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Invesco
120 Bloor Street, Suite 700
Toronto, Ontario M4W 1B7

Telephone: 416.590.9855 or 1.800.874.6275
Facsimile: 416.590.7742

www.invesco.ca

12 September 2011

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators CSA Consultation Paper 91-402 – Derivatives: Trade Repositories

Thank you for the opportunity to comment on CSA Consultation Paper 91-402 - *Derivatives: Trade Repositories* (the "Consultation Paper").

Invesco Canada Ltd. (formerly, Invesco Trimark Ltd.) is registered as an adviser under the category of portfolio manager in Ontario and several other provinces of Canada. As a portfolio manager, we manage investment funds, pooled funds and separately managed accounts for Canadian retail and institutional investors. Invesco Canada Ltd. is an indirect wholly-owned subsidiary of Invesco Ltd., a global investment management firm with over $650 billion (USD) in assets under management worldwide as of July 31, 2011.

We were provided with the opportunity to comment on CSA Consultation Paper 91-401 and reviewed CSA Consultation Paper 91-402 with great interest. We believe that overall the CSA has done an excellent job in synthesizing the issues and the concerns that arise with different proposals. We are pleased to comment on those ideas at this time. Our letter is divided into two parts: first, we will comment on various concepts presented in the consultation paper; then, we will respond to the six specific questions raised by the CSA in the consultation paper.

Notwithstanding the foregoing statement, we are concerned that the Consultation Paper proposes new regulatory reporting requirements without stating how the regulators would use the data. The Consultation Paper often refers to the regulators' ability to monitor various data points but does not state or suggest at what levels (at least initially) regulatory concerns may arise and, if regulatory concerns arise, what actions regulators could take to alleviate those concerns. This is disconcerting from the perspective that the concepts endorsed by the G20 and addressed in this Consultation Paper will result in significant additional costs for counterparties. While a reasonable estimate of the costs of implementing these concepts may well be attainable, the benefit is less clear. In our view, it is incumbent upon the CSA to address concretely the benefits that such a regime would yield. In that regard, we refer you to several notes published recently by ISDA and which are attached hereto as Appendix A: "Is There a Better Way?" (September 6, 2011), "Do the Sums All Add Up?" (August 23, 2011), "Questions...and Answers" (August 3, 2011) and "Preserving Netting Efficiency" (July 18, 2011).

Trade Repository Governance and Operational Guidelines (Section 2 of Consultation Paper)

We believe that the structure of any trade repository is of crucial importance given the important place it will function in creating derivatives contracts. To that end, we believe that real oversight by a regulator is necessary and this oversight would include approval of directors and officers. This is important because the potential for conflict of interest is extremely high and regulatory approval of the directing minds of such an enterprise is important to ensure a fair and balanced approach by repositories.

Legal Framework

We believe that trade repositories should be free to structure and govern themselves as they desire, subject to regulatory oversight and legislative recognition. Without strict regulatory oversight, the potential for abuse is great, including exclusion of market participants (effectively closing off certain parts of the derivatives market) and conflicts of interest. The repositories must be viewed as data collection and reporting organizations whose purpose is to provide the regulatory community with the information needed to properly regulate derivatives markets and to oversee the stability of the financial system. As long as the focus in on this mandate, then it is our view that complex governance procedures are likely unnecessary. The Consultation Paper addresses this broadly in its discussion of recognition and designation orders and we urge the CSA to use such mechanisms to impose conditions on repositories that address these concerns.

