ISDA. Safe, Efficient Markets

BY EMAIL

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Financial Supervisory Service ("**FSS**")

Capital Market Supervision Department

Derivatives Market Team

Consultation on Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Transactions

The International Swaps and Derivatives Association ("**ISDA**")[1] welcomes this opportunity to provide comments to the current FSS's Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Transactions ("**FSS Margin Guidelines**").

Consistent with our mission, we are primarily concerned in this letter with the impact of the proposed implementation on the safety and efficiency of the financial markets, by considering the impact of the proposals on the obligations of a financial institution with respect to the trading of over-the-counter ("**OTC**") derivatives.

Our membership includes the leading global, regional, and national financial institutions as well as leading end-users and many other important financial market participants. Our leading financial institution members are members of the other international financial trade associations, and their views on certain other issues will be represented to you through those associations.

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

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1. Extension of the exemption for equity options

We note the exemption from the application of the margin requirements for equity options in the FSS Margin Guidelines remains only until August 31, 2026.

1.1 *Out of scope or permanent exemptions*

This approach is different to certain jurisdictions who:

(i) ***(out of scope)*** have not implemented margin requirements for single-stock options, equity basket options and equity index options or such are out of scope of their relevant margin rules.

For example, in the United States of America ("**US**"), equity options and equity index options are not considered to be within the definition of swaps under the scope of the Dodd-Frank Act Title VII and rather are securities and so margin requirements are not applicable to equity options and equity index options and regulatory margin requirements do not in practice apply to swap dealers under US regulation. Given that the US is the largest market for equity options[2] , alignment with the US in this regard will be important to avoid disruption of cross-border business; or

(ii) ***(permanent or indefinite exemptions)*** have granted permanent or indefinite exemptions for these transactions.

For example:

(a) The European Union ("**EU**") co-legislators have introduced a permanent exemption from the requirement to exchange margin for single-stock equity options and equity index options.[3] This permanent exemption, which forms part of EMIR 3, came into force and became applicable as of 24 December 2024. The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority (the "**European Supervisory Agencies**" or "**ESAs**") are required to monitor, and, every three years report on:

a. regulatory developments in non-EU jurisdictions in relation to the treatment of single stock options and equity index options;

b. the impact of the derogation in the financial stability of the EU in one or more member states; and

c. the development of exposures in single stock options and equity options not cleared by a central clearing counterparty.

[2] https://data.bis.org/topics/OTC_DER/tables-and-dashboards/BIS,DER_D8,1.0

[3] Amendment of Article 11, by paragraph 3(a): https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202402987

Within one year of receipt of the report from the ESAs, the European Commission must assess whether international developments have led to more convergence in the treatment of single stock options and equity index options and whether the derogation endangers the financial stability of the EU or one or more of its member states. The European Commission has the power to revoke the derogation by way of a delegated act following an adaptation period which cannot exceed two years;

(b) the United Kingdom ("**UK**") Prudential Regulation Authority ("**PRA**") (by the PRA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2025)[4] and the UK Financial Conduct Authority ("**FCA**") (by the FCA Standards Instrument: The Technical Standards (European Markets Infrastructure Regulation) (Bilateral Margining) Instrument 2025)[5] have amended the Binding Technical Standards 2016/2251 to introduce an *indefinite exemption* from the UK bilateral margining requirements for non-centrally cleared single-stock equity options and equity index options, replacing the previous temporary derogation that expired on January 4, 2026. The amendments took effect on November 27, 2025;[6] and

(c) in Singapore, the Monetary Authority of Singapore ("**MAS**") has released guidelines[7] exempting equity options and equity index options from the scope of its margin rules entirely.

1.2 *Temporary derogation that is open-ended*

Another approach taken by certain jurisdictions is to grant a temporary derogation and leave it open-ended as to when it will cease to provide maximum flexibility given the different approaches across jurisdictions.

