

Comments by the International Swaps and Derivatives
Association, Inc. (ISDA) on Consultation Paper I on Proposed
Amendments to the Securities and Futures Act on Regulation
of OTC Derivatives issued by the Monetary Authority of
Singapore

22 June 2012

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Market Conduct Policy Division
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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 I on the Proposed Amendments to the Securities and Futures Act ("**SFA**") on Regulation of OTC Derivatives ("**SFA Consultation Paper**") issued by the Monetary Authority of Singapore ("**MAS**") on 23 May 2012.

ISDA has previously submitted responses to the Consultation Paper on Proposed Regulation of OTC Derivatives ("**OTC Consultation Paper**") and the Consultation Paper on the Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS, both issued by the MAS on 13 February 2012. ISDA supports the proposal by MAS to respond to feedback received on such consultation papers, and to consult on draft legislative amendments, in phases.

Capitalised terms used but not defined herein have the meaning given to such terms as set out in the SFA Consultation Paper.

General comments

Before we address specific comments on the draft legislative amendments proposed in the SFA Consultation Paper, we would like to make a few general comments.

Regulatory regimes

Members are generally supportive of the two-tier regulatory regime proposed for clearing facilities and the single-tier regulatory regime proposed for trade repositories. In the case of clearing facilities, this will allow for sufficient and effective regulation by the MAS of systemically-important clearing facilities as "approved clearing houses" (and we note the MAS's statement in the SFA Consultation Paper that clearing facilities that perform the role of central counterparties will generally be considered to be systemically-important clearing facilities). However, under the proposed legislation, only a Singapore corporation can apply to be approved as an approved clearing house. An overseas corporation can only apply to be recognised as a recognised clearing house and would (based on the MAS's above-stated position in the SFA Consultation Paper) prima facie be precluded from offering central

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counterparty clearing facilities in Singapore. Given the MAS's position in the OTC Consultation Paper that it will not insist on a domestic location requirement for foreign central counterparties, we believe that this is not the outcome that is intended. We suggest that this inconsistency be addressed by allowing overseas corporations as well as Singapore corporations to be approved as approved clearing houses (i.e., similar to the position with regard to recognised clearing houses where both overseas as well as Singapore corporations can apply for recognition). In addition, as the MAS's position is that it will rely on the home country's regulatory and supervisory regime for an overseas clearing house, we urge the MAS to adopt the concept of an approved clearing house/approved overseas clearing house and a recognised clearing house/recognised overseas clearing house – i.e., similar to the framework in respect of trade repositories where there is a differentiation between a licensed trade repository and a licensed overseas trade repository.

We welcome the creation of separate licensing categories for local and overseas trade repositories. We also support the MAS's position that it does not intend to regulate all trade repositories but only those that wish to offer their services to participants seeking to fulfil their mandatory reporting obligations. The licensing regime for overseas trade repositories will afford them the opportunity of providing trade repository services to Singapore participants seeking to fulfil their mandatory reporting obligations and will help support the MAS's proposal in the OTC Consultation Paper that mandatory reporting will not need to take place on local trade repositories.

However, to ensure that there will be overseas clearing facilities and overseas trade repositories that will apply to become "recognised clearing facilities" and "licensed overseas trade repositories" respectively (and thereby give local industry players access to a wider choice of clearing facilities and trade repositories), we strongly urge the MAS to consult with prospective overseas clearing facilities and trade repositories on the draft legislative amendments to ensure that the requirements are not overly onerous or effectively prohibitive for such overseas clearing facilities and trade repositories to apply to be licensed under the new regimes. As you know, a significant volume of interest rate swaps is already cleared by LCH and other foreign CCPs in a well-regulated environment. We cannot over-state the importance to market participants of being able to continue to clear their transactions through such foreign CCPs. Similarly, our members support the use of global trade repositories in each relevant asset class, with the domestic regulators being given access to relevant data in the global trade repositories. We have pointed out in our comments below certain proposed legislative provisions which we think may not work for, or be acceptable to, overseas clearing facilities and trade repositories.

