

21 March 2013

FMI Feedback
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Bank of England
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Sent by email to: FMIFeedback@bankofengland.co.uk

Response to ‘ Proposed statutory statements of policy in respect of the Bank of England’s supervision of financial market infrastructures’; and ‘ Proposed rules for recognised clearing houses and approved operators’

This letter contains the response of the International Swaps and Derivatives Association, Inc.¹ (“ISDA”) to two recent Bank of England (“BoE”) consultation papers.

1. Proposed statutory statements of policy in respect of the BoE’s supervision of financial market infrastructures (“CP1”)

We are largely in agreement with what has been proposed in CP1.

The one aspect that we consider we should comment is the definition of qualifying parent undertakings (“QPUs”). The definition is currently restricted to QPUs incorporated in the UK². Accordingly, it does not address a scenario where a UK Recognised Clearing House (“RCH”) is held by a parent entity located outside the UK.

We consider that the concerns that the BoE seeks to address by providing direction to QPU can hold true for CCPs with parents outside the UK. Some of these entities, for example CMECE/ Euro CCP with parents CME/ DTCC group, are either large or have the potential to become significant clearing organisations and consideration should be given to applying this provision to all QPUs.

¹ 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.

² Refer Appendix 1: *Proposed statement of policy with respect to the giving of directions to qualifying parent undertakings of UK recognised clearing houses*, page 10, Consultation Paper Proposed statutory statements of policy in respect of the Bank of England’s supervision of financial market infrastructures, February 2013

While doing so, the BoE should recognise that the QPU may be subject to multiple regulators and would have to work with other regulators to, for example, resolve the QPU/ RCH. The present restriction to QPU in the UK may only allow BoE access to the immediate holdco and prevent access to the ultimate parent who may be located outside the UK. Given that the ultimate holdco may determine the group structure, risk management and have an ability to repatriate earnings to an area over which the BoE has no jurisdiction, we think the BoE should be able to provide direction to the ultimate holdco.

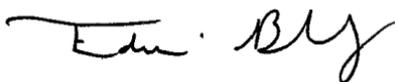
The only caveat to extending the scope to all QPUs is whether the BoE would have jurisdictional authority or reach with respect to parents outside the UK. We suspect this is the reason why the CP is limiting QPU to UK entities. In that case, and given the benefit broader QPU directive power, it would be interesting to know whether the BoE is working on any arrangements with foreign regulators to give effect to direction powers and, if so, which countries are in their scope.

2. Proposed rules for recognised clearing houses and approved operators

We are in agreement with what has been proposed by the BoE with the caveat that the Financial Services Authority notification rules should be reviewed to determine if there is anything further that should be introduced by the BoE.

We welcome the opportunity to share these comments. We consider the BoE's considerable work in this area will help reduce risk and foster financial stability. If you require further information, please do not hesitate to contact the undersigned.

Yours sincerely,



Edwin Budding
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ISDA