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12 February 2019

Dear Mr. Planta,

Dear Mr. Pearson,

ISDA comments on the proposed technical standards on Brexit-related novations

The International Swaps and Derivatives Association (ISDA) welcomes the ESMA Final Report on EMIR RTS on the novation of contracts for which the clearing obligation has not yet taken effect and the ESAs Final Report on EMIR RTS on the novation of bilateral contracts not subject to bilateral margins.

However, we would like to take this opportunity to raise some comments from members regarding the fact that the relief is only available upon a no-deal Brexit.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 69 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.

Contingency of the relief on the event of a no-deal Brexit

We note that the proposed RTS state that they will not apply if any of the following conditions is fulfilled:

- a) A withdrawal agreement concluded with the UK in accordance with Article 50(2) of the Treaty on European Union has entered into force by the date on which Union law ceases to apply to the UK;
- b) A decision has been taken to extend the two-year period referred to in Article 50(3) of the Treaty on European Union.

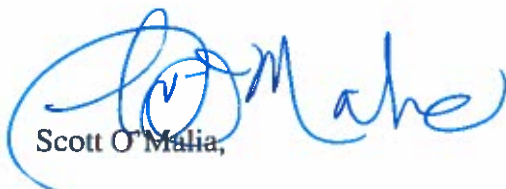
We understand that this condition was included on the assumption that if a withdrawal agreement was concluded or the two-year period was extended, firms may not need to novate outstanding OTC derivative contracts from a UK to an EU counterparty. However, firms may still need to novate longer-dated contracts in these circumstances (particularly if there is an extension to the two-year period but no assurance of a withdrawal agreement or long-term agreement at the end of that period).

The condition also means that EU counterparties will need to wait before novating contracts until they have certainty regarding the existence of any withdrawal agreement or decision to extend the two-year period. It is not operationally possible for firms to enter into agreements to novate contracts subject to this condition, and if they agree to novate contracts now but then a withdrawal agreement is concluded or the two-year period is extended they will not be able to benefit from the proposed relief.

As a result, we are concerned that, instead of giving EU counterparties the comfort that they can agree to novate their contracts without running the risk that they will trigger margin or clearing obligations that do not currently apply, the RTS will in fact require EU counterparties to wait until closer to exit day before carrying out any novations.

We would welcome the opportunity to discuss this issue with you and are also very happy to answer any questions you may have in the meantime.

Yours sincerely,



Scott O'Malia,

CEO,

ISDA