Definitions of common use

We note that new defined terms of "derivatives contract", "forward contract", "option contract", "swap contract", "commodity", "financial instrument" and "underlying" have been introduced, both for the new Part IIA (*Clearing Facilities*) of SFA as well as the new Part III (*Trade Repositories*) of the SFA. We are also mindful that similar definitions may be suggested for the legislative amendments to introduce mandatory clearing and reporting of OTC derivatives contracts, as well as regulation of intermediaries dealing in OTC derivatives contracts.

Ideally, instead of repeating such definitions in the various Parts of the SFA, a common set of definitions for "derivatives contracts" should apply across the board at the parent Act level, with relevant exceptions or exemptions being introduced for each category of regulation,

either in the SFA itself or in subsidiary legislation. We should avoid having multiple (and potentially conflicting) definitions for "derivatives contracts". Our more detailed comments on these defined terms are set out below.

Client clearing

We note that in the MAS's response to feedback received on the consultation on policy reforms on regulation of OTC derivatives published on 23 May 2012 (the "**MAS Response**"), the MAS indicated that they would be studying the issue of segregation and portability of customers' money and assets further to examine if the existing segregation requirements in the SFA provide adequate protection for customers. We look forward to the MAS's publication of its views on this issue and the opportunity to comment on the MAS's views and any proposed legislative changes. In addition to segregation and portability of customers' money and assets, we also urge the MAS to consider portability of customer positions and also the extension of the insolvency protection provisions in the SFA to customer contracts (i.e. contracts between customers and clearing members through which such customers will clear their derivatives contracts). We expect that the bulk of market participants in Singapore will access central counterparty clearing facilities through client clearing arrangements and the robustness of such arrangements is thus imperative.

Trade repositories and banking secrecy

We note that the SFA Consultation Paper does not address mandatory reporting obligations and that draft legislation on this will be consulted on at a later phase. However, we would like to take this opportunity to mention that such legislative provisions will need to address the banking secrecy issue. Unless necessary legislative amendments are made, banks may be caught by conflicting and irreconcilable legal requirements. On one hand, they may be required to report trade information (which necessarily includes their counterparties' information). On the other hand, it may be a criminal offence and a breach of banking secrecy under Section 47 of the Banking Act to carry out such trade reporting. We urge the MAS to take this into account when preparing such legislative provisions.

Comments on draft legislative amendments

We set out below our comments on the respective Annexes to the SFA Consultation Paper:

A. Annex 1 – New Part IIA (Clearing Facilities) of the SFA

Provision	Comment
Definition of "derivatives contract" and related defined terms	<p>The definition of "derivatives contract" is key to determining the scope of regulation of clearing facilities (and trade repositories). As such, it is important to ensure that this definition is drafted so as to be clear, concise and easily applied in practice.</p> <p>We agree that the definition of "derivatives contract" should carve out "securities" and "futures contracts". However, the current proposed definition of "derivatives contract" uses too many layers of defined terms, which are in turn circular and unclear in application. For example:</p>

