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July 30, 2021

Department of Finance Canada

c/o

*The Honourable Chrystia
Freeland, Deputy Prime Minister
and Minister of Finance
Department of Finance Canada
90 Elgin Street
Ottawa, Ontario K1A 0G5*

House of Commons
Parliament Buildings
Ottawa, Ontario K1A 0A6
chrystia.freeland@fin.gc.ca

Dear Sirs/Mesdames:

**Re: Bill C-30 (the *Budget Implementation Act*) – Proposed Amendments to the
*Canada Deposit Insurance Corporation Act***

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ has been actively engaged for many years with providing input on regulatory reforms impacting derivatives in major jurisdictions globally, including Canada. ISDA appreciates the opportunity to provide comments to the Department of Finance Canada (the “**Department**”) with respect to proposed amendments (the “**Proposed Amendments**”) to the *Canada Deposit Insurance Corporation Act* (the “**Act**”) contained within Bill C-30 (the *Budget Implementation Act*) (the “**Bill**”).

The importance of the derivatives market in Canada continues to grow, as derivatives play an increasingly important role in the global and Canadian economies.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 member institutions from 76 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](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

ISDA therefore is pleased to provide feedback regarding the Proposed Amendments on behalf of its members. Please see below for comments on the Proposed Amendments, specifically regarding the ability to terminate and net eligible financial contracts (“EFCs”) on a resolution event.

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The Proposed Amendments are contained in Clause 126(4) of the Bill, which provides:

Section 39.15 of the Act is amended by adding the following after subsection (7.3):

Application of this section

(7.4) A federal member institution that is part of a class prescribed by the by-laws must ensure in accordance with the by-laws that this section — or provisions that have substantially the same effect as this section — applies to any eligible financial contract to which the institution is a party and that is part of a class prescribed by the by-laws.

By-laws

(7.5) The Board may make by-laws respecting the manner in which a federal member institution referred to in subsection (7.4) is to ensure that this section — or provisions that have substantially the same effect as this section — applies to an eligible financial contract referred to in that subsection.

Different treatment

(7.6) The by-laws made under subsection (7.5) may distinguish among classes of federal member institutions and classes of eligible financial contracts.

The effects of the Proposed Amendments are not entirely clear. As currently drafted, the Act explicitly states that the general stay of proceedings that occurs when a resolution order is made under subsection 39.13(1) does not prevent the termination and netting of EFCs.²

It is our understanding that these new provisions are not intended to change the general rule described above that allows termination and netting of EFCs on the making of a resolution order.³ However, this is not clear on the face of the provisions. Thus, we would

² See *Canada Deposit Insurance Corporation Act*, RSC 1985, c C-3, s. 39.15(7). However, note that in certain circumstances this termination and netting will be delayed for a period of two business days: s 39.15(7)-(7.102).

³ Again, subject to the two business day stay referenced in footnote 2.

recommend clarifying amendments to the Bill or language included in the by-laws making it clear that termination and netting is still permissible in respect of EFCs. For example, this could be accomplished by adding an additional provision to the Act, stating as follows:

(7.7) Nothing in the by-laws made under subsection (7.5) prevent actions from being taken in accordance with the provisions of an eligible financial contract as permitted under subsection (7)

Adding this clarity is crucial because close-out netting is extremely important in the context of derivatives. Global market players rely on their ability to terminate and net derivative transactions as an efficient way to mitigate their risks on the insolvency of a counterparty. ISDA itself has published netting opinions covering 75 jurisdictions worldwide which provide comfort to global market players that they will be able to net if they transact with parties located in those jurisdictions.

Therefore, any uncertainty regarding the ability to terminate and net against Canadian financial institutions could cause market participants to avoid transacting with Canadian counterparties. Given these market realities, such uncertainty could restrict the ability of Canadian financial institutions to access liquidity in the derivatives markets and transact in derivatives markets outside of Canada which provide more than 90% of the Canadian derivatives market's liquidity.

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ISDA and its members would like to reiterate our appreciation to the Department for the opportunity to provide feedback on the Proposed Amendments. We are happy to discuss our comments and to provide any additional information that may be helpful.

Thank you for your consideration of these important issues to market participants. Please contact the undersigned if you have any questions or concerns.

Yours very truly,



Name: Katherine Darras

Title: General Counsel