you would like your identity to be kept confidential. Your contact information will not be published.)</i></p>

**General comments:**

We welcome MAS' efforts to implement a trading obligation that is appropriately tailored for the Singapore market. Before going into our specific responses to the individual questions below, we have set out certain general comments and observations which we hope MAS will take into consideration. Any terms not defined in Appendix 1 are as defined in the Consultation Paper.

Venue Availability

We note that the revised regulatory regime for operators of trading facilities for the trading of OTC derivatives will soon come into place with the commencement of the Securities and Futures (Amendment) Act ("**SFA Amendment Act 2017**"). Prior to the commencement of the trading mandate, members consider that it will be of utmost importance that overseas and domestic operators of OTC derivatives trading facilities which are or will be commonly used by participants in Singapore to trade in USD, EUR and GBP IRS, make an application, and are approved or recognised as approved exchanges ("**AE**") or recognised market operators ("**RMO**") under the Securities and Futures Act, Chapter 289 of Singapore ("**SFA**") (as amended by the SFA Amendment Act 2017) (the "**Amended SFA**") and the revised Securities and Futures (Markets) Regulations. This will be necessary to ensure that there will be sufficient venues for participants to satisfy the trading obligation.

Cross-border Harmonization – Substituted Compliance, Equivalence & Mutual Recognition

As MAS considers and implements a trading obligation for Singapore, in line with the expectations on cross-border harmonisation of the Financial Stability Board (FSB), the International Organization of Securities Commissions (IOSCO) and the OTC Derivatives Regulators Group (ODRG), members consider that it is essential that all jurisdictions introducing OTC derivatives reforms seek to address any conflicts and overlaps by introducing rules that clearly provide for a mechanism of substituted compliance, mutual recognition or equivalence. In the case of mandatory trading obligations, such an approach is particularly important to avoid regulatory disparity, which can lead to market fragmentation, low trading liquidity, regulatory arbitrage, duplicative compliance requirements and ultimately increased risk.

We note and commend MAS for stating in the Consultation Paper that it will actively engage in international and bilateral discussions to address potential duplicative requirements on participants in Singapore that are involved in cross-border transactions. Our members very much hope that MAS will draw on the recent US-EU mutual recognition of derivatives trading venues put in place prior to the go-live date of the Markets in Financial Instruments Directive ("**MiFIDII**") and put in place a mechanism of substituted compliance, mutual recognition and/or equivalence. In addition, to the extent that MAS considers substituted compliance, mutual recognition and/or equivalence determinations, ISDA encourages MAS to do so using an outcomes-based approach instead of rule-by-rule analyses, consistent with the abovementioned US-EU mutual recognition of derivatives trading venues. In particular, we consider that prior to the commencement of the trading mandate, it is critical that MAS provides further clarity on the following:

- (a) the jurisdictions that may benefit from a substituted compliance determination pursuant to Section 129M of the Amended SFA; in this regard, members have identified the UK, EU and US as priority jurisdictions; and
- (b) the approach and status of any proposed equivalence determinations and mutual recognition of organised markets in Singapore.

These measures will be key to prevent further market and liquidity fragmentation.

In addition, as the U.S. Commodity Futures Trading Commission (“CFTC”) undertakes a review of its rules and regulations under Project KISS (Keep It Simple, Stupid), the UK puts in place a regulatory framework to replace existing EU acquis and the European Commission (“EC”) considers the updates to the European Market Infrastructure Regulation (“EMIR”) in the EMIR review process, we also hope that MAS will continue to review its approach towards the scope of the trading obligations (including after the draft SF(TDC)R is finalised). In the interest of cross-border harmonisation, this will be important to ensure that any potential conflicts or overlaps between the requirements in Singapore and those of other jurisdictions are being monitored on a continuous basis against other international developments.

We additionally request that the industry be consulted and have the opportunity to provide comments on any future changes to the scope of the Singapore trading obligation, as a result of US, UK, EU developments or otherwise.

#### Other Considerations

In addition to the above, the industry would also like to highlight a few other key issues for MAS’ consideration:

- (a) that MAS publishes a list of banks which exceed the trading threshold amount and which are in-scope of the trading obligation (including the respective dates where the trading obligation starts to apply to these specified persons) (see response to question 2 below); and
- (b) in light of the implementation challenges for specified persons to comply with trading obligations on the basis of mandated products which are “traded in Singapore”, that MAS imposes the trading obligations only in circumstances where the specified person has booked the trades in Singapore (see response to question 4 below).

