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Basel Committee on Banking Supervision  
Bank for International Settlements  
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**REQUEST FOR RELIEF FROM MARGIN REQUIREMENTS FOR SWAPS IN JURISDICTIONS WITHOUT FINAL MARGIN RULES**

Ladies and Gentlemen,

The members of the International Swaps and Derivatives Association<sup>1</sup> ("**ISDA**") are in the process of implementing the margin rules for uncleared swaps. In light of this implementation, ISDA requests relief on implementation in the circumstance outlined below.

**Entities in Foreign Jurisdictions without Final Margin Rules**

**Request:**

If a Covered Entity (as defined below) in a Non-Final Jurisdiction (as defined below) enters into an OTC derivative with a covered counterparty in a Non-Final Jurisdiction, the Covered Entity should be temporarily relieved from compliance with the margin rules until the Non-Final Jurisdiction finalizes its margin rules. Our members need this relief because substituted compliance will not be available until the Non-Final Jurisdiction's margin rules are finalized.

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<sup>1</sup> Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC 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 including exchanges, clearinghouses 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 web site: [www.isda.org](http://www.isda.org).

A "**Non-Final Jurisdiction**" is a jurisdiction in which margin rules based on the BCBS-IOSCO framework<sup>2</sup> are in the process of being adopted but are not yet adopted in final form. A "**Covered Entity**" is an entity that is subject to the applicable margin rules in a jurisdiction where the margin rules have been adopted in final form (a "**Final Jurisdiction**"). A Covered Entity in a Non-Final Jurisdiction is either (i) organized in a Non-Final Jurisdiction or is (ii) a branch located in that jurisdiction, and will be subject to the applicable margin rules in that jurisdiction once such rules are in final form. The most common example of a Covered Entity in a Non-Final Jurisdiction would be a branch in a Non-Final Jurisdiction of a bank organized under the laws of a Final Jurisdiction (e.g., an Australian branch of a US bank, assuming Australia is a Non-Final Jurisdiction).

### **Discussion:**

We assume for purposes of this letter that the swap between the Covered Entity and the counterparty in the Non-Final Jurisdiction would be subject to margin requirements in that jurisdiction in the absence of relief.

The Final Jurisdictions (excluding the US CFTC but including the US Prudential Regulators,<sup>3</sup> the EU, Japan, Canada and Switzerland) have adopted the concept of "equivalence" or "substituted compliance" ("**Substituted Compliance**"), whereby a foreign entity will be in compliance with the laws of the Final Jurisdiction if the foreign entity complies with the applicable margin rules in its jurisdiction. Substituted Compliance will not be available to a Covered Entity in a Non-Final Jurisdiction because the Non-Final Jurisdiction's rules are not in final form and the Substituted Compliance tests require final rules.

Because the Non-Final Jurisdiction's rules follow the BCBS-IOSCO framework, they may well satisfy the Non-Final Jurisdiction's requirements for Substituted Compliance in the future. In such situations, a Covered Entity in the Non-Final Jurisdiction should be temporarily relieved of its obligation to comply with the margin rules until it is possible for the relevant regulators to make an informed Substituted Compliance determination.

Such relief will not result in a meaningful increase in systemic risk because the Final Jurisdictions have already adopted final margin rules and other jurisdictions are expected to do so before margin rules take effect under the BCBS-IOSCO framework. Further, we are only requesting relief for Covered Entities in Non-Final Jurisdictions. The relief will therefore only apply to a relatively small percentage of swaps entered into by Covered Entities subject to margin regulation.

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<sup>2</sup> The margin framework for non-centrally cleared derivatives issued by the Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**") in March 2015.

<sup>3</sup> The United States Commodity Futures Trading Commission (the "**CFTC**") has not yet adopted final rules addressing cross-border transactions.

Finally, in the absence of such relief, a Covered Entity in a Non-Final Jurisdiction will find itself at a significant competitive disadvantage to local firms in that jurisdiction. Customers of the Covered Entity in the Non-Final Jurisdiction will not be prepared to comply with margin rules immediately, as they anticipate and are preparing for compliance based on a later timeline. The result will be that the Covered Entity will have significant difficulty in competing with local firms.

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Thank you for your consideration, and please contact me if you have any questions.

Sincerely,



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