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**International Swaps and Derivatives Association, Inc.

AUSTRALIAN SINGLE-SIDED REPORTING LETTER**

**published on September 24, 2015
by the International Swaps and Derivatives Association, Inc.**

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On September 3, 2015, the Australian Treasury promulgated the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015 which (amongst other things) amends the Corporations Regulations 2001 to include a single-sided reporting exemption (the “***single-sided reporting exemption***”). This letter allows market participants to provide counterparties with status representations which may be used to help determine whether the single-sided reporting exemption is applicable. Part I provides representations to be made by the party wishing to rely on the exemption from reporting (the “***Exempt Phase 3 Reporting Entity***”) and Part II provides representations to be made by the counterparty (the “***Counterparty***”). The representations in this letter are solely for the purposes of making such determinations. The headings used in this letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting any of the provisions in it.

**Capitalized terms used in this letter are defined in Appendix I.**

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**I. Exempt Phase 3 Reporting Entity Representations.**

**Instructions: The Exempt Phase 3 Reporting Entity should make one of the two representations provided below by checking the relevant box.**

The Exempt Phase 3 Reporting Entity is responsible and liable for its compliance with the Derivative Transaction Rules (Reporting) and the determination specified in this Section I. The Exempt Phase 3 Reporting Entity shall promptly notify the Counterparty if the below representation ceases to be accurate in any material respect.

 *New phase 3 reporting entity*

[ ]  The Exempt Phase 3 Reporting Entity hereby represents that it reasonably believes that it is a new phase 3 reporting entity and two (2) successive disqualifying quarter days have not occurred with respect to it.

The first date from which the single-sided reporting exemption applies to the Exempt Phase 3 Reporting Entity is: [insert date].

*Continuing phase 3 reporting entity*.

[ ]  The Exempt Phase 3 Reporting Entity hereby represents that it reasonably believes that it is a continuing phase 3 reporting entity and that either: (i) it was a phase 3 reporting entity on 30 September 2015 and two (2) successive applicable disqualifying quarter days have not occurred with respect to it; or (ii) with respect to it, there have been two (2) successive qualifying quarter days which have not been followed (immediately or otherwise) by two (2) successive disqualifying quarter days.

The date from which the single-sided reporting exemption applies to the Exempt Phase 3 Reporting Entity is: [insert date].

**II. Counterparty Representations.**

**Instructions: The Counterparty should make one of the ten representations provided below by checking the relevant box.**

The Counterparty shall promptly notify the Exempt Phase 3 Reporting Entity if the below representation ceases to be accurate in any material respect.

 *Counterparty required to report*.

[ ]  The Counterparty hereby represents that it is a reporting entity other than a phase 3 reporting entity that is required to report Relevant Information under the Derivative Transaction Rules (Reporting).

[ ]  The Counterparty hereby represents that it is a phase 3 reporting entity that is required to report Relevant Information under the Derivative Transaction Rules (Reporting) and that regulation 7.5A.73 does not apply to the Counterparty in relation to these OTC derivative positions or OTC derivative transactions.

*Counterparty will report*

[ ]  The Counterparty hereby represents that it is a reporting entity and it will report Relevant Information in accordance with the Derivative Transaction Rules (Reporting).

*Counterparty will report “booked” and “nexus” transactions*

[ ]  The Counterparty hereby represents that it is a reporting entity and it will report only such Relevant Information that, in each case, either (1) is in respect of OTC derivatives booked to the profit or loss account of a branch of the Counterparty located in this jurisdiction, or (2) the Counterparty is required to report under ASIC Instrument [15-0067], and in each case, in accordance with the Derivative Transaction Rules (Reporting).

*Counterparty will report under alternative reporting*.

[ ]  The Counterparty is a foreign entity and hereby represents that it: (i) is subject to reporting requirements in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting); (ii) will report Relevant Information in accordance with the requirements that apply in one or more of those foreign jurisdictions, to a facility prescribed by or under regulation 7.5A.30(2) of the Corporations Regulations 2001 including but not limited to the facilities determined by ASIC under ASIC Prescribed Trade Repositories Determination [15/0591]; and (iii) will designate such information reported to that facility that either (1) is in respect of OTC derivatives booked to the profit or loss account of a branch of the Counterparty located in Australia, or (2) the Counterparty is required to report under ASIC Instrument [15-0067] as information that has been reported in accordance with the Derivative Transaction Rules (Reporting).

[ ]  The Counterparty is a foreign entity and hereby represents that it: (i) will report Relevant Information that either (1) is in respect of OTC derivatives booked to the profit or loss account of a branch of the Counterparty located in Australia, or (2) the Counterparty is required to report under ASIC Instrument [15-0067], to a licensed derivative trade repository in accordance with the Derivative Transaction Rules (Reporting); and (ii) will designate such information reported to that facility as information that has been reported in accordance with the Derivative Transaction Rules (Reporting).

