ISDA Safe, Efficient Markets

August 15, 2014

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Dear Sir

Consultation Paper on Draft for Reporting of Foreign Exchange Derivatives Contracts

1. Introduction: The International Swaps and Derivatives Association, Inc. (**ISDA**)[1] is grateful for the opportunity to respond to the consultation paper on Draft Regulations for Reporting of Foreign Exchange (**FX**) Derivatives Contracts (the **Consultation Paper**) released by the Monetary Authority of Singapore (**MAS**) on July 9, 2014. Individual members will have their own views on the Consultation Paper, and may provide their comments to MAS independently.

2. Reporting of FX Derivatives Contract:

2.1 While we support and commend MAS for excluding FX spot contracts from reporting requirement, we respectfully request MAS to consider a similar definition of FX spot, as has been adopted in the US and Europe, for FX spot transactions relating to the purchase and sale of a security and a "standard delivery period" for all other currency pairs that do not settle within a T+2 settlement period. This will allow for a consistent definition to be applied to FX spot transactions across multiple jurisdictions.

2.2 The United States[2] (**US**) and Canada have excluded FX contracts entered into solely for the purpose of the purchase or sale of an amount of foreign currency in order to effect

[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 64 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.

[2] http://www.gpo.gov/fdsys/pkg/FR-2012-08-13/pdf/2012-18003.pdf, Federal Register, Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC), Vol. 77, No. 156, 17 CFR Parts 230, 240 and 241, *Further Definition of "Swap", "Security-Based Swap" and "Security-Based Swap Agreement"; "Mixed Swaps; Security Based Swap Agreement Recordkeeping; Final Rule*, Page 48257, 13 Aug 2012. Securities Conversion Transaction is defined as "The CFTC will consider the following to be a bona fide spot foreign exchange transaction: An agreement, contract or transaction for the purchase or sale of an amount of a foreign currency equal to the price of a foreign security with respect to which (i) the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant

delivery of a security (also known as **FX Security Conversion**) from the FX derivatives reporting requirement. A FX Security Conversion contract may have a settlement period greater than two business days, for example, when a non-US client who purchases a US dollar denominated security that settles in three business days, the broker-dealer will enter into a corresponding FX transaction to have the required US dollar on hand to complete the purchase transaction in three business days to match the settlement of the security. Although such FX Security Conversion contracts may settle more than two business days from execution, we believe such FX derivative contracts should still be considered FX spot contracts and excluded from the reporting requirement. In so doing, the MAS approach would align with other jurisdictions and industry standards that consider FX Security Conversion contracts as bona fide spot transactions, notwithstanding the settlement period of securities will differ depending on the jurisdictions and settlement conventions, some as described below.

2.3 In Europe, the European Commission (**EC**) sent a letter[3] to the European Securities and Markets Authority (**ESMA**) on the need for clarity regarding the definition of a financial instrument relating to foreign currency (**FX contract**).The letter highlights broad consensus with respect to defining FX spot contracts as (a) a T+2 settlement period to define FX spot contracts for European and other major currency pairs such as Euro, EU Member States currencies, Croatian koruna, etc., US dollar, Japanese yen, Australian dollar, Swiss franc, Hong Kong dollar, New Zealand dollar, Singapore dollar, Norwegian krone and Mexican peso (BIS most traded currencies); (b) to use the "standard delivery period" for all other currency pairs to define a FX spot contract; (c) where contracts for the exchange of currencies are use for the sale of a transferable security, to use the accepted market settlement period of that transferable security to define a FX spot contract, subject to a cap of 5 days; and (d) a FX contract that is used as a means of payment to facilitate payment for foods and services should also be considered a FX spot contract.

2.4 Under the current proposals, all FX derivative contracts, excluding spot transactions, are reportable on a transaction level, even those with retail clients. For some firms, these retail FX derivative contracts are booked into the global markets trading system on an aggregate level without individual counterparty information. It will require substantial effort and costs to build the necessary infrastructure to report the individual retail client information for such transactions. We respectfully request MAS to consider allowing such transactions to be reported on an aggregate level, without the need for reporting retail client information on a transaction level.

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securities settlement deadline and (ii) actual delivery of the foreign security and foreign currency occurs by such deadline (such transaction, a "Securities Conversion Transaction"). For Securities Conversion Transactions, the CFTC will consider the relevant foreign exchange spot market settlement deadline to be the same as the securities settlement deadline. The CFTC also will interpret a Securities Conversion Transaction as not leverage, margined or financed within the meaning of section 2(c)(2)(C) of the CEA".