Provision	Comment
	<ul style="list-style-type: none"> - the current definition of "derivatives contract" does not contemplate transactions that include combinations of forwards, options and/or swaps (for example, swaptions); - the definition of "underlying" (which is used in each of "forward contract", "option contract"¹ and "swap contract") itself uses the term "derivatives contract"; - the use of the expression "the effect of which" in the definition of "forward contract" could inadvertently capture non-derivatives type agreements; - the definition of "financial instrument" refers to an interest rate instrument and it is unclear what this is; - as currently drafted, it is unclear if interest rate swaps are "derivative contracts"; - it is unclear what paragraph (b) of "underlying" is meant to cover. It seems to suggest credit derivatives but it is not drafted sufficiently clearly; - it is unclear why the definition of "swap contract" makes reference to purpose whereas the definitions of "forward contract" and "option contract" do not. It is also not clear what "pretended purpose" in the definition of "swap contract" means. <p>We also note that the definitions of "commodity" and "financial instrument" follow the existing definitions of "commodity" and "financial instrument" in the SFA. We do not think it is appropriate to use the existing definitions as this is currently used in respect of futures contracts. In the OTC derivatives space, for example, "commodities" do not include "financial instruments". It would be more appropriate for a financial instrument to be an underlying.</p> <p>As an alternative to using defined terms such as "forward contract", "option contract" and "swap contract", the MAS may wish to consider using a broad but simple definition of "derivatives contracts" in the parent Act that would apply across the various regulatory spheres (i.e. regulation of clearing facilities, regulation of trade repositories, mandatory clearing, mandatory reporting and licensing of OTC derivatives intermediaries). Appropriate carve-outs can then be applied in relevant Parts of the SFA or in the applicable subsidiary legislation. In relation to such carve-outs, we believe that clarity can perhaps be achieved through specificity. When ISDA instructs counsel to provide close-out netting and</p>

¹ We assume there is a typographical error in the definition of "option contract" and references in paragraphs (a), (b) and (c) to "option" should instead be to "underlying".

Provision	Comment
	<p>collateral opinions, counsel is requested to opine on whether their opinion covers the transactions described in Appendix A to ISDA’s instruction letter. We attach a copy of Appendix A in Annex I as this may provide a useful reference when determining such carve-outs.</p> <p>The above approach will allow the MAS to capture a sufficiently broad range of OTC derivatives contracts for the purposes of the regulation of clearing facilities and trade repositories in this phase of the consultation, while ensuring that the OTC derivatives products that are captured by the mandatory clearing and reporting obligations (to be introduced at a later stage) are consistent with the proposals in the US and EU.</p> <p>In this connection, the MAS may wish to refer to comparative legislation. One example is the definition of "derivative" in the Australian Corporations Act 2001. You will note that this definition refers to a non-exclusive list of underlyings (assets, rates, indices and commodities) without references to forwards, options and swaps. It also provides for carve-outs from the definition. We attach a copy of this definition in Annex II for your reference.</p> <p>With respect to transactions that should be carved out from the definition of "derivatives contracts", we trust that the MAS will allow for a detailed consultation in due course in relation to the mandatory clearing and reporting obligations. At this point, we would simply state that transactions such as foreign exchange spots, forwards and swaps and contracts relating to commodities that are physically settled should be excluded.</p>
<p>Definition of "clearing or settlement"</p>	<p>We note the MAS's comment in the MAS Response that it is important to ensure that activities immediately following the execution of transactions in securities, futures contracts and derivatives contracts are subject to regulatory oversight. However, in the context of derivative contracts, the proposed definition of "clearing or settlement" in Part II to the First Schedule to the SFA, which lists limbs (a) to (d) in the alternative, is too wide and may capture services which the MAS may not intend to regulate. For example, the following could be caught:</p> <ul style="list-style-type: none"> - single dealer booking platforms (and we note the MAS’s position in the OTC Consultation Paper that it does not intend to regulate such platforms); - prime brokerage arrangements and other arrangements between brokers and customers which involve give-up agreements;