Governance

Many of the proposals relating to governance of repositories add unnecessary complexity. We agree that many of the issues raised are important insofar as the trade repository has other business interests that may conflict with its primary mission of collecting data and providing information to the regulatory community. But we are sceptical that other business interests will be subsided to this primary mission and, as such, we would strongly encourage the CSA to consider, as part of the recognition process, a prohibition on additional activities. While we believe a for-profit model is essential to ensure appropriate technological development and to provide the incentives for repositories to be established, the repositories will be able to generate revenue (which we will address below) regardless of governance and part of the regulatory oversight could and should be directed at ensuring that the level of revenue is adequate to ensure a reasonable profit after reinvestment in the repository infrastructure. In this regard, it is not clear to us why end-users should be involved in the corporate governance of the repository. That is, the CSA is suggesting that the customers of the repository be involved in the governance of the repository, an arrangement virtually unheard of in the capitalist world. Should end users be involved in governance, the potential for conflicts will increase and, over time, it is inevitable that the dominant users will end up controlling the repositories and will thus have an avenue toward data manipulation and covert anti-competitive practices. While we appreciate that intentions are quite good at the outset, we believe a review of financial market practices over the last 15 years suggests our fear is well founded. We fully agree that each repository should have a Chief Compliance Officer and we would further suggest that such Chief Compliance Officer be required to file an annual report to the regulatory oversight body.

Market Transparency and Data Availability

The Consultation Paper discusses data availability yet appears to leave to the repositories the task of determining the format for submitting information. We believe that the concept of trade repositories will work only if all data submitted to various repositories is compatible and easily merged. We do not believe that regulatory oversight can be effective if the regulators have to spend too much time making sense of different data formats or cannot access data immediately while it is being aggregated, potentially by another party. Ideally, the format for data submission would be standardized globally since the markets clearly operate globally. However, at a minimum, all Canadian data, regardless of the number of repositories, should be submitted in the same format. While it is possible for private enterprises to agree to a standard format, if this waits until repositories are recognized, then implementation of this system will be unduly delayed. Therefore, we believe that the regulators, in finalizing this proposal, should require interested enterprises to conform to a format set by the regulators and the criteria applied by regulators should be geared toward ensuring that all who wish to participate in these markets will not be unduly burdened by the technological requirements.

Operational Reliability

We believe operational reliability of trade repositories is vital to achieving the regulatory goals set forth in the Consultation Paper. In order to ensure operational reliability, we believe the following three requirements must be included in the proposal: (1) to be recognized by regulators, the repository will have to demonstrate day-to-day operational reliability; (2) to be recognized by regulators, the repository will have to present a viable disaster recovery/business continuity plan ("DR/BCP"); and (3) the DR/BCP will have to be tested at least annually by an independent third party (which could be by the regulators themselves) who would report the results and all deficiencies (including minor ones) to the regulators.

Access and Participation

The trade repository must be accessible to all who wish to participate in the relevant market. While the Consultation Paper does not address revenue generation (pay as you go; payment by regulators through Capital Market Participation Fees or equivalent), on the assumption that participants will have to fund this system, there should be few criteria for access beyond payment of the fees and ability to interact with the repository's information technology. There should also be a financial test relating to the size of contracts into which a potential participant might enter. Further, to the extent that a market participant is denied access to a trade repository, such participant must have the ability to appeal that decision immediately to regulators on an expedited basis and the regulators must have the power to compel the repository to provide access to the participant.

Reporting Requirements (Section 3 of Consultation Paper)

Where Must Transactions be Reported – Mandating a Canadian Solution

The question of whether a trade repository must be based in Canada is a complicated one. We are of the view that, given the global nature of derivatives markets, a global solution is desirable. However, we acknowledge the validity of many of the concerns raised on page 19 of the Consultation Paper. An important consideration that is not addressed in the Consultation Paper is cost. To the extent that participants in global derivatives markets will be required to pay repository fees (directly or indirectly), then it is important that economies of scale be achieved by repositories so that the additional costs of a trade repository introduce as little friction as possible into derivatives markets.

We address the CSA's concerns as follows:

- There may not be any suitable repositories for particular types of derivative transactions: In such cases it is clear that a Canadian repository would be appropriate.