For example:

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[4] https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2025/november/ps2325app2.pdf

[5] https://api-handbook.fca.org.uk/files/instrument/Technical%20Standards/FCA%202025/50-2025-11-27.pdf

[6] PS23/25 – Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251 | Bank of England

[7] Paragraph 4.2(f) of the MAS Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts, https://www.mas.gov.sg/-/media/mas/regulations-and-financial-stability/regulations-guidance-and-licensing/securities-futures-and-fund-management/regulations-guidance-and-licensing/guidelines/guidelines-on-margin-requirements-for-noncentrally-cleared-otc-derivatives-contracts-29-jun-2021-2.pdf

(i) the Hong Kong Monetary Authority ("**HKMA**") has extended the exemption for non-centrally cleared single-stock options, equity basket options and equity index options from the relevant margin requirements, as reflected in the 2020 revisions to the HKMA Supervisory Policy Manual module CR-G-14, *until further notice*;[8] and

(ii) to align with the latest global developments, the Hong Kong Securities and Futures Commission ("**Hong Kong SFC**") has exempted non-centrally cleared single-stock options, equity basket options and equity index options (collectively, "non-centrally cleared equity options") from the margin requirements, with effect from January 4, 2026, *until further notice*.[9]

1.3 *Temporary derogation ending January 2029*

The Swiss Financial Market Supervisory Authority ("**FINMA**") took a temporary derogation approach. FINMA extended their previous temporary transitional period (by FINMA Guidance 04/2025)[10] for the duty to exchange collateral for non-centrally cleared OTC derivatives transactions that are options on individual equities or index option until January 1, 2029, due to legal developments in important financial centers, namely in the EU and UK. The FINMA Guidance says that it is necessary to grant a corresponding extension in Switzerland in order to prevent disadvantages for Swiss derivatives traders.

[8] Footnote 13 to paragraph 2.1.2(ii)(v) of the Supervisory Policy Manual CR-G-14 Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards, https://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CR-G-14.pdf

[9] Schedule 10, Part III, Margin Requirements, paragraph 7(e) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/Code_of_conduct-Dec-2025_Eng-Final-with-Bookmark_Jan-2026.pdf

[10] https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmitteilungen/20250905-finma-aufsichtsmitteilung-04-2025.pdf

1.4 *Equity options market*

Equity options serve as a useful tool in today's financial markets, assisting with risk management and facilitating market liquidity. They allow shareholders to have protection against potential stock price declines, enable companies to manage pricing risks in mergers and acquisitions, and support strategic initiatives like share repurchases. Additionally, investors may use equity options to diversify their portfolios, while issuers may use them to facilitate convertible bond offerings. However, imposing margin requirements on these instruments could undermine their effectiveness in such strategies, potentially disrupting the markets for the underlying securities.

The equity options market is very small compared with the overall OTC derivatives market, with many contracts being short-term in nature. Exempting these instruments from the FSS Margin Guidelines is unlikely to pose any risks to financial stability. Data from the Bank for International Settlements (BIS)[11] reveals that equity options accounted for just 0.67% of the total notional outstanding OTC derivatives in the second half of 2025. Furthermore, 65.13% of equity-linked contracts (including forwards, swaps, and options) had maturities of one year or less. Given their modest scale and short duration, applying margin rules could hinder their beneficial role in the financial ecosystem.

1.5 *Request for permanent exemption*

Given that increasingly more major jurisdictions are now looking to apply a permanent exemption, to avoid an unlevel playing field for Korean market participants engaged in global derivatives markets and ensure market predictability, we would ask the FSS to consider amending the FSS Margin Guidelines to exclude equity options and equity index options from the margin requirements *permanently* (following the change in approaches by the EU and the UK).

Alternatively, if the FSS prefers the temporary derogation approach, we would request the FSS:

(I) extend the relief for equity options and equity index options *until further notice* (similar to the approach used by the HKMA and Hong Kong SFC), to give the FSS the most flexibility as to approach;

(II) extend the relief for equity options and equity index options until January 1, 2029 (similar to the approach used by FINMA); or

(III) at least, extend the relief for equity options and equity index options until August 31, 2027 so as to consider this issue at the next review of the FSS Margin Guidelines. However, if this approach is taken, Korea may soon be one of the few remaining jurisdictions with a date that relates to 2027.

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[11] https://data.bis.org/topics/OTC_DER/tables-and-dashboards/BIS,DER_D5_1,1.0

If approach (I) above is followed, we suggest the following amendment to the FSS Margin Guidelines:

Existing footnote	Proposed Amendment
4) Furthermore, for equity options, this Guideline shall not apply until August 31, 2026.	4) Furthermore, for equity options, this Guideline shall not apply until further notice.

