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Ladies and Gentlemen

Cross-border Bank Resolution Group – Report and Recommendations

The International Swaps and Derivatives Association (**ISDA**)¹ is grateful for the opportunity to respond to the Report and Recommendations of the Cross-border Bank Resolution Group (**CBRG**) issued on 17 September 2009 (the **Consultation Document**). The issues considered in the Consultation Document are of great importance to the financial markets in general and the privately negotiated (or over-the-counter (OTC)) derivatives markets in particular.

Since our foundation in 1985, one of our central missions has been the strengthening of the legal framework for derivatives trading. We have therefore promoted and continue to promote law reform to eliminate areas of legal uncertainty and to provide a solid and predictable legal framework for such trading and for reduction of credit and systemic risk in the market through credit risk mitigation, most importantly through close-out netting and the use of financial collateral arrangements. Having participated in law reform activities at national, regional and international level, ISDA has a clear perspective on the importance of international co-ordination, harmonisation (where possible) and mutual recognition of legal and regulatory frameworks.

¹ ISDA is the global trade association representing leading participants in the privately negotiated derivatives industry, a business that includes interest rate, currency, commodity, credit and equity swaps, options and forwards, as well as related products such as caps, collars, floors and swaptions. ISDA currently has more than 840 member institutions from 58 countries on six continents.

Over the past couple of years ISDA has followed particularly closely national, regional and international efforts to address the legal framework for resolution of financial institutions. For example, we have been closely involved in the consultative process leading to the introduction of the Banking Act 2009 in the United Kingdom and the related secondary legislation designed to protect close-out netting, set-off, security and title transfer collateral arrangements and financial market infrastructure.² ISDA is represented on the Banking Liaison Panel, a statutory body established under the Banking Act 2009 to advise the UK Treasury on the impact of the legislation on the financial markets. ISDA has also been engaged for some months in informal dialogue with the European Commission regarding its work on cross-border crisis management in the banking sector. ISDA continues to monitor national legislative initiatives on resolution of banks, investment firms and other financial institutions in various countries around the world. And, of course, ISDA has a long familiarity with the existing resolution regimes in a number of leading jurisdictions, most notably the FDIC regime in the United States.

Accordingly, ISDA strongly endorses the work of the CBRG and the related on-going work of the Financial Stability Board (**FSB**) to promote common standards for resolution of financial institutions and related cross-border co-operation and information sharing by authorities to ensure co-ordinated action and proportionate responses that recognise the international nature of the markets and of financial institution groups. ISDA especially welcomes the recognition and endorsement in the Consultation Document of risk mitigation mechanisms such as netting, collateral arrangements and segregation of client assets.³

At the heart of all of the initiatives that we have followed and are following is the tension between the need to give sufficient powers and flexibility to the authorities to ensure the effectiveness of any resolution, which will normally occur under severe time constraints, and the need to protect the rights and legitimate expectations of financial market participants by, among other things, protecting legal certainty and respecting private law contractual and property rights.

We found the Consultation Document to be informative and encouraging. But we also note the lack of concrete proposals in the Consultation Document, which makes it to some extent difficult to respond. For the most part, the Recommendations are, we expect, uncontroversial, and it will be the detailed implementation of the Recommendations that will require careful attention, as we have discovered in our work on national law reform in this area.

Also, as we are primarily concerned with a market sector, namely, the OTC derivatives market, rather than with financial institutions in all of their aspects and markets, we defer to other international trade associations concerned more generally with the whole of a financial institution's business to comment in detail on most of the Recommendations. Of course, ISDA's financial institution members are also members of those other international trade associations and have commented on the broader issues through those associations. In this regard, we have had sight, for example, in draft of the responses of the Association for Financial Markets in Europe (AFME), the International Banking Federation (*ibfed*) and the Institute of International Finance (IIF), and we would refer you to those responses, which have the support of our members, with regard to the broader issues.

² ISDA was heavily involved in the consultative process, run through the Banking Liaison Panel, that led to a considerable strengthening of the protective secondary legislation in July 2009, the Banking Act 2009 having itself come into effect in February 2009.

³ For example, in paragraph 14, in the final bullet point of Recommendation 1, in paragraphs 103-112 and in Recommendation 8.