- Lack of access by Canadian regulators and the central bank: It is our expectation that a global repository framework will be developed at least among G20 countries and an essential feature of such framework would be information sharing. If Canadian regulators and the central bank are not comfortable with that aspect of a global framework, then, quite simply, Canada should not participate in such framework and the question ends there: Canadian repositories would be required. We believe the same can be said for the third concern raised in the Consultation Paper, namely, concerns relating to confidentiality and legal barriers.

- Oversight or influence of a foreign repository, indemnification, enforcement and informational access: In our view, these concerns are minor, at best. Inter-jurisdictional cooperation agreements regarding capital market activities have become somewhat commonplace over time and we see no reason why a global trade repository framework should be any different. If an appropriate inter-agency agreement cannot be reached, then it would be logical to have a Canadian repository, although it would have to be recognized that non-Canadian transactions could impact Canadian capital markets and, therefore, this would be a second best solution. As long as there is a global framework that mandates data gathering and reporting standards, the need to influence operations of a global repository should be minimal. As enabling legislation would be required in virtually all jurisdictions, indemnification concerns could be addressed thereby. Similarly, enforcement and informational access concerns would also be address in legislation and in inter-agency agreements.

- Repository insolvency: We would urge Canadian regulators, in devising Canadian solutions, and global regulators to consider legislating requirements that in an insolvency the regulator would act as a receiver for the repository and continue to carry on its business until a new repository is found or the repository is adequately funded. In the context of a global framework we believe this would provide appropriate protection for the information and allow regulators to continue to access relevant market information in the event of a repository insolvency.

- Standards of international cooperative oversight arrangements: We believe this is fundamental to the entire concept of repositories and international OTC Derivatives regulation. Any local solutions that do not take the international context into account will be ineffective and/or overly cumbersome for market participants. We question the benefits, therefore, of a repository system without an international framework for cooperation.

- Aggregation challenges: This concern applies equally for a made-in-Canada solution where there is more than one repository and, as such, we do not view this as a serious impediment to a global framework. An international body, such as IOSCO, should take the lead role is devising reporting and technological standards that can be used by participants regardless of geographic location. Given the cross-border use of derivatives, even if standards are entirely consistent within Canada, effective oversight will not be possible unless international data are aggregated with Canadian data. As such, this concern relates more to the effectiveness of oversight and not so much with the geographic location of a repository.

We believe the conditions set forth on page 20 of the Consultation Paper (section 3.3(c)) are appropriate and would address the concerns set forth in section 3.3(b) and are consistent with our comments above. As such, we fully support the CSA's views in that regard. We are also encouraged that the CSA is concerned with harmonization and duplication. These are key concerns for market participants as they directly influence the burden that a new reporting regime imposes. We would be satisfied with proposals that address these two concerns.

What Information Must be Reported?

While we are in agreement with most of Section 3.4 – What Information must be reported? of the Consultation Paper, we strongly disagree with the notion, under subsection (i) that full legal agreements should be remitted to the repository. We believe this is excessive with no additional benefit yet at great cost. It will certainly increase the operating costs of a repository (required to store additional documents, additional security would be required since the identifiers discussed would not offer any protection, staffing costs to compare the legal agreements to the electronically submitted data) – and those costs would be passed on to users of derivatives. It is not clear from the Consultation Paper what the rationale would be for providing the legal documents, given that all relevant information would be provided already. It would seem, therefore, that the rationale for this inclusion would be a lack of reliance on the data submitted. But if that data is submitted confidentially and there is a realistic expectation of confidentiality on the part of those who submit data, requiring additional documentation offers no benefit.

Continuation Data

We are concerned with the proposals relating to the provision of continuation data as we foresee these adding significant costs for market participants. Ideally, a counterparty should be able to provide the standard data in electronic format and such data can then be used by the same information system or other information systems to generate continuation data. That is, the economic terms should be automatically updated once input into the system. Only where a counterparty has discretion with respect to a matter, should the more frequent snapshot-type reporting be required and then, reporting should be simplified so that the counterparty need only enter the decision made.