Members have also requested for a block-trade exemption as well as a full exemption of derivatives contracts arising from portfolio compression, and raised questions on the proposed treatment of certain types of transactions (e.g. novation, non-par rate swaps). These are discussed in greater details in our response to the specific questions below.

#### **Question 1: MAS seeks views on the proposal to subject IRS denominated in USD, EUR and GBP, with the contract specifications set out in Table 1, to trading obligations.**

We are generally supportive of subjecting USD, EUR and GBP IRS with the contract specifications set out in Table 1, to trading obligations. However, to the extent MAS proposes to change the scope of specified derivatives contracts which may be subject to trading obligations, we respectfully request that the industry be consulted and have the opportunity to provide comments on any future expansion (or reduction) of the scope of the trading obligations ahead of time. In addition, members also request that the addition of any product to the trading obligations be subject to a notice or phase-in period of at least 6 months prior to commencement date.

Given the current LIBOR and EURIBOR reforms, if replacement rates for these benchmarks are adopted by the industry, members also request that the industry be consulted and have the opportunity to provide comments on any transition plan or change of product scope as a result of these benchmark reforms.

Members also have some queries and comments on the availability of exemptions to certain types of trades. Please see response to question 5 below.

**Question 2: MAS seeks views on the proposal to impose trading obligations on banks that exceed a threshold of S\$20 billion gross notional outstanding of OTC derivatives contracts booked in Singapore for each of the last four quarters.**

### General

Members are supportive of applying trading obligations initially only to banks that exceed a threshold of S\$20 billion gross notional outstanding of OTC derivatives contracts booked in Singapore and not extending this (initially) to all other specified persons. However, members request that the industry be consulted and have the opportunity to provide comments on any future changes to the scope of “specified persons” who may become subject to trading obligations or any changes to the threshold amount, and that a notice or phase-in period of 6 months be provided prior to the trading obligation commencement date (the “**TO commencement date**”).

### Trading Threshold Amount

With respect to the trading threshold amount, members note that the trading threshold amount is meant to be aligned with the clearing threshold amount under the draft Securities and Futures (Clearing of Derivatives Contracts) Regulations (“**SF(CDC)R**”) (such that the same group of banks will be subject to MAS’ trading and clearing obligations). Hence, it is of utmost importance that the calculation parameters are clearly and consistently defined so as to avoid confusion.

#### (a) Derivatives Contract

In calculating the trading threshold amount, given that the definition of a “derivatives contract” will be amended when the SFA Amendment Act 2017 comes into force, members believe that it is MAS’ intent that the calculation of this trading threshold amount (as with the clearing threshold amount) will be based on the new definition of “derivatives contracts” under the Amended SFA. Accordingly, this will also include “securities-based derivatives contracts”. Members would welcome confirmation from MAS.

#### (b) Intra-group Transactions

In ISDA’s submission to MAS on the Consultation Paper on the draft SF(CDC)R in July 2015, members requested MAS to exclude intra-group transactions from the calculation of the clearing threshold. Seeing that it is MAS’ intent that the same group of banks be subject to both the trading obligation and the clearing obligations, members kindly request that MAS clarifies if its intent is to exclude (or include) intra-group transactions in the calculation of the trading threshold. If intra-group transactions are to be excluded, we would request that this be addressed explicitly in the SF(TDC)R, and that it be aligned with the calculation of the clearing threshold.

#### (c) Published List of Banks

Members are strongly of the view that in order to facilitate the compliance of the trading obligations, it is of utmost importance that market participants are informed of, and have access to the same set of information in assessing whether counterparties meet required thresholds. According to the circumstances under which the trading obligation applies as

currently proposed in the draft SF(TDC)R, members not only have to self-identify whether they are in-scope of the trading obligation, but have to ascertain if the counterparty they are trading with, or intend to trade with, are also in-scope. Members would therefore urge and strongly request MAS to maintain and publish a list of banks which are in-scope of the trading obligation (including the respective dates where the trading obligation starts to apply to these banks). This approach should be extended to the clearing obligation and members note that this would be consistent with the approach which is currently being adopted by the Hong Kong Monetary Authority (HKMA) and Australian Securities & Investments Commission (ASIC) in the implementation of their respective clearing obligations.<sup>3</sup> In order to achieve this published list of in-scope banks, we would be very happy to discuss this with MAS further and assess what the industry can do to assist MAS with the publication and maintenance of this list.

