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Mr. Gopal Sundaram
Bank Negara Malaysia
Jalan Dato' Onn
P.O. Box 10922
50929 Kuala Lumpur

Dear Mr Gopal

Revised Guidelines on Product Transparency and Disclosure

1. We understand from our members that Section 12 of the revised Guidelines on Product Transparency and Disclosure issued by Bank Negara Malaysia (BNM) prescribes certain language requirements which take effect from January 1, 2011. Specifically, Sections 12.2 and 12.3 stipulates as follows:

“12.2 For comprehensive documents such as contracts, agreements and insurance policy/takaful certificates, the documents may be made available in a single language (at least in either Bahasa Malaysia or English). The Bahasa Malaysia version must be made available upon the customer’s request. The FSP should ensure that all documents are written in plain language.

12.3 It is important for the customer to understand the terms and conditions of the contract/agreement and to sign in a language that the customer can understand. If the customer requests for the Bahasa Malaysia version, the FSP must allow the customer to complete the relevant forms and sign the contract/agreement in Bahasa Malaysia. In this regard, the contract/agreement signed by the customer, be it in Bahasa Malaysia or English, will be the basis for the formation of the contract.”

2. While the Guidelines are only applicable to products and services offered to individuals and small and medium-sized enterprises (SMEs), the financial services provider (FSP) is encouraged to adopt similar disclosure standards with all other types of customers.

3. Thus, contracts such as the ISDA Master Agreement and Credit Support Documents and Confirmations would be covered by the provisions of Section 12 of the Guidelines if entered into by a FSP with an individual or SME customer. The revised Guidelines also encourage FSPs to adopt similar disclosure standards with all other types of customers, that is, even with larger non-SME customers.

4. As you know, the ISDA documents are the global market standard documentation for OTC derivatives transactions. The ISDA documents are in the English language as this is the dominant language of international commerce and financial transactions. We agree that it is necessary that a party to a contract understands the terms of that contract. Thus, ISDA has, to date, published 8 translations of the ISDA Master Agreement into various languages for educational purposes. ISDA would undertake to commission a Bahasa Malaysia translation of the ISDA Master Agreement if there were demand from our members for such a translation. However, as a general rule, the parties will sign the English language document and the legally binding document remains the English version. Accordingly, if there is any inconsistency between the English version and the translation, the English version will prevail. Given that many participants enter into derivative transactions on a cross-border basis, it is of paramount importance that the English versions of the ISDA documents remain the legally binding document in order to reduce documentation basis risk.

5. Section 12.3 of the revised Guidelines makes it mandatory for a FSP to enter into a Bahasa Malaysia language version as the legally binding document where the customer wants this. This increases documentation basis risk for the FSP even for its onshore portfolio of transactions as a number of these transactions will be documented in English while others will be documented in Bahasa Malaysia. Given that the FSP will no doubt engage in offshore transactions to manage its risks, the FSP will also face documentation basis risk as the offshore transactions will be governed by English language documents.

6. The ISDA documents are intended for use by parties that are financially sophisticated and are not designed for use with retail customers¹. As a general rule, parties that are entering into transactions with each other pursuant to the ISDA Master Agreement do so as arm's length counterparties and indeed, the Schedule to the 2002 ISDA Master Agreement² includes standard representations³ to this effect. As such, the ISDA documents are not written in plain language. Nor would it be advisable to attempt such a task given the purpose of the ISDA documents and the long-established reliance by financial institutions and their regulators on the close-out netting opinions obtained by ISDA on the ISDA Master Agreement.

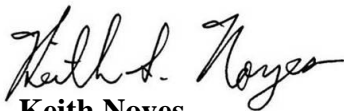
¹ However, not all individuals and SMEs should be classified as retail customers. Private banking clients and high net worth individuals and certain SMEs may be financially sophisticated.

² Comparable representations were included in the Schedule to the 1992 ISDA Master Agreement by market participants.

³ Part 4(m)(i) of the Schedule - Additional Representation: Relationship Between Parties.

7. Our members believe that the Guidelines are meant to protect retail customers and that the wider coverage of the Guidelines may be inadvertent. We agree that FSPs, when entering into OTC derivative transactions under the ISDA documentation with non-FSPs, need to conduct the requisite due diligence checks - we understand that such requirements are covered by separate guidelines on derivatives issued by BNM. In the circumstances, our members have requested that we apply to BNM to exempt the ISDA documentation from the application of the entirety of the Guidelines or, at the minimum, to provide an exception from the plain language requirements of Section 12.2 and the Bahasa Malaysia language requirements of Section 12.3 of the revised Guidelines for the ISDA documentation. Please do not hesitate to contact Mr Keith Noyes (knoyes@isda.org) at +852 2200 5909 or Ms Jacqueline Low (jlow@isda.org) at +65 6538 3879.

Yours sincerely



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