[ ]  The Counterparty is a foreign entity and hereby represents that it: (i) is subject to reporting requirements in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting); (ii) will report Relevant Information in accordance with the requirements that apply in one or more of those foreign jurisdictions, to a facility prescribed by or under regulation 7.5A.30(2) of the Corporations Regulations 2001 including but not limited to the facilities determined by ASIC under ASIC Prescribed Trade Repositories Determination [15/0591]; and (iii) will designate such information reported to that facility as information that has been reported in accordance with the Derivative Transaction Rules (Reporting).

[ ]  The Counterparty is a foreign entity and hereby represents that it: (i) will report Relevant Information to a licensed derivative trade repository in accordance with the Derivative Transaction Rules (Reporting); and (ii) will designate such information reported to that facility as information that has been reported in accordance with the Derivative Transaction Rules (Reporting).

*Counterparty will not report*

[ ]  The Counterparty hereby represents that it is a reporting entity and where it is not required to, it will not, report Relevant Information under the Derivative Transaction Rules (Reporting).

[ ]  The Counterparty hereby represents that it (i) will not report Relevant Information in accordance with either (A) the Derivative Transaction Rules (Reporting) or (B) the requirements that apply in a foreign jurisdiction where such requirements are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting), or (ii) will not designate Relevant Information to the relevant facility as information that has been reported in accordance with the Derivative Transaction Rules (Reporting).

**III. Additional Provisions.**

(A) **Limitation of Liability**

Nothing in this letter causes the Counterparty to be acting as a fiduciary for, or an advisor to, or delegate of, the Exempt Phase 3 Reporting Entity and, other than as outlined herein, the representations given by the Counterparty in this letter do not result in the Counterparty undertaking any additional duty with respect to the Exempt Phase 3 Reporting Entity.

The Counterparty and each affiliate of the Counterparty and the directors, officers, employees, contractors and agents of the Counterparty and each affiliate of the Counterparty disclaim, and the Exempt Phase 3 Reporting Entity agrees that the Counterparty shall not have, any liability to the Exempt Phase 3 Reporting Entity (or any person claiming under or through it) for any breach of statutory, regulatory or other additional duty in connection with its representations hereunder or any information it reports or does not report in connection with those representations.

A failure by a party to take any actions required by, or otherwise comply with, the representations given by it in this letter, or any inaccuracy of a representation given by it in this letter, will not constitute an event of default in respect of such party or other event which permits either party to terminate any transaction between them.

(B) **Consent to Report**

Notwithstanding anything to the contrary in any non-disclosure, confidentiality or other agreement between the Exempt Phase 3 Reporting Entity and the Counterparty, the Exempt Phase 3 Reporting Entity hereby consents to the disclosure by the Counterparty of information to the extent contemplated by a representation given by the Counterparty in this letter (whether or not that information is required to be reported under the Derivative Transaction Rules (Reporting)).

The Exempt Phase 3 Reporting Entity hereby acknowledges that:

1. the disclosure of information could result in certain anonymous swap transaction and pricing data becoming more widely available;
2. the disclosure of information may be made to parties located in a country other than the Counterparty’s or Exempt Phase 3 Reporting Entity’s respective home county; and
3. The Counterparty may use a third party service provider to transfer trade information into a trade repository and that trade repository may engage the services of a global trade repository regulated by one or more governmental regulators.

(C) **Correction of Errors**

If the Exempt Phase 3 Reporting Entity becomes aware of any material error in any relevant data reported to a trade repository or any omission in respect of transactions which the Counterparty has confirmed it has reported, it will notify the Counterparty as soon as reasonably practicable.

(D) **Governing Law**

This letter will be governed by and construed in accordance with the laws of [New South Wales][England][New York].

Executed and delivered with effect from the date first written above:

**[Exempt Phase 3 Reporting Entity[[1]](#footnote-2)**

[Name of entity completing letter][[2]](#footnote-3)
[LEI/CICI: ]
[Alternative Identifier: ][[3]](#footnote-4)

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**Counterparty**

**Branch(es):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**A Counterparty restricting its representations to a branch or branches should make the representation provided below by checking the box.**

[ ]  This letter is being entered into by a foreign bank. All representations provided herein apply solely with respect to the branch or branches specified above and not to any other branch or affiliate.

**A Counterparty restricting its representations to a prescribed class or prescribed classes (each a “Covered Class”) should make the representation provided below by checking the box. Where a Counterparty does not check the box, all representations provided herein will apply to all prescribed classes.**

[ ]  All representations provided herein apply solely with respect to the Covered Class or Covered Classes specified below and not to any other prescribed classes:

**Covered Class(es):** [commodity derivatives that are not electricity derivatives], [credit derivatives], [equity derivatives], [foreign exchange derivatives], [interest rate derivatives]

[Name of entity completing letter][[4]](#footnote-5)

[LEI/CICI: ]
[Alternative Identifier: ][[5]](#footnote-6)

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix I: Definitions**

“***ASIC exemption instrument***”means*ASIC Instrument [14/0633]*.

“***continuing phase 3 reporting entity***” means:

1. An entity that was a phase 3 reporting entity on 30 September 2015; or
2. A new phase 3 reporting entity in respect of which two (2) successive disqualifying quarter days have occurred.

***Derivative Transaction Rules (Reporting)*** means the ASIC Derivative Transaction Rules (Reporting) 2013, as amended from time to time.

