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**Response from the International Swaps and Derivatives Association Inc. (“ISDA”) to the DG Energy Consultation on the ‘Implementation of a Data and Transaction Reporting Framework for Wholesale Energy Markets’.**

On behalf of its members, the International Swaps and Derivatives Association (ISDA) takes the opportunity to comment on the DG Energy consultation paper on the Implementation of a Data and Transaction Reporting Framework for Wholesale Energy Markets.

ISDA has supported the Regulation on Energy Market Integrity and Transparency (REMIT) as it should result in a more level playing field between commodity market participants, will prohibit market abuse and thus enhance market integrity.

ISDA members broadly welcome steps towards increased convergence between financial and non financial regulation on the prevention of market abuse and particularly the misuse of inside information. An appropriate data and transaction reporting framework is a key element for the success of this regulation as well as coordination with reporting that is or will be applied under financial pieces of legislation – EMIR, MIFID/ MIFIR, MAR/MAD .

Please find in the attached appendix our responses to selected questions from the consultation. We would also like to draw DG Energy’s attention to some specific comments that ISDA and its members consider to be of particular importance:

1. ISDA fully agrees with the intention to coordinate with other areas of financial regulation and we would stress the importance of working closely with ESMA to ensure that the implementation of EMIR and any framework required by REMIT is delivered in a consistent manner. The requirement to ensure that reporting under EMIR fulfils the reporting requirements under REMIT is essential to ensure unnecessary burdens on market participants as you note in your consultation. In this regard ISDA would be interested in contributing to the discussion and to provide views on how such consistency should be ensured
2. In a further effort to reduce the burden on market participants, ISDA would also like to note that it has been very active working with its members over the last couple of years to assist the industry with designing and implementing reporting frameworks to comply with various areas of financial regulation across multiple jurisdictions. Given this work we would encourage DG

Energy to avoid creating additional requirements related to the process of reporting. We recognise that there may not be a single solution that is optimal for all market participants and suggest that flexibility be retained provided the end output satisfies the requirements of legislation. Many firms who will be required to report under EMIR and REMIT have built or are in the process of building functionality that allows them to comply with legislation in other jurisdictions and we would encourage DG Energy to recognise reporting mechanisms that leverage this work.

3. Finally, as noted above ISDA would encourage the European Commission to leverage the reporting mechanisms the industry has developed to comply with other forms of financial regulation reporting. Data Repositories have been, or are currently being developed and we would recommend that the European Commission engage with these organisations and industry to determine a suitable way to access the information contained therein.

In order to help effect the above and other considerations noted in our selected responses attached, ISDA is keen to continue to engage in a constructive dialogue with the DG Energy in order to leverage the considerable amount of work that has been undertaken by ISDA and its members.

## **About ISDA**

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA is one of the world's largest global financial trade associations, with over 840 member institutions from 59 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses 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).

## **Appendix of ISDA's responses to selected questions**

### **Question 1.**

**What, if any, verification of their capacity to effectively interact with ACER for the purposes of data transfer should be required of**

**a. market participants reporting transactions or,**

ISDA supports a multi-channel approach to reporting data to ACER, as specifically foreseen by REMIT, and therefore considers market participants should have full discretion to either report themselves or designate third parties to report on their behalf.

**b. of third parties who report transactions on behalf of market participants?**

ISDA believes that Wholesale Energy Market participants or the entities acting on their behalf to provide the data reporting, should be registered persons falling under a regulatory body which has a responsibility to enforce REMIT legislation. Registration under the regulator should require them to report to ACER on the market activity which is captured under REMIT.

Third parties should also be registered persons as in a. above. Governance should be established to ensure that third parties have the capacity to manage the reporting on behalf of market participants in terms of systems, audit trail, finances and control and oversight.

Further work is necessary to define the certification requirements for RRM established by market participants and third party RRM. It is therefore crucial that ACER and the EU Commission accelerate the process for defining the RRM certification framework and requirements.

