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Laurence White
Senior Manager, OTC Derivatives Reform
Financial Market Infrastructure
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Email: OTCD@asic.gov.au

The Australian Securities and Investments Commission's Consultation Paper 221 on OTC Derivatives Reform: Proposed Amendments to ASIC Derivative Transaction Rules (Reporting) 2013

The International Swaps and Derivatives Association, Inc. (**ISDA**)[1] welcomes the opportunity to provide comments on the Australian Securities and Investments Commission's (**ASIC**) consultation paper on the proposed amendments to ASIC Derivative Transaction Rules (Reporting) 2013 (**CP 221**) released on 25 July 2014. Individual members will have their own views on the Consultation Paper, and may provide their comments to MAS independently.

We appreciate the efforts ASIC has taken to work with market participants to develop and meet the trade reporting requirements. We support and encourage continued dialogue between ASIC and the industry to work together to address any implementation issues that may arise from trade reporting.

General comments

Before we address the questions in the Consultation Paper, we would like to make a few general comments.

An alternative option

As the Australian derivatives market consists of a wide range of market participants, none of the three options proposed would be ideal for all the market participants due to their differing setups

[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.

and infrastructures. To factor in the various setups and infrastructures that exist, we propose a combination of some segments from Option 1 and some segments from Option 2, which we will refer to in this paper as Option 4.

We propose Option 4 which will include (i) 'snapshot reporting' as a permanent reporting option; (ii) foreign entities are allowed to report to a prescribed trade repository in a jurisdiction other than the jurisdiction to which they are incorporated; (iii) foreign entities that use alternative reporting arrangements are not required to 'tag' their transactions as being reported under the derivative transaction rules (reporting); (iv) the amended definition for 'regulated foreign market'; (v) Australian reporting entities are reporting to a prescribed trade repository if a licensed trade repository is not available; (vi) the removal of Australian Business Numbers (ABNs) are removed from the hierarchy of entity identifiers; (vii) foreign subsidiaries are not required to report their derivative transactions; and (viii) the 'safe harbour' should not require the 'delegate' to ensure the information and any changes to the information is complete, accurate and up-to-date.

Response to specific questions

The remainder of this letter sets out our comments in relation to the specific questions posed in the Consultation Paper. Our response is set out underneath each question. The headings used below correspond to the headings used in the Consultation Paper.

QUESTIONS

Question A1Q1: Do you agree with our recommended option (Option 2)? If not, why not?

Please refer to our proposal for Option 4 in our response to A1Q3.

Question A1Q2: Will Option 2 reduce the compliance costs that you will incur in implementing OTC derivative transaction reporting? If so, please provide details.

We believe Option 4 will reduce the compliance costs for implementing OTC derivative transaction reporting as it addresses a few challenges the industry faces in complying with the current reporting requirements.

Question A1Q3: Please provide your specific feedback in relation to Option 2 by responding to the detailed proposals set out in Sections B-D of this paper.

As noted in our introduction, we believe a combination of certain segments of Option 1 and Option 2 would best meet the industry's needs as the industry consists of many firms with varying setups and infrastructures.

Consequently, we propose Option 4 whereby (i) 'snapshot reporting' is a permanent reporting option; (ii) foreign entities are allowed to report to a prescribed trade repository in a jurisdiction other than the jurisdiction to which they are incorporated; (iii) foreign entities that use alternative reporting arrangements are not required to 'tag' their transactions as being reported under the derivative transaction rules (reporting); (iv) the definition of 'regulated foreign market' is amended; (v) Australian reporting entities are reporting to a prescribed trade repository if a licensed trade repository is not available; (vi) the removal of Australian Business Numbers (ABN) are removed from the hierarchy of entity identifiers; (vii) foreign subsidiaries are not required to report their derivative transactions; and (viii) the 'safe harbour' should not require the 'delegate' to take all reasonable steps to ensure the information and any changes to the information is complete, accurate and up-to-date.

Question A1Q4: Do you think we should adopt Option 1? Please give reasons for your answer.

Please refer to our response for A1Q3.

Question A1Q5: Do you think that we should adopt Option 3? Please give reasons for your answer.

Please refer to our response for A1Q3.

Question A1Q6: Are there any other options we should consider to meet our regulatory objective of minimizing compliance costs while ensuring that trade data is comprehensive and complete?

