ISDA®

International Swaps and Derivatives Association, Inc.
24 Raffles Place
#24-02A Clifford Centre
Singapore 048621
Telephone: (65) 6538 3879
Facsimile: (65) 6538 6942
email: isdaap@isda.org
website: www.isda.org

19 October 2007

Securities and Exchange Board of India
Plot No. C4-A, "G" Block
Bandra Kurla Complex, Bandra (East)
Mumbai 400051
India

Attention: Mr. M. Damodaran, Chairman

Dear Sirs

Re: Paper for discussion on Offshore Derivative Instruments (Participatory Notes)

We are writing to you on behalf of the International Swaps and Derivatives Association, Inc. ("**ISDA**") to register our interest in the proposed policy measures on Offshore Derivative Instruments (Participatory Notes) (the "**Proposed Measures**"), as set forth in a discussion paper on Overseas Derivative Instruments issued by the Securities and Exchange Board of India ("**SEBI**") on 16 October 2007.

Introduction

As you may be aware, ISDA represents participants in the privately negotiated, or over-the-counter ("**OTC**"), derivatives industry. It is the largest global financial trade association by number of member firms. ISDA has over 815 member institutions from 56 countries on six continents, including India. These members include most of the world's major institutions that deal in privately-negotiated derivatives, as well as many of the businesses, governmental entities and other end-users that rely on OTC derivatives to manage efficiently the financial market risks inherent in their core economic activities. Since its inception, ISDA has pioneered efforts to identify and reduce the sources of risk in the derivatives and risk management business.

Implications of Proposed Measures

As discussed with SEBI on previous occasions with regard to these matters, ISDA supports SEBI's aims of fostering market stability and applauds the commitment of SEBI to promote an efficient market. ISDA and its members appreciate the privilege of investing in the Indian markets directly or indirectly via Participation Notes and other Offshore Derivative Instruments and we strongly support any initiatives of the market regulators as well as exchanges to promote an orderly market for trading.

ISDA has discussed with its membership the possible implications of the Proposed Measures, if adopted, and identified a number of unresolved issues and practical questions that arise as a result. While we understand that certain ISDA members will comment separately on the Proposed Measures, we wish to note at this stage that ISDA members are extremely concerned about the sizeable impact that the Proposed Measures are likely to have on the OTC derivatives industry relating to Indian securities. As noted by the HLCCFM Technical Committee of SEBI Regulated Entities, it is crucial that any measures taken should be practical, pragmatic, non-disruptive and enforceable without great difficulty. The proposed implementation of the Proposed Measures with immediate effect could be highly disruptive. Market participants who have conducted their business and dealings (including their funding, liquidity, hedging and other risk management processes) on the basis of the current FII Regulations would face great difficulty in changing their arrangements overnight to comply with the Proposed Measures. This is exacerbated by the retroactive nature of the Proposed Measures in regard to the requirement to wind up current Offshore Derivative Instruments with derivatives underlying within 18 months. Even where the issuers of such Offshore Derivative Instruments have the legal right to early terminate these instruments, it is likely that such early termination will result in losses which will have to be borne by the holder and/or the issuer. The Proposed Measures, if adopted immediately and without substantial modifications, have the potential to disrupt the market and impose significant losses and economic costs on market participants.

We would like to urge SEBI to continue the dialogue with market participants to help mitigate any unintended negative impact on the equity and derivatives markets in India and so that market participants can carry on business in a manner consistent with SEBI's policy objectives. In particular, we respectfully request that SEBI refrain from implementing the Proposed Measures or other regulations or policy measures regarding Offshore Derivative Instruments such as Participatory Notes until broader industry consultation has been undertaken. At a minimum, there should be a sufficient period of notice before existing rules are changed so that market participants will have time to re-order their affairs.

ISDA would greatly appreciate discussing the Proposed Measures with SEBI with a view to fostering the continued growth of the Indian markets while ensuring sufficient measures are in place to safeguard against market instability. Also, if deemed helpful and following further detailed consideration, ISDA would wish to submit more detailed comments at a later stage.

Conclusion

ISDA is grateful for the opportunity to comment on the Proposed Measures. We very much would like to discuss with SEBI and market participants some of the implications of the Proposed Measures, and we would be most happy to assist with any questions SEBI may feel ISDA could further elaborate on. Toward this end, we would appreciate any further opportunities to communicate with SEBI with respect to these important issues.

Accordingly, if SEBI has any questions on ISDA's role or the issues that may arise in the context of the OTC derivatives markets, and particularly how we feel such markets may be impacted by the Proposed Measures, please do not hesitate to contact any of Way Yee Bay of ISDA in Singapore (+65 6538 3879; wybay@isda.org), David Geen of ISDA in London (+44 (0) 20 3088 3550; dgeen@isda.org), Jacqueline Low of DBS Bank Ltd in Singapore (+65 6878 4195; jacquelinelow@dbs.com), Thomas Jones of Allen & Overy in Hong Kong (+852 2974 7130; thomas.jones@allenovery.com) or H. Jayesh of Juris Corp in Mumbai (+91 22 2204 3574; h_jayesh@jclex.com).

Yours sincerely,

David Geen	**Way Yee Bay**
European General Counsel	**Director of Policy, Asia Pacific**