In the event that MAS is unable to support the publication and/or maintenance of a list of in-scope banks, members request MAS to explicitly allow specified persons to rely (in good faith) on appropriate representations, self-certification or any other information which may be provided by its counterparty as to its status as an in-scope bank exceeding the trading threshold. As currently proposed, there is no defence from the offence set out in section 129J(2) of the SFA (as amended by the SFA Amendment Act 2017) for an entity which relies on the representation, certification or other information provided by its counterparty to assess its compliance requirements of the trading obligation and members respectively request that such defence be made available. In addition, members also request that MAS expressly prescribes in the SF(TDC)R that it is the responsibility of each specified person to disclose its own in-scope status, including whether it has exceeded the trading threshold during the applicable period.

### **Question 3: MAS seeks views on the proposal to exempt public bodies from trading obligations.**

#### Exempt Public Bodies

Members support the proposal to exempt public bodies from the trading obligation and agree that the policy functions of public bodies may require them to maintain flexibility to respond to various circumstances, which may otherwise be impeded if they were subject to trading obligations. As currently drafted, we understand that an exemption for public bodies may not be required as the trading obligation only applies to trades between “specified persons” (which as defined in Section 129J of the Amended SFA does not appear to include any public bodies). Given this fact, members have raised the question if the list of exempted persons in the Second Schedule to the draft SF(TDC)R is intended to be an exhaustive list of exempted persons and also seek clarity that sovereign wealth funds and related government investment funds would not be in-scope of the trading obligation even if more types of “specified persons” in the SF(TDC)R are phased-in in the future.

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<sup>3</sup> See [http://www.sfc.hk/web/EN/files/SOM/OTC/List%20of%20Institutions%20that%20have%20Reached%20the%20Clearing%20Threshold%20SFC%20to%20HKMA%20Final%20\(EN\)%20-%20204.pdf](http://www.sfc.hk/web/EN/files/SOM/OTC/List%20of%20Institutions%20that%20have%20Reached%20the%20Clearing%20Threshold%20SFC%20to%20HKMA%20Final%20(EN)%20-%20204.pdf) and <http://asic.gov.au/regulatory-resources/markets/otc-derivatives-reform/central-clearing-of-otc-derivatives/clearing-entity-notifications>



In this regard, we respectfully request that, to the extent MAS proposes to change the scope of “specified persons” or the list of Exempted Persons in the Second Schedule to the draft SF(TDC)R, or to phase-in more types of “specified persons”, the industry be consulted and have the opportunity to provide comments on any such changes ahead of time.

#### Consistency – List of Public Bodies

In addition to the above, members note that there are certain inconsistencies in the list of public bodies that have been identified in the draft SF(CDC)R and SF(TDC)R as well as in the MAS Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts [SFA 15-G03] (“**MAS Margin Guidelines**”) and the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 (the “**SF(RDC)R**”). For example, the Islamic Development Bank, the Nordic Investment Bank and the International Finance Facility are listed as being exempt in the Second Schedule to the draft SF(TDC)R but not as such in the draft SF(CDC)R, the SF(RDC)R and the MAS Margin Guidelines.

Members seek clarity from MAS on whether it intends to maintain consistency in the list of public bodies which should be exempt from the clearing and trading obligations as well as the margin and reporting requirements. If so, we note that the list of public bodies in the draft SF(TDC)R is the most extensive and would request that this list be used instead.

**Question 4: MAS seeks views on imposing trading obligations to products that are traded in Singapore by both counterparties that exceed the proposed threshold of S\$20 billion gross notional outstanding of OTC derivatives contracts booked in Singapore.**

#### The Requirements – “Traded in Singapore”

Members note that the Consultation Paper and the draft SF(TDC)R suggest that trading obligations will apply if:

- (a) both counterparties are banks that exceed a threshold of S\$20 billion gross notional outstanding of OTC derivatives contracts booked in Singapore for each of the last four quarters; and
- (b) the mandated product is “traded in Singapore” by traders based in Singapore representing both counterparties.