[3] http://www.esma.europa.eu/system/files/ec_letter_to_esma_on_classification_of_financial_instruments_23_07_2014.pdf, letter from Mr. Jonathan Faull, European Commission Director for Internal Market and Services to Mr. Steven Maijoor, Chair of the European Securities and Markets Authority on the definition of a financial instrument relating to foreign currency (FX contract), 23 July 2014.

2.5 We seek clarification on the information that is required to be retained for 5 years under section 4[4] of the Consultation Paper for "any relevant book". Would the transactions that are reported to the licensed trade repository and kept for 5 years be sufficient to meet this requirement?

3. Traded in Singapore:

3.1 The industry respectfully requests that the definition of "traded in Singapore" should, subject to the comments in paragraph 3.6 below, align broadly with the "conducted in Hong Kong" definition as proposed in the Hong Kong Monetary Authority (**HKMA**) and the Securities and Futures Commission (**SFC**) consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules[5] (referred to as the **HK Consultation Paper**), published in July 2014. This would reduce the need for multiple system builds to capture different definitions across jurisdictions, reduce implementation costs and would increase data standardization across jurisdictions. In particular the industry has welcomed the guidance provided by HKMA/SEC on the meaning of "trader" and the distinction that has been made between traders and salespersons.

3.2 In the Consultation Paper, the proposed definition of "traded in Singapore" is defined as "in relation to a derivatives contract, means the execution of the derivatives contract by a trader who conducts, or is authorized to conduct on behalf of a specified person activities relating to the execution of derivatives contracts in Singapore for more than 46 days of the preceding quarter, where "quarter" means a period of 3 months, beginning on 1st January, 1st April, 1st July or 1st October of any year"[6]. The Consultation Paper further states that "MAS proposes to consider a trader to be employed in Singapore if he conducts, or is authorized to conduct on behalf of specified persons, activities relating to the execution of derivatives contracts in Singapore for more than half of the preceding quarter"[7]. We respectfully request MAS to consider a period of 1 month instead of 46 days and the preceding month test instead of the preceding quarter test when determining if the activities of a specified person should be reportable. Further the preceding time period should be a rolling time period instead of a "fixed" quarter as a trader who is in Singapore over the period of March to April will not exceed 46days in either quarters, i.e., January to March or April to June. The rolling one month test is easier for firms to track a

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[4] http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/CP%20FX%20regs, Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014*, Annex, Paragraph 4, Page 5, 9 July 2014.

[5] http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2014/20140718e3a1.pdf, Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC), *Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules*, July 2014.

[6] http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/CP%20FX%20regs, Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014*, Annex, Part 1B of the First Schedule, Page 4, 9 July 2014.

[7] http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/CP%20FX%20reporting.pdf, Monetary Authority of Singapore, *Consultation Paper on Draft Regulations for Reporting of Foreign Exchange Derivatives Contracts*, Page 1-2, 9 July 2014.

trader's movement instead of tracking the number of days a trader may have stayed in Singapore over a pre-defined time period. If a rolling one month period is not acceptable, we suggest a rolling period of 46 days instead.

3.3 Further we believe there should be a "backstop" date, after which a trader who has been in Singapore for more than 46 days and then returns back to another jurisdiction should not be required to have his/her trades reported. For example: if a Hong Kong trader is in Singapore for 50 days the preceding quarter and then returns back to Hong Kong, the current wording for "traded in Singapore" will require this trader's transactions to be reported even though he/she has now returned to Hong Kong. As there is no "backstop" date, we seek clarification that if a trader exceeds the 46 days of the preceding quarter, how long should his/her transactions be reported for, i.e., should it be reportable for the subsequent quarter only or for some other time period? We propose that the cut off should apply as soon as a visiting trader leaves Singapore or a trader who leaves Singapore on a permanent basis and he/she is no longer generally authorized to conduct the execution of derivatives contracts on behalf of a specified person in Singapore. In past discussions with MAS, for seconded traders, the industry has suggested that firms will continue to report a Singapore trader who is seconded to another jurisdiction for 1 month from the date such a trader is seconded to another location. For foreign traders seconded to Singapore, the industry will begin reporting those transactions, as long as the foreign trader is in Singapore, beginning from 1 month after the foreign trader arrives in Singapore.