We believe Option 4 would be the best possible solution as it takes into account in the various firms' setups, requirements and infrastructures. It is by no means the ideal solution for every firm that is subject to the Australian reporting regime, however, it is the solution that most firms may agree as the path forward and encapsulates the diverse requirements each firm may have.

Question B1Q1: Do you agree with the proposal? If not, why not?

Yes, we agree with the proposal for 'snapshot reporting'. However, we seek clarification on subrule 2.2.6 of CP 221 which states that the "information it reports under subrule 2.2.1(1) and any change that information it reports under subrule 2.2.2(1) is and remains at all times complete, accurate and current"[2]. As you may be aware, under 'snapshot reporting', any amendments to the transaction after the 'snapshot reporting' cycle has been completed and submitted to the trade repository, will be reported on the next day. As such, the information that is reported, under

[2] http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/CP221Attachment-Proposed%20Amendments%20to%20Derivative%20Transaction%20Rules-Reporting-25-July-2014.pdf/$file/CP221Attachment-Proposed%20Amendments%20to%20Derivative%20Transaction%20Rules-Reporting-25-July-2014.pdf, Australian Securities & Investments Commission, *Attachment to CP 221: Proposed amendments to derivatives transaction rules (reporting),* Rule 2.2.6, Page 13, July 2014.

'snapshot reporting' will be complete, accurate and current at the time the 'snapshot reporting' was completed and sent to the trade repository. We seek clarification that this is the intent of subrule 2.2.6 when applied to 'snapshot reporting'.

Question B1Q2: Will this proposal reduce your costs of implementing transaction reporting? If so, please provide details.

Yes, this proposal will reduce the costs of implementing transaction reporting as noted in the CP 221, firms are setup to report based on 'snapshot reporting' in the majority of other jurisdictions. The extension of this infrastructure to encapsulate the Australian reporting regime would result in lower implementation costs as it does not require a separate build and will allow firms to leverage off their current solution that is being used for trade reporting in Hong Kong[3] and Singapore.

We believe that intraday transactions, i.e., transactions that are opened and closed on the same day, are not crucial as they do not provide any additional information from a market integrity perspective. As you are aware, market misconduct is a difficult concept to police and prevent. It is difficult for any regulation to predict and encompass all the various possible scenarios and human behavior that would prevent any one firm or person from market misconduct. In addition, it will require a totally new solution to be built for lifecycle reporting. If firms did provide this intraday transaction information, we seek further understanding on how this would aid in preventing market misconduct and the additional compliance costs a firm will incur to provide this information, particularly since these transactions were opened and closed on the same day, the firm holds no position or risk for these transactions.

Question B1Q3: Taking into account the varying record-keeping practices and requirements applicable to relevant OTC derivatives market participants, are records currently maintained in a form that would support accurate recording of transactions (including 'time stamping') to facilitate investigations by financial regulators into (for example) market abuse in OTC derivatives markets (in absence of a transaction-by-transaction reporting obligation)?

For some firms, their current record keeping practice is to provide an extract of all the transactions that are booked in their systems. This will include trades that are opened and closed on the same day on a T+1 basis.

Question B1Q4: Do you support an exception snapshot reporting being made for intraday trades (i.e. trades that are opened and closed on the same day, leaving no net end-of-day position)? What would the costs and benefits of such an exception be?

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[3] It should be noted there are slight differences between Hong Kong and Singapore in terms of the 'snapshot' reporting requirements.

We do not believe an exception snapshot reporting is required for the reasons stated in our response to B1Q2. As noted in our response to B1Q2, it would be costly for a firm to build a separate solution to report intraday trades or implement a manual solution as the current reporting infrastructure does not support it. As some firms have a record keeping practice that allows them to provide a list of all transactions on a T+1 basis, including those that are opened and closed on the same day, this information would be available to the regulators without a need to impose an exception to 'snapshot reporting' for such reporting entities.

Question B1Q5: Would you support a reversion to transaction-by-transaction reporting at some point in the future (e.g. if ASIC were in a position to undertake proactive and automated analysis of data in its supervision of market conduct)?

As there are substantial build costs and reporting entities involved, we urge ASIC to carefully consider the cost implications before a decision is made to revert to a transaction-by-transaction reporting regime. We believe that are other avenues of preventing market misconduct such as approaching the affected firm, on a bilateral level, for their books and records which form part of their record keeping requirement.