On this basis, members consider that under the proposed approach, the execution of a specified derivatives contract will be in scope for the trading obligation so long as the mandated products are “traded in Singapore” by “specified persons” (i.e. initially, banks licensed under the Banking Act (Cap.19) in Singapore) exceeding the trading threshold amount, regardless of where the trades are booked. In other words, mandated products which are booked in offshore branches or affiliates of licensed banks can also be subject to trading obligations in Singapore so long as (a) the product is “traded in Singapore” by both parties and (b) if both parties executing the specified derivatives contracts are “specified persons” exceeding the trading threshold amount.

Members respectfully request MAS to confirm if this is the intended scope of the SF(TDC)R.



### Implementation Challenges – “Traded in Singapore”

With respect to the proposal to impose trading obligations on mandated products that are “traded in Singapore”, members have expressed very strong concerns that this is likely to present significant challenges in implementation efforts – as an example, it would be overly burdensome if pre-trade checks had to be conducted not just by members themselves to assess if they may be subject to the trading obligation, but also on their respective counterparties (including on a trade by trade basis). Members therefore propose that MAS removes the requirement for mandated products to be “traded in Singapore”, and (similar to the clearing obligations) require compliance to the trading obligations only in circumstances where the specified person has booked the trades in Singapore.

In the event that MAS does not support the proposal to remove the requirement for mandated products to be “traded in Singapore” and apply the trading obligation only in circumstances where the specified person has booked the trades in Singapore, (similar to our response to question 2 above) members request MAS to explicitly allow specified persons to rely (in good faith) on appropriate representations, self-certification or any other information form as may be provided by its counterparty to assess if the requirement of “traded in Singapore” has been met (including on a trade-by-trade basis). There should also be a defence from the offence set out in section 129J(2) of the Amended SFA for an entity which relies on such representation, certification or any information provided by its counterparty. In addition, members also request that MAS expressly prescribes in the SF(TDC)R that it is the responsibility of each specified person to disclose its own in-scope status, and in this case, whether the requirement of “traded in Singapore” has been met (including, on a trade-by-trade basis).

### Agency Arrangements

As MAS consults on the proposed scope of the trading obligation, we respectfully also request that MAS clarifies the proposed application of the trading obligation to agency arrangements as this does not appear to be addressed in the draft SF(TDC)R. In particular, it would be helpful if MAS could clarify if the trading obligations apply in the following scenarios, and if so, to whom the regulatory obligation applies (i.e. whether the principal or the agent):

- (a) if a specified person enters into a specified derivatives contract as an agent of a person who is not a specified person or who is otherwise exempt; and
- (b) if a person (who is not a specified person) enters into a specified derivatives contract as an agent of a person who is a specified person.

Members respectfully request that the proposed application of the trading obligation in the scenarios described above be also explicitly addressed in the SF(TDC)R.

### **Question 5: MAS seeks views on the proposal to exempt intra-group transactions from trading obligations.**

We support the proposal to exempt intra-group transactions from trading obligations. MAS correctly notes in the Consultation Paper that such transactions do not transfer risks in or out of a corporate group and are best left to such groups to manage their group-wide risks in a manner

most appropriate for their corporate structure.

However, apart from intra-group transactions, we also request that MAS clarifies its intent with respect to the application of the trading obligation to the following types of transactions, and more specifically, while it will be necessary to address some of these issues below in the SF(TDC)R, we would also request that MAS considers publishing a MAS response to “Frequently Asked Questions (FAQs)” to the SF(TDC)R (the “**FAQs**”) on some of the points below.

(a) Inter-branch Trades

Members believe that inter-branch trades should be out of scope of the trading obligations and seek MAS’ confirmation of this as well as request that this be addressed in the FAQs.

(b) Block Trades

Members would be grateful for MAS to provide an exemption to the trading obligation for block trades (i.e. large notional size swap transactions that meet or exceed a minimum block trade size threshold). Members note that under the CFTC approach in the US, special treatment is given to block trades, depending on whether the trade is executed pursuant to the rules and procedures of a swap execution facility (“**SEF**”) or designated contract market. A block trade can, for example, be pre-arranged and executed away from the SEF’s order book.<sup>4</sup> In the case of the EU, post-trade large in scale (“**LIS**”) trades are not exempted from the trading obligation but the European Securities and Markets Authority (“**ESMA**”) has explained that such exemptions have not been introduced in the EU as the flexibility of trade execution provided in the Markets in Financial Instruments Regulation (“**MIFIR**”) (where deferrals and waivers from pre-trade transparency and post-trade publication requirements are permitted for certain trades) do not necessitate such an exemption for large trades.