2. AANA Phase Out

With the passing of the final global phase-in period for regulatory initial margin ("**IM**") in 2022, firms are conducting an annual recalculation of a group's average aggregate notional amount ("**AANA**") to determine any changes to the application of the regulatory IM requirements, as appropriate.

Based on the AANA annual calculations, some groups of counterparties may become subject to regulatory IM requirements for the first time; while others which were previously subject to the requirements may be allowed to cease the application of regulatory IM requirements in one or more jurisdictions for the corresponding year-long compliance period[12] and for as long as their annual AANA calculation remains below the threshold.

2.1 *Initial Margin Obligation Falls Away*

Any change to a group's qualification for regulatory IM rules will need to be communicated by the impacted group to all of its counterparties in advance so that both sides can appropriately prepare.

The majority of market participants are now familiar with the steps[13] necessary to coordinate with their counterparties to prepare for the commencement of regulatory IM application to their mutual portfolios in the event a group of counterparties qualifies inaugurally for the IM requirements.

However, our members are seeing the alternate scenario where a counterparty group is no longer subject to regulatory IM requirements.

This was first seen with respect to the IM requirements of the U.S. prudential regulatory authorities[14] (the "**USPR**") when parties which became subject to these requirements on or before September 1, 2022, ceased to be subject to them on January 1, 2023, the first global post phase-in compliance date. In these limited cases, affected parties made changes to

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[12] ISDA has compiled the AANA calculation methods and periods, compliance dates and thresholds here: https://assets.isda.org/media/5e7ce0f1/4f4fc9ed-pdf/

[13] https://www.isda.org/2020/09/16/getting-ready-for-initial-margin-the-steps-to-take/

[14] The Department of Treasury's Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency

cease the assignment of new derivatives trades to regulatory IM portfolios and to remove tags for trades previously subject to the regulatory IM requirements, for consistent treatment. This consistent treatment is possible because of unambiguous text in the USPR rules which provides that once a group falls below the lower-bound threshold for IM exchange (i.e. material swaps exposure), then the obligation falls away for both new and existing trades.[15]

Similar unambiguous text is provided in the non-cleared margin rules for a number of jurisdictions, including:

(i) U.S. Commodity Futures Trading Commission ("**CFTC**");[16]

(ii) the Office of the Superintendent of Financial Institutions Canada ("**OSFI**");[17]

(iii) Quebec's Autorité des marchés financiers ("**Quebec AMF**");[18]

(iv) the HKMA;[19]

[15] *§ll.1 Authority, purpose, scope, exemptions and compliance dates. .1(g)(2) If a covered swap entity's counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to less strict margin requirements under this [part] (such as if the counterparty's status changes from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any noncleared swap or non-cleared security based swap entered into with that counterparty after the counterparty changes its status as well as for any outstanding non-cleared swap or noncleared security-based swap entered into after the applicable compliance date in paragraph (e) of this section and before the counterparty changed its status.*

[16] *§23.161 Compliance dates. …(c)(2) If a covered swap entity's counterparty changes its status such that an uncleared swap with that counterparty becomes subject to less strict margin requirement under §§ 23.150 through 23.161 (for example, if the counterparty's status changes from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any uncleared swaps entered into with that counterparty after the counterparty changes its status as well as for any outstanding uncleared swap entered into after the applicable compliance date under paragraph (a) of this section and before the counterparty changed its status.*

[17] *10. Conversely, if a counterparty's status vis-à-vis the definition of a Covered Entity changes such that it ceases to be a Covered Entity, all trades (regardless of when they were entered into) between a Covered FRFI and the counterparty are not subject to the margin requirements of this Guideline.*

[18] *2. [...] Conversely, a covered institution belonging to a financial group whose aggregate month-end average gross notional amount of outstanding covered derivatives for March, April and May of a given year falls below $12 billion ceases to be a covered institution. From that time on, the guideline will not apply to any covered derivative involving the institution, regardless of the date on which the derivative was traded, until such time as the institution has recovered its status as a covered institution.*

