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29 May 2017

Dear Kelly and Ken,

Re: Request for Amendment of Masking Relief under Regulation 11 of the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 (“Reporting Regulations”)

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) would like to submit a request for MAS to consider granting further relief in respect of Regulation 11 of the Reporting Regulations, to (i) extend the current date of 1 July 2017, as stated in Regulations 11(1) and 11(2) respectively, to a later date, and (ii) to disapply the current unmasking requirement under Regulation 11(3) in respect of historical transactions where consent has not been obtained from the counterparty.

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 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 ISDA’s web site: www.isda.org.

ISDA is actively engaged with providing input on regulatory reporting regimes in the United States (the “**US**”), Canada, the European Union (the “**EU**”) and Asia-Pacific jurisdictions, including Japan, Korea, Australia and Hong Kong, among others. ISDA’s comments are derived from this international experience and constant dialogue, and reflect the views of both firms in the Asia-Pacific region and from further afield. As OTC derivatives tend to be cross-

border in nature, we wish to highlight the importance of ensuring that regulatory requirements have a consistent domestic and cross-border effect, so as to not disproportionately impact any one sector or jurisdiction of what is a global market.

Problem

Without further relief from MAS,

- from 1 July 2017, under paragraphs 11(1) and (2) of the Reporting Regulations, Specified Persons may have no choice but to cease trading relationships with counterparties who have not provided consent for their identifying information to be reported under the Singaporean OTC derivatives trade reporting regime; and
- by 1 January 2018, under paragraph 11(3) of the Reporting Regulations, Specified Persons would be required to revisit the historical records of their transactions with those counterparties reported under the Singaporean OTC derivatives reporting regime, and re-report them with the identity of those counterparties revealed, or ‘unmasked’, even if counterparty consent to do so has not been able to be obtained.

For Specified Persons, these requirements would have a twofold, compounding, detrimental effect: Firstly, the cessation of OTC derivative trading relationships with counterparties as described above would lead to a loss of revenue, reputation, ability to provide liquidity and manage risk, and may also possibly put the wider product trading relationship with that counterparty in jeopardy. Secondly, a certain breach of obligations of Specified Persons may result, either to the counterparty if their identity is disclosed without their consent, or under the Reporting Regulations if the Specified Person is unable to disclose its counterparty’s identity.

This is of significant concern to our members, as despite some progress, regular counterparty outreach and increased regulatory attention, many of the counterparty consent restrictions which justified the granting of relief have not been fully removed, and remain in place today.

What are the Facts?

From recent discussions with MAS, we understand that MAS will extend the relief currently in place for transactions where the reporting of counterparty information is prohibited due to “the laws of any jurisdiction specified in the Fifth Schedule (of the Reporting Regulations) or by any requirements imposed on him by any authority of any jurisdiction specified in the Fifth Schedule (of the Reporting Regulations)”, as specified in Regulations 11(1)(a) and 11(2)(a).

With respect to counterparty consent limitations under Regulations 11(1)(b) and 11(2)(b), significant and ongoing efforts have been used to secure counterparty consent to unmask, however there remains a subset of counterparties which either refuse to respond to requests, or respond to requests with a refusal to allow their identity to be unmasked.

We are grateful that MAS has previously provided similar relief in response to industry requests and applications over a number of years. We also note that a number of regulators globally have considered the issue of masking where counterparty consent cannot be obtained, and have granted relief, albeit in different forms. This includes jurisdictions within the Asia-Pacific region such as Australia¹ and Hong Kong², but also from other regions such as Canada.³

What is the Impact of the Problem?

The primary impact of the problem is that, as Regulations 11(1), (2) and (3) stand, Specified Persons would need to completely cease trading OTC derivatives with non-consenting counterparties from 1 July 2017, and additionally be faced with the difficult situation of having to either unmask for all historical transactions without counterparty consent (in breach of banking secrecy and/or customer confidentiality obligations with exposure to legal action), or to continue to report transactions with counterparty information masked (in breach of the Reporting Regulations).

We would submit that none of these actions lead to improved regulatory outcomes, foster growth in Singaporean market liquidity, permit existing important client relationships to continue or further Singapore's standing as a regional financial centre. We believe it is not the intention of MAS to discourage the provision of liquidity by Specified Persons to counterparties to manage risk, and that non-consenting counterparties are unlikely to be a source of systemic risk in the Singaporean OTC derivatives market.

Relief Sought

We consider that MAS policy, and indeed the policy of many regulators globally, has consistently been to promote a practical, pragmatic approach to transaction reporting which allows reporting entities to mask counterparty information where consent to the disclosure of identity has not been obtained. In light of the foregoing, we would respectfully request (i) to extend the 1 July 2017 deadline in Regulations 11(1) and (2), and (ii) to disapply Regulation 11(3) in cases where consent has not been obtained from the counterparty, so that existing relationships may continue and that transactions are not required to be unmasked in the future, unless consent is obtained from the counterparty. We note that the general requirement for other jurisdictions has been to permit an approximate 90-day period for unmasking historical trades after consent is received.

¹ Exemption 4, [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#).

² Rule 26(1), [Securities and Futures \(OTC Derivative Transactions – Reporting and Record Keeping Obligations\) Rules](#).

³ [Alberta Securities Commission Blanket Order 96-501](#) and [Canadian Securities Administrators Multilateral CSA Staff Notice 96-301](#).

Why Should Relief be Granted?

In addition to dealing with the issues described above, we would also like to highlight a number of other reasons in support of our request for relief from MAS.

In the event that MAS is minded to grant the relief requested herein, it will not only facilitate ongoing trading (with clients affected by banking secrecy) leading to real economic benefits, but will also ensure that the Singapore reporting regime is tailored to deal with banking secrecy issues that continue to exist across many jurisdictions. Further, the Singaporean reporting regime will continue to be aligned with other reporting regimes that continue to provide masking relief which in turn avoids any stimulus towards regulatory arbitrage. Other reasons in support of the continuation of relief include the mitigation of the following undesirable outcomes:

- commercial harm to Specified Persons through reputational damage and ceased business relationships;
- reduction in the ability of Specified Persons and their counterparties to manage risk and hedge existing exposures; and
- market dislocation, reduction in market liquidity and the general level of Singaporean market access overseas.

Members are mindful that the relief is subject to conditions, including those in Regulation 11(2), which requires a Specified Person or their agent to make reasonable efforts to obtain the consent of the party, the counterparty, or both the party and the counterparty, as the case may be. This already places the onus to take measures to seek the counterparty's consent. We would therefore submit that the existing conditions remain appropriate.

We thank MAS for its consideration of this request, and we would also welcome the opportunity to provide feedback on the draft text of any proposed amendments to the relevant Reporting Regulations. Please contact Rishi Kapoor, Director, Policy, Asia-Pacific at rkapoor@isda.org should you wish to discuss this letter further.

Yours faithfully,

For the International Swaps and Derivatives Association, Inc.



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ISDA



Keith Noyes
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