We note that Recommendations 8 and 9 and the accompanying text in the Consultation Document address more directly areas of specific concern to ISDA, which go to the heart of our mission, and it is on these that we particularly wish to comment. Before doing so, however, we make some general comments and touch on some of the broader issues in passing.

1. Background, context and broader issues

Background and case studies

The Consultation Document stresses the importance of international co-operation, information sharing between regulatory, judicial and insolvency official authorities. It also stresses the importance of convergence of legal and regulatory frameworks for the financial markets and, in particular, for the resolution and insolvency treatment of failed financial institutions. We agree that these are all important, and we touch further on these themes below. We commend the CBRG for its work in preparing the Consultation Document and, in particular, for setting out clearly the background of the financial crisis and official responses to date and for providing very useful case studies. This underlines the importance of learning from recent experience and ensuring that any proposals take market experience fully into account and are balanced, proportionate and practical.

Co-ordination with EU initiative and other regional and national initiatives

The Consultation Document notes (in paragraph 18) the work being done by the EU Commission to strengthen bank resolution regimes, which, of course, is reflected in the Commission Communication COM (2009) 561/4 “An EU Framework for Cross-Border Crisis Management in the Banking Sector”, to which we and other international trade associations (as well, of course, as the leading European trade associations) will be responding.

It is important that any other regional and national initiative on resolution of banks or other financial firms takes into account and is compatible with the work being done by the CBRG, the Basel Committee on Banking Supervision, the FSB or otherwise at international level. This does not seem currently to be the case. For example, we note that the EU Communication mentioned above focuses on the banking sector, while the Consultation Document is concerned with financial firms more broadly. We urge national authorities to ensure that they take the work of the CBRG and other international work into account in relation to current and future national initiatives in relation to financial firm resolution.

Approaches to resolution of a financial institution operating across borders

Paragraph 57 of the Consultation Document sets out two approaches to the resolution of a financial institution operating across international borders, the universal approach and the territorial approach. The Consultation Document notes in passing, of course, a third approach (or perhaps “middle way”), which is that of the EU, namely, a modified universal approach.

As a practical matter, some form of modified universal approach is likely to be the optimal solution. A strictly territorial approach clearly does not reflect the global nature of the financial markets and creates unfairness and economic distortion. On the other hand, as the Consultation Document itself points out, there are many practical constraints to a fully universal approach, including the different stages of economic, political and legal development of the various jurisdictions around the world where international financial institutions operate.

Comparative database on national bank resolution and insolvency laws

Paragraph 67 the Consultation Document refers to the extensive database developed by the CBRG on national bank resolution and insolvency laws of member states of the CBRG. The CBRG encourages the development of one or more databases or sources of information on current and future developments in national laws and regional or international laws or policies. We fully agree that easy access to and widespread dissemination of such information will greatly enhance the effectiveness of measures to harmonise, where appropriate, or promote convergence and mutual recognition of national regimes for financial firm resolution and insolvency. It would greatly assist such development if the CBRG were to make publicly available the database it has assembled. We therefore strongly urge the CBRG to do so.

International instrument, law reform and convergence of national frameworks

We note the discussion in paragraphs 69 and 70 of a comprehensive universal framework for the resolution of cross-border financial groups. We understand that many will feel sceptical about the chances of such an ambitious approach succeeding within the foreseeable future, given the past history of international law reform initiatives that touch on issues of insolvency law. But we do not believe that such scepticism should nonetheless prevent this approach being pursued, in parallel with more immediate and more limited initiatives and measures. Accordingly, we support the development of an international instrument broadly reflecting the principles set out in paragraph 70.

Important advances have been made over the past twenty years in international fora to promote convergence of national legal regimes in areas of importance to the financial markets. We believe that these efforts should continue to be pursued and supported. We note the work that has been done in recent years by the Hague Conference on Private International Law (for example, in relation to the Hague Securities Convention), by UNIDROIT (for example, in relation to the recently signed Geneva Securities Convention) and by UNCITRAL (for example, the UNCITRAL Model Law on Cross-Border Insolvency,⁴ the UNCITRAL Legislative Guide to Secured Transactions and, as discussed in the Consultation Document in paragraph 72 and in Recommendation 2, the UNCITRAL work on insolvency proceedings affecting commercial groups).