3.4 With respect to the proposed definition of "employed in Singapore", we request that MAS considers the proposal described in the HK Consultation Paper which proposes to cover a trader who is either employed or engaged by the local entity[8]. By adopting such an approach, there will be clarity in identifying which transactions are in scope for reporting. For example, transactions traded by a trader who is seconded out of Singapore will be excluded while transactions traded by a trader employed in Singapore during his/her business trips outside of Singapore will be included.

3.5 We also respectfully request that electronic and algorithmic trading systems be excluded from the "traded in Singapore" definition where the trades are not booked to a Singapore entity. As there are significant challenges in building the infrastructure to identify and report these trades since these are executed electronically with no manual trader involvement, we believe such transactions should not be caught in scope as reportable under the "traded in Singapore" definition. If this is not acceptable, please note our comments below around the need for flexibility in the interpretation of the "traded in Singapore" definition and guidance, where applicable.

3.6 As the definition of "traded in Singapore" is not straight forward to apply in every possible scenario and fact pattern, we respectfully request MAS to consider allowing the

[8] http://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2014/20140718e3a1.pdf, Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC), *Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules*, Paragraph 66(c), Page 20, July 2014.

industry some degree of flexibility when interpreting the "traded in Singapore" definition. Where further clarification is required, MAS may wish to provide such clarification through Frequently Asked Questions (**FAQs**). This will provide a degree of flexibility in terms of interpretation of the definition of "traded in Singapore" as different firms have different set ups and infrastructures, which may not allow for a 'one size fits all' solution.

3.7 The industry seeks further clarity on points such as (i) how the definition of "traded in Singapore" should be applied within the private banking sector; (ii) confirmation that MAS is not looking to capture persons acting solely as salespersons when referencing a "trader"; (iii) the specific circumstances under which a salesperson may be considered a "trader"; (iv) whether a specified person who enters into a delegated or outsourcing arrangement with a separate offshore legal entity such that the booking and execution of trades will be effected offshore and the traders will be authorized to trade on behalf of the offshore entity and not the specified person should be reported under the "traded in Singapore" definition; or (iv) whether a trader located outside of Singapore, who is not employed by a specified person but is authorized to trade or provide price quotes in Singapore and books his/her trades in another location should be reportable under the "traded in Singapore" definition.

4. Information To Be Reported:

4.1 We respectfully request MAS to consider a reporting commencement date later than April 1, 2015, for the additional data fields for interest rate and credit derivatives contracts as set out in Part 1A[9] of the First Schedule (referred to as the **Additional data fields**) and later than October 1, 2015, for the reporting of collateral information as set out in Part 1B[10] of the First Schedule for all asset classes (referred to as the **Collateral data fields**). As you may be aware, the industry is concerned with the concentration risk of reporting deadlines that will occur on April 1, 2015, when firms are required to begin reporting the Additional data fields; the FX derivatives contracts; as well as the transactions that are "traded in Singapore" for interest rate and credit derivatives contracts.

4.2 Each additional reporting requirement will be dependent on service providers to deliver the reporting requirements as well as the technological builds required to report the Additional data fields and FX derivatives contracts to a trade repository (**TR**). Firms will be required to test the feeds and data staging for these additional reporting requirements. In addition, middleware providers are also utilized by the industry to help fulfil firms' reporting obligations. Hence it is imperative for firms to coordinate and work with these middleware providers to meet the April 1, 2015 deadline for the Additional data fields,

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[9] http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/CP%20FX%20regs, Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014*, Annex, Part 1A of the First Schedule, Page 14-17, 9 July 2014.

[10] http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/CP%20FX%20regs, Monetary Authority of Singapore, *Draft Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014*, Annex, Part 1B of the First Schedule, Page 18, 9 July 2014.

FX derivatives contracts and the transactions that are "traded in Singapore" for interest rate and credit derivatives contracts. These middleware providers will need to be able to deliver a fully working and compliant version of their software in time for testing and before the 'go-live' date. Additionally, firms will need to ensure they have updated their existing interfaces with the various middleware providers.

4.3 For the Additional data fields and Collateral data fields, in addition to the readiness of the middleware providers, it is equally important that the TR has built its capability to accept the additional information that is required be reported by the firms. As you are aware, even if the firms are prepared to send the required information to the TR, the TR must, in turn, be able to receive and accept the Additional data fields and Collateral data fields. If the TR is unable to accept the Additional data fields or the Collateral data fields, the information cannot be processed by the TR and consequently, will not be reported to MAS, meaning that firms will not be in compliance.

