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ISDA and US Chamber Center for Capital Markets Competitiveness Publish CFTC-SEC Safe Harbor Recommendation

NEW YORK, September 20, 2018 – The International Swaps and Derivatives Association, Inc. (ISDA) and the US Chamber Center for Capital Markets Competitiveness (CCMC) have published a new paper that recommends the introduction of a safe harbor mechanism that would avoid the need for firms to comply with two sets of similar but not identical US rules – one from the Commodity Futures Trading Commission (CFTC) and one from the Securities and Exchange Commission (SEC).

The proposed safe harbor would allow firms to rely on their compliance with one commission’s rules to satisfy comparable requirements set by the other commission. This would prevent entities that are subject to both sets of rules from having to run duplicative compliance systems for swaps and security based swaps – a situation that would result in high costs and unnecessary compliance burdens, and could impact liquidity. The two commissions would retain their oversight authority for their markets, and the relevant Congressional committees would maintain their oversight roles for the swaps and security based swaps markets.

The SEC has yet to implement many of its rules, but there are a number of technical disparities between its proposed requirements and those of the CFTC – for example, the time allowed for reporting under swap data reporting rules. Even minor differences can require firms to build separate compliance systems, resulting in complexity and incremental costs.

“Firms have already spent millions of dollars developing systems and processes to comply with CFTC requirements for swaps. Rather than have those firms repeat that work to comply with similar but not identical rules from the SEC for security based swaps, we believe there is a better way to comply with the regulations. Our proposed safe harbor mechanism would reduce the compliance burden, while ensuring the CFTC and SEC continue to have oversight authority over their respective markets,” said Scott O’Malia, ISDA Chief Executive.

“With this paper, we are proposing common-sense reforms for efficient capital markets,” said Tom Quaadman, executive vice-president of CCMC. “We’ve been a long-time advocate for regulatory harmonization, especially for financial instruments that are largely the same, such as swaps and security based swaps. A safe harbor mechanism would prevent inconsistencies in regulation and ensure the markets continue to operate efficiently, to the benefit of all market participants – from swap dealers to the end users that use these instruments to hedge their risks.”

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As part of the proposal, ISDA and CCMC recommend that the two commissions use their respective exemptive authorities to establish the safe harbor. This relief would be in the public interest because of the disparities between the rules, the fragmentation this has caused, and the uncertainty over when the SEC will fully implement its security based swaps rules, the paper argues.

Relief is also consistent with the Dodd-Frank Act, which called on the CFTC and SEC to ensure regulatory comparability to the extent possible, and the intent of the current US Administration, which has expressed support for the commissions to harmonize their respective regulations.

According to the paper, a safe harbor mechanism would help ensure full regulatory coverage of the entire swaps market, without requiring firms to meet inconsistent or duplicative requirements.

The full [paper is available on the ISDA website](#).

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About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 900 member institutions from 68 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. Follow us on Twitter @ISDA.

About the US Chamber's Center for Capital Markets Competitiveness

The Center for Capital Markets Competitiveness's (CCMC) mission is to advance America's global leadership in capital formation by supporting diverse capital markets that are the most fair, transparent, efficient, and innovative in the world. CCMC advocates on behalf of American businesses to ensure that legislation and regulation strengthen our capital markets allowing businesses – from the local flower shop to a multinational manufacturer – to mitigate risks, manage liquidity, access credit, and raise capital.

The US Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.