We have followed these initiatives closely over many years because we believe that they have the potential to achieve the goals of convergence and mutual recognition in areas of importance to the financial markets, and in limited ways, so far, they have delivered (and,

⁴ And the related UNCITRAL Practice Guide, referred to in footnote 10 of the Consultation Document.

of course, will continue to deliver as the process of signature and ratification of existing instruments proceeds). As we noted above, the CBRG in the Consultation Document stresses the importance of convergence and mutual recognition to strengthen the international legal framework for financial market activity. Member states of the CBRG should continue to bear in mind these existing international law reform bodies when considering next steps in relation to financial firm resolution and insolvency.

We urge the member states of the CBRG to remember the value of these long-standing international bodies, which do important work on limited budgets. We urge them to ensure that these bodies are given the resources necessary to carry on their work effectively. As part of this, we urge member states of the CBRG, and all other member states of these international bodies to ensure the continuing commitment of national delegates, experts and observers to participation in these projects. International law reform is a long-term game and requires vision, commitment and an appropriate level of resource.

Recommendation 1

We note the second and third bullet points of Recommendation 1, which discuss various powers necessary to operate and resolve a failing financial institution and options to facilitate continuity for essential operations. We agree that an effective resolution regime is likely to include these powers and options, but note that these are the features of a resolution regime most likely to undermine legal certainty or affect existing private law rights of counterparties and creditors to the institution if the powers and options are not clearly delineated and appropriately circumscribed.

As we have already noted, the Consultation Document acknowledges in several places, including in the final bullet point of Recommendation 1, the need to include appropriate safeguards for early termination, netting and collateral rights. We simply wish to underline that the interface between these competing objectives is precisely between, on the one hand, the powers and options in the second and third bullet points and, on the other hand, the last bullet point of Recommendation 1.

We would like to raise a further point relevant to Recommendation 1 that is not raised in the Consultation Document but is, for example, highlighted in a recent UK Treasury consultation document, namely, the need for the officials responsible for resolution of a failing financial institution to have sufficient expertise and other resources to handle complex counterparty and creditor positions.⁵ Such officials have a difficult job with many difficult facets. Inevitably, no matter how qualified or experienced such officials are, they (through no fault of their own) generally do not have the expertise and resources necessary to assess quickly and accurately the validity of creditor claims resulting from close-out of market positions. Further thought should therefore be given to how to ensure that the officials have access to appropriate expertise and other resources.

⁵ HM Treasury, "Establishing resolution arrangements for investment banks" (December 2009), chapter 7.

We also wish to underline the particularly close relationship of Recommendations 1, 6 and 8. There is clearly a tension between the objectives reflected in each of these Recommendations, and this needs to be borne in mind in framing any further proposals.

Recommendation 3

We endorse the statement in paragraph 82 of the Consultation Document that convergence among national regimes promotes a level playing field and urge the member states of the CBRG to commit the necessary resources to this goal.

Examples of on-going initiatives of direct relevance to issues raised by the Consultation Document are the efforts of industry (most notably, by ISDA and the European Financial Markets Lawyers Group (the EFMLG), with support from the European Federation of Energy Traders (EFET) to promote a European Union Directive on close-out netting. Although no concrete steps have been taken publicly by the EU Commission in this regard, we understand that internal work has already commenced on an official proposal for such a Directive.

We also note ISDA's proposal to UNIDROIT for an international convention, complementary to the recent Geneva Securities Convention (which includes an optional Chapter on financial collateral arrangements and an Article strengthening rights of set-off in relation to intermediated securities), to establish general principles for close-out netting and related collateral arrangements. We note that the Governing Council of UNIDROIT is currently actively considering this proposal, which could help to extend the benefits of close-out netting and collateral arrangements to, among others, emerging market jurisdictions. This would help to address the concern, expressed in paragraph 104 of the Consultation Document, regarding the level of progress on these issues being made "in some emerging market jurisdictions".

Recommendation 5

Other international trade associations are commenting in their responses on the extent to which their members (who are for the most part also members of ISDA) agree that complexity of a group structure is, in and of itself, problematic. We support the general view that a balanced approach is necessary. It is more important that the management of each financial group has a thorough understanding of the group structure and is able to explain and justify it to its own satisfaction as well as to the relevant regulatory authorities. There are many commercial, regulatory, fiscal and other drivers behind group structures, and a blunt approach to this issue would likely do more harm than good.

