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**ISDA response to the ACER's guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services**

On behalf of its members, the International Swaps and Derivatives Association (ISDA) takes the opportunity to comment on the ACER consultation document on the ACER guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services.

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.

We strongly believe that that Wholesale Energy Market participants, when they have to report, or the entities acting on their behalf to provide the data reporting, should be registered persons falling under a National Energy Regulator who 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 noted 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. In this respect, we welcome ACER's guidelines aiming to define the certification requirements for RRM established by market participants and third party RRM.

We however are concerned that the ACER's guidelines are inconsistent with registration obligation under EMIR and would raise legal as well as technical issues. ISDA therefore wants to highlights the following points.

- On territorial scope, ACER states that in order to register, a person must have "legal status" in an EU / EEA country. ISDA members think this statement is not clear enough and should be clarified: precisely, if ACER means that an RIS / RRM may only register with ACER if it is

incorporated in the EU, this would prevent firms from reporting to non-EU Trade repositories registered under EMIR and fulfilling their reporting obligation that way. This would be highly problematic.

- On the scope of definition of “RIS” and “RRM”, ISDA notes that persons providing reporting services on behalf of market participants would be required to register as an RRM to do so whereas they can report on behalf of their counterparty under EMIR.
- On penalties, appeals process and timing for consideration of an application for registration, ACER’s guidelines would introduce a prohibition on persons reporting required information to ACER on behalf of a market participant unless they are registered. However, the guidelines contain none of the normal protections required in any prohibition/ authorisation regime. For example, there is no statement of how long ACER has to consider an application. There is no mechanism for appeal if ACER refuses an application. There is no indication of what penalties would be imposed if a person provides reporting services without being registered. Such clarifications are needed.
- There should be different requirements for RRM’s reporting on their own behalf compared to those reporting for 3rd parties. If reporting for its own behalf, the RRM should have reduced requirements around data such as the confidentiality provisions and also the corresponding Annual report requirements.
- ACER should ensure consistency with MiFID with regard to record keeping. We do not see why the RRM has to retain records for 7 years versus the 5 year requirement in MiFID.
- We also call for clarity with regard to the responsibility of the counterparties. In particular, should a counterparty check if the other counterparty is registered and what if it is not?

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