ISDA® Safe, Efficient Markets

27 March 2015

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Nova Scotia Securities Commission
Ontario Securities Commission

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RE: Canadian Securities Administrators Consultation Paper (92-401)—Derivatives Trading Facilities

Dear Sirs/Mesdames:

The International Swaps and Derivatives Association (***ISDA***) appreciates the Canadian Securities Administrators Derivatives Committee's (Committee) engagement with the industry throughout this consultation process. We welcome the opportunity to provide comments to the Committee concerning this Consultation Paper that sets out the framework for the regulation of Derivatives Trading Facilities (DTFs) in Canada.

We respectfully encourage the Committee to take a flexible approach focused on broad principles aimed at risk reduction, increased transparency and market integrity, rather

than imposing detailed requirements, to allow for a smoother transition toward the use of DTFs.

ISDA has previously highlighted in its comment letters to a number of national authorities the importance of effective cross-border regulatory harmonization. Over-the-counter (OTC) derivatives markets have historically been the most global in nature of all financial markets. The absence of consistency in regulatory reform negatively impacts these markets and threatens the efficiency with which end-users can manage their business risk.

We urge the Committee to address how cross-border regulatory harmonization could be achieved and suggest ways to reduce undesirable regulatory outcomes that threaten the efficient functioning of markets. We stress the importance of an approach to a comparability of foreign rules based on regulatory outcomes rather than a detailed assessment of each jurisdiction's individual rules.

Below we respond to the questions posed in this Consultation Paper.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

We are generally supportive of the proposed definition of a DTF. It provides sufficient flexibility to accommodate established and unique market practices.

However, as explained in more detail below, we urge the Committee to interpret this definition in a flexible way to allow DTFs to offer various methods of execution that take into account the liquidity and other unique trading characteristics of a particular product.

Question 2: Is it appropriate to permit operators a degree of discretion over the execution of transactions? Why or Why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

The discretion of the operator is important for participant choice. Preserving this discretion is especially important when trades are executed in less liquid markets or during a liquidity crisis.

Question 3: Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

ISDA is supportive of the Committee's intention to permit various execution methods on a DTF. An assessment of a DTF's execution methods must be based on an appreciation of the unique characteristics of the relevant swap's trading liquidity. Even relatively standardized contracts may trade infrequently and therefore cannot be executed on an Order Book or an RFQ to more than one person system. For such swaps, the requirement

to advertise a requester's interest to a broad portion of the market may preclude maintaining confidentiality and may adversely affect the price to customers, who should be the primary beneficiaries of such regulations. Therefore, ISDA urges the Committee to allow DTFs' participants to decide what methods of execution are suitable for their particular instrument.

Question 4: Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We believe the definition of a DTF allows participants a broad choice of execution methods that will satisfy product liquidity and participants' trading needs.

Question 5: Is the proposed regulatory framework for DTFs appropriate?

ISDA is supportive of the Committee's overall approach to the proposed regulatory framework for DTFs. We urge the Committee, however, to maintain a principles based approach to regulation of these new trading venues. Compliance with core principles will ensure reliable regulatory oversight and at the same time, will not put the Committee in a position of a front-line decision maker that imposes its judgment on every aspect of the DTF's operation. This will also allow DTFs to maintain their competitive positions in the Canadian market and globally and to keep pace with rapidly changing market demands.

Question 6: Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

ISDA believes that if the operator of a DTF exercises discretion in the execution of transactions, such operator should be subject to effective business conduct rules. We believe that an essential component of the regulatory framework is ensuring that the operator, in exercising discretion in the execution of transactions, makes such decisions based on sound risk management and free from conflicts of interest. However, we do believe that applying a blanket requirement to register as a swap dealer will lead to unnecessary burdensome regulatory compliance. A swap dealer registration will impose additional costly compliance requirements that have nothing to do with establishing a risk management program or avoiding conflicts of interest. A better approach is to require DTFs to establish reasonable procedures designed to prevent any conflicts of interest that may arise in the execution of discretionary trades by DTFs' operators.

Question 7: To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or Why not?

ISDA recommends that the Committee refrain from adopting the requirement that a DTF must only exercise discretion in the execution of transactions in a separate affiliated entity. This requirement will put a strain on the resources of new trading facilities that may use capital for prudential purposes and at the same time, will allow entities with the deepest pockets to set up separate affiliated entities and achieve trading dominance. As discussed above, a better approach is to establish effective procedures to avoid conflicts of interest in executing discretionary trades.