### **Question 2.**

**What, if any, additional steps do you consider the Commission should take to ensure an effective interaction between transaction reporting under financial regulation and under REMIT?**

ISDA welcomes the fact that ESMA and ACER have worked and will continue to work closely to ensure that the standards adopted under EMIR satisfy the reporting requirements under REMIT. We believe that the Commission should continue to target consistent reporting requirements under different areas of financial regulation and furthermore strongly encourage authorities responsible for implementing rules to fully and openly engage with ISDA, its members and other organisation that represent market participants. Particular attention should be given to an appropriate alignment of the trade data fields and reporting formats required under EMIR and REMIT. There should be either a full convergence/reciprocity of reporting formats or the REMIT data fields should form a subset of the EMIR data fields in so far as a market participant should be able to submit all required information only once to a trade repository.

We would also strongly recommend that market participants should be allowed to choose to which approved data repository they supply the required data, regulators should then draw data from all approved repositories across all pieces of legislation and aggregate accordingly.

**Question 3.**

**Do you agree that it is not appropriate to include a *de minimis* threshold for reporting standard transactions carried out using organised market places, brokers or trade matching facilities or which are cleared?**

ISDA advocates against any *de minimis* threshold for the purposes of reporting standard transactions. ISDA agrees that thresholds would be too complex to define, might induce transaction fragmentation and not provide regulators with oversight of the whole market of transactions.

**Question 4.**

**Do you agree that the definition of "standard commodity transactions" and the creation of a white list for fully reportable transactions, as set out in the consultant's report, represents a suitable approach?**

ISDA believes that creating a white list of products would be a good idea, however, as noted in the consultation and elsewhere in this response it is important to ensure consistency of approach with other areas of financial regulation and therefore this should be done in conjunction with and be consistent with the determination of which products need to be mandatorily cleared under EMIR.

**Question 5.**

**In relation to transactions not covered by the "white list";**

- a. Do you agree that these transactions should be subject to reduced "short form" reporting requirements?**

ISDA supports the proposal to introduce a 'short form' reporting requirement for non-standard transactions, provided there is a clear definition of this 'short form' reporting requirement. ISDA believes that this "short form reporting" should be developed in close coordination with stakeholders in order to define a format that allows companies to report, on a simplified and automated basis, some basic information on non-standardised transactions. This process must avoid as much as possible manual processes that would (i) increase the risk of reporting mistakes and operational risk (thereby undermining the robustness of the data received by NRAs) and (ii) create undue burden on market participants.

- b. Should these transactions be reported at a defined interval or only upon request of ACER?**

ISDA recommends collating the data reported in the 'short form' for non-standard transactions at a defined interval, and sees one month following the execution as an appropriate period. Consideration should be given to a phased reporting implementation for non-standard transactions, recognising that significant work remains to be done to establish an appropriate reporting framework.

- c. Should the frequency of "short form" reporting be related to the size of the market participant or the overall frequency or volume of trading in which it is engaged?**

See a. and b. above.

### **Question 6.**

**Do you agree that the definition of wholesale energy products extends to contracts relating to LNG and storage, including landing and storage capacity?**

ISDA is of the opinion that the provisions of REMIT, such as the definition of inside information in Art. 2 (1) and the exemption in Art. 3 (4) (b), speak in favor of including contracts relating to LNG and storage as wholesale energy products. Also economically these contracts are very much relevant for the price formation process on the EU natural gas markets.

It follows from the above that in order for ACER to fulfill its market monitoring role it would need to capture details of the contracts/transactions for the marketing of the capacity of those facilities in order to detect whether those transactions were in any way manipulative in terms of affecting the supply of natural gas into the wholesale energy market. Clearly transparency of available capacity at the LNG facility is key to an efficient market functioning and is already adequately ensured today across Europe.

However, LNG is a different product to natural gas and electricity in so much as it requires both regasification and often blending before it meets the required specification to enter any particular wholesale energy market be that in Europe, Asia or elsewhere. From a supply chain perspective, there are LNG related contracts that are not relevant to any particular wholesale energy market, as they are relevant to the global market for LNG where commercial decisions about LNG cargo movements are typically made in response to global supply and demand price signals. For example, a diversion of one cargo away from the EU territory to Asia simply frees the capacity at the terminal it was due to arrive which makes it freely available for other cargos if commercially attractive to do so. ISDA would therefore question if such LNG cargo movements and related contracts, such as landing agreements, are in scope of REMIT.