Valuation

Similarly, we view the requirement to product daily valuation and collateral data as being unduly burdensome without commensurate benefit. If the information systems are properly constructed, valuation should be updated automatically at the repository level. Alternatively, a tolerance threshold should be developed and only once the mark-to-market value exceeds that threshold should reporting be required. We view this as a less intrusive means that ought still to achieve the regulatory goal. For example, if the threshold were set at 5%, a counterparty would only need to report daily valuation for those contracts where the mark-to-market value has changed by 5% or more since the prior report. The option to report all valuations should be granted, as it may be administratively simpler for some counterparties to report all daily valuations. The determination of an appropriate threshold should be derived based on levels of variation that would cause regulatory concerns.

CSA Questions

Question 1: If the use of a Canadian trade repository were to be mandated, should it be privately developed and operated for profit, privately developed and operated on a not-for-profit basis or should provincial market regulators perform this function directly?

Invesco Canada supports a private/for-profit model for repositories. In the long-run, competition should foster on-going efficiencies. A more efficient repository should help minimize costs. On-going infrastructure re-investment is vital, as Canada's experience with SEDAR amply demonstrates. A private entity will certainly invest to ensure competitiveness, while a public-entity may not, as the public-entity would be prone to political influences.

To the extent that other entities may enter the field, the profit margins will act as an appropriate incentive to ensure operability, ease of use and that the technology used is upgraded and revisited regularly. That said, we believe that the fees set by repositories should be subject to approval by regulators, otherwise, the profit motive could lead to abuse and interference with the functioning of derivatives markets.

Question 2: What is required to enable Canadian derivative market participants to be able to report derivatives transaction information in real time and how long will it take to achieve this functionality?

A central clearing house seems to be in the best position to report in real-time and, as such, it may be difficult to separate discussion of repositories from clearing. Relying on market players, each with their own information technology infrastructure, could serve as an impediment to data integrity and reliability.

Otherwise, a secure interface would need to be developed by the repository and such interface would need to be compatible with most participants' information technology systems. As regards the time required to build such a system, we expect that potential repositories will be better positioned to respond to questions relating to timing.

Question 3: What is the appropriate block trade threshold for the Canadian market?

Invesco Canada has no opinion on this question.

Question 4: What is the appropriate publication delay for block trades?

Invesco Canada has no opinion on this question.

Question 5: Would a uniform block trade threshold across asset classes be acceptable or should thresholds be determined based on asset class? If block trade thresholds should be determined based on asset class, what thresholds would suitable for specific asset classes?

Block trade thresholds should be determined by each asset-class. The threshold should be a function of the asset class' historical volatility. Assets that have inherent higher volatility should have lower thresholds. As the intent for the repository is for regulators to monitor potential systemic pressures, more frequent trade information on block-trades involving high-volatility-assets, is more crucial, than seeing block trades of lower-volatility-assets.

Question 6: If block trade thresholds are determined by asset class and given the changes inherent in liquidity conditions, how often should these be assessed? (as per the CFTC's two tests proposal for example?)

The review period for block trade thresholds should not be pre-determined to specific future dates. The review period should be flexible to allow for changes in market dynamics. Any deemed changes to the block trade threshold should not be telegraphed in advance, as this will enable market players to potentially "game" the timing of their trades for their own gain.

We thank you for the opportunity to comment on these important matters and would be pleased to discuss the impacts of these issues on mutual funds should you so desire.

Yours Truly,

Invesco Canada Ltd.

Rex Chong
Vice-President, Portfolio Manager

Eric J. Adelson
Senior Vice-President, Legal

Appendix A

Is There a Better Way?

Posted on **September 6, 2011** by **derivatiViews**

ISDA has published studies recently that give us a better understanding of the functioning of the OTC derivatives market leading up to and during the financial crisis. A recent paper on the US banking system found relatively modest losses arising out of counterparty defaults of plain vanilla derivatives.

