

21 November 2013

Contingency Planning Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Sent by email: non-bank.resolution@hmtreasury.gsi.gov.uk

Re: HM Treasury Open consultation on Secondary legislation for Non-Bank resolution regimes

Ladies and Gentlemen:

This letter contains the response of the International Swaps and Derivatives Association, Inc. (**ISDA**)¹ to the HM Treasury Open consultation on Secondary legislation for Non-Bank resolution regimes published 26 September 2013 (the **Consultation**). For the purposes of this response we focus our comments primarily on the aspects of the Consultation that concern investment firms and banking group companies.

We have submitted a separate response that contains comments on aspects of the Consultation that concern central counterparties (**CCPs**).

We appreciate the opportunity to share these comments and would be pleased to engage further with HM Treasury on this regulatory initiative. If you require further information, please do not hesitate to contact the undersigned.

Yours sincerely,



George Handjinicolaou, Ph.D

Deputy CEO and Head of ISDA
Europe, Middle East and Africa

¹ Information regarding ISDA is set out in Annex 1 to this response.

Response to individual questions in relation to investment firms and banking group companies*Order to exclude certain investment firms*

We confirm our support for the proposal to narrow the scope of the Special Resolution Regime (**SRR**) powers and the Bank Administration Procedure (**BAP**) to those investment firms that are required to hold initial capital of EUR 730,000 (**EUR 730 k investment firms**) as specified in Directive 2006/49/EC (the **Capital Adequacy Directive**). We agree with the content of the draft Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2013 that excludes non-EUR 730k investment firms from the scope of the SRR and the BAP. However, we query whether a reference to Article 28(2) of Directive 2013/36/EU (the **Capital Requirements Directive**), which also refers to investment firms having initial capital of EUR 730,000, might be more appropriate as the Capital Requirements Directive will supersede and replace the Capital Adequacy Directive.

Banking group companies order

We confirm our support for the proposed specification of firms to be considered banking group companies in the draft Banking Act 2009 (Banking Group Companies) Order 2013, subject to one concern. We consider that the allowance for regulatory discretion in the definition of a “banking group company” (see Article 3(5)) creates legal uncertainty, is therefore unhelpful, and is not helpful or necessary. In considering the application of the Banking Act, interested stakeholders for the purposes of any credit risk analysis, and the banking group itself for the purposes of resolution planning, will be required to apply the widest possible interpretation of “banking group company” even if the likelihood that a particular company would be considered by the Bank of England to be within scope is remote.

Note that for the purposes of this response we do not comment on the application of the “banking group companies” concept to CCP groups.

Partial property transfer safeguards in respect of investment firms and banking group companies

We confirm our support for the extension of existing safeguards applicable in relation to partial property transfers under section 47 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (SI 2009/332) to apply in the case of resolution actions taken in respect of investment firms and banking group companies. We note that the extension of the safeguards regime to investment firms and banking group companies under the 2009 Order and the draft Banking Act 2009 (Banking Group Companies) Order 2013 is vital for the continued effectiveness of close-out netting arrangements with UK banks and building societies.

“No creditor worse off”

We confirm our support for the proposal to apply the “no creditor worse off” provisions to partial property transfers made in respect of investment firms and banking group companies in the draft Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) (Amendment) Regulations 2013.

International Swaps and Derivatives Association (ISDA)

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 60 countries. These members include a broad range of OTC 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 including exchanges, clearinghouses 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 web site: www.isda.org.