



**CONFIDENTIAL**

Executive Director

REF: CMD CMP 02/2013

23 Aug 2013

**BY HAND**

International Swaps and Derivatives Association, Inc.  
50 Collyer Quay #09-01  
OUE Bayfront  
Singapore 049321

Attention: Mr Keith Noyes  
Regional Director, Asia Pacific

Ms Jacqueline Low  
Senior Counsel Asia

Dear Sir/Madam

**REQUEST FOR RESPONSE REGARDING DISCLOSURE PROHIBITIONS**

We refer to your letter dated 2 August 2013, requesting for a written response from the Monetary Authority of Singapore (“MAS”) with respect to the issues raised in paragraph 3 of the letter. We understand from your letter that this request is made on behalf of members of ISDA, so that the members of ISDA may avail themselves to the no-action relief set out in the CFTC Letter No. 13-41 dated 28 June 2013 that would permit a reporting party to omit Identity Information of its swap counterparty under the Reporting Rules. For ease of reference, the capitalised terms in this letter have the same meaning as the terms defined in your letter.

**The Banking Act (Cap.19) (“BA”)**

2 Section 47(1) of the BA prohibits a bank in Singapore or any of its officers from disclosing customer information except as expressly provided for under the BA. “Bank in Singapore” is defined in section 2 of the BA to mean “(a) a bank incorporated in Singapore; or (b) in the case of a bank incorporated outside Singapore, the branches and offices of the bank located within Singapore”. “Customer information” in relation to a bank is defined in section 40A of the BA to mean “(a) any information relating to, or any particulars of, an account of a customer of the bank, whether the account is in respect of a loan, investment or any other type of transaction, but does not include information that is not referable to any named customer or group of named customers; or (b) deposit information”.

**CONFIDENTIAL**

**CONFIDENTIAL**

3 With respect to paragraph 3B) of your letter, whether section 47 of the BA would be applicable so as to prohibit reporting in accordance with the Reporting Rules would depend on whether the reporting counterparty falls within the definition of “bank in Singapore” and whether the Identity Information falls within the definition of “customer information”. This is a question of fact and is to be determined based on an assessment of the facts of each case. Following from this, if a reporting counterparty falls within the definition of “bank in Singapore” and the Identity Information falls within the definition of counterparty information, then regardless of whether the relevant trade is booked in Singapore or elsewhere, the reporting counterparty would be prohibited from reporting in accordance with the Reporting Rules unless an exception applies as explained in the following paragraph.

4 Section 47(2) of the BA provides that a bank in Singapore or any of its officers may, for such purpose as may be specified in the first column of the Third Schedule to the BA, disclose customer information to such persons or class of persons as may be specified in the second column of that Schedule, and in compliance with such conditions as may be specified in the third column of that Schedule. Under the Third Schedule to the BA, one such purpose for which customer information can be disclosed is if the disclosure is permitted in writing by the customer. MAS has received feedback from the industry on operational difficulties<sup>1</sup> in obtaining such customer consent, and is looking at amendments to address this issue.

**The Securities and Futures (Licensing and Conduct of Business) Regulations  
(Rg. 10) (“SF(LCB)R”)**

5 Regulation 47(2) of the SF(LCB)R prohibits a capital markets services (“CMS”) license holder in respect of the relevant activities from divulging information relating to a customer’s order except under specific conditions. Regulation 54 of the SF(LCB)R provides that regulation 47 shall, with the necessary modifications apply to “(a) a bank licensed under the BA; (b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186); and (c) a finance company licensed under the Finance Companies Act (Cap. 108) [collectively “Exempt Entities”]”.

6 MAS had received feedback from industry that regulation 47(2) of the SF(LCB)R may prevent the reporting of Identity Information by CMS license holders and Exempt Entities as “customer’s order” in regulation 47(2) may include Identity Information.

---

<sup>1</sup> (i) Banks may not be able to obtain consent from customers for past trades (to comply with back-loading reporting requirements);  
(ii) Some customers may not agree to provide consent for reporting, and those who do so may also subsequently withdraw consent.

**CONFIDENTIAL**

7 In this regard, MAS has confirmed that “customer’s order” was not intended to include information on completed OTC derivatives transaction<sup>2</sup>. MAS is considering amendments to regulation 47(2) of the SF(LCB)R to more explicitly clarify that “customer order” does not include information on completed OTC derivatives transactions and consequently would not prevent CMS license holders and Exempted Entities from meeting the relevant reporting rules.

Yours faithfully



LOO SIEW YEE (MS)  
EXECUTIVE DIRECTOR  
CAPITAL MARKETS DEPARTMENT

---

<sup>2</sup> Paragraph 14 of MAS’ June 2013 Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.