Provision	Comment
	<ul style="list-style-type: none"> - trade confirmation platforms; - collateral management services; - portfolio reconciliation services; - portfolio compression services; - CLS Bank’s services; - services provided by Clearing and Payment Services Pte Ltd ("CAPS") to the local banks. <p>The current list of exclusions in paragraph 4(2) does not sufficiently carve out the above. In addition:</p> <ul style="list-style-type: none"> - the ambit of "back office operations" is unclear; further, the extent to which "out-sourced" operations would fall within this exclusion is unclear; - it is not entirely clear if paragraph 4(2)(b) is meant to only cover the provision of custodial services or is wider than that. In any case, we suggest that it be expanded beyond "securities" to cover any physical "underlying" of derivatives contracts.
<p>Section 48 <i>(Interpretation)</i></p>	<p>Please consider including definitions for the terms "investor" and "investing public". Such definitions should be inclusive of end-users of derivatives contracts.</p>
<p>Section 49(3)(a) <i>(Requirement for approval or recognition)</i></p>	<p>Please consider extending this to "derivatives clearing house" and "clearing house".</p>
<p>Section 51 <i>(Power of Authority to approve clearing house and recognise clearing house)</i></p> <p>Section 52 <i>(General criteria to be taken into account by Authority)</i></p>	<p>The MAS will have the power to prescribe the minimum financial and other requirements that clearing houses will have to satisfy and to prescribe other criteria to be taken into account when considering any applications. Before prescribing such requirements and criteria, we would urge the MAS to conduct a consultation.</p> <p>We would also urge that the considerations that the MAS will take into account when determining whether "adequate arrangements" exist for co-operation between the MAS and the home country regulator are set out in Guidelines. Further, we cannot over-state the importance to market participants of a confirmation of the MAS’s position in regard to the US and EU regulators.</p> <p>We note the broad powers granted to the MAS to grant such approval or recognition subject to such conditions or restrictions as</p>

Provision	Comment
	<p>the MAS may think fit to impose, as well as to vary any such condition or restriction and impose further conditions or restrictions.</p> <p>In connection with the above:</p> <ul style="list-style-type: none"> - we reiterate the importance of prior consultation especially with overseas clearing facilities on such conditions and restrictions; - we would suggest that the relevant clearing house be given a reasonable grace period to meet such revised or additional conditions or restrictions; - in the event that an approved clearing house or recognised clearing house is unable to meet such revised or additional conditions or restrictions, such failure should not impact the ability of users to satisfy any mandatory clearing requirements by using such clearing house, particularly during any applicable grace period.
<p>Section 52(2)(b) (<i>General criteria to be taken into account by Authority</i>)</p>	<p>We note and support that this provision requires the requirements and supervision (that the overseas corporation be subject to) to be comparable "in the degree to which the objectives specified in section 47 are achieved". In our view, taking an outcomes-based approach to determining comparability is the right approach.</p>
<p>Section 57(1)(c) (<i>General obligations</i>)</p>	<p>Clearing house rules (including SGX-DC's rules) generally give the clearing house very wide powers to call an Event of Default against a clearing member. These Event of Default provisions are generally very broadly drafted, compared to Event of Default provisions that we would expect to see in bilaterally negotiated ISDA agreements between two swap counterparties with comparable bargaining power.</p> <p>Members are of the view that clearing houses should exercise their ability to call an Event of Default only after careful consideration of the possible consequences (including market disorder and systemic risk). Apart from the defaulting clearing member itself, its end-clients would also be affected (in a client-clearing model), and so would other clearing members (because for example, they may be required to participate in auctions and their default fund contributions may be utilised).</p> <p>We would like to suggest that Section 57(1)(c) be expanded to say that a clearing house should have regard not only for "the interests of the investing public", but also for other participants in the clearing system. These participants would include the clearing members and also the end-clients (who may not fall within the meaning of "investing public" if they, for instance, enter into</p>