Question B2Q1: Do you agree with this proposal? If not, why not?

We agree with this proposal. Would ASIC publish a list of Foreign jurisdictions that have reporting requirements it considers to be substantially equivalent to the Australian reporting regime?

Question B2Q2: Will allowing the use of alternative reporting reduce your costs of implementing transaction reporting? If so, please provide details.

Yes, the use of alternative reporting will reduce the costs for implementing transaction reporting as it allows the reporting entity to use its existing reporting infrastructure and reporting obligations in another jurisdiction to meet its reporting obligations in Australia.

Question B3Q1: Do you agree with this proposal? If not, why not?

We do not agree with this proposal. We believe Rule 2.2.1(3) should remain unchanged because the requirement to 'tag' transactions would require a firm to build a reporting solution to identify which transactions should be 'tagged' as ASIC reportable transactions. As the concept of alternative reporting is to reduce the need for multiple builds and to reduce the compliance costs for firms, the condition for 'tagging' would require a system build and correspondingly result in compliance costs.

As a similar concept to "entered into Australia" has been introduced in Singapore and Hong Kong respectively, the industry's preference is for international alignment and a consistent definition to be applied in identifying such transactions across Singapore, Hong Kong and Australia. This would reduce the need for multiple system builds to capture different definitions across multiple jurisdictions, reduce implementation costs and increase data standardization across jurisdictions. If the concept for "entered into Australia", as applied in Singapore or Hong Kong, is not acceptable, we believe an alternative solution may be attained that allows both ASIC and the industry to reach a solution that is practicable and workable for the industry and meets ASIC's policy objective. If the alternative solution is accepted as the path forward, we respectfully request ASIC to consider an extension of the reporting commencement date for the 'tagging' of transactions for the Phase 2 entities as they would require additional time to build out their systems to identify these transactions.

As a summary, the industry's preferred option would be the adoption of a definition for "entered into Australia" that is consistent with the definitions used in either Singapore or Hong Kong. However, if such an option is not available, we believe an alternative solution may be achieved between ASIC and the industry which would be the preferred choice over the current definition of "entered into Australia".

Question B3Q2: Do you anticipate any practical difficulties with implementing 'tagging'? If so, please provide details.

Although the industry's preference is not to 'tag' transactions, if 'tagging' is implemented, a precondition would be for the trade repository (**TR**) to have the functionality that allows a Reporting Entity to 'tag' their transactions. To facilitate the 'tagging' process, we respectfully request ASIC to allow Reporting Entities that are currently reporting via the alternative reporting regime to the United States (**US**) Commodity Futures Trading Commission (**CFTC**) or to the European Union (**EU**) under the European Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (**EMIR**) be allowed to 'tag' their transactions with the CFTC or EMIR data fields respectively without the need to build and populate the ASIC data fields. Although a Reporting Entity would still need some system builds to identify the population of transactions that should be 'tagged', the ability to 'tag' transactions using either the CFTC or EMIR data fields would assist in reducing the need for an ASIC-specific build and allows a Reporting Entity to leverage off their existing reporting regime.

Currently, DTCC sends an error message for transactions using the CFTC or EMIR data fields. This will result in a massive number of error messages which would need to be checked as to whether these error messages are valid error messages or an error message because these transactions are not using ASIC data fields. Although this is a technical issue, we respectfully request ASIC to allow sufficient time for the TR to rectify this issue prior to the reporting start date for 'tagging' transactions.

Question B3Q3: Are there any alternative approaches that may meet our regulatory objective of ensuring that regulators have prompt and complete access to derivative trade data reporting under alternative reporting arrangements?

As noted in our response to B3Q1, if the 'tagging' proposal is adopted, the industry's preference is for a consistent definition of "entered into Australia" as proposed in both Singapore and Hong Kong to be adopted. However, if this is not an acceptable concept, we believe an alternative solution may be attained that allows both ASIC and the industry a path forward. To achieve this alternative solution, it would require a degree of flexibility and compromise from both ASIC and the industry. The aim of the alternative solution would be to allow the industry a practicable and workable solution in identifying the transaction population and it would allow ASIC access to the data to meet its policy objective.

Question B4Q1: Do you agree with this proposal? If not, why not?