Question 8: What factors are relevant in defining the proposed best execution duty?

At the outset, the Committee should make it clear that the proposed best execution duty does not apply if a DTF does not act on behalf of a participant. In this case, neither the dealer nor the firm owes the participant an agency obligation.

We believe that a core-principles approach-- and not detailed regulation-- is the best way of ensuring that best execution is achieved in the derivatives markets, which are primarily institutional rather than retail. The Committee should allow DTFs the flexibility to develop their own best execution policy. A DTF should consider a number of factors, including delivery of a fair price (albeit not necessarily the best price), execution costs, likelihood of execution, the nature of the trade, and the unique characteristics of the relevant financial instruments.

Question 9: Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

ISDA believes that the Committee should not allow a DTF to require, through its rulebook, that its participants clear all transactions capable of being cleared (regardless of whether those transactions are subject to a mandatory clearing obligation). In this case, a DTF and not the Committee would effectively be establishing a mandatory clearing requirement. The Committee may permit a DTF to decide whether they would like to trade only products that have been determined to be mandatorily cleared.

Question 10: Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

We would like to see regulations that unambiguously allow two parties to trade a product on a DTF and agree in advance which clearing agency they will use to clear their transaction. In addition, a DTF should have the ability to provide access to a clearing agency that already clears existing products. We believe the above approach would not fragment liquidity since all participants would have access to the same clearing agency.

As to the reporting obligations, please see our responses to Questions 18, 19, and 22.

Question 11: Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds?

To require that all contract participants have impartial access to its markets and services may preclude a business model designed for wholesale participants only. European regulators, for example, permit platform operators to categorize clients and to make rules appropriate for the category based on objective, transparent criteria designed to ensure suitability and protect market integrity. This does mean that different clients may be treated in different ways. It is not necessary to prescribe that the business model of each DTF must ensure that all types of clients have equal access to its platform. However, similarly situated groups of participants have to be treated similarly to alleviate any anti-competitive conduct.

Question 12: Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

ISDA recognizes the importance of rules governing the establishment and operation of a DTF as they are essential for achieving the overarching goal of promoting trading on centralized venues. To this end, we support flexible governance rules that accommodate various business and corporate structures. We believe the Committee should offer guidance or best practices to encompass a broader range of violations and account for unique trading practices of a particular DTF.

We agree that recordkeeping is an essential element for monitoring trade violations. However, each DTF must retain the flexibility, within a core principles framework, to determine and implement a record retention system that is best suitable for its operations and is the most cost effective way of preventing abusive trading practices.

Question 13: Is it appropriate that a DTF that does not exercise discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

We believe that a DTF is best placed to and should have the flexibility to determine how best to perform its regulatory and surveillance functions. Requiring the use of a third-party regulation services provider may incur additional costs on DTFs, especially nascent platforms that do not have excess capital to invest in a third-party provider and may instead choose to perform these functions in-house.

To reiterate, DTFs should have the flexibility to determine the manner in which they are going to comply with their regulatory and surveillance responsibilities based on each DTF's financial resources, expertise and available technology on the assumption that it

has a clear set of principles against which to assess itself. This again highlights the importance of an outcome based regulatory regime that provides for the necessary flexibility in determining how best to achieve desired regulatory objectives.

Question 14: Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own account? Please explain.

In general, ISDA believes that prohibiting operators of DTFs from entering into trades on their platforms as principals, on their own account may create a significant withdrawal of liquidity on these platforms. In derivatives markets, client transactions have traditionally involved firms employing their own capital and managing the risk associated with client-facing transactions. The ban may prevent the supply of additional liquidity by firms that are willing to use their own capital to take the risk on a short-term basis.

A better approach is to institute a comprehensive business conduct program to ensure that customer trades are executed fairly and free from conflicts of interest. Given the small size of the Canadian market, however, DTFs may be benefited from aligning their model with the U.S. CFTC Swap Execution Facility (SEF) model insofar as not permitting SEF operators to trade as principals. This will ensure a seamless transition by existing U.S. SEFs into Canada. If the Committee were to adopt rules allowing a different model, it would make the transition more difficult and consequently might deter U.S. SEFs from participating as DTFs in Canada.

Question 15: How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

We believe that financial resources should be construed broadly to include anything of value that a DTF has at its disposal, including operating revenues. We note that one DTF's failure will not lead to a liquidity crisis because swaps trade on various trading platforms with various liquidity pools. Therefore, DTFs should only be required to hold adequate resources to be able to wind-down their operations in six months.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply?