Provision	Comment
	<p>derivative transactions for hedging purposes only). As suggested above, the term "investing public" should be defined or further clarified.</p>
<p>Section 58(1) <i>(Obligation to notify Authority of certain matters)</i></p>	<p>We would like to suggest that Section 58(1) be expanded such that the approved clearing house should also be required to notify the MAS if it determines that (a) any Event of Default under its rules has occurred with respect to a clearing member and separately, (b) if and <u>before</u> it has decided to institute default proceedings with respect to that clearing member.</p> <p>This expansion is suggested because the scenarios described above are not necessarily covered by the existing Section 58(1)(d)(ii), and are events that may trigger market disorder and systemic risk. This is because the clearing house is likely to have very widely drafted Event of Default provisions in its rules, whereby the clearing house can call an Event of Default even if nothing has occurred which would affect the clearing member's ability to meet its financial obligations.</p> <p>Further, in relation to locally-incorporated clearing houses, MAS may wish to prescribe itself with specific powers to issue directions to a clearing house to take or refrain from taking any action against a participant (without prejudice to Section 81R(1)).</p>
<p>Section 70 <i>(Control of substantial shareholding in approved clearing houses)</i></p>	<p>Members request for clarification on the rationale for the 12% and 20% thresholds in this section. We note that this reflects the existing SFA provision relating to designated clearing houses. We also note that similar thresholds are used in the Banking Act with respect to licensed banks. However, we believe that this is an opportune time to re-visit the rationale for these thresholds, in particular the 12% threshold.</p>
<p>Division 3 <i>(Regulation of Recognised Clearing House)</i></p>	<p>We have some reservations whether overseas clearing houses would be able, or be prepared, to comply in full with the following:</p> <ul style="list-style-type: none"> - regulations made pursuant to Sections 77 <i>(Obligation in relation to customers' money and assets held by recognised clearing house)</i>; - any prescribed requirements under Section 78 <i>(Obligation to maintain proper records)</i>; - the provisions of Section 79 <i>(Obligation to submit periodic reports)</i>; - the provisions of Section 80 <i>(Obligation to assist Authority)</i>; and

Provision	Comment
	<p>- the provisions of Section 81 (<i>Obligation to maintain confidentiality</i>).</p> <p>We urge the MAS to consult with relevant stakeholders to ensure that such provisions will be acceptable to any prospective overseas clearing houses and their home regulators which intend to apply to be recognised as recognised clearing houses.</p> <p>In particular, the MAS may wish to consider:</p> <ul style="list-style-type: none"> - whether such requirements should instead be addressed through the arrangements to be entered into between the MAS and the home regulator of the overseas clearing house; - whether to specifically restrict such requirements to apply only to Singapore transactions and Singapore users (though the precise scope of such "covered" transactions and users would need to be further consulted on).
<p>Section 81O (<i>Immunity from criminal or civil liability</i>)</p>	<p>Members would like to recommend that the words "or appointment" be inserted immediately after the word "delegation" in the first line thereof. We also recommend that the MAS consider qualifying Section 81O with the requirement that the person must have acted in good faith or taken reasonable care.</p>
<p>Section 81S (<i>Emergency powers of Authority</i>)</p>	<p>We note that Section 81S gives broad powers to the MAS in the event of an emergency or if the MAS thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors.</p> <p>We also note that such powers extend to an overseas clearing house. We are concerned that overseas clearing houses and their home regulators will find this provision to be unacceptable. We urge the MAS to consult with relevant stakeholders to ensure that such powers will be acceptable to any prospective overseas clearing houses and their home regulators which intend to apply to be recognised as recognised clearing houses.</p> <p>We note that the proposed powers are based on the existing SFA provision in respect of designated clearing houses. While we appreciate the rationale behind giving the MAS emergency powers given the inherent systemic risk associated with clearing houses, we question the very broad scope of the events that could trigger the exercise of such powers. We believe that a more balanced outcome would be to limit the events that could trigger the exercise of such powers to the insolvency or potential insolvency of the clearing house or where the clearing house has committed such breaches of the SFA or shown such signs of mismanagement that it threatens the achievement of the objectives in Section 47. In any event, we are of</p>