As MAS considers an appropriate block size for the exemption, members respectfully request that while the CFTC block trade thresholds and the MIFIDII LIS thresholds may be referred to for guidance, that local market and trading conditions be considered too. Any block trades exemption should also be addressed and drafted in the SF(TDC)R and in the FAQs.

In the event MAS considers it appropriate not to exempt block trades, members request that the industry be consulted and have the opportunity to provide comments on any pre- and post-trade transparency requirements (as well as waivers) which may be proposed in the future (whether in relation to block trades or otherwise).

(c) Novation

Members have noted that the draft SF(TDC)R lacks clarity on whether novated trades will be in scope for trading obligations. As members consider that novated trades should be exempt, we respectfully request that the exemption of novated trades be addressed explicitly in the SF(TDC)R and the FAQs.

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<sup>4</sup> While the CFTC Regulation 43.2 requires that a swap block trade occur away from the SEF’s trading system or platform, CFTC Regulation 37.702(b) requires block trades to be subject to pre-trade credit checks. Today, there is no technological capability to perform pre-trade credit checks away from the SEF platform. As a result, the CFTC, through no-action relief, has allowed block trades to be executed on a SEF via an RFQ-to-one method. See CFTC Letter No. 17-60

(d) Amendments/Unwind/Upsize

Members have noted that the draft SF(TDC)R lacks clarity on whether trade amendments, unwind and/or an upsize of mandated products will be in scope for trading obligations and respectfully request that MAS clarifies its intent on this. We would also request that MAS' intent on the treatment of these lifecycle events be addressed in the SF(TDC)R and the FAQs.

(e) Package Transactions

Members welcome the proposal to exempt package transactions from the trading obligation but would seek clarification from MAS if the exemption applies to the entire package, instead of one or more components of the package transactions. Members also note no drafting relating to the exemption has been proposed, and request that this be addressed explicitly in the SF(TDC)R. MAS may wish to make reference to the existing definitions of "package transaction" under the EU<sup>5</sup> and US<sup>6</sup> regimes. Members request that the industry be consulted and have the opportunity to provide comments on the definition of exempt package transactions.

(f) Swaptions

Members would be grateful for MAS to provide an exemption to the trading obligation for swaps resulting from an exercise of swaptions (i.e. options to enter into the underlying swaps). We would request that this also be addressed explicitly in the SF(TDC)R and the FAQs.

(g) Portfolio Compression

Members are grateful to MAS for introducing an exemption for contracts that result from a multilateral portfolio compression cycle. However, we note Regulation 4(2)(c) of the draft SF(TDC)R exempts derivatives contracts arising from a multilateral portfolio compression cycle involving a portfolio of derivatives contracts other than those specified in the First Schedule and would like to seek clarification on whether MAS only intends to exempt derivatives contracts arising from multilateral portfolio of contracts other than USD, EUR, GBP IRS.

Members consider that in practice, any portfolio compression relating to a portfolio of derivatives contracts should result in a derivatives contract of the same type. For this reason, we believe this may be a drafting error in the proposal and seek MAS' confirmation that all derivatives contracts resulting from portfolio compression would not be subject to the trading obligation. A portfolio compression should not be considered to provide for the execution or trading of swap transactions between counterparties because compression provides a netting mechanism whereby the outstanding trade count and outstanding gross notional value of swaps in two or more swap counterparties' portfolios are reduced. This is consistent with the US and EU approaches to portfolio compression. Please also refer to drafting comments in our response to question 9.

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<sup>5</sup> See MIFIR Regulation (EU) No 600/2014, Article 2(49) and (50) and the ESMA opinion on the treatment of packages under the trading obligation for derivatives published March 21, 2018

<sup>6</sup> See CFTC No-Action Letter 17-55

With this exemption in the trading obligation, members anticipate and hope that MAS extends the same (amended) exemption to the clearing requirements under the SF(CDC)R.

(h) Non-par swap rates

Market participants interpret that the trading obligation only applies to par coupon swaps (i.e. trades at market) and request that MAS confirms this. Members also note that in the case of the EU, we expect ESMA to confirm this interpretation shortly. Members respectfully request that MAS expressly address this in the SF(TDC)R and in the FAQs.