Importantly, some form of pre-trade price transparency already exists in many forms across various different markets and has developed on the basis of the demands of market participants. For OTC contracts, for example, investors have access to multi-dealer trading venues offering composite pages "click and trade" systems, request for quotes and order books. To remain competitive in these products, dealers have a strong incentive to be as transparent as possible in order to ensure that they remain on the counterparty list of their clients.

In drafting DTF regulations, it is important to recognize this variety of transparency. However certain swaps, for example, commodity swaps, trade infrequently. For such swaps the requirement to advertise a requester's interest to a broad portion of the markets (because such market may have few participants) may preclude maintaining confidentiality, adversely affecting the price to the customer. Equally, order book trading is not suitable for more customized swaps, where price depends on various negotiable terms. Prescribing specific pre-trade transparency requirements could significantly raise transaction costs for commercial end-users and prevent such end-users from engaging in prudent risk management.

We would prefer to see a more targeted approach to pre-trade transparency, based on the needs of market participants, including end-users and the objective of ensuring the best possible price discovery and promoting trading on centralized venues. For DTFs to succeed, market participants must be given the discretion to choose the level of transparency that best meets their needs.

Question 17: Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

ISDA is concerned that this Consultation Paper does not take into consideration the post-trade transparency requirements for a DTF contained in the existing and proposed transaction reporting regulations - the Trade Repositories and Derivatives Data Reporting rule or regulation (91-507) issued by the Ontario Securities Commission (OSC), the Manitoba Securities Commission (MSC) and the Autorité des marchés financiers (AMF), as well as the proposed Multilateral Instrument (96-101), Trade Repositories and Derivatives Data Reporting (96-101). The post-trade transparency requirements for a DTF should consider the impact to the requirements under 91-507 and 96-101 (collectively, the Reporting Rules) and should leverage the experience resulting from compliance with the reporting requirements in other jurisdictions to fully consider the approach to and impact of transaction level public reporting.

Question 18: What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

ISDA notes that except as when entered as a principal, a DTF is not a reporting counterparty under §25 of the Reporting Rules. The consultation report suggests that a DTF would only be responsible for transaction level public reporting, either directly to the public or via a Trade Repository (TR). This implies that the reporting counterparty would still be responsible for reporting all transaction data to the TR, including the data subject to aggregated public reporting but excluding such data from transaction level public dissemination. This will lead to duplicative and inconsistent reporting. ISDA is

concerned that bifurcation of the reporting responsibility will impact data quality and complicate compliance with the Reporting Rules for both reporting counterparties and TRs.

As evidenced by the Commodity Futures Trading Commission (CFTC) reporting rules, a shared responsibility for reporting a single transaction results in disaggregation of data and negatively impacts data quality. Under the CFTC reporting rules, a SEF is responsible for the initial creation data reporting, including the data for transaction level public dissemination, while the reporting counterparty is responsible for reporting continuation data, including life-cycle data and valuation data. This shared obligation is challenging since a SEF and reporting counterparties may have established connectivity to report to different Swap Data Repositories (SDRs). Such division in reporting is both complex and costly, and therefore ISDA has recommended that the CFTC eliminate this shared responsibility for reporting of swaps.

Similarly, in Canada, assigning partial reporting responsibility for transaction reporting to a DTF would hamper the ability of reporting counterparties to comply with §26(6) of the Reporting Rules that requires them to "report all derivatives data relating to a transaction to the same recognized trade repository to which the initial report was made." This requirement would increase the cost and complexity of compliance with the Reporting Rules.

ISDA believes that a DTF should be responsible for reporting trades executed on or via its facility that are intended for clearing. After trades have been cleared, the clearing agency must assume the reporting obligation for the cleared transactions in accordance with the reporting hierarchy prescribed by the Reporting Rules. For trades executed on a DTF that are not intended for clearing, the reporting counterparty should have the obligation to report in accordance with the hierarchy prescribed by the Reporting Rules. On February 11, 2015, the SEC issued the proposed rules – Reporting and Dissemination of Security-Based Swap Information (proposed SBSR). The proposed rules are consistent with this recommendation.

This approach eliminates the potential for transaction data to be reported to different TRs, thus streamlining the reporting process, improving parties' ability to comply with their reporting obligations and preserving data quality. We suggest that the Committee align the reporting obligations for DTFs and the Reporting Rules with § 901(a) (1) of the proposed SBSR. A consistent cross-border approach would allow a DTF that is also registered as a Security-Based SEF to report to a single multi-jurisdictional TR to satisfy its reporting obligations. This approach promotes efficiency and improves data quality.