Provision	Comment
	<p>the view that such powers should only be exercised where it is "necessary" (and not just "expedient") in the interests of the public (and not just "a section of the public") or for the protection of investors. As suggested above, the term "investor" should be defined or further clarified.</p> <p>Further, some of the scenarios described as an emergency in subsection (4) seem vague and/or inappropriate, particularly in the context of clearing houses clearing OTC derivatives contracts. For example, it is unclear what would constitute a "clearing facility manipulation" or a "clearing facility disturbance". We also do not understand what the reference to "... prevents the clearing facility from accurately reflecting the forces of supply and demand for such commodity or securities" is intended to mean. We request the MAS to provide an explanation on how these emergency powers are intended to be used and practical examples.</p> <p>We also urge the MAS to consider comparative legislation on emergency powers over clearing houses in other major countries.</p>
<p>Section 81SA (<i>Power of Authority to appoint adviser</i>)</p>	<p>We are concerned about how Section 81SA would apply to overseas clearing houses.</p> <p>We urge the MAS to consult with relevant stakeholders to ensure that such provisions will be acceptable to any prospective overseas clearing houses and their home regulators which intend to apply to be recognised as recognised clearing houses.</p> <p>In particular, the MAS may wish to consider:</p> <ul style="list-style-type: none"> - whether such requirements should instead be addressed through the arrangements to be entered into between the MAS and the home regulator of the overseas clearing house; - whether to specifically restrict such requirements to apply only to Singapore transactions and Singapore users, bearing in mind our earlier comment on the need for further consultation on the precise scope of such "covered" transactions and users.
<p>Division 5 (<i>Insolvency</i>)²</p>	<p>We support the application of protection from insolvency proceedings to recognised clearing houses as well as approved clearing houses. We note, however, that such protection may not be foolproof especially in regard to overseas clearing houses and overseas participants.</p> <p>As stated earlier, we believe that the robustness of client clearing</p>

² Division 5 (Insolvency) should be re-numbered as Division 4.

Provision	Comment
	<p>arrangements is imperative. As such, insolvency protection should extend to client clearing arrangements. Given the definition of "market contract" in Section 48(1), it is unclear that the insolvency protection would apply to client clearing arrangements, at least where the client clearing arrangements adopt the "principal" model.</p>

B. Annex 2 – New Part III (Trade Repositories) of the SFA

Provision	Comment
<p>Definition of "derivatives contract" and related defined terms</p>	<p>The comments set out above in respect of Part IIA (<i>Clearing Facilities</i>) of the SFA apply here as well.</p>
<p>Section 5 (<i>Power of Authority to grant trade repository licences and overseas trade repository licences</i>)</p>	<p>The MAS will have the power to prescribe the minimum financial and other requirements that trade repositories will have to satisfy. Before prescribing such requirements, we would urge the MAS to conduct a consultation.</p> <p>We would also urge that the considerations that the MAS will take into account when determining whether "adequate arrangements" exist for co-operation between the MAS and the home country regulator are set out in Guidelines. Further, we cannot over-state the importance to market participants of a confirmation of the MAS's position in regard to the US and EU regulators.</p> <p>We note the broad powers granted to the MAS to grant such licences subject to such conditions or restrictions as the MAS may think fit to impose, as well as to vary any such condition or restriction and impose further conditions or restrictions.</p> <p>In connection with the above:</p> <ul style="list-style-type: none"> - we reiterate the importance of prior consultation especially with overseas trade repositories on such conditions and restrictions; - we would suggest that the relevant trade repositories be given a reasonable grace period to meet such revised or additional conditions or restrictions; - in the event that a licensed trade repository or licensed overseas trade repository is unable to meet such revised or additional conditions or restrictions, such failure should not impact the ability of users to satisfy any mandatory reporting requirements by using such trade repositories, particularly

