

ISDA®

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Via E-Mail and International Mail

Mr. Kim Jong Min
Management Guidance Team
Bank Supervision Department of Financial Supervisory Service
27 Yoido-Dong
Youngdeundpo-Gu
Seoul 150-743
Republic of Korea

Dear Mr. Kim,

Close-out Netting for Capital Relief

We are writing to you on behalf of the International Swaps and Derivatives Association, Inc. (“**ISDA**”), to seek the opportunity to better understand current deliberations within the Financial Supervisory Service (“**FSS**”) regarding close-out netting related regulations especially those concerning capital relief for credit risk management purposes.

Background

As you are aware, ISDA is a non-profit organization representing participants in the privately negotiated derivatives industry and is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985, and today has over 725 member institutions from 50 countries on six continents, including eight local member institutions in the Republic of Korea (“**Korea**”).

Over the years ISDA has paid visits to the FSS of Korea and has had the privilege of building a constructive working relationship with the FSS. ISDA would be keen to provide helpful input to enhance the development of the OTC derivatives business in Korea.

Close-out Netting Regulation

A number of Asian regulators are currently reviewing the regulations governing close-out netting for capital relief. Earlier this year, the Monetary Authority of Singapore (“**MAS**”) and Hong Kong Monetary Authority (“**HKMA**”) issued consultation papers to the industry soliciting input related to

regulation changes regarding granting capital relief following the recognition of close-out netting. ISDA provided submissions to both authorities.

In June this year, the MAS issued Notice 638, setting out requirements for banks to claim capital relief. The requirements for capital relief stipulated by MAS are very similar to those set out by the Basel Committee. The HKMA is presently finalizing their revised and updated approach. ISDA continues to be responsive to regulators by providing comments on consultation papers for policy changes that concern the industry at large and we have been grateful for the opportunity to engage with the MAS and HKMA on these important initiatives.

The approaches taken by MAS and HKMA are in line with the standards in other developed countries such as the United Kingdom, the United States of America and Japan. We would be most happy to provide you with relevant materials for these jurisdictions mentioned and any further jurisdiction you may be interested in.

ISDA's Legal Opinions

Ensuring the enforceability of the netting provisions of the ISDA Master Agreement has been, and remains, a key initiative for ISDA, because of the ISDA Master Agreement's importance in reducing the credit risk arising from the business. Our work in this area has resulted in a series of laws being passed in various countries that ensure legal certainty in those jurisdictions.

Since 1987 ISDA has obtained legal opinions which review the enforceability of the termination, bilateral close-out netting and multibranch netting provisions of the 1987, 1992 and 2002 Master Agreements. In addition, ISDA also solicits legal opinions on the enforceability of the ISDA Credit Support Documents.

ISDA's legal opinions now cover 49 jurisdictions, including South Korea. The opinions have been prepared in order to satisfy the legal opinion requirements of the Basel Committee, after the Basel Committee recognized close-out netting for capital purposes for OTC derivatives transactions. They are furthermore updated annually to comply with requests from various central banks. Local legal counsel has also been asked to review whether the inclusion of additional derivatives transactions, such as credit derivatives, bullion transactions and weather derivatives, affects the legal opinions being rendered.

As a result, in a large number of jurisdictions, members of ISDA rely on these legal opinions to analyze the current legal and regulatory framework and then decide whether close-out netting can be relied upon for the purposes of obtaining capital relief in any particular jurisdiction.

Close-out Netting Regulation in Korea

ISDA understands the FSS has published a general guideline setting forth the requirements for capital relief in the context of close-out netting and is currently contemplating the need for more detailed guidance to be provided to the industry on the application of the guideline. Accordingly, we would like to offer our assistance in providing you with further relevant information and added insight on how these issues are dealt with in jurisdictions around the world. We have provided submissions to many key authorities and would be honoured to engage in a similar dialogue with the FSS on this matter.

In addition, if the FSS issues a consultation paper or guideline on capital relief in the context of close-out netting regulation to the industry, ISDA would be most happy to provide feedback on any formal or informal consultation the FSS may suggest.

We would be delighted to further discuss this topic. If the FSS has any questions regarding the matters outlined in this letter, please do not hesitate to contact Ms Tricia Bowden in Tokyo on (813) 6437 1717, Ms Angela Papesch or Mr Way Yee Bay in Singapore on (65) 6538 3879 or send a fax to us at (65) 6538 6942.

Sincerely yours,



Tricia Bowden
Chair of ISDA's Asia-Pacific
Legal & Regulatory Committee



Angela Papesch
Director of Policy &
Head of Asia-Pacific Office

(Korean translation attached)