22 December 2022

Richard Knox
Financial Services (International)
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Vicky Saporta
Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

Helen Boyd
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Sasha Mills
Bank of England
Threadneedle Street
London
EC2R 8AH

Dear Mr Knox,
Dear Ms Saporta,
Dear Ms Mills,
Dear Ms Boyd,

As part of the UK Government's ongoing call for reform of financial services and its rulebooks, the International Swaps and Derivatives Association (ISDA) would like to recommend:

1. Reform of the UK EMIR intragroup exemptions and
2. Making permanent the UK EMIR temporary exemption for certain equity options from exchanging initial and variation margin.

We have attached a paper explaining our recommendations for reform of the UK EMIR intragroup exemptions. This is an overly complicated regime inherited from the EU which the UK could usefully reform. Our key proposal is that there should be permanent intragroup exemptions from margin and clearing requirements for OTC derivative contracts between UK and non-UK group companies, that do not depend on the making of equivalence determinations in respect of non-UK countries. This would be in line with how the EU is proposing to amend the EMIR intragroup regime (see EMIR 3 legislative proposal). Our paper presents a set of reforms in this area which would give the industry clarity over the topic and would remove a cliff-edge for some firms at the end of 2023.

Secondly, under UK EMIR, the temporary exemption for single-stock equity and index options from exchanging initial and variation margin will expire on 4 January 2024. This temporary derogation was introduced to avoid market fragmentation and to ensure a level playing field for UK counterparties on a global level, because in some major jurisdictions (e.g., the US) single-stock options and equity index options are not subject to equivalent margin requirements. The situation has not materially changed and many jurisdictions either have not implemented margin requirements for single-stock equity options or index options or have introduced temporary derogations for these contracts. As the situation will not change materially in the future, we urge the UK authorities to permanently exempt single-stock options and equity index options from margin requirements. In general, a move by the UK to lessen the amount of expiry dates and make permanent certain temporary exemptions would be welcomed by industry, who favour certainty in these matters. In this specific case, early communication of either making permanent or extending this exemption would be welcomed by firms who otherwise face an uncertain implementation period. If the UK is not minded to extend the derogation permanently, a clear message to firms on expectations early next year would be helpful.

Following publication of HMG's UK 'Edinburgh Reforms' on 9 December, we note that EMIR is not included in Tranche 1 or Tranche 2 regulations that HM Treasury 'expects to make significant progress on by the end of 2023' (see "Building a smarter financial services framework for the UK"). The document does, however, signal intent for dealing with other necessary changes that need to be made while the priority items are fully addressed, including extending "vital transitional regimes". ISDA and its members would strongly advise that the two issues covered in this letter are 'necessary changes'. Implementation required to prepare for the expiry of these two exemptions at 31 December 2023 and 4 January 2024, respectively, could be significant and firms may need to start work on this sooner if no clear signal is given about the intentions of the UK authorities – particularly for intragroup clearing requirements.

We thank you for taking the time to consider our views on these issues. We look forward to discussing them with you at your convenience.

Yours sincerely,

Scott O'Malia
CEO
International Swaps and Derivatives Association