**Question 6: MAS seeks views on the proposed timing for the commencement of trading obligations in conjunction with the commencement of the SF(A) Act.**

Commencement of Trading Obligations

Members note that MAS intends to issue the SF(TDC)R in conjunction with the commencement of the SFA Amendment Act 2017 (which is targeted for 3Q 2018). Notwithstanding, members also note that MAS has highlighted in the Consultation Paper that appropriate time will be provided for market participants to make arrangements to access organised markets (domestic and overseas) that are licensed under the revised markets regime to meet the trading obligations and commend MAS for this.

With respect to the proposed timing for the commencement of the trading obligations, members would like to highlight the need for a sufficient timeframe in light of various considerations. More specifically, members are of the view that the TO Commencement Date should take into consideration a number of factors, including the critical issue of counterparty identification, venue availability, availability of substituted compliance and the approach towards equivalence determination and mutual recognition.

Members strongly suggest that the following issues be addressed prior to the TO Commencement Date:

(a) Counterparty Identification

Following the release of the final SF(TDC)R rules, members would need sufficient time not only to self-identify whether they are in-scope of the trading obligation, but to ascertain if the counterparty they are trading with, or intend to trade with, are also in-scope. Members respectfully request that MAS considers and allows a sufficient timeframe after the release of the final SF(TDC)R rules until the TO Commencement Date to facilitate such self-disclosure and counterparty identification.

(b) Venue Availability

Members are of the view that prior to the TO Commencement Date, it is important that as many overseas and domestic operators of OTC derivatives trading facilities as possible, which are commonly used (or will be used) by participants in Singapore to trade in USD, EUR and GBP IRS, make an application and are approved or recognised as an AE or RMO. The preparation time and resources required to submit an AE or RMO application can be

considerable and members urge MAS to assess regularly the status of any such application and recognition/approvals. The availability of venues is key to ensure that there will be sufficient trading facilities which market participants can have access to from Singapore, failing which the implementation of the Singapore trading obligation could result in fragmentation of market and liquidity pools. Members also point out that it generally takes about 6 months to sign up to new trading facilities and this should be also considered by MAS as it assesses an appropriate TO Commencement Date.

(c) Substituted Compliance

Members are of the view that prior to the TO Commencement Date, as MAS considers the issue of “venue availability” as described above, that MAS also provides clarity on the relevant trading jurisdictions (if any) which may be prescribed pursuant to Section 129N of the Amended SFA such that substituted compliance may be applied in respect of these jurisdictions. Members have recommended that UK and EU respectively be prescribed as a relevant trading jurisdiction in light of the trading obligations that currently apply under MIFIDII/MIFIR. In the case of US, members have also indicated that it would also be helpful for MAS to clarify the availability of substituted compliance in light of the CFTC rules that the Singapore branch of a U.S. swap dealer or U.S. major swap participant is not subject to the mandatory trade execution requirement.<sup>7</sup> Members consider that while the issue of “venue availability” as described above is being addressed, further information on the availability of substituted compliance will also be helpful to assist market participants in their implementation efforts towards the Singapore trading mandate.

(d) Equivalence and Mutual Recognition

Members note that in the Consultation Paper, MAS has highlighted that it will be seeking equivalence determinations for organised markets that are based in Singapore. In this regard, members seek further clarity from MAS as to the equivalence regime for organised markets that may be based in Singapore, the jurisdictions being considered for equivalence determination, the status of such equivalence determination and if mutual recognition is also being considered. Members consider that such clarity will be necessary for market participants who may be considering accessing liquidity through market operators in Singapore. If organised markets based in Singapore become available to market participants, equivalence and mutual recognition of these platforms will be relevant to avoid market and liquidity fragmentation.

Members stress that it is critical that MAS considers the various factors above when determining the appropriate TO Commencement Date and provide sufficient timeframe for implementation, for example at least 6 months from the publication of final SF(TDC)R rules (but potentially longer given the various factors discussed above).

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<sup>7</sup> See CFTC Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations

## Trading Obligations vs. Clearing Obligations

While considering the proposed timing for commencement of the trading obligations, members also noted that the clearing mandate should be implemented some time prior to the trading obligations, to give adequate time for market participants to implement each one in succession.

