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Australian Securities and Investments Commission Corporation Act – Paragraph 907D(2)(a) - Exemption

The International Swaps and Derivatives Association, Inc. (“**ISDA**”)¹ welcomes the opportunity to provide comments on the Australian Securities and Investments Commission’s (“**ASIC**”) proposed class exemption on the staggered and delayed start to Phase 3 of the OTC Derivatives Transactions Reporting Obligation (the “**Proposal exemption**”). We have no major comments with regards to the staggered and delayed start of Phase 3.

However, we seek clarification on certain aspects of the class exemption. Further, as the Phase 1 and 2 reporting entities may be requesting an extension to certain reliefs granted earlier, we hope ASIC will take into consideration these timelines and to avoid, as much as possible, any overlapping or conflicting commencement dates. We believe the Phase 3 commencement dates for the various aspects of the class exemption should not begin prior to the corresponding commencement dates for the Phase 1 and 2 reporting entities. Additionally, a reasonable lead time should be maintained between the commencement dates of the Phase 1 and 2 reporting entities and the Phase 3 reporting entities.

Clarifications

Transaction and Position Reporting

We seek confirmation that the position reporting of transactions will consist of outstanding transactions as of the Revised Transaction Reporting Date, for example, 13 April 2015.

¹ 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

We seek confirmation as to whether ASIC will consider granting any exemption to Phase 3 reporting entities for intra-day modification reporting as was granted to the Phase 1 and 2 reporting entities. Further, would ASIC consider deferring the reporting of transactions that are “entered into Australia” to a later date for Phase 3a and 3b reporting entities to allow for a staggered reporting for Phase 3.

Tagging and Porting

We seek clarification that the requirement to “port” transactions from a prescribed TR to a licensed TR will not include a foreign ADI that has a branch located in Australia or a foreign company that is required to register under Division 2 of part 5B.2 of the Corporations Act 2001.

We seek confirmation that the term “tagging” referred to in section 7 of the class exemption will be taken to mean the “tagging” of transactions, which will enable such transactions to be reported to ASIC by the prescribed TR.

Counterparty consent and notices

We seek further understanding for the need to include 10(b) of the class exemption as it is unclear to us for the need to impose a one calendar month notice period once a Phase 3 Reporting Entity has made a determination. If the intent is to encourage Phase 3 reporting entities to attain client consent by the Revised Transaction Reporting Date, we believe the method and timing of attaining such client consent should be determined by the Phase 3 reporting entities as long as they are able to attain client information by the required date.

Would ASIC consider deferring the start date for Phase 3 reporting entities to begin unmasking their client information? If a Phase 3 reporting entity is still unable to obtain client consent, after making all best efforts, would a Phase 3 reporting entity be able to discuss this with ASIC? Just for clarity, will a Phase 3 reporting entity be able to state a deadline in its compliance plan by which it may be (a) sending Notices to its counterparties and/or (b) attain client consent or will there be a definitive date imposed by ASIC which will require a Phase 3 reporting entity to unmask their client information?

Compliance Plan

If a Phase 3 reporting entity chooses to opt-in, would they still be required to have a written compliance plan in place? Further, we seek further clarification on what may be considered a “reasonable time”.

Opt-in Template

We seek clarification if there will be a standardized template or an example of an Opt-in Notice that Phase 3 reporting entities may use. Further, is there a deadline by which a Phase 3 reporting entity must submit its Opt-in Notice?



Yours faithfully

For the International Swaps and Derivatives Association, Inc.

A handwritten signature in black ink, appearing to read "Cindy Leiw".

Cindy Leiw
Director of Policy