

February 27, 2014

Mr. Sergey Shvetsov  
First Deputy Governor of the Bank of Russia  
9 Leninskiy Prospekt, Moscow, GSP-1, 119991 Russia

**Re: Trade reporting in Russia**  
**[letter sent in Russian with English copy]**

Dear Mr. Shvetsov:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) and the National Association of Securities Markets Participants (“**NAUFOR**”), on behalf of our members with reporting obligations under Russian securities market legislation, are writing to you for further clarification of certain issues relating to trade reporting in Russia. We appreciate the importance of the clarifications provided by the Bank of Russia in its Information Letter dated 30 October 2013, *On Application of Procedure for Keeping the Register of Agreements Entered Into under a Master Agreement (Single Agreement), Providing Information Necessary to Maintain the Register and Information from the Register, and Providing the Register of Agreements Entered Into under a Master Agreement (Single Agreement) to the Federal Government Body for the Securities Market* (the “**Bank of Russia Information Letter**”) and hope that the questions asked in this letter will also receive a response from the regulator.

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 62 countries. These members include a broad range of OTC 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 including exchanges, clearinghouses 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).

In 2013 ISDA created the Russian Regulatory Compliance Working Group to facilitate ISDA members’ compliance with reporting obligations under Russian securities market legislation.

NAUFOR is the Russian securities and collective investments self-regulatory organization with over 260 broker-dealers, banks and asset managers in the membership. NAUFOR sets rules and standards for its members covering virtually every aspect of business in financial markets. NAUFOR’s mission is to improve securities regulation and promote fair and efficient market

that benefits investors and intermediaries alike. Under a license from ISDA, NAUFOR develops and administers Russian-law OTC Derivatives Master Agreement and an extensive range of asset class specific documentation.

We would like to first and foremost thank you for the clarifications provided to us in the Bank of Russia Information Letter; these clarifications were extremely important and useful to us and our members in terms of the 5<sup>th</sup> of November compliance date for reporting repurchase transactions and FX swaps. Our members are now preparing to comply with the second compliance date (25 June 2014) and therefore are seeking further guidance and clarifications.

***1) Trade reporting as a pre-condition for close-out netting***

Article 4.1 of Federal Law No. 127-FZ On Insolvency (Bankruptcy), dated 26 October 2002 (the “**Insolvency Law**”), requires the entry into a financial agreement (as defined in Article 4.1 of the Insolvency Law) be registered with a trade repository in accordance with Federal Law No. 39-FZ On the Securities Market, dated 22 April 1996 (the “**Securities Market Law**”). Pursuant to item (1) of the Bank of Russia Information Letter, registration of the entry into a financial agreement with a trade repository is a pre-condition for effective operation of close-out netting in insolvency.

In light of the above, we would like to ask for your confirmation of our understanding that in order to ensure the eligibility of a trade for close-out netting in insolvency under the Insolvency Law, it is only necessary to report the execution of the trade (and the relevant master agreement) and not any other event which is reportable under the Procedure for Keeping the Register of Agreements Entered Into under a Master Agreement (Single Agreement), Providing Information Necessary to Maintain the Register and Information from the Register, and Providing the Register of Agreements Entered into under a Master Agreement (Single Agreement) to the Federal Government Body for the Securities Market, approved by the FSFM of Russia Order No. 11-68/pz-n, dated 28 December 2011 (the “**Reporting Regulation**”) (such as, for example, the status of obligations codes (*kody sostoyaniya obyazatel'stv*) in respect of the reported trade or amendments to the reported trade or the relevant master agreement).

Furthermore, if our understanding is correct, to provide greater legal certainty for market participants, it would be helpful to amend the Reporting Regulation to clarify this point. There is uncertainty among market participants as to how and to what extent a Russian court would, in its interpretation of the Reporting Regulation, take into consideration any clarifications given by the Bank of Russia.

***2) Use of information from own records in the absence of necessary information in register / ability to report supplemental information / admissibility in evidence of register excerpts provided by trade repository***

Article 29 of the Reporting Regulation prescribes that in the case of any discrepancy between trade information held by the trade repository and information from reported contracts and/or the parties' documents relating thereto, the former shall prevail for the purposes of calculating the net termination amount in insolvency.

In light of the above, we would like to ask for your confirmation of our understanding that, if the register held by a trade repository does not contain (for any reason) information on performance (including margin transfers) and/or termination of a trade (and we note that this information is essential for calculation of the net termination amount), the information about these matters from the parties' own records will be taken into account for the purposes of calculation of the net termination amount.