Provision	Comment
	during any applicable grace period.
Section 5(5) (<i>Power of Authority to grant trade repository licences and overseas trade repository licences</i>)	We note and support that this provision requires the requirements and supervision (that the overseas trade repository be subject to) to be comparable "in the degree to which the objectives specified in section 1 are achieved". In our view, taking an outcomes-based approach to determining comparability is the right approach.
Section 21 (<i>Control of substantial shareholding in licensed trade repositories</i>)	<p>Members request for clarification on the rationale for the 12% and 20% thresholds in this section.</p> <p>While members can understand a rationale for some form of control of substantial shareholding for approved clearing houses (in view of the systemic importance of their role in the financial markets), we are of the view that control of substantial shareholding of licensed trade repositories is not necessary. Alternatively, if some form of control of substantial shareholding is required, then such control need not be to such a rigorous extent.</p>
Section 25 (<i>Emergency powers of Authority</i>)	<p>We note that Section 25 gives broad powers to the MAS in the event of an emergency or if the MAS thinks that it is necessary or expedient in the interests of the public or a section of the public or for the protection of investors.</p> <p>While we can appreciate the rationale behind giving the MAS emergency powers in relation to clearing houses given the inherent systemic risk associated with clearing houses, we question the need for such emergency powers in relation to trade repositories as they do not pose inherent systemic risk. Even if a trade repository were to fail (which is highly unlikely assuming that it is set up as a single purpose entity), such failure would not threaten the financial system but would only lead to a disruption in the reporting of trades. At most, we submit that the exercise of such emergency powers should be confined to situations of insolvency or potential insolvency of the trade repository or where the trade repository has committed such breaches of the SFA or shown such signs of mismanagement that it threatens the achievement of the objectives in Section 1. We fail to see the relevance of the scenarios described as an emergency in subsection (3) in the context of trade repositories.</p> <p>We also urge the MAS to consider comparative legislation on emergency powers over trade repositories in other major countries.</p>
Division 3 (<i>Regulation of Licensed Overseas Trade Repositories</i>)	<p>We have some reservations whether overseas trade repositories would be able, or be prepared, to comply in full with the following:</p> <ul style="list-style-type: none"> - any prescribed requirements under Section 32 (<i>Obligation to</i>

Provision	Comment
	<p><i>maintain proper records</i>);</p> <ul style="list-style-type: none"> - the provisions of Section 33 (<i>Obligation to submit periodic reports</i>); - the provisions of Section 34 (<i>Obligation to assist the Authority</i>); and - the provisions of Section 35 (<i>Obligation to maintain confidentiality</i>). <p>We urge the MAS to consult with relevant stakeholders to ensure that such provisions will be acceptable to any prospective overseas trade repositories and their home regulators which intend to apply to be licensed as licensed overseas trade repositories.</p> <p>In particular, the MAS may wish to consider:</p> <ul style="list-style-type: none"> - whether such requirements should instead be addressed through the arrangements to be entered into between the MAS and the home regulator of the overseas trade repositories; - whether to specifically restrict such requirements to apply only to Singapore transactions and Singapore users, bearing in mind our earlier comment on the need for further consultation on the precise scope of such "covered" transactions and users.

C. Annex 3 – Draft amendments to Part IIIA (Approved Holding Companies) of the SFA

Provision	Comment
	We have no comments on Annex 3.

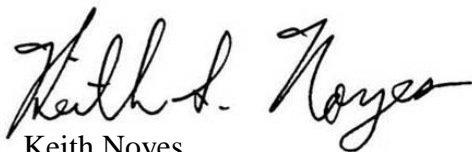
D. Annex 4 – Draft amendments to Section 2 of the SFA

Provision	Comment
Definitions of "business rules", "customer", "member" and "user"	<p>We note that these defined terms are used in connection with clearing houses as well as trade repositories.</p> <p>Clearing houses have established structures whereby only members are able to participate in clearing activities with the clearing houses in accordance with rules of the clearing houses. On the other hand,</p>

Provision	Comment
	<p>trade repositories do not necessarily have similar structures and rules:</p> <ul style="list-style-type: none"> - trade repositories may not have a membership structure and generally are accessible by users; - trade repositories may not necessarily have business rules which are binding as a contract between the trade repositories and each member or user, but may only have agreements or terms and conditions under which users sign up to access services provided by the trade repository. <p>As such, it would be important to ensure that the relevant terms used in respect of trade repositories are sufficiently generic to cover the various relationship types and documentation arrangements trade repositories may have with their users. We urge the MAS to consult with relevant stakeholders in this connection.</p> <p>With regard to the definition of "customer", limb (b) should in any case refer to Part IIA in addition to Part III.</p>

ISDA appreciates the opportunity to provide comments on the SFA 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 sincerely,



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International Swaps and Derivatives Association, Inc.