### 6-Month Grace Period

Members note that the trading obligations will commence on the “trading commencement date” as specified in the third column of the First Schedule to the draft SF(TDC)R. In addition, it is noted that there is a proposed 6-month grace period under Regulation 5(2) of the draft SF(TDC)R for persons who become specified persons in respect of a specified derivatives contract only after the applicable trading commencement date but was not one on or before that date.

Members would be grateful if MAS can assist with the following with respect to the application of the 6-month grace period:

- (a) that MAS confirms that the exemption available for the 6-month grace period is absolute and that the trading obligations would not have retroactive effect once the 6-month grace period has lapsed;
- (b) members consider that in-scope specified persons which trade with counterparties who are relying on such grace period should also be exempt in respect of the relevant trades (with no requirement to re-execute the trades on an organised market after the 6-month grace period) and request that MAS addresses this in the SF(TDC)R; please refer to proposed drafting changes to the SF(TDC)R in our response to question 9 below; and
- (c) that MAS clarifies if the 6-month grace period also applies in the context of the trading threshold and if so, how this is to be applied to specified persons who may initially exceed the trading threshold but who, during the course of their initial 6-month grace period or otherwise, may then fall below the trading threshold and then exceed the trading threshold again.

Separately from the above, members are supportive of the proposal that only in-scope specified derivatives contracts which are entered on or after the commencement date of the trading obligations will be subject to the trading obligations under the SF(TDC)R. It is further noted that as a result, legacy trades (i.e. trades executed prior to the commencement of the trading obligation) will not be subject to the trading obligations.

### **Question 7: MAS seeks feedback on the trading facilities which market participants may access, or intend to access, for the trading of USD, EUR and GBP IRS.**

Members have indicated that the trading facilities they currently access and / or intend to access include the following:

- (a) BGC Broker LP;
- (b) BGC Derivative Markets L.P.;

- (c) Bloomberg SEF LLC;
- (d) Bloomberg Trading Facility Limited;
- (e) Brokertec Europe Limited;
- (f) DW SEF LLC;
- (g) GFI Brokers Ltd;
- (h) GFI Swaps Exchange LLC;
- (i) I-Swap Euro Ltd;
- (j) ICAP Global Derivatives Limited;
- (k) ICAP Securities Ltd;
- (l) ICAP SEF (US) LLC;
- (m) ICAP WCLK Ltd;
- (n) Marketaxess Europe Limited;
- (o) tpSEF Inc;
- (p) Tradeweb Europe Limited;
- (q) Tradition Financial Services Ltd;
- (r) Tradition SEF, Inc.;
- (s) Tradition TRADE-X;
- (t) Tradition (UK) Ltd OTF;
- (u) TrueEx SEF;
- (v) Tullet Prebon (Europe) Ltd;
- (w) Tullet Prebon (Institutional Services) Ltd;
- (x) Tullet Prebon (Securities) Ltd;



(y) TW SEF LLC.

**Question 8: MAS seeks feedback on any other considerations and timing concerns that may affect market participants' ability to access trading facilities for the trading of USD, EUR and GBP IRS.**

Please see response to question 6 above.

**Question 9: MAS seeks comments on the draft SF(TDC)R in Annex B.**

*Booked in Singapore*

We note that there are drafting differences in the statutory definition of "booked in Singapore" in the draft SF(TDC)R and SF(CDC)R, and the SF(RDC)R. In this regard, we would like to confirm that the concept of "booked in Singapore" is meant to be consistent across the trading, clearing and trade reporting obligations. If so, we respectfully submit that the same concept of "booked in Singapore" should be used consistently across the trading, clearing and trade reporting obligations.

*Calculation of Threshold – Intra-group Transactions*

If MAS considers that intra-group transactions should be excluded from the calculation of the trading threshold (see our response to question 2), we kindly request that the SF(TDC)R clearly states so and that this is also aligned with the threshold calculation under the SF(CDC)R. This can be addressed either in the definition of "trading threshold amount" or in paragraph 7 of the Second Schedule to the SF(TDC)R.

*The Requirements - Traded in Singapore*

As mentioned in our response to question 4 above (see "The Requirements – Traded in Singapore"), we submit that the requirement for specified products "traded in Singapore" to be subject to the trading obligation be removed from the SF(TDC)R, and that the SF(TDC)R provides that specified persons are only required to comply with the trading obligation if the trade is booked in Singapore.