We believe the proposal will aid in reducing the time and administrative process for Regulated Foreign Markets in the US and Europe. However, it should be noted that the number of Designated Contract Market (**DCM**) in the US and Regulated Market (**RM**) in Europe only apply to 7 financial markets listed under the Relevant Financial Markets (**RFM**)[4]. This may be due to name changes in the financial markets or simply that the financial markets listed are not registered as either a DCM or a RM.

For Regulated Foreign Markets located in jurisdictions outside the US and Europe, we seek clarification whether this determination process will be changed or would it remain as it currently stands?

Question B4Q2: Are there any alternative proposals that may meet our regulatory objective of excluding exchange-traded derivatives from the derivative transaction reporting regime (while ensuing that OTC derivatives executed on trading platforms are included)? If so, please provide details.

As you are aware, the process to determine each foreign market requires time and is administratively burdensome. We commend ASIC for granting relief for the Phase 1 and Phase 2 Reporting Entities with regards to the list of financial markets as listed as RFMs in paragraph 12[5] of the ASIC Gazette dated October 1, 2013. However, the RFMs on this list will change over time and presents an operational issue for Reporting Entities. Hence, a possible long term solution may be to incorporate a generic definition for exchange traded derivatives (**ETDs**), which would exclude ETDs from the reporting requirement but would capture the relevant venues on which derivatives are traded. The industry hopes to work with ASIC in developing a generic definition for ETDs to achieve a workable long term solution to this issue.

Question B5Q1: Do you agree with this proposal? If not, why not?

We agree with this proposal.

Question B6Q1: Do you agree with this proposal? If not, why not?

4 http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/A45_13.pdf/$file/A45_13.pdf, Australian Securities & Investments Commission, *ASIC Gazette*, No. A45/13, Page 4, 1October 2013.

5 http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/A45_13.pdf/$file/A45_13.pdf, Australian Securities & Investments Commission, *ASIC Gazette*, No. A45/13, Page 4, 1October 2013.

We agree with this proposal as the trade repository, such as DTCC, does not support the use of ABNs. As ABNs are not used in other jurisdictions, a firm that is leveraging its current reporting infrastructure for other jurisdictions such as Hong Kong or Singapore, to report its transactions under the Australian reporting regime, would not have a reporting system that supports the use of ABNs. To facilitate data consistency and standardization, ASIC may wish to consider the entity identifier waterfall developed by ISDA (**ISDA Identifier Waterfall**). The ISDA Identifier Waterfall allows for international consistency, operational efficiency and reduced costs as the same identifier waterfall may be applied across multiple jurisdictions.

The ISDA Identifier Waterfall is as follows:

i. LEI/ CICI/ pre-LEI
ii. DTCC/ AVOX ID / SWIFT BIC
iii. Internal identifier

Question C1Q1: Do you agree with this proposal? If not, why not?

We do not agree with this proposal to extend the reporting regime to include foreign subsidiaries of an Australian ADI or AFS licensee as transaction reporting is an onerous and expensive obligation and has extra-territorial impact on foreign subsidiaries that may not have any systemic impact on the Australian derivatives market.

Question C1Q2: Is the proposed threshold of $5 billion appropriate? If not, what threshold or trigger would be more appropriate?

No comments.

Question C1Q3: If a foreign subsidiary starts (or ceases) to hold $5 billion in gross notional outstanding OTC derivative positions, should the foreign subsidiary be required to start (or be permitted to cease) reporting transactions? If not, why not?

No comments.

Question C1Q4: Is the proposed timeframe for implementing reporting obligations for foreign subsidiaries of Australian entities appropriate? If not, what timeframe would be more appropriate?

No comments.

Question D1Q1: Do you agree with this proposal? If not, why not?

We do not agree with the proposal. The proposal is in substance and effect imposing an obligation on the delegate to underwrite the regulatory obligations of the Reporting Entity/client.

If ASIC adopts this proposal, we believe there will be a number of negative consequences. In particular, the imposition of regulatory obligations as a contractual obligation is a significant departure from the approach taken in other jurisdictions permitting delegated reporting such as in the European Union (**EU**) and Singapore. ISDA has recently released an industry standard on delegated reporting for Asia Pacific jurisdictions such as Singapore and Australia which is substantially based on the ISDA FOA EMIR documentation. Further, on the basis that delegated reporting is intended to be offered as a service, usually without charge, the proposal would provide no incentive to the delegate to offer this service.