ANNEX I

Appendix A

**CERTAIN TRANSACTIONS UNDER
THE ISDA MASTER AGREEMENTS**

Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a “spot” or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, “Bullion” means gold, silver, platinum or palladium and “Ounce” means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. The payment calculation is based on the quantity of the commodity and is settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index based on the price of one or more commodities.

Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount

determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.

Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity

of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity and shares to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).

Foreign Exchange Transaction. A deliverable or non-deliverable transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one

port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a “Fund Interest”), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction: A transaction a transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

ANNEX II

Definition of "derivative" from Australian Corporations Act 2001



Commonwealth Consolidated Acts

[\[Index\]](#) [\[Table\]](#) [\[Search\]](#) [\[Search this Act\]](#) [\[Notes\]](#) [\[Noteup\]](#) [\[Previous\]](#) [\[Next\]](#) [\[Download\]](#) [\[Help\]](#)

CORPORATIONS ACT 2001 - SECT 761D

Meaning of derivative

(1) For the purposes of this Chapter, subject to subsections (2), (3) and (4), a [derivative](#) is an [arrangement](#) in relation to which the following [conditions](#) are satisfied:

(a) under the [arrangement](#), a party to the [arrangement](#) must, or may be required to, [provide](#) at some future time consideration of a particular [kind](#) or [kinds](#) to someone; and

(b) that future time is not less than the number of days, [prescribed](#) by regulations [made](#) for the purposes of this paragraph, after the day on which the [arrangement](#) is entered into; and

(c) the [amount](#) of the consideration, or the [value](#) of the [arrangement](#), is ultimately determined, derived from or varies by reference to (wholly or in part) the [value](#) or [amount](#) of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:

- (i) an [asset](#);
- (ii) a rate (including an [interest](#) rate or exchange rate);
- (iii) an index;
- (iv) a commodity.

(2) Without [limiting](#) subsection (1), anything declared by [the regulations](#) to be a [derivative](#) for the purposes of this section is a [derivative](#) for the purposes of this Chapter. A thing so declared is a [derivative](#) despite anything in subsections (3) and (4).

(3) Subject to subsection (2), the following are not [derivatives](#) for the purposes of this Chapter even if they are covered by the definition in subsection (1):

(a) an [arrangement](#) in relation to which subparagraphs (i), (ii) and (iii) are satisfied:

(i) a party has, or may [have](#), an obligation to buy, and another party has, or may [have](#), an obligation to sell, tangible [property](#) (other than [Australian](#) or foreign currency) at a price and on a [date](#) in the future; and

(ii) the [arrangement](#) does not permit the seller's obligations to be wholly settled by cash, or by set-off between the parties, rather than by delivery of the [property](#); and

(iii) neither usual market practice, nor the [rules](#) of a [licensed market](#) or a [licensed CS facility](#), permits the seller's obligations to be closed out by the matching up of the [arrangement](#) with another [arrangement](#) of the same [kind](#) under which the seller has offsetting obligations to buy;

but only to the extent that the [arrangement deals](#) with that purchase and sale;

(b) a contract for the future [provision](#) of services;

(c) anything that is covered by a paragraph of [subsection 764A\(1\)](#), other than paragraph (c) of that

subsection;

(d) anything declared by [the regulations](#) not to be a [derivative](#) for the purposes of this Chapter.

(4) Subject to subsection (2), an [arrangement](#) under which one party has an obligation to buy, and the other has an obligation to sell, [property](#) is not a [derivative](#) for the purposes of this Chapter merely because the [arrangement provides](#) for the consideration to be varied by reference to a general inflation index such as the Consumer Price Index.

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