In addition, members would respectfully request that MAS consider if the language of "[party / parties / counterparty] to the specified derivatives contract" in the draft SF(TDC)R (see Regulations 5(1) and 6(1)) should be re-considered, particularly in the context of agency arrangements as mentioned in our response to question 4.<sup>8</sup>

We would also highlight that editorial amendments should be made to the definition of "traded in Singapore" to correct the numbering of paragraphs (d) and (e) to paragraph (a) and (b), and to add "and" after paragraph (a).

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<sup>8</sup> This language should also be re-considered if the "traded in Singapore" is to be maintained at all.

Portfolio compression amendment

With reference to our response to question 5 (see “(g) Portfolio Compression”), we suggest that Regulation 4(2)(c) is amended as follows:

“(c) the derivatives contract is not a contract that is the result of a multilateral portfolio compression cycle in respect of a portfolio of derivatives contracts—~~other than the derivatives contracts that are specified in the First Schedule.~~”

6-Month Grace Period

As set out in our response to question 6, we respectfully request that MAS provides clarity in the draft SF(TDC)R to clarify that that in-scope specified persons which trade with counterparties who are relying on the 6-month grace period would also be exempt from the trading obligation in respect of the relevant trades. We would suggest that the following changes be made to Regulation 6(1):

6.—(1) A person who is a party to a specified derivatives contract is exempted from section 129J of the Act in respect of the specified derivatives contract, if —

(a) he is a person specified in the Second Schedule; ~~or~~

(b) the counterparty to the specified derivatives contract is a person specified in the Second Schedule; or

(c) the counterparty to the specified derivatives contract is a person referred to in regulation 5(2) and the specified derivatives contract is traded during the 6-month period from the date of his becoming a specified person.

Responsibility of Specified Person to make certification – specified person/traded in Singapore

As set out in our response to question 2, in the event that MAS is unable to support the publication and/or maintenance of a list of in-scope banks, members respectfully request that MAS expressly prescribes in the SF(TDC)R that it is the responsibility of each specified person to disclose its in-scope status, including whether it has exceeded the trading threshold during the applicable period. As set out in our response to question 4, this should also be extended to require each specified person to disclose to prospective counterparties if the requirement of “traded in Singapore” has been met on a trade-by-trade basis if the “traded in Singapore” requirement is to be maintained at all.

Inconsistency in List of Public Bodies

As set out in our response to question 3, if it is the MAS’ intention to maintain consistency in the list of public bodies which are exempt from the clearing, trading and trade reporting obligations as well as the margin requirements, members respectfully request that MAS make relevant amendments to the list of Exempted Persons in the Second Schedule to the draft SF(TDC)R, or otherwise, to the corresponding list of exempted persons in the SF(CDC)R, SF(RDC)R and the MAS Margin Guidelines accordingly. As mentioned above, we note that the list of public bodies in

the SF(TDC)R is the most extensive, and would suggest that this list be used across the SF(CDC)R, SF(RDC)R and the MAS Margin Guidelines as well.

Package Transactions

As mentioned in our response to question 5 (see “(e) Package Transactions”), we note that it is MAS’ intent to exempt package transactions from the trading obligation. However, this is not reflected in the proposed SF(TDC)R and it is respectfully submitted that such exemption should be expressly incorporated into the SF(TDC)R (e.g. in Regulation 4).

Block Trades, Novation, Amendments/Unwind/Upsize, Non-par Swaps

As set out in our response to question 6, members respectfully request that MAS clarifies its intent with respect to certain types of transactions. In the case of block trades, members would suggest that the block trade exemption be specifically addressed in Regulation 4(2). In the case of the proposed treatment of novations, amendments/unwind/upsized, swaptions and non-par swap rates, members would request that these are also addressed in the SF(TDC)R (e.g. in Regulation 4(2)) to the extent MAS is of the view that they are exempt. We would be happy to work with MAS on the drafting of these provisions.

**Question 10: MAS seeks views on the proposal to subject IRS denominated in EUR and GBP, with the contract specifications set out in Table 2, to clearing obligations.**

Members are in support of MAS’ proposal to align the contracts that are subject to trading and clearing obligations. However, members also seek clarity from MAS as to the proposed commencement date of these additional products with respect to the clearing obligations.