4.4 For the Collateral data fields, given the lack of experience amongst the industry in reporting collateral, we respectfully request MAS to delay the reporting commencement date for Collateral data fields until MAS and the industry, generally, has had the opportunity to review the implementation process and any issues that arise for collateral reporting under the European Market Infrastructure Regulation (**EMIR**) which began in August 2014. It is likely firms will adopt the same collateral reporting solution used in Europe for use in other jurisdictions to minimize any system builds and for standardization reasons. As it will take some time to work through the issues that will arise in Europe in terms of collateral reporting, we anticipate that the collateral reporting process in Europe should be stabilized sometime in 2015. Under EMIR, valuation and collateral is submitted as a separate report to the trade repository from the end of day snapshot file (**EOD snapshot file)**. As such, the data fields for valuation and collateral will not be populated in the EOD snapshot file. We seek clarification from MAS on whether the submission of two separate files, one for valuations and one for collateral will be acceptable. Further, we seek clarification on whether MAS will take into account the guidance issued by the European Securities and Markets Authority (**ESMA**) for collateral reporting in determining what information will be required to be reported in Singapore.

4.5 As firms will need to secure the required resources for testing and implementing the trade reporting requirements, we would like to request a later commencement date for both the Additional data fields and Collateral data fields. We would like to request the Additional data fields for interest rate and credit derivatives contracts to commence 6 months after the commencement date for reporting of FX derivatives contracts and 12 months from the commencement date for reporting of FX derivatives contracts for reporting of Collateral data fields. We seek clarification if there will be a requirement to backload the Additional data fields for interest rate and credit derivatives contracts as these transactions would have been back-loaded to the trade repository for the current data field population by October 2014. We would like to suggest that when the FX trade reporting requirement is expanded to other entity types, this will be phased in starting with capital markets services license holders; insurance companies; finance companies; and trustees and

followed by Significant Derivatives Holders (**SDHs**).

4.6 The industry proposes to report the Additional data fields for FX derivative contracts by April 1, 2015. However, the industry's ability to meet the April 1, 2015 'go-live' date would be dependent on whether the Additional data fields are like those used in EMIR and subject to same conditions, i.e., whether the data fields follow the EMIR data fields in terms of them being mandatory, conditional or optional. If there are data fields that are not currently in EMIR, the industry would need time to analyze and determine the system build for such a data field. In such an instance, the industry requests that the reporting commencement date for the Additional data fields for FX derivatives contracts be deferred to October 1, 2015.

5. Implementation Timeline:

5.1 We are concerned with the concentration risk that will occur on April 1, 2015, for a number of deliveries, i.e., the reporting commencement for FX derivatives contracts; the reporting commencement for the interest rate derivatives and credit derivatives transactions that are "traded in Singapore"; and the Additional data fields. While the industry always strives to meet the implementation timeline as set out by MAS, the number of deliveries due on the same date will create significant operational risk due to the finite level of resources available to each firm.

5.2 We appreciate MAS providing a 12 month transition period till October 1, 2015 to report FX derivatives contracts that are "traded in Singapore". However, the industry is concerned with the April 1, 2015, 'go-live' date for the reporting of credit and interest rate derivatives contracts that are "traded in Singapore". While we also appreciate MAS' efforts in deferring the reporting commencement date for credit and interest rate derivatives contracts that are "traded in Singapore" by 1 year, we are concerned that the definition of "traded in Singapore" would not be finalized till the fourth quarter of 2014. As the "traded in Singapore" concept requires comprehensive front and back office changes and upgrades across the various divisions of a bank, particularly since it requires the reporting of transactions that are booked outside of Singapore but "traded in Singapore" to be reportable, the industry is concerned that there would not be sufficient time to implement and test the required system changes prior to the 'go-live' date on April 1, 2015. As such, we respectfully request MAS to consider aligning the 'go-live' date for the reporting of credit and interest rate derivatives that are "traded in Singapore" with the 'go-live' date for the reporting of FX derivative contracts that are "traded in Singapore" on October 1, 2015.