In conclusion, to simply include all kind of LNG related contracts as a wholesale energy product is too broad and will create greater uncertainty as to the boundaries of REMIT. ISDA believes that in order to allow ACER to fulfill its market monitoring role, it will need the contractual/transaction information about the marketing of capacity of LNG facilities. This would be consistent with what is already included in the definition of inside information around the “capacity and use of LNG facilities”, and is aligned with the REMIT perimeter in relation to monitoring of wholesale energy markets as opposed to upstream markets.

### **Question 8.**

**Do you agree that where one of the parties to a transaction organises the market place, that party should have sole responsibility for reporting the transaction?**

As mentioned above ISDA supports a multi-channel reporting approach where a market participant can freely choose whether to execute the reporting himself or delegate this to a service provider which includes the organiser of a market place. In case of delegation to a market organising party, there must be a clear agreement whereby the reporting duties and associated liability are fully transferred from one party of the transaction to the other. In order to guarantee an adequate delegation, it is of utmost importance that market organising party uses the compatible reporting process, data content and technical communication standards.

**Question 9.**

**Do you agree that where neither party to a transaction organises the market place, that both parties should separately remain responsible for reporting the transaction?**

As explained above, ISDA continues to support a multi-channel reporting approach, where both counterparties to a transaction bear reporting obligation and where each of those market participants can independently and freely choose whether to execute the reporting on its own behalf or delegate this to a service provider. Requiring that only one counterparty reports a unique trade will create significant legal (given the obligations on individual firms in REMIT) and logistical issues for the industry. ACER can readily access trade matching software to match transactions reported by both counterparties.

**Question 10.**

**Do you agree that daily reporting of standard transactions is the most appropriate frequency to allow ACER to effectively monitor wholesale energy markets?**

Yes, daily reporting is the most appropriate frequency, however, to allow for firms to run their overnight batch processes and remove the need to provision for adjusting end of day processes depending on which time zone a firm operates in we would suggest that information is made available to the regulators on Trade Date +2.

**Question 11.**

**Do you consider it would be possible for market participants to report their transactions on a daily basis?**

Please see response to question 10 above.

**Question 12.**

**Do you agree that reporting of orders to trade (bids) should not be collected by ACER from market participants, other than organised market places, at least initially?**

Yes, organized market places are often underpinned by electronic screens for the display of bid/offer spreads and an audit trail can easily be constructed. The collecting of bid or offer numbers out side of this will be extremely difficult, time consuming and costly, especially in the voice brokered markets.

**Question 13.**

**For which stages in the lifecycle do you consider that it is necessary to collect transaction data?**

ISDA believes that collection, including timing and frequency, of transaction data should be consistent with that required under EMIR.

For example the following lifecycle events should be covered in the data collation process:

- Cancellations;
- Novations;

- Terminations before maturity;
- Confirmations (only for those transactions which were not yet confirmed at the D+1/D+2 reporting date).

**Question 14.**

**Do you agree that it is appropriate to develop a specific standard product taxonomy for reporting transaction data to ACER?**

No, ACER should leverage work already being undertaken by the industry to develop UPI conventions in response to requirements under the Dodd-Frank Act and EMIR. This is an area where global standardisation is extremely important, development of a specific naming convention to satisfy REMIT implementation would be highly inefficient and costly.

**Question 15.**

**Do you consider the items reportable under the draft electricity transparency rules envisaged by the Commission's consultation mentioned above sufficient for monitoring with regard to electricity fundamental data and which reporting channel(s) would you consider appropriate?**

YES. This information should be collected from existing sources where possible, such as Transmission System Operators, and reported through centralised existing or future platforms, such as ENTSO-E, to avoid additional unnecessary information channels and duplication of firms' compliance efforts.

**Question 16.**

**What gaps do you consider to exist in relation to fundamental data related to gas, and can this be accessed without the creation of a framework for gas equivalent to that envisaged for electricity and which reporting channel(s) would you consider appropriate?**

The existing gas transparency guidelines under the 3rd Energy Package (EU Regulation 715/2009) should be updated to bring these up to a comparable level of fundamental data transparency as envisaged by the new guidelines for the power sector. There are some areas that warrant further consideration, in particular, notification of unplanned facilities outages that should be consistently applied across all Member States.