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25 November 2019

Dear Mr. Planta,

Dear Mr. Pearson,

ISDA requests extension of relief on Brexit-related novations

The International Swaps and Derivatives Association (**ISDA**) thanks the Commission and the European Supervisory Authorities for enacting Commission Delegated Regulation (EU) 2019/564¹ and Commission Delegated Regulation (EU) 2019/565² (together, the **Novation RTS**), which were designed to enable UK counterparties to novate derivatives contracts to EU counterparties during a 12-month period following the UK's departure from the EU without that novation triggering clearing or margin requirements for those contracts under the European Market Infrastructure Regulation (EMIR). We are very grateful for the Commission's and the ESAs' work on this and their prompt action to replace the predecessor Commission Delegated Regulations (EU) 2019/396 and 2019/397 after the European Council agreed to an extension of the two-year period referred to in Article 50(3) of the Treaty on European Union, as a result of which those earlier Regulations would not apply.

However, the Novation RTS do not apply if either a withdrawal agreement has entered into force by the date on which Union law ceases to apply in the UK or a decision has been taken to extend the two year period referred to in Article 50(3) of the Treaty on European Union beyond 31 December 2019.

As a decision has in fact been taken to extend the two year period referred to in Article 50(3) of the Treaty on European Union to 31 January 2020, we respectfully request the Commission and the ESAs to amend the Novation RTS to extend the date referred to in point (b) of Article 2 of Commission Delegated Regulation (EU) 2019/564 and of Article 4 of Commission Delegated Regulation (EU) 2019/565 from 31 December 2019 to a later date (or, if it is thought

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.099.01.0003.01.ENG&toc=OJ:L:2019:099:TOC

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0565&from=EN>

more appropriate, to replace the Novation RTS with new Commission Delegated Regulations on the same terms but specifying that later date instead of 31 December 2019).

This would ensure that the Novation RTS achieve their intended objective if the UK withdraws from the EU on 31 January 2020 without concluding a withdrawal agreement. Many EU counterparties to derivatives contracts with UK counterparties have been unwilling to agree to the novation of those contracts where the novation would trigger clearing or margin requirements for the EU counterparties to the novated contract. Amending (or replacing) the Novation RTS in the way proposed above would provide the EU counterparties to these contracts with valuable flexibility because it would at least enable them, during the 12 months after the UK's withdrawal from the EU without concluding a withdrawal agreement, to agree the novation of their contracts to an EU counterparty without triggering clearing or margin requirements (even though they cannot rely on the Novation RTS to make these novations in advance of the UK's withdrawal).

Therefore, we consider that it is important that the Commission and the ESAs act now to amend (or replace) the Novation RTS in the way proposed above so that the amended (or replaced) RTS can enter into application on 1 February 2020 if the UK has not concluded a withdrawal agreement with the EU before that date. We consider that urgent action is needed because new RTS amending (or replacing) the Novation RTS cannot enter into force unless the European Parliament and the Council have expressed their no objection to the RTS within the periods specified in the regulations establishing the ESAs. Therefore, there needs to be adequate time, after the adoption by the Commission of the new RTS, for the Parliament and the Council to consider the RTS before 31 January 2020.

We would welcome the opportunity to discuss this issue with you and are also very happy to answer any questions you may have in the meantime.

Yours sincerely,

Scott O'Malia
Chief Executive Officer
International Swaps and Derivatives Association, Inc.

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 71 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 @ISDA.