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13 December 2018

Dear Mr. Pearson,

Dear Mr. Planta,

Dear Mrs. Vaillant,

Dear Dr. Zweimüller,

EMIR: Time-limited derogations under the Margin Regulatory Technical Standards (Margin RTS) for intragroup transactions and equity options and indexes

The Margin RTS[1] provide for time-limited derogations until 3 years after entry into force of the Margin RTS in relation to intragroup transactions and in relation to transactions in single-stock equity options or index options. These derogations are currently set to expire on 4 January 2020.

[1] Commission Delegated Regulation (EU) 2016/2251

The International Swaps and Derivatives Association (**ISDA**) is concerned that, unless the derogations are extended, the transactions which currently benefit from the derogations will become subject to the margin rules even though the reasons for exempting them remain valid and have not yet been addressed.

We strongly welcomed the Final Report of the European Securities and Markets Authority (**ESMA**) dated 27 September 2018, which proposed an extension until 21 December 2020 of the equivalent derogation under the clearing RTS, and we also welcomed ESMA's public statement of 31 October 2018[2] stating that, if the RTS extending the derogation do not come into force in time, it expects competent authorities to not prioritise their supervisory actions towards group entities that benefit from the derogation for intragroup transactions meeting certain conditions on and after 21 December 2018.

We ask that the Commission and the European Supervisory Authorities take a similar approach to the derogations under the margin RTS.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 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.

Time-limited derogation for intragroup transactions

Article 36 of the Margin RTS provides that where an EU counterparty and a third country counterparty to a non-centrally cleared OTC derivative contract meet the conditions for an intragroup transaction, and where no equivalence decision has been adopted in respect of the relevant third country, the margin requirement shall apply 3 years after the date of entry into force of the Margin RTS. The Margin RTS entered into force on 4 January 2017, so this derogation is currently set to expire on 4 January 2020.

The purpose of the derogation was to give the European Commission time to adopt equivalence decisions in relation to any relevant third countries. However, while an equivalence decision has been adopted in relation to the US CFTC margin rules (in October 2017), no other equivalence decisions have yet been adopted. This is in part because many jurisdictions have only recently adopted or completed implementation of their own margin rules. However, until equivalence decisions have been adopted for at least the other G20 jurisdictions, the justification for having a derogation for intragroup transactions will continue to exist. If the derogation is not extended, the impact on the ability of European derivative market participants to operate on a cross-border basis would be severe.

In order to address the risk of market fragmentation and instability resulting from termination of the derogation in the absence of equivalence decisions, we would welcome confirmation that the ESAs and the Commission intend to adopt regulatory technical standards similar to those proposed in relation to the clearing obligation[3], extending the derogation by a further two years.

While there is still over a year to go before the derogation is set to expire, we understand that there is actually limited time available in the EU legislative timetable, in light of elections next year and the number of other measures set to be finalised and adopted in the next year. As a result, we would

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[2] ESMA70-151-1773.

[3] https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-report-amending-rts-clearing-obligation-intragroup

welcome confirmation from the ESAs and the Commission that they intend to take prompt action to extend the derogation.

Time-limited derogation for equity options and indices

Article 38 of the Margin RTS also provides for a derogation from the margin obligation in respect of all non-centrally cleared OTC derivatives which are single-stock equity options or index options.

This derogation was necessary in order to avoid market fragmentation and to ensure a level playing field for EU counterparties on a global level, because of the fact that in some jurisdictions single-stock options and equity index options are not subject to equivalent margin requirements. The derogation was intended to allow time for monitoring of regulatory developments in other jurisdictions.

Given that the Dodd-Frank Act excludes equity options from the "swap" definition, equity option transactions are not covered under the margin rules that have been finalized or proposed by United States regulators in recent years. Furthermore, SEC rules applying margin rules to security-based swaps including relevant equity indices have not yet been adopted. As a result, we consider that the reason for this derogation continues to exist and that it would be appropriate to extend the phase-in period.

We would welcome confirmation from the ESAs and the Commission that, when considering technical standards extending the derogation in relation to intragroup transactions, they will also consider using these technical standards to extend the derogation in relation to equity options and indices.

We thank you for your consideration of this letter, and would be happy to discuss this issue at your convenience.

Yours sincerely,

Scott O’Malia

CEO

ISDA