

Dear Sir/Madam

## **Transaction Reporting Requirements**

This is an open letter written on behalf of our members which is intended to raise awareness around global transaction reporting requirements and related consent issues.

In response to concerns about the systemic risks in the over-the-counter derivatives markets, the G20 leaders agreed in 2009 to a comprehensive reform agenda to improve transparency in these markets, mitigate systemic risk and protect against market abuse. As part of this agreement the G20 set the objective that “all OTC derivative contracts should be reported to trade repositories by the end of 2012”.<sup>1</sup>

According to the recent, “OTC Derivatives Market Reforms - Seventh Progress Report on Implementation” by the FSB, as at April 2014, the majority (15) of the FSB member jurisdictions have trade reporting requirements in effect for one or more product and participant types and by the end of 2014 all but 3 FSB jurisdictions are expected to have trade reporting requirements in effect.<sup>2</sup>

These changes are already having a significant impact on our members and their ability to conduct cross border derivative transactions with their counterparties internationally.

In particular, a large number of our international members have regulatory obligations to report derivative transaction, under the following reporting regimes, which are already live:

- **United States:** section 2(a)(13)(G) of the Commodity Exchange Act, introduced pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Part 45 of the CFTC’s regulations relating thereto (effective since December 2012)
- **European Union:** Article 9 of the European Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) (effective since February 2014)
- **Australia:** Corporations Act 2001 and the ASIC Derivative Transaction Rules (Reporting) 2013 (effective since [December 2013])
- **Singapore:** Securities and Futures Act and the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014 (effective since April 2014)

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<sup>1</sup> G20 Pittsburgh Summit 2009

<sup>2</sup> “OTC Derivatives Market Reforms - Seventh Progress Report on Implementation”; FSB (8 April 2014).

All of these reporting regimes impose reporting obligations in respect of transactions conducted between derivative counterparties outside of the jurisdiction or region from which the requirements originate. In many cases this ‘extra-territorial’ reach impacts an extremely broad range of counterparties.

Although these regulations are already in effect, legal developments globally in terms of data privacy laws, blocking statutes and confidentiality have not kept pace with the introduction of these reporting requirements. This means that our members who currently have reporting obligations with respect to a transaction, will nearly always need to seek the specific consent of the relevant counterparty to that transaction before they can report in compliance with that obligation. Except where limited exemptions may exist within the reporting requirements, without such an agreement or consent in place our members will be at risk of breaching data privacy, confidentiality and/or banking secrecy restrictions.

To facilitate the consent gathering process, at the request of members in 2013, ISDA published the following<sup>3</sup>:

- (i) ISDA 2013 Reporting Protocol  
<http://assets.isda.org/media/a07640b6-7/d77cbab1.pdf/>
- (ii) ISDA Side Letter (Principal)  
<http://www2.isda.org/functional-areas/protocol-management/protocol/14>

Without the necessary counterparty consent in place, members will not be able to comply with the relevant reporting requirements and may ultimately be forced to stop trading. This may have a significant long term impact on existing trading relationships and market liquidity.

Our members wish to draw your attention to these reporting requirements that are already in effect and to request participants in the OTC derivatives market to actively engage with their counterparties to ensure that all necessary consents are given to enable trading to continue without disruption, to safeguard the efficient operation of the cross-border derivatives markets.

Please do not hesitate to contact us should you have any questions on any of the above.

Yours sincerely,

The International Swaps and Derivatives Association, Inc.

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<sup>3</sup> It is of course open to members to adopt their own bilateral solutions to gather the necessary consents from their counterparties