5.3 When the regulations are finalized, FX derivative contracts will fall under the definition of "specified derivatives contract" in section 124[11] of the Securities and Futures Act (**SFA**). This means that going forward, an entity will have to count FX derivatives

[11] http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%2225de2ec3-ac8e-44bf-9c88-927bf7eca056%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes, Securities and Futures Act (Chapter 289), Revised Edition 2006, section 124, 1 April 2006.

contracts for the purposes of determining whether it exceeds the reporting threshold amount to be designated as a significant derivative holder (**SDH**) pursuant to section 6(2) of the Consultation Paper. This could lead to the unintended outcome of an entity being designated as a SDH and being required to report their credit derivative and interest rate contracts only because the inclusion of FX derivative contracts will cause their aggregate gross notional amount of the "specified derivatives contract" to exceed the reporting threshold. For some SDHs, which have a small number of credit derivative and interest rate derivative contracts and would fall below the reporting threshold were the gross notional amount of FX derivatives contracts not be included, would be required to begin reporting their credit derivatives and interest rate derivatives contracts by October 1, 2014. This will mean that the SDH may have to employ considerable resources to begin reporting by October 1, 2014 despite having only a small number of credit derivatives and/or interest rate derivatives contracts. We respectfully request MAS to consider exempting an entity from having to include FX derivative contracts in its calculation of the aggregate gross notional amount of the "specified derivatives contract" for the purposes of determining whether it exceeds the reporting threshold as an SDH until the reporting of FX derivatives contracts is required of SDHs.

6. Deferred Reporting in Certain Cases:

6.1 The reason there is no equivalent masking relief for counterparties in the European Union (EU) countries is because of the safe harbor provided under Article 9(4) of European Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (known as "**EMIR**" – EMIR Financial Infrastructure Regulation), which provides that a counterparty that reports a derivative contract to a trade repository "shall not be in breach of any restriction or disclosure of information by that contract of by any legislative, regulatory or administrative provision"[12]. However, the safe harbor provided in Article 9(4) of EMIR does not cover the reporting of details of any derivative contracts to a trade repository located outside the EU that is otherwise not recognized as equivalent by ESMA.

6.2 We attach in Schedule 1 of our submission, the Annex detailing the privacy restrictions in certain enumerated jurisdictions, this information has been reproduced from our letter to the Commodity Futures Trading Commission (**CFTC**) on June 21, 2013 requesting for no-action relief for parts 20, 45 and 46 of the CFTC regulations relating to reporting obligations. However, we only wish to highlight the privacy restrictions for Austria, Belgium, France, Hungary and Luxembourg. It should be noted that in some of the European jurisdictions, such as Belgium or France, even where client consent is sought, the disclosure of certain information would not be permitted and the masking relief provided by the Fifth Schedule remains important to market participants. As such, we respectfully request MAS to consider reinstating the EU countries that were originally in the Fifth Schedule, namely, Austria, Belgium, France, Hungary and Luxembourg to the

[12] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0648, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on *OTC derivatives, central counterparties and trade repositories*, OJ 27/7/2012, Article 9(4), 27 July 2012.

Fifth Schedule, given that the safe harbor provided under Article 9(4) of EMIR does not extend to repositories located outside of the EU that is otherwise not recognized as equivalent by ESMA.

7. Miscellaneous:

7.1 With respect to the "matching and pairing" of a transaction's unique transaction identifier ("**UTI**"), we respectfully request MAS to consider a further extension for the requirement to "match and pair" a transaction's UTI beyond April 1, 2015. We are grateful to MAS for the relief that was granted until April 1, 2015, however, the "matching and pairing" of UTIs remains an issue for all firms across multiple jurisdictions, such as Europe and Australia. The industry is committed to developing a practicable and workable solution for the "matching and pairing" of UTIs and requests a further extension on the relief that has been provided.

7.2 We seek clarification if precious metals, such as gold or silver, will be considered as a FX derivatives contract or a commodity derivatives contract. As the definition of "commodity" in the Securities and Futures Act (**SFA**) means "gold or any produce, item, goods, article or financial instrument, and includes an index, right or interest in such commodity other than a financial instrument; and such other index, right or interest of any nature as the Authority may, by notification in the Gazette, prescribe to be a commodity"[13], we seek clarification if a precious metal other than gold, such as silver, would still be considered a "commodity".

7.3 We seek clarification on the treatment of FX swaps. As a FX swap will be booked as two separate legs, i.e., one near-dated leg and one far-dated leg and reported as two FX forwards transactions. For back-loading, if the near-dated leg has expired before April 1, 2015, will it still be required to be back-loaded?

Yours faithfully

For the International Swaps and Derivatives Association, Inc.

Keith Noyes
Regional Director, Asia Pacific

Cindy Leiw
Director of Policy

[13] http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%2225de2ec3-ac8e-44bf-9c88-927bf7eca056%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes, Securities and Futures Act, Chapter 289, Revised Edition 2006, Part I – Interpretation, 1 April 2006.