Recommendation 6

This is another issue on which other international trade associations will be responding in more detail, in particular, in relation to whether and, if so, to what extent advance planning by an institution for its own demise is a valuable exercise and worth the costs it would entail. The general view seems to be cautious acceptance of the principle, but concerns regarding proportionality and an emphasis on the need for confidentiality of

such plans and any related information (for example, information in a Management Information System, as referred to in Recommendation 6).

In paragraph 95, which is part of the text accompanying Recommendation 6, there is a reference to the practical and legal difficulties of defining the location of intangible financial assets, noting, of course, that consideration of the issues is beyond the scope of the Consultation Document. We strongly agree, of course, that clarification of and international convergence on these issues is highly desirable to strengthen legal certainty and create a level playing field.

In this regard, we note that the Hague Securities Convention, which has yet to come into force, deals directly with the legal aspect of this issue in relation to intermediate securities, namely, what law governs, very broadly speaking, the proprietary effect of the holding or transfer of intermediated securities. Accordingly, we urge the member states of the CBRG (and, indeed, all member states of the Hague Conference) to renew their consideration of this Convention with a view to its being brought into effect as soon as possible and, of course, with as wide a scope as possible in terms of adherent countries. We have already noted the more recent Geneva Securities Convention produced by UNIDROIT, which deals with the substantive law aspects of intermediated securities, and similarly urge that it be swiftly ratified and brought into effect as widely as possible.

2. Recommendation 8

Netting and collateralisation

We strongly endorse the recognition in paragraph 104 of the Consultation Document of the importance to systemic risk reduction of netting agreements and collateralisation. This is fundamental. The resolution tools referred to in Recommendation 1 and the related discussion should not be framed in such a way that these protections are or may be overridden or where there is a material doubt as to whether these protections continue to apply. Among other things, any such doubt would eliminate the possibility of such arrangements being recognised as risk-reducing for purposes of the regulatory capital requirements applicable to banks and investment firms, driving up the cost of and access to capital and impairing liquidity and efficiency.

ISDA has been promoting law reform in relation to close-out netting almost since the year of its foundation in 1985 and during that time has been involved in literally dozens of national initiatives to strengthen close-out netting, and many national statutes have been wholly or partly based on, or at least influenced by, ISDA's Model Netting Act.⁶ For over a decade, ISDA has been similarly involved in efforts to promote legislative reform in relation to financial collateral arrangements. ISDA was, for example, represented on the European Commission's Forum Group on Collateral, which assisted the Commission in the drafting of what became the EU Directive on financial collateral arrangements.

⁶ The third and most recent version of ISDA's Model Netting Act was published in 2006 and is available from our website: <http://www.isda.org>.

ISDA continues to monitor and, where appropriate, actively promote national law reform developments in relation to netting and financial collateral, most recently in China, Russia, Kazakhstan, the Ukraine, Poland, the Czech Republic, Slovakia, Slovenia, Romania, Croatia, Serbia, Pakistan, the UAE, Bahrain, Qatar, Colombia, Peru, Mauritius, the Seychelles, South Korea, Indonesia and Malaysia. In addition, it has been monitoring recent and current post-financial crisis legislation with potential to affect current protections for netting and financial collateral in a number of other countries, including the USA, Canada, the United Kingdom, Germany, Ireland, Denmark, Iceland, Switzerland, Hungary and South Africa.

Segregation and rehypothecation

We also agree that segregation of client assets and client positions is an important risk mitigant where appropriate, although we would also note that as between sophisticated market counterparties dealing with one another at arm's-length such segregation is not always necessary. Extending client money and segregation requirements inappropriately in the wholesale financial markets could impede liquidity and market efficiency without adding any benefit but instead imposing unnecessary costs and in some cases distorting economic incentives. This is manifestly an area where the detail is important, as well as the surrounding circumstances, such as the nature of the trading relationship and products traded, the relative knowledge and sophistication of the parties and the legitimate expectations of the parties.

For example, the seller of securities under a securities repurchase (repo) transaction to a buyer who becomes insolvent before the repurchase leg of the transaction is performed does not expect to recover any property from the estate of the buyer but expects merely to be an unsecured creditor. On the other hand, a customer who has deposited securities for safe-keeping with a financial institution as custodian does have a legitimate expectation that it will be able to recover those securities in the event of the financial institution's insolvency, unless, of course, it has expressly and, with a proper understanding, agreed to allow the custodian to use its assets (the so-called right of "rehypothecation"). A hedge fund that provides securities to its prime broker under a title transfer arrangement should understand that in the event of the prime broker's demise, it is merely an unsecured creditor for the value of those securities.

