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BY POST AND BY E-MAIL

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Mr Richard Glenn
Personal Property Securities Branch
Australian Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
pps@ag.gov.au

Dear Sir,

Personal Property Securities Regulations 2010 - Exposure Draft

The International Swaps and Derivatives Association, Inc. (“ISDA”) is grateful for the opportunity to respond to the request by the Australian Attorney-General's Department for submissions in relation to the exposure draft of the Personal Property Securities Regulations 2010 released for public comment in April 2010 (“**Draft Regulations**”).

ISDA's submission on the Draft Regulations is limited to an issue to which ISDA originally referred in its submission of 15 August 2008 on the consultation draft of the Personal Property Securities Bill (“**Consultation Draft Bill**”). As was the case with that submission, this submission is not intended to be a submission on each detailed aspect of the relevant Australian law, as we understand that the Attorney-General's Department has already received submissions of this nature.

Absolute-transfer derivatives collateralisation, securities lending and repurchase transactions

ISDA notes that the commentary released with the Consultation Draft Bill in 2008 stated that it was likely that the regulations would exclude lending arrangements in relation to investment instruments from the definition of security arrangements (section 3.10 of the commentary). ISDA understood that the Government's policy behind this exclusion was that it is not intended that the arrangements under the new Personal Property Securities regime (“**PPS Regime**”) would interfere with the ability to transact efficiently in the financial markets. ISDA supports such a policy. ISDA's submission on the Consultation Draft Bill made the point that the exclusion should be described by general principles, rather than specific types of transactions, so that other arrangements similar to securities lending - namely repurchase transactions and absolute transfer derivatives collateralisation arrangements - would also be excluded.

However, no exclusion of this type appears in the Draft Regulations, and no reference to it is made in the commentary to the Draft Regulations. ISDA believes that the absence of this exclusion presents a risk

that a large number of financial market transactions would be unintentionally caught by the PPS Regime, potentially resulting in a significant level of inefficiency in these financial market transactions and arrangements - with no obvious policy benefit. These financial market transactions are regularly entered into between financial institutions and, in some cases, government entities and serve a beneficial function in enhancing the stability and liquidity of the financial markets. Indeed, in the case of absolute transfer derivatives collateralisation arrangements (such as ISDA's Transfer-Method law credit support annex which is the credit support document commonly used in the Australian derivatives market) their importance has been recognised by Australia's three financial regulators: ASIC, APRA and the RBA.

Accordingly, ISDA submits that the Draft Regulations should exclude these arrangements from the PPS Regime, as was intimated by the Government in its commentary on the Consultation Draft Bill in 2008.

As ISDA noted in its submission on the Consultation Draft Bill, such an exclusion should refer to the nature of the transaction which is put into place in such arrangements, rather than referring to commercial descriptions such as "lending". This would minimise the risk of inadvertently disadvantaging parts of the financial markets who effect similar transactions under different commercial descriptions. Conceptually, the arrangements excluded should be those where:

- there is a transfer of personal property from a transferor to a transferee
- the transferee is under no obligation to return that personal property to the transferor
- the transferee is under an obligation (which may be conditional) to transfer property to the transferor which is fungible with the original property or to pay the value of the property to the transferor.

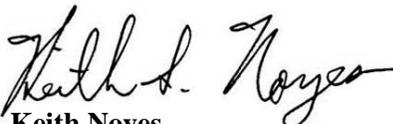
An exclusion of this type should avoid the PPS Regime inadvertently applying to financial market transactions such as repurchase transactions, absolute transfer derivatives collateralisation arrangements and securities lending transactions.

Conclusion

ISDA would be happy to speak with the Attorney-General's Department in relation to any further developments in relation to the PPS Regime or the Draft Regulations, to clarify any issues raised in this submission or generally to discuss any future developments in the derivatives market in Australia. In the meantime, if you or your colleagues have any questions regarding our comments, please do not hesitate to contact Mr Keith Noyes (knoyes@isda.org; +852 2200 5900) Ms Jacqueline Low (jlow@isda.org; +65 6538 3879) of ISDA or Mr Scott Farrell (scott.farrell@malleasons.com; +612 9296 2142) of Malleasons Stephen Jaques.

Yours faithfully,

For the International Swaps and Derivatives Association, Inc.


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