The paper also found that mandatory clearing called for by the Dodd-Frank Act would increase variation margin by $30 to $50 billion among US banks, again a relatively small sum in a $14 trillion economy. Clearing, of course, requires payment of initial margin as well. The Office of the Comptroller of the Currency (OCC) estimated in a paper that initial margin requirements could total over $2 trillion globally under certain circumstances, a truly staggering sum. Other estimates of initial margin start at the hundreds of billions of dollars of new collateral needed. What this means is that the new regulations may require over a trillion dollars in initial margining to protect against incremental exposures whose current mark-to-market value is perhaps $50 billion. We have not seen any cost benefit analysis of clearing and initial margins that justifies this approach.

How did we get here? During the financial crisis, global regulators were unsure how the market would handle defaults of major participants. OTC derivatives contracts amounted to hundreds of trillions of dollars of notional amounts with thousands of participants. It was not clear how many were subject to collateral requirements nor was there uniformity in collateral practices. Some had initial margin and daily margining. Others only had variation margin after a threshold exposure was reached. Furthermore, regulators did not know if another mortgage problem existed through a single entity such as AIG FP or through widespread risk-taking by many participants. Out of this grew the requirement for mandatory clearing and trade reporting.

The requirement is leading to a host of clearinghouses around the world. As they are created and used, they reduce the benefits of bilateral netting (which we discussed in a previous derivatiViews). In some cases, the benefits of risk reduction from clearing will be exceeded by the additional risk created by losing netting benefits. That's even before considering the costs of clearing.

As noted, the clearing requirement was not subject to analysis nor were other alternatives. ISDA would like comments from readers on the following approach:

- First, we do agree that interdealer contracts for standardized products should be cleared. For very active participants, initial margining is quite efficient.

- Second, all financial entities (subject to de minimis exceptions) should have two-way collateral arrangements for variation margin. This would include AIG and all the monolines that wrote CDS on mortgage CDOs. These arrangements should be completely standardized – no exposure thresholds and margin posted daily. The collateral process could be overseen by an independent third party.

- Third, the parties can decide for themselves the amount and extent of initial margin required.
- Finally, trade and counterparty reporting should be put in place to reveal risks taken both by individual counterparties as well as by many participants together.

Our proposal will not eliminate losses due to the absence of initial margin. But it will reduce the excess costs of initial margins for creditworthy counterparties. And it will also give regulators the transparency they need. With initial margin running anywhere from the hundreds of billions to the OCC's estimate of $2 trillion or more, perhaps the benefits of our proposal exceed the alternative "one size fits all" approach that we are unfortunately moving toward.

Do the Sums Add Up?

Posted on **August 23, 2011** by **derivatiViews**

Earlier this month, ISDA published a short paper entitled Counterparty Credit Risk Management in the US Over-the-Counter (OTC) Derivatives Market. The paper used data prepared by the Office of the Comptroller of the Currency (OCC) to examine the extent of losses related to counterparty defaults from 2007 through the first quarter of 2011. During that entire period, the US banking system sustained losses of $2.7 billion on counterparty defaults on OTC derivative contracts. This includes nearly $850 million of losses in the fourth quarter of 2008, which is when we believe losses associated with Lehman were recognized. This leaves less than $2 billion of counterparty losses not related to Lehman.

We were surprised at these relatively small figures as we remembered large synthetic CDOs inflicting very large losses on financial institutions. The OCC data covered just banks so we looked harder. We found very substantial counterparty losses in non-bank affiliates of banks and broker-dealers outside the banking system. These losses were related to mortgage products and they verified our understanding of the market. We were, though, still surprised by the very small counterparty losses sustained by the banking system.

We then decided to model how these exposures and losses might be impacted by the clearing and margining regulations stemming from the Dodd-Frank Act. A portion of the losses were due to corporations that defaulted amid the troubles that followed 2008. These users will be exempt from clearing under most sets of proposed regulation. Another portion must have come from entities, such as hedge funds, that defaulted on mortgage and other complex products that could not be cleared.