We believe this proposal needs to be re-considered as it imposes the responsibility of ensuring the information reported on behalf of the Reporting Entity/client is complete, accurate and current onto the delegate. This creates a burden and open-ended liability for potential non-compliance on the part of the delegate which would have the unintended consequence of preventing any delegate from offering delegated reporting services. For example, when a delegate does not have a reporting obligation but its client has a reporting obligation, the delegate may report on behalf of the client. In such an instance, the delegate would be dependent on the information provided by the client. The delegate would not be able to verify that the transaction information is complete, accurate and current as this information can only be determined by the client.

Consequently, firms which may have previously considered offering delegated reporting in Australia may no longer choose to offer such a service. As a result, Phase 3 Reporting Entities would be required to build systems to report on their own behalf. We believe that this is not ASIC's intention.

Question D1Q2: Do you consider that this proposal will encourage the use of delegated reporting? If not, why not?

We do not believe this proposal will encourage the use of delegated reporting because in the current proposal, when a reporting entity delegates its reporting obligation to another entity (the 'delegate'), the delegate needs to report the reportable transactions and positions in accordance with Rules 2.2.1 and 2.2.5. Additionally, the delegate needs to ensure the information, and any changes to the information, is complete, accurate and up-to-date. The terms of delegated reporting should be clear and unambiguous such that the reporting obligation and obligation of ensuring the information is complete, accurate and up-to-date should remain with the reporting entity as it is their regulatory obligation to ensure the information reported to a trade repository is true and accurate in compliance with their regulatory obligation under the ASIC reporting rules. The delegate is performing a service on behalf of the Reporting Entity/client and should not be held responsible in any way whatsoever, on a regulatory level, for ensuring all information is complete, accurate and up-to-date.

As part of its responsibilities, a delegate would ensure it has reported the information as true and correct, on a best efforts basis, on behalf of the Reporting Entity/client. This has historically been a contractual obligation between the delegate and the Reporting Entity/client. We believe this should remain as a contractual obligation to be agreed on a bilateral basis between the delegate and Reporting Entity/client and should not become a regulatory obligation for the delegate.

Further, as with trade reporting obligations generally, there should be international consistency with regard to the proposed approach to delegated reporting. By way of example, the EU and Singapore (as well as Hong Kong) contemplate delegated reporting on the basis that the underlying reporting obligation and responsibility at all times remains with the Reporting Entity/client.

Question D1Q3: Will a 'safe harbour' for delegated reporting reduce your costs if implementing transaction reporting? If so, please provide details.

The current proposal for a 'safe harbour' for delegated reporting will not encourage firms to offer delegated reporting to other reporting entities. This in turn will force all reporting entities, particularly Phase 3 reporting entities, to build their own systems to carry out their own reporting requirements.

Question D1Q4: Are there any other proposals that may meet our regulatory objective of encouraging the use of delegated reporting? If so please provide details.

If ASIC intends to encourage delegated reporting then the reporting rules should not be amended as proposed. Instead, the rules should remain as they are and parties should be allowed to bilaterally negotiate the terms of providing and receiving delegated reporting services.

We would also propose a reporting threshold level such that only Reporting Entities above this reporting threshold will be required to report their transactions. The aim of the reporting threshold is to exclude AFSL license holders and end users who use derivatives for hedging purposes only and are not large sized firms. This reporting threshold will also solve the delegated reporting issues by removing the reporting obligation of such Reporting Entities or the need for them to delegate such an obligation to another Reporting Entity. For example: the Hong Kong Monetary Authority (**HKMA**) and the Securities and Futures Commission (**SFC**) recently published a consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules[6], which proposes a reporting threshold of USD 3 billion for interest rate derivatives and a reporting threshold of USD 1 billion for non-deliverable forwards. Under the Hong Kong proposal, there is an exit threshold which aims to provide a cushion against temporary fluctuations around the reporting threshold level.

Other proposals or issues

We respectfully request ASIC to consider a similar definition of foreign exchange (**FX**) spot, as 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.

[6] 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.

As you may be aware, the United States[7] (**US**) has excluded FX contracts entered into solely for the purpose of the purchase or sale of an amount of foreign currency in order to effect 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 ASIC 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. Further in Europe, the European Commission (**EC**) sent a letter[8] 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.

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[7] 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 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".

[8] 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.

Yours faithfully

For the International Swaps and Derivatives Association, Inc.

Keith Noyes
Regional Director, Asia Pacific

Cindy Leiw
Director of Policy