In this regard, we refer to paragraph 106 of the Consultation Document. We support the principle that client money and client assets should be protected, but where a sophisticated party in the wholesale market has agreed to rehypothecation of its assets, the normal result is that it has also waived client asset protection and effectively agreed to be an unsecured creditor in the event that its counterparty exercises the right to rehypothecate and then becomes insolvent before returning fungible equivalent assets. Such a party will normally agree that its custodian should have a right of rehypothecation in return for a benefit, such as lower fees or better prices on related transactions. And the market benefits from the increased liquidity and enhanced circulation of collateral resulting from rehypothecation.

Wholesale financial market participants should understand the nature of any protections they are being offered and have the freedom to structure their arrangements in a way that optimises the balance of risk and reward. The problem is not, therefore, “unlimited re-hypothecation” but rather the need for market participants to assess the relative risks and rewards more accurately. Recent financial market experience has, of course, yielded much valuable information that should improve such risk assessments in the future.

Standardisation, central clearing, trading platforms and trade repositories

In relation to standardisation of OTC transactions, and the clearing and settlement of OTC transactions through central clearing counterparties (CCPs), ISDA is actively engaged with the regulatory authorities in various parts of the world to promote standardisation where that is appropriate and the use of CCPs. ISDA has always maintained that the benefits as well as the drawbacks of standardisation and the use of CCPs need to be carefully weighed.

In a recent press release (October 20, 2009) welcoming the European Commission’s Communication outlining future policy actions on derivatives markets, ISDA commented on these issues and pointed out some of the principal pitfalls.⁷ For example, products where there is a high volume of turnover are likely to be appropriate for standardisation and straight-through processing (STP). Regulatory authorities, however, need to provide guidance, co-ordinated internationally, on what standardisation actually means and where it is necessary or appropriate, bearing in mind differences between asset classes underlying different derivatives market sectors (interest rates, currencies, equities, energy, other commodities, credit and so on).

There is clearly also a need to preserve the ability of parties, particularly in the wholesale financial markets, to structure their transactions in a manner best suited to the management of the risks that arise in their businesses. There are limits to the extent to which standardised products can be used to address such needs. By the same token, it is clear that a significant proportion of market volume in the largest product sectors of the OTC derivatives market is already relatively standardised and may, in fact, benefit from improved infrastructure in terms of execution methods (including STP) or central clearing and settlement.

Market participants are more sceptical about the extent of the need for exchange trading or trading platforms. Product uniformity can actually make it more difficult to hedge and there will parts of the market, in relation to less liquid products, where it is simply impossible or not justified in terms of cost to require trading on an organised market or platform. The G20 itself refers to developing the use of exchange trading “where appropriate”, indicating acceptance of the proposition that there are situations where exchange trading is not necessarily appropriate.

In relation to CCPs, in particular, it will be necessary to pay particularly close attention to the robustness of the legal structure and supporting legal framework for the CCP given the amount of risk that will be centralised in such structures. It will be important to

⁷ <http://www.isda.org/press/press102009.html>.

ensure that the CCP default rules are enforceable in the event of the insolvency of a CCP participant or the CCP itself and that customer positions with a defaulted CCP participant, including related collateral held by the CCP, are quickly, cleanly and robustly “ported” to a healthy CCP participant.

As part of this, it will be necessary to ensure that the documentation supporting customer trades with a CCP participant as well as corresponding positions established by the CCP participant with the CCP is comprehensive and robust, reflecting the detail of market practice and the various market risks associated with the traded product. ISDA has built up an extensive library of documentation since its inception, covering not only Master Agreements and collateral documentation but extensive product-specific terms across the broad spectrum of OTC derivative trading activity.

ISDA will continue to work with market participants and infrastructure providers to ensure that this tremendous resource is available, updated and adapted as appropriate to facilitate trading and to address and reduce risk in any market sector where trading platforms and/or central clearing and settlement are being developed.

In relation to the final sentence of paragraph 109, we would simply note that any type of derivative, not only a CDS, can be entered into speculatively. There is no convincing evidence of which we are aware that the speculative use of CDS was itself a significant factor in the financial crisis, notwithstanding media comment suggesting otherwise.