It is important to note that there is little value in reporting a bilaterally executed transaction that is intended for clearing (an "alpha" trade) to a TR as the alpha trade is

immediately or very shortly (usually within minutes) terminated and replaced by cleared trades (the "beta" and "gamma" trades) that are reported to a TR by the clearing agency. The beta and gamma trades more accurately represent the market exposure. To minimize the reporting cost incurred by DTFs and counterparties, the Committee should limit the reporting obligation for an alpha trade to only the data that is required for public dissemination in Appendix A of the Reporting Rules (Appendix A). If creation data reporting of all applicable fields in Appendix A is not required for alphas, then the DTF should not be required to source creation data that is not readily available to it (e.g., Master Agreement type and version). In this case, a reporting counterparty would not be required to supplement a report submitted by the DTF.

Notably, the jurisdiction where the DTF is registered should not trigger a reporting obligation. The DTF is merely a conduit for the trade (except to the extent it enters into a trade as principal) – it does not take on any credit or counterparty exposure and therefore the reporting rules of the DTF's jurisdiction are not relevant. Rather, a transaction executed on a DTF should be subject to reporting obligations only as they apply to the counterparties to the trade under applicable provincial reporting rules. To comply with its reporting obligation, the DTF will need to gather representations from its participants (e.g., as part of their on-boarding process) to establish which local reporting laws apply to a trade between two parties executed on the DTF.

Separately, one item worth highlighting relates to data confidentiality and privacy laws. In certain jurisdictions, consent is required from counterparties to allow reporting of counterparty information. While this adds an operational burden to the reporting process and requires a period of time to be implemented, consent where permitted, and where requirements for informed consent are met, serves to address confidentiality restrictions. Where consent, even if obtained, is not sufficient, and reporting of counterparty identifying information could lead to criminal charges, a regulatory solution is the only safeguard. Further, where local laws are unclear on the point, any ambiguity may not be resolved in favor of the reporting party and therefore a regulatory solution is the preferred safeguard. Execution of a Global MOU among regulators would be most effective to mitigate data confidentiality risk to reporting parties and resolve interpretive ambiguities.

Question 19: When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

Recent amendments issued by the OSC and MSC and an order issued by the AMF extend the date for transaction level public reporting under 91-507 to July 29, 2016. Prior to this deadline, significant work is expected to be undertaken by the authorities to determine an approach to transaction level public dissemination that balances the need for transparency with the necessity to preserve party anonymity and market liquidity.

The requirements for transaction level public dissemination should be based on a careful analysis of Canadian transaction data in order to determine where such requirements can align with those of other global regulators and in what cases distinct treatment is necessary to preserve the Canadian market. Any requirements with respect to block sizes, corresponding delays and other mechanisms that may apply to publicly reported transaction data (e.g., notional cap sizes) should be based on the relative liquidity of the product, not just the trade size, and should be consistently applied to a product or sub-product regardless of the execution method. For additional considerations and suggestions regarding transaction level public dissemination, please refer to our letter submitted to the Committee on January 16, 2015.

Question 20: Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

Achieving the appropriate relationship between reporting delay and frequency and volume of trading in a specific swap product is critical to achieving the balance between transparency and liquidity. In all derivatives markets, there are clearly definable categories of swaps that trade with significantly lower frequency and volume than more liquid categories of swaps.

ISDA believes that in determining an appropriate size of a block trade, the Committee should take into account the relationship between trading volume, frequency of trading and liquidity. Block treatment should be permitted for any swap transaction, regardless of size, in swap categories for which trade frequency is particularly low. In highly illiquid markets, a single transaction is especially likely to move the market (i.e., change the price that market participants would demand or accept for a particular swap transaction).

Question 21: What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to the data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

ISDA recommends that the Committee align the requirements with other jurisdictions, including the CFTC rules in 17 CFR 16.01. This would provide the public with access to consistent data across regimes and prevent any arbitrage that could result from differences in the reporting obligations between DTFs and SEFs, as well as other platforms.

Question 22: In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade

information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

We believe a DTF should be restrained from disclosing swap transaction and pricing data relating to publically reportable swap transactions prior to the public dissemination of such data by a TR. Advance disclosure by a DTF would undermine the party anonymity protections afforded to the counterparties and would negatively impact market liquidity. Moreover, DTFs that are registered as SEFs would already be restricted from disclosing swap transaction and pricing information prior to public dissemination of such data by an SDR.