[19] *2.4.5. Where an AI's counterparty… (ii) ceases to be subject to margin provisions or becomes subject to lower margin provisions in any one-year period from 1 September of that year to 31 August of the following year (such that VM and/or IM provisions no longer apply), the AI may cease to comply with the margin provisions or may comply with the lower margin provisions for transactions entered into with that counterparty after the counterparty changes its status (i.e. from 1 September of that year) as well as for any outstanding transactions entered into since the beginning of the applicable phase-in period set out in paragraphs 2.4.1 and 2.4.2*

(v) the Banco do Brasil ("**BCB**").[20]

Our review concludes that the IM obligation can also be reasonably determined to fall away in this instance under the guidelines of the Hong Kong SFC, Japan's Financial Securities Agency ("**JFSA**"), FINMA, the Saudi Arabian Monetary Authority ("**SAMA**") and the joint standard of the Financial Sector Conduct Authority ("**FSCA**") and the South African Reserve Bank Prudential Authority ("**SARB**").

Similarly, while the UK previously required that a derivatives transaction remain subject to IM requirements for the life of the transaction, notwithstanding that a counterparty subsequently fell below the AANA threshold, with effect from November 27, 2025, through the PRA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2025) and the FCA Standards Instrument: The Technical Standards (European Markets Infrastructure Regulation) (Bilateral Margining) Instrument 2025), the PRA and FCA permit counterparties that fall below the AANA threshold to cease exchanging IM for both new and existing transactions, thereby aligning the UK framework with the approach adopted in the majority of other jurisdictions.[21] [22]

We believe this approach taken by most jurisdictions is consistent with the intentions of the BCBS and IOSCO Margin Requirements for non-centrally cleared derivatives,[23] which says in section 8.11 that "*Applying the initial margin requirements to existing derivatives contracts is not required*". Furthermore, allowing the IM obligation to fall away when a group does not have significant derivatives exposure aligns with the stated objective in the Executive Summary to that document that the non-cleared margin requirements are intended to promote the "Reduction of Systemic Risk".

2.2 *Request*

In order to facilitate a practicable and harmonized global approach to IM portfolio management, we would request that the FSS clarify in the FSS Margin Guidelines, that IM requirements no longer apply to existing (as well as new) derivatives transactions once one of the counterparties falls below the AANA threshold and that an IM requirement would

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[20] *Art. 18. In the event the institution or the counterparty is no longer deemed as a covered, pursuant to article 2, the margin requirements set out by this Resolution will immediately no longer be applicable to all transactions entered into by such party.*

[21] https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2025/november/ps2325app2.pdf and https://api-handbook.fca.org.uk/files/instrument/Technical%20Standards/FCA%202025/50-2025-11-27.pdf

[22] The relevant rule text provides as follows: "Article 28(1). By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins are not collected for all new OTC derivative contracts entered into within a calendar year where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year of below EUR 8 billion."

[23] https://www.bis.org/bcbs/publ/d499.pdf

instead only apply on a forward-looking basis from the compliance date associated with a subsequent AANA calculation period in which the group exceeds that AANA threshold.

For consistency, we also suggest the clarification should be applied to variation margin.

We suggest the following amendment to the FSS Margin Guidelines.

Existing	Proposed Amendment
3.1.4. (new section)	3.1.4. If the Financial Group's total amount of non-centrally cleared OTC derivatives transactions falls below the threshold for IM exchange (such that the Initial Margin requirements under 3.1.1 no longer apply), the Financial Companies affiliated to the Financial Group may cease to comply with the margin requirements under 3.1.1 for transactions entered into by the Financial Companies affiliated to the Financial Group after the Financial Group changes its status (i.e. from September 1 of that year) as well as for any outstanding transactions entered into since the beginning of the applicable phase-in period set out in 3.1.3.
3.2.5 (new section)	3.1.5. If the Financial Group's total amount of non-centrally cleared OTC derivatives transactions falls below the threshold for VM exchange (such that the Variation Margin requirements under 3.2.1 no longer apply), the Financial Companies affiliated to the Financial Group may cease to comply with the margin requirements under 3.2.1 for transactions entered into by the Financial Companies affiliated to the Financial Group after the Financial Group changes its status (i.e. from September 1 of that year) as well as for any outstanding transactions entered into since the beginning of the applicable phase-in period set out in 3.2.4.

Should you have any questions or desire further clarification on the matters discussed in this letter, please do not hesitate to contact the undersigned.

Yours faithfully,

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