The balance of counterparty losses were caused, most likely, by defaults of financial entities that will be required to clear their transactions under the new regulations, and the defaults occurred on these very same transactions. If these transactions had been cleared, then it stands to reason that counterparty losses by US banks would have been lower. This raises an interesting question: how beneficial would clearing and initial margining have been for US banks?

The reason we ask this question is the pure cost of initial margin related to clearing. ISDA estimates that initial margin will amount to anywhere from $200 billion to $500

billion of collateral once clearing is complete. The "cost" of this collateral might be 50 basis points; it might be 100 basis points. That's a minimum of $1 billion per year and a maximum of $5 billion per year. These estimates are global costs. Perhaps the cost to customers of US banks is $250 million to $2 billion per year. These costs need to be considered when contemplating the benefits of clearing and the need for initial margin.
So let's consider what this means in light of the counterparty loss experience of US banks. As noted, we have a firm upper bound of $2 billion of costs (the counterparty losses not related to Lehman) that could be attributed to the absence of initial margin. But let's make some assumptions. First, let's assume half the losses were attributed to defaults by corporations. That reduces the losses caused by financial institutions to $1 billion. These losses were caused by a combination of:

- no variation margin on clearing eligible products;
- no or insufficient margin on products not clearing eligible; and
- variation margin but no initial margin or insufficient initial margin on clearing eligible products.

It is impossible to quantify these respective losses but common sense indicates that a large majority came from lack of variation margin or from products that are not clearing eligible. We will hazard a guess and say those two causes accounted for 80% of the $1 billion of losses from the defaults of entities that would now be subject to clearing. That leaves $200 million as the benefit of initial margin over a period of four and a quarter years. Our numbers and analysis don't have to be exact. We shake our heads and wonder: we spend hundreds of millions a year and save tens of millions?

Readers: are we missing something?

Questions…. and Answers

Posted on **August 8, 2011** by **derivatiViews**

New York — ISDA has labored since its founding at making OTC derivatives markets safer and more efficient. We are naturally proud of our many accomplishments but the financial crisis showed we had much more to do. The industry's recent progress — in reducing counterparty credit risk through clearing and portfolio compression, increasing regulatory transparency through trade repositories and strengthening operational infrastructure — reflects this commitment.

Further progress lies ahead and it's important for our collective efforts to be focused on developing real solutions to real issues. Our recent study, Counterparty Credit Risk Management in the US Over-the-Counter (OTC) Derivatives Markets, contains some interesting data that should help to inform this effort. It indicates that the derivatives market might not have been as risky as some would believe.

We ask our readers the following questions. Did you know that:

- US banks only incurred $2.7 billion in counterparty credit losses on OTC derivatives products since January 2007?

- The total uncollateralized credit exposure among US banks relating to their derivatives activities is now only $109 billion?
- Dodd-Frank will likely increase variation margin by no more than $30 billion with the banks, and another $20 billion or so for the few remaining non-bank dealers?
- Credit losses on monoline exposures relating to sub-prime mortgages and executed outside the banking system dwarfed the counterparty losses at the banks? And that these products will remain outside Dodd-Frank?

ISDA has maintained for quite some time that the crisis was caused by bad residential real estate lending and investment. That's where the losses were for the economy in general and that's where they were for derivatives. We all know about AIG. We also should all know about the monoline insurers that rushed in to fill the void caused by AIG's withdrawal from the sub-prime market. That entire industry virtually destroyed itself insuring super-senior tranches of sub-prime collateralized debt obligations. And, in doing so, it created tens of billions of losses in and outside of the global banking sector.