Consistent with the requirement for SEFs and the proposed SBSR, DTFs should be required to report any transaction level data to a TR for public dissemination. Allowing a DTF to disseminate derivatives data directly will fragment data, impact data quality and impair data aggregation and analysis. If each DTF is allowed to disseminate its own data before a TR has disclosed swap transaction and pricing data, then in addition to the three TRs currently recognized for reporting under 91-507, there will be many DTFs publishing their own data in varying formats. Both regulators and the public will have to aggregate data across many sources to obtain a complete picture of the Canadian derivatives market, making it more difficult to access data.

Question 23: Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

In general ISDA supports the criteria proposed by the Committee. ISDA supports the criteria that measure liquidity on a product-specific basis. ISDA acknowledges, however, that in practice, defining a standard measure of liquidity is hard to achieve. At a minimum, a product that is determined to be suited for mandatory trading should trade multiple times daily with multiple distinct swap counterparties. We urge the Committee to perform an in-depth study of the markets on a swap-specific basis, in conjunction with market participants, to determine the appropriate criteria for a DTF-trading mandate. ISDA will be happy to assist the Committee in such efforts.

Question 24: Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

The critical issue in determining whether there is sufficient trading liquidity in a certain contract to justify a mandatory trading obligation must be assessed on a contract-by contract basis. Each relevant instrument should be broken down into fixed contract specifications, including specified maturity, rate source, currency, business day conventions, etc. While we recognize that two swaps with different contractual specifications may hedge each other, in whole or in part, the trading of these two swaps

does not create a single trading liquidity pool for the purposes of generating readily observable prices and market volumes. We believe that certain interest rate and credit default contracts may be subject to mandatory DTF trading, while commodity and energy products do not have sufficient trading liquidity to be executed on a DTF.

In addition, as previously mentioned, the FX market is cross-border and global in nature. Clearing mandates and platform trading obligations should be globally aligned and we note that deliverable FX forwards and FX swaps, following the 2012 U.S. Treasury exemption,[1] are currently excluded from the definition of "swaps" in the Commodity Exchange Act (CEA) in order to exclude these types from the application of clearing obligations and SEF rules within the U.S.

Question 25: Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

If after a careful review of the available data, the Committee determines that certain swaps are subject to a mandatory trading obligation, then such swaps should be traded exclusively on DTFs. Otherwise, these products could continue to trade on other trading venues, including single-dealer platforms, which would lead to fragmentation of liquidity.

ISDA believes that commercial end-users should be exempt from a trading mandate and therefore any trade with an end-user can be traded off venue. End-users did not contribute to the financial crisis; they do not pose significant risk to the derivatives markets.

Also, ISDA notes that inter-affiliate transactions should be exempt from a DTF trading mandate. The distinctive characteristics of inter-affiliate swaps, the lack of systemic risk engendered by such trades, and the important systemic and private benefits of inter-affiliate swaps argue persuasively in favor of the Committee exempting such swaps from the mandatory clearing and trade execution obligations.

Finally, ISDA notes that each package transaction as a whole (and not its individual components) must be assessed for its liquidity characteristics to determine whether such transaction is suitable for trading on a DTF.

Question 26: Should there be a formal role for DTFs initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

[1] http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx

While we understand the efficiency of requiring each DTF to make the initial assessment of whether a particular swap or a class of swaps should be mandated to trade on DTFs, the Committee should make the final determination pursuant to a set of objective criteria established by the Committee. ISDA believes that such criteria should be based on global minimum volumes of daily trading over a significant period of time for each swap. We also believe that the Committee must periodically re-evaluate the liquidity characteristics of a swap to determine whether a particular swap should continue to be mandated for DTF trading.

Having this determination made by the Committee will eliminate the competitive motivation of one DTF to determine that a particular swap is mandated to be traded on a DTF and thus force other DTFs to list this swap as a mandatorily traded swap.

Question 27: What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

Please see generally our answers to Questions 3, 4, and 16. We believe the Committee should not prescribe restrictive pre-trade transparency requirements for mandatorily traded swaps. Even mandatorily traded swaps will have various degrees of liquidity and frequency of trading. Consequently, a restrictive requirement to quote prices to all or a certain number of participants in less liquid markets would likely result in fewer dealers making markets, reduced liquidity, and greater costs to DTF participants.