It is also well-known that speculation is not in and of itself necessarily a bad thing. The assumption of any risk involves a degree of speculation as to the outcome of that assumption. Prudent investment involves a degree of speculation. Speculators play an important role in any actively traded market, ensuring liquidity. Of course, a party undertaking a risk should have the knowledge and skills properly to assess the risk and the resources to bear it. Focus should be directed to those aspects of the risk-taking process rather than to the intrinsic nature of the CDS as a product, which is, after all, merely a tool, for example, for expressing a view of risk.

ISDA has also supported and continues to support the use of trade repositories, but stresses that careful consideration needs to be given to where such trade repositories are needed (that is, in respect of which asset classes) and to the structure and security of such trade repositories. Trade repositories create certain advantages in terms of regulatory transparency, but also potentially raise difficulties, for example, in terms of confidentiality of the information, potential impact on liquidity and the ratio of benefit to cost.

3. Recommendation 9

Regarding the suggestion the proposal that the authorities should, in the context of the resolution of a financial firm, have the ability to impose a brief delay on the exercise of early termination and netting rights in certain circumstances, we understand the reason for the proposal and accept that this is justifiable on systemic grounds, subject to the conditions, largely reflected in Recommendation 9, namely, that:

- the ability of the authorities to override early termination rights is strictly limited in time (ideally for a period not exceeding 48 hours)
- the relevant master agreement and all transactions under it are transferred to an eligible transferee as a whole or not at all (there is no possibility of “cherry-picking” of transactions or parts of transactions)
- the proposed transferee is a financially sound entity with whom the counterparty would prudently be able to contract in the normal course of its business
- the early termination rights of the counterparty are preserved as against the transferee in the case of any subsequent default by the transferee
- the counterparty retains the right to close out immediately against the failed financial institution should the authorities decide not to transfer the relevant master agreement during the specified transfer window

The footnotes to paragraph 114 of the Consultation Document note that provisions complying with the above conditions currently apply in the US in relation to the resolution regime administered by the FDIC. We note that the existence of this limited power of the resolution authority to suspend early termination and close-out netting has not prevented supervised institutions from obtaining legal opinions in relation to US banks subject to the FDIC regime that are sufficiently robust to comply with current requirements for recognition of close-out netting for regulatory capital purposes. But we stress that any regime implementing such a power must clearly limit the power if the necessary legal certainty is to be maintained.

Paragraph 115 of the Consultation Document raises the difficult theoretical problem of the application of resolution regime transfer powers to foreign property, rights and liabilities. This was much debated, for example, in the UK during the consultation process leading to the UK Banking Act 2009. One of the most important advantages of the international convergence promoted by the Consultation Document, and which ISDA strongly endorses, is that it would be possible to address this issue.

Outside the context of a universal succession, many jurisdictions, perhaps most, will not recognise the effect of a statutory transfer under a foreign law of a piece of property or right or liability governed by local law. In fact, it is right and proper that local law property, rights and liabilities should, as a matter of general principle, be protected from the effect of mandatory transfers under foreign laws. If that were not the case, certainty

and security of tenure of property and maintenance of contractual rights would be seriously undermined. International convergence on agreed principles would allow carefully crafted national exceptions to be created that did recognise statutory transfers of local property, rights and liabilities under a foreign law in connection with a financial firm resolution.

Recommendation 9 also encourages industry groups such as ISDA to consider a market contractual solution to the issue of the transfer of a master agreement in the context of the resolution of a financial firm. This is something that we will be discussing with our members in due course. It should be remembered, however, that use by an ISDA member of any standard form document published by ISDA is voluntary. Even where an ISDA member uses an ISDA document, there is no obstacle, as far as ISDA is concerned, to the ISDA member agreeing with its counterparty to modify the document as needed or desired. Indeed, ISDA encourages such flexibility⁸ and has no power to impose any restriction in this regard. Accordingly, some combination of a market and legal or regulatory solution to this issue may be necessary.

We would be pleased to meet with you to discuss any issues arising out of the Consultation Document or out of our responses above. We look forward to receiving and will study with close attention any more detailed proposals that emerge as a result of this consultation. In the meantime, please do not hesitate to contact either of the undersigned if we can be of assistance in this regard.

Yours faithfully

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⁸ And the need for this flexibility is reinforced by anti-trust or competition law concerns.