“***disqualifying quarter day***”, for an entity, means a quarter day at the end of which the total gross notional outstanding positions held by the entity in the relevant capacity is 5 billion Australian dollars or more.

“***foreign entity***” means an entity incorporated or formed outside of Australia.

*“****in this jurisdiction****”* means “in this jurisdiction” within the meaning of the *Corporations Act 2001*.

“***licensed derivative trade repository***” means a Licensed Repository within the meaning of the Derivative Transaction Rules (Reporting).

“***new phase 3 reporting entity***” means an entity that becomes a phase 3 reporting entity on or after 1 October 2015.

“***OTC derivative***” means an OTC Derivative within the meaning of the Derivative Transaction Rules (Reporting).

“***OTC derivative transaction***” means a derivative transaction (within the meaning of Chapter 7 of the *Corporations Act 2001*) relating to an OTC derivative.

“***OTC derivative position***” means a position relating to an OTC derivative transaction.

“***OTC derivative position information***” means Derivative Position Information within the meaning of the Derivative Transaction Rules (Reporting), as in force on 1 October 2015, about OTC derivative positions.

“***phase 3 reporting entity***” means a Phase 3 Reporting Entity within the meaning of the ASIC exemption instrument as in force on 1 October 2015.[[6]](#footnote-7)

“***prescribed class”*** means a Prescribed Class within the meaning of the Derivative Transaction Rules (Reporting).

“***qualifying quarter day***”, for an entity, means a quarter day at the end of which the total gross notional outstanding positions held by the entity in the relevant capacity is less than 5 billion Australian dollars.

*“****quarter day***”, means 31 March, 30 June, 30 September and 31 December.

“***relevant capacity***”: a position is held by the entity in the ***relevant capacity***, for the purpose of the definition of ***qualifying quarter day*** or ***disqualifying quarter day***, if:

1. the position is held by the entity otherwise than in a representative capacity, in the following circumstances:
	1. in a case in which the relevant definition is applied in relation to an OTC derivative transaction to which the entity is a party otherwise than in a representative capacity;
	2. in a case in which the relevant definition is applied in relation to an OTC derivative held by the entity otherwise than in a representative capacity; or
2. the position is held by the entity in a representative capacity in relation to a particular registered scheme or trust, in the following circumstances:
	1. in a case in which the relevant definition is applied in relation to an OTC derivative transaction to which the entity is a party in that capacity;
	2. in a case in which the relevant definition is applied in relation to an OTC derivative held by the entity in that capacity.

***“Relevant Information”*** meansOTC derivative position information in relation to a Counterparty’s OTC derivative positions to which the Exempt Phase 3 Reporting Entity is a party and information about the Counterparty’s OTC derivative transactions to which the Exempt Phase 3 Reporting Entity is a party.

***“reporting entity”*** means a Reporting Entity within the meaning of the Derivative Transaction Rules (Reporting), as in force on 1 October 2015.

1. If this letter is being delivered solely by Counterparty to the Exempt Phase 3 Reporting Entity, and Counterparty does not require the Exempt Phase 3 Reporting Entity to make any representations herein, the Exempt Phase 3 Reporting Entity signature block may be removed. [↑](#footnote-ref-2)
2. If this letter is being delivered by an agent on behalf of one or more principals, the agent should insert “as agent for [name of principal][the principals named on the attached sheet].” If the agent is acting on behalf of more than one principal, (i) it may list the names of such principals on a separate sheet and (ii) this letter should be treated as if it were a separate letter with respect to each principal listed on such sheet. Similarly, if this letter is being delivered by a trustee on behalf of one or more trusts or trust funds, the trustee should insert “as trustee for [name of trust or trust fund][the [trusts][trust funds] named on the attached sheet].” [↑](#footnote-ref-3)
3. If you would like to include an alternative identifier, please describe the type of identifier provided. [↑](#footnote-ref-4)
4. If this letter is being delivered by an agent on behalf of one or more principals, the agent should insert “as agent for [name of principal][the principals named on the attached sheet].” If the agent is acting on behalf of more than one principal, (i) it may list the names of such principals on a separate sheet and (ii) this letter should be treated as if it were a separate letter with respect to each principal listed on such sheet. Similarly, if this letter is being delivered by a trustee on behalf of one or more trusts or trust funds, the trustee should insert “as trustee for [name of trust or trust fund][the [trusts][trust funds] named on the attached sheet].” [↑](#footnote-ref-5)
5. If you would like to include an alternative identifier, please describe the type of identifier provided. [↑](#footnote-ref-6)
6. As at September 24, 2015, a Phase 3 Reporting Entity is defined in the ASIC exemption instrument as “a Reporting Entity that: (a) is an Australian ADI, an AFS Licensee, a CS Facility Licensee, an Exempt Foreign Licensee or a Foreign ADI; (b) was not required to report under Phase 1 or Phase 2; and (c) did not opt-in to reporting during Phase 1 or Phase 2 by lodging an Opt-In Notice with ASIC under Rule 2.4.1 of the Rules.” [↑](#footnote-ref-7)