In addition, given that information in the register is to be used for the purposes of calculating the net termination amount in insolvency, it would be helpful if parties to a trade could elect to register supplemental information (such as performance / non-performance of payment/delivery obligations) regarding that trade for the purposes of such calculation. It would also be helpful if parties could correct any errors previously registered. Specific time periods could apply in which this should be done. Would the Bank of Russia consider amending the Reporting Regulation to effect such changes?

Market participants are entitled to obtain from the trade repository an excerpt from the register confirming, amongst other things, the registration of the master agreement and any trades thereunder. Would the Bank of Russia consider amending the Reporting Regulation to make clear that such an excerpt will be admissible in the Russian courts for the purposes of evidencing the calculation of the net termination amount?

### 3) *Scope of reportable products*

Pursuant to clause 6 of Article 51.5 of the Securities Market Law, our understanding is that reportable trades include over-the-counter derivative transactions, repurchase transactions and other types of transactions with securities and/or foreign currency documented under a master agreement (single agreement).

Could the Bank of Russia please confirm that “*other types of transactions with securities and/or foreign currency*” do not capture vanilla foreign currency deposits or loans, even if they are entered into under a master agreement (single agreement), because this legislation was designed to implement the G20 objectives relating to reporting of over-the-counter derivatives only, which do not include vanilla deposits or loans. Further, the secondary objective of this legislation is to introduce close-out netting for derivatives and repos. It is worth noting that close-out netting is not a feature of vanilla loans and deposits and there is no regulatory requirement in other jurisdictions such as the EU and the US that would require reporting of loans and deposits. We would be grateful for your confirmation.

Furthermore, we understand that the clarifications issued by the FSFM of Russia in its Information Letter dated 12 November 2012, *On the Provision of Information Necessary to Maintain the Register of Agreements Entered Into under a Master Agreement (Single Agreement)* (the “**FSFM Information Letter**”) are still applicable and believe that they, in our view, require guidance from the Bank of Russia in terms of a definition of a ‘master agreement (single agreement)’. Among other things, pursuant to the FSFM Information Letter, the parties to an over-the counter transaction documented under a master agreement (single agreement) shall

provide information to a trade repository if the master agreement contains a provision to the effect that:

- all transactions concluded thereunder constitute a single agreement between the parties; and
- a default under at least one of the transactions will constitute a default under all the other transactions concluded under that master agreement.

We would appreciate the confirmation by the Bank of Russia that, in addition to the above criteria, in order to constitute a ‘master agreement (single agreement)’ for reporting purposes under the Securities Market Law, a master agreement must *also* provide for the grounds and procedures for terminating transactions following the occurrence of an event of default and calculating the net amount to be paid in connection therewith and, absent such provisions, transactions documented under such a master agreement shall not be subject to trade reporting under Russian law.

#### 4) *Trade matching*

Market participants have expressed concern that, in the case where the parties to a trade have agreed that each party (or its reporting person) is obliged to report that trade, trade matching becomes an essential pre-condition for close-out netting. However, there may be a number of situations where this pre-condition cannot be satisfied.

For example, if one party (or its reporting person) doesn’t comply with its obligation to report a trade, the other party (or its reporting person) is not permitted to unilaterally report that trade. In this scenario, in order to be able to enjoy the benefit of the close-out netting in insolvency, the other party (or its reporting person) should be permitted to report the trade unilaterally. In these circumstances it may also be necessary to temporarily extend the three day reporting period to allow for any resulting disruptions. Would the Bank of Russia consider amending the Reporting Regulation to effect such changes?

Similar issues may arise in the context of reporting transactions with a duration of less than four days where the market participants have a choice to report either on a daily or quarterly basis. Therefore, the situation where one party reports daily and the other – by the end of the quarter, results in one sided submissions to the trade repository and it may be difficult, if not impossible, to match the trade. In connection therewith, does the Bank of Russia intend to amend the Reporting Regulation to remove optionality when it comes to reporting such transactions?

#### 5) *Collateral reporting*

As a matter of English law, the credit support arrangements set out in the Credit Support Annex (Transfer – English law) (the “CSA”) constitute a transaction. As confirmed previously in item (1) of the Bank of Russia Information Letter, it is not required under Russian law to submit information on particular (interim) payments/deliveries under a transaction to a trade repository.

In light of the above, could the Bank of Russia please confirm that under the current Russian securities market legislation individual transfers of collateral under the CSA, even if made on or after 25 June 2014 (being the second compliance date), are not required to be reported.