This could have been prevented. At a minimum, as the values of the insured products were declining, collateral should have been required. This was generally difficult if not impossible for insurance companies to do and it would have limited the amount of protection they could have sold. Instead, insurance companies were able to write sub-prime CDS protection and only had to post collateral once they had been downgraded to a certain level, if at all. It's worth noting that today, virtually 100% of the remaining CDS market is regularly collateralized. It's also worth noting that insurance derivatives are not subject to the provisions of the Dodd-Frank Act.

There was another element at work in the financial crisis that hasn't received some of the notice that other contributing causes have received. Under the Basel II minimal capital requirements, banks could have purchased over $700 of super senior collateralized debt obligations for every dollar of common equity.

We wonder whether the facts from our study might point us in a more effective, efficient and economical direction than the current conventional wisdom would lead us. Do we really need hundreds of billions of dollars of initial margin to protect the system when there is only $30 to $50 billion at risk? Do we need to spend this money when the annual cost of prevention far exceeds the losses we have experienced coming through the stress test environment of 2007 to 2011? We think money is being spent unwisely and without the support of a cost benefit analysis. We will have more to say about making the derivatives markets safer in the weeks to come.

Preserving Netting Efficiency

Posted on **July 18, 2011** by **derivatiViews**

New York — One of ISDA's core beliefs is in the power of close-out netting, which enables counterparties to reduce their credit risk exposure to each other. No single tool is more effective in delivering safe, efficient OTC derivative markets.

That's why the Association is concerned about the effect of legislative provisions contained in the Dodd-Frank Act. These provisions could have serious adverse effects on the efficiency of netting. And less efficient derivative markets could have the effect of exacerbating system risk. No one has done the analysis of the extent to which the benefits of clearing are offset by less efficient bilateral netting. Where is netting inefficiency being introduced? The following are a few examples, and we suspect there are many more:

- *DFA Section 716.*The so-called "push-out" provision forces banks active across product areas to create a new company for equity, commodity and certain credit derivatives.

- *Clearinghouse proliferation.*By all accounts, clearinghouses will abound—by product type and by geographic area. Clearing has huge potential for risk reduction through multilateral netting, but a proliferation of clearinghouses will make it harder to achieve that potential as transactions are moved from bilateral arrangements to a multitude of clearinghouses. ISDA is fully supportive of the greater use of clearinghouses, particularly when netting and compression can be aggressively pursued for cleared trades. But as we move into this new cleared world, we must be attuned not just to its promise, but to its limitations.

- *Breaking up hedged sets.*A potentially risk increasing effect of trades moving to clearing is where the trade to be cleared provides a hedge for a trade that cannot be cleared. The bilateral trade that remains and the cleared trade that is moved to the clearing house are no longer netted under an ISDA Master Agreement.

- *Legacy trades vs. new trades.*ISDA has generally taken the view that new regulations should only apply to new trades, and that legacy trades should reflect the terms and regulatory environment at the time the trade was done. But proposals regarding margin for uncleared trades could create a dilemma: apply the new rules to all transactions (both existing and new) under one master or create two masters, one for the old, uncollateralized trades and one for the new, collateralized ones.

- *Extraterritoriality*. Then, there is the issue that has reared its head in issue after issue—the applicability of national rules to global participants in global markets. We will address the many facets of this issue in an upcoming Views, but depending on how these issues are addressed, strong incentives may be created for booking business in a multitude of entities, a sure recipe for netting inefficiency.

How does ISDA work to maximize netting efficiency in this new world? First, we remain focused on spreading the gospel of the benefits of netting, as evidenced by legislation in 38 jurisdictions, and the 55 opinions that provide the backbone of the ISDA Master Agreement (Members can see all those opinions by logging in to the ISDA Members Portal). In this regard, we continue to urge European regulators to take up the cause of a netting directive. Second, we help regulators understand the exposures of derivatives market participants as they face a more fragmented and less efficient netting environment. Third, we pursue ways, through documentation, regulation or otherwise, to facilitate netting across entities and platforms.

Netting remains a key part of ISDA's mandate. We believe, in short, that if you undermine netting, you undermine the safety and efficiency of markets.