Question 28: For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

Please see our answer to question 20. We also note that the Committee should use at least a 6-month window of data as part of its methodology for determining appropriate minimum block sizes for each swap category.

Question 29: Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request for quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

Please see our answer to Questions 3, 4, 16, and 27. We would like to reiterate that it is not appropriate to mandate specific execution methods for the OTC derivatives that have

been mandated to be traded on a DTF. The proposed definition of a DTF as a facility "that bring[s] together multiple buying and selling interests leading to the execution of OTC derivatives transactions" does not limit execution methods for mandatorily traded products.

While we believe that the participants should be able to trade in a multiple-to-multiple environment, the participants should not be restricted in their execution methods and must be able to use their expertise to determine how to execute their orders. Requiring specific methods of execution for mandatorily traded contracts will increase hedging costs and the price offered in response to an RFQ request.

A pre-trade broadcast to all, in case of an Order Book, or to many, in case of an RFQ to more than one, could artificially affect prices and move the market against the requester, in particular, in the case of large size trades that do not qualify as block trades. Each participant, in every case, should be allowed to assess the balance between the available liquidity in the market and potential consequences of wide dissemination of the request. In more liquid markets, a requester may wish to execute a trade via an Order Book or an RFQ to a larger number of participants because the markets will not be affected by the request.

Question 30: What additional requirements should apply to DTFs with respect to products that have been mandated to trade on a DTF?

Please see our responses to questions 3, 4, 16, and 29. At this time, we don't believe that additional requirements should apply to DTFs with respect to products that have been mandated to trade on a DTF. As we explained above, we would prefer to see a more targeted approach to pre-trade transparency, based on the needs of market participants, including the objective of ensuring that end-users achieve the best possible price discovery on a DTF. This also requires flexibility of the execution methods, taking into account the characteristics of each mandatorily traded product.

Question 31: Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider which might justify a divergence between Canadian rules those in effect in the U.S. and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

Given the limited liquidity and the number of liquidity providers in many OTC products in Canada, it is important to allow flexible execution methods on a DTF. We also note that it is important to establish a workable post-trade transparency reporting regime.

In addition, the relatively small size of the Canadian market and the cross-border nature of OTC derivatives markets underscore the potentially significant risk of market

fragmentation and loss of access to primary trading markets if cross-border harmonization of rules is not respected.

We support the Derivatives Committee's recommendation that exemptions should be available for foreign-based DTFs from the requirements of the Canadian DTF regime. However, we believe that these exemptions should not be granted only on a case-by-case basis. Given the importance of ensuring appropriate market access to regulated SEFs and OTFs and the principal of international cooperation and inter-reliance among regulators, we suggest that it is appropriate to grant an outright exemption from DTF rule requirements for SEFs and OTFs that are regulated under the CEA or MiFID II, are in compliance with related CFTC or EU requirements, have not improperly restricted access to trading by market participants in applicable Canadian provinces, and have complied with all Committee member requests for information and periodic reports as contemplated by the DTF rule. Such an approach could codify the exemptions provided to a number of SEFs by the OSC but do so on a transparent and equitable basis that eliminates unnecessary barriers to market access.

Additional Comments:

As we noted in Question 25, we expect that the Committee will provide an exemption from any mandatory DTF trading obligation for end-users that have the benefit of an exemption from the mandatory clearing obligation for the related trade. We consider such an exemption to be appropriate and consistent with the policy rationale for exempting end-users from a clearing mandate. For example, a company that is entering into a credit facility and simultaneously entering into related interest rate swaps with one or more hedge providers that are taking the benefit of security under the credit facility will negotiate numerous deal terms with the lenders and hedge providers. For numerous reasons, this type of standard market arrangement cannot be fit within a DTF trading model.

Separately, we believe that the end-user hedging exemption should also be available for financial entities. We expect to discuss this further in our comment letter on the draft Clearing Rule.

Further, we urge the Committee to exempt inter-affiliate transactions from a DTF trading mandate given the importance of permitting company groups to internally manage their risk.

Finally, we recommend that phase-in and staging provisions similar to that proposed for the clearing rule be included in the eventual draft DTF rule.

ISDA appreciates the opportunity to provide its comments on the DTF Consultation Paper and looks forward to working with the Committee as it continues to consider the

issues outlined in this Consultation Paper. Please feel free to contact me or ISDA's staff at your convenience.

Sincerely,
Steven Kennedy,

Global Head of Policy
ISDA