Furthermore, we understand that the Bank of Russia is contemplating amending the Regulation on Types of Derivative Transactions, approved by the FSFM of Russia Order No. 10-13/pz-n, dated 4 March 2010, making a margin agreement a new type of derivative transaction (the “**Amendments**”). We further understand that this new concept of “margin agreement” intends to cover and make fully enforceable under Russian law, among other things, the CSA and the NAUFOR Floating Margin Payment Agreement (together the “**Collateral Documents**”). This is, in our view, a positive step fostering the development of the Russian capital markets and establishment of Moscow as an International Financial Center. In this respect it would be very beneficial for market participants to understand that, after the Amendments are adopted, individual transfers of collateral under the Collateral Documents need not to be reported as they are deemed particular (interim) payments/deliveries under a transaction.

As a separate matter, does the Bank of Russia plan to amend the Reporting Regulation in connection with adopting the Amendments and, if yes, what would be the scope of such amendments?

#### **6) Counterparty scope**

The FSFM Information Letter explained that the duty to provide information to a trade repository under the Reporting Regulation rests with both parties, even if one of the parties is a non-resident of Russian Federation.

We understand that the clarifications issued by the FSFM of Russia are still applicable and believe that this provision, in our view, requires guidance from the Bank of Russia in terms of a definition of a ‘Russian resident’. We would appreciate its confirmation that this means that trades documented under a master agreement (single agreement) between a non-Russian entity and the following types of counterparties are *not* subject to the reporting obligation under Russian law:

- Russian citizens domiciled and entering into a trade outside of Russia;
- Russian citizens who are also citizens of another state entering into a trade outside of Russia;
- non-Russian citizens domiciled in Russia;
- foreign branches of Russian legal entities entering into a trade outside of Russia; and
- Russian branches of non-Russian legal entities.

Our understanding is based on the fact that there is a link between the above-mentioned counterparties and a state other than the Russian Federation which is stronger than the nexus of such persons to the Russian Federation. Therefore, such persons do not amount to ‘Russian residents’ for the purposes of trade reporting in Russia and transactions executed between such persons and non-Russian entities should not be reportable under the Russian securities market laws and regulations.

**7) *Trades with the Bank of Russia***

In light of the clarifications given in the FSFM Information Letter as specified in item 6) above, we understand that trades with the Bank of Russia documented under a master agreement (single agreement) are not required to be reported under Russian law. Please confirm if our understanding is correct.

However, if our understanding is incorrect and such trades need to be reported, please clarify whether (a) it is intended that the method of reporting (including to the trade repository and allocation of reporting person functions) be agreed with each counterparty of the Bank of Russia on a case-by-case basis for each master agreement, or whether (b) the Bank of Russia will require that the same method of reporting be used for all master agreements as was set out in the template master repurchase agreement attached to the Bank of Russia Letter No. 55-T, dated 29 March 2013?

**8) *Notification by the trade repository of inability to register***

It will be important for market participants to receive prompt notification from the trade repository in the event that it is unable to register a trade. Under the Reporting Regulation, trades are required to be reported within three days. However, we note that, under the NSD trade reporting rules, the trade repository will not notify the parties of an inability to register a trade before the expiration of a 100 day waiting period.

**9) *Block allocation***

An Investment Manager who manages multiple funds often executes a so-called block transaction which is typically large in size to benefit from better pricing. After execution of the block transaction, the block trade will be allocated in smaller trades to the different funds. The legal counterparties to the trade are the funds and the confirmation will happen on the allocated/fund level.

We understand that in these circumstances only the allocated trades need to be reported. Could the Bank of Russia please confirm that our understanding is correct?

As a separate matter, we understand that the Bank of Russia is developing a set of significant amendments to the Reporting Regulation. We would like to understand more the direction and scope of these amendments and discuss with you how the amendments will impact the reporting regime in Russia and, possibly, the effectiveness of close-out netting in insolvency. We would therefore appreciate a meeting with the Bank of Russia representatives scheduled in March, preferably in the week commencing on the 3<sup>rd</sup> of March. We also hope that the meeting will provide the opportunity to discuss further steps for harmonization of the reporting obligations across G20 members.

Thank you for your consideration of these concerns. We very much look forward to hearing from you and stand ready to discuss.

Sincerely,

Robert Pickel  
Chief Executive Officer  
ISDA

Alexey Timofeev  
Chairman  
NAUFOR