

Comments by the International Swaps and Derivatives
Association, Inc. (ISDA) on the Consultation Paper on Transfer
of Regulatory Oversight of Commodity Derivatives from IE to
MAS issued by the Monetary Authority of Singapore

26 March 2012

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Dear Sir/Madam,

Introduction

The International Swaps and Derivatives Association, Inc. ("**ISDA**") welcomes the opportunity to respond to the Consultation Paper on the Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS ("**Consultation Paper**") issued by the Monetary Authority of Singapore ("**MAS**") on 13 February 2012.

ISDA has submitted a separate response to the Consultation Paper on Proposed Regulation of OTC Derivatives issued by the MAS also on 13 February 2012 (the "**OTC Response**").

General observations

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

Unique market

We welcome the MAS's aim to provide greater clarity and efficiency to the commodities industry. However, as the MAS also notes in the Consultation Paper, the commodity derivatives market has characteristics which are unique and distinct from those of financial derivatives – not only in the nature of the underlying asset but also in the purpose of commodities related transactions and the types of and role played by market participants (for example, financial institutions are not necessary price makers but may in fact be price takers in this market which is largely driven by physical players). As such, we urge the MAS to take these into account when legislating the regulatory framework for commodities derivatives. The current regulatory framework in the SFA which applies to, inter alia, securities and futures contracts may not be appropriate for wholesale application to commodity derivatives and we urge the MAS to make the necessary exceptions where required.

Continued growth of the market

We note that the transfer of regulatory oversight of commodity derivatives to the MAS is being proposed at the same time as regulatory reforms in respect of mandatory central clearing and mandatory reporting in line with G20 commitments are being proposed to be implemented. While there may have been specific instances where certain standardized commodity derivatives may have given rise to dual or uncertain regulatory coverage as highlighted in paragraph 2.1.1 of the Consultation Paper, we would like to mention that the overall view of members is that the

current regulatory framework under the CTA and IE works and has successfully supported and encouraged the growth of the commodities market in Singapore. As such, relevant exemptions and arrangements under the CTA that have help to support such growth should, where possible, be carried over to the SFA in order to ensure continued growth of the market in Singapore. Any overregulation over and beyond that required to meet the regulatory reforms mentioned above may negatively impact the growth or sustainability of the commodities market in Singapore.

We propose that the MAS excludes physical commodity transactions with elements of embedded financial derivatives, as well as OTC commodity derivatives with physical settlement, from the definition of OTC commodity derivatives. Such transactions are essentially non-financial in nature and generally entered into for underlying commerce and risk management reasons and clearing is not available. It is not uncommon for institutions to transact in both financially-settled OTC commodity derivatives and physical commodities, and be involved in various operational aspects of physical commodities activities including transport and storage. The engagement in physical commodities is necessary for hedging, to understand the commodity markets, and to provide a service to clients. As MAS already has a framework in place for regulating the non-financial business of banks under the Banking Act (Cap. 19), it is not necessary for the MAS to introduce further regulations via the SFA in regard to the physical commodities activities of banks.

Response to specific questions

We set out below our comments in relation to the specific questions posed in the Consultation Paper. Our response is set out underneath each question. Capitalised terms used but not defined herein have the meaning given to such terms as set out in the Consultation Paper. The headings used below correspond to the headings used in the Consultation Paper.

2. PROPOSED SCOPE FOR THE TRANSFER

Question 1: MAS seeks views on the scope of the proposed regulatory regime under the SFA.

1. Members have no objection to preserving the status quo of only regulating tangible commodity derivatives. Should there be an intention to regulate intangible commodity derivatives, we request that the MAS conduct public consultations prior to implementation.
2. With respect to the proposal to exclude physically-settled commodity forward contracts, members request that the exclusion be extended to all contracts which provide for physical settlement of the underlying commodity (and not just forwards). Further, members seek clarification that physically-settled commodity forward contracts that are excluded would not inadvertently become regulated (or subject to mandatory clearing or reporting) if they are eventually cash-settled.
3. Members also seek clarification whether commodities transactions with embedded derivatives would be treated as commodity derivatives contracts. For example, it is common for commodity sale and repurchase agreements with sale and repurchase legs that are physically-settled to also include a hedge (such as a cap or collar) on the price of the underlying commodity. Such embedded derivative could be cash-settled.

4. Please also see our response to Question 1 of the OTC Response.

Question 2: MAS seeks views on the proposal to maintain the objective of the CTA to protect the public.

5. We express no view on this proposal.

Question 3: MAS seeks views on the current scope of the CTA regulatory oversight of spot commodity trading and its effectiveness in the protection of the public against bucket shops.

6. We express no view on this proposal.

Question 4: MAS seeks views on the proposal to transfer regulation of commodity derivatives market operators to the SFA and the extension of the existing two-tier regulatory regime to these operators.

7. We refer you to our response to Questions 23, 24 and 25 in the OTC Response in respect of the proposals for the regulatory framework for market operators generally.

Question 5: MAS seeks views on the proposal to transfer regulation of clearing facilities for commodity derivative contracts to MAS and the expansion of regulatory ambit after the transfer

8. We refer you to our response to Questions 26, 27 and 28 in the OTC Response in respect of the proposals for the regulatory framework for clearing facilities generally.

Question 6: MAS seeks views on the proposal to transfer regulation of intermediaries dealing in commodity derivatives to MAS

9. We refer you to our response to Questions 32 and 34 in the OTC Response and our general observations set out above. We urge the MAS to retain and carry over the relevant exemptions for market participants as currently provided for under the CTA. We also urge the MAS to consult closely with commodity trading houses and other relevant players on this proposal.

ISDA appreciates the opportunity to provide comments on the Consultation Paper and looks forward to working with the MAS as it continues the regulatory process. If you have any questions on this submission, please feel free to contact the undersigned at your convenience.

Yours faithfully,

For the International Swaps and Derivatives Association, Inc.



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Jacqueline ML Low
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