ISDA® Safe, Efficient Markets

October 16, 2012

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Dear Sir

**Management of Intra-Group Transactions and Exposures – Draft Guidelines**

1. The International Swaps and Derivatives Association, Inc. ("**ISDA**")[1] is writing to you on one aspect of the above Draft Guidelines. We note that your submission deadline has expired and do apologize for this late submission. However, we hope that you will still be able to take our submission into consideration and thank you for your kind indulgence.

2. The point that ISDA and its members are concerned with arises from paragraph 4.4b of the Draft Guidelines which states as follows:

> *"4.4 As a general rule, banks should not:*
>
> *b. Enter into cross-default clauses whereby a default by a Group entity on an obligation (whether financial or otherwise) is deemed to trigger a default of the bank in its obligations."*

3. A cross-default clause is a standard provision in industry standard documentation. The Global Documentation Steering Committee ("**GDSC**") that was set up in 1999 under the sponsorship of the Federal Reserve Bank of New York with the mission of encouraging harmonization in standard over-the-counter documentation and minimizing disparities that can exacerbate market, credit and legal risk had recommended the inclusion of a cross-default clause in industry standard documentation[2]. The ISDA

[1] ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org.

[2] *"RECOMMENDED CROSS-DEFAULT PROVISION*

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Master Agreement contains a cross-default clause in Section 5(a)(vi) that is in line with the recommendation of the GDSC.

4. As the proposed requirement in the Draft Guidelines is not in keeping with established international market practice, it will be extremely difficult for banks in India to persuade their non-Indian counterparties to disapply the cross-default provision. This may lead to banks in India being excluded from the global derivatives marketplace and being able to trade only with each other.

We would be most pleased to assist in any way. Please contact Jacqueline Low (jlow@isda.org, +65 6538 3879) or Keith Noyes (knoyes@isda.org, +852 2200 5909) at your convenience.

Yours faithfully,
**For the International Swaps and Derivatives Association, Inc.**

Keith Noyes
Regional Director, Asia Pacific

Jacqueline ML Low
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*The GDSC recommended that industry standard documentation include a uniform cross-default provision allowing for the termination of a trading relationship upon the occurrences of matured defaults under indebtedness or trading transactions in amounts in excess of a materiality threshold.*
*The GDSC studied both cross-default and cross-acceleration provisions (collectively, "cross provisions") that are designed to protect against a situation where a party to an agreement is unable to find a basis to terminate that agreement while its counterparty's impeding financial collapse is revealed and perhaps hastened through the default structure of another agreement. The GDSC reviewed many factors including the differences between the two basic types of cross provisions, the scope of the other agreements that might trigger the cross provisions, the entities that might be involved in those other agreements and the effect of grace periods, materiality concepts and other potential parameters. The GDSC realized the need to balance a financially sound party's desire for a swift means of terminating deteriorating relationships against a weakened credit's interest in stability. The GDSC concluded that the historical reasons for maintaining both cross-default and cross-acceleration provisions do not outweigh the virtues of having a single, consistently applicable cross provision. For a copy of the GDSC's proposed cross-default provision (and related background), see November 29, 2001 -* **Memorandum Regarding Cross-Default Provision***".*
http://www.newyorkfed.org/globaldoc/gd_projects.html