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3 October 2022

Dear Commissioner McGuinness,

Dear Chairman Campa,

Dear Chairwoman Hielkema,

Dear Chairwoman Ross,

ISDA Safe, Efficient Markets

EMIR review: proposed amendments

Executive summary

We believe the Commission should take the opportunity of the forthcoming review of EMIR to remove unnecessary barriers to clearing in Europe. There are a number of measures that have the potential to increase the attractiveness of the EU as a capital markets hub, and act as an incentive for globally active participants to choose to do business in the EU.

This paper sets out measures that would increase attractiveness of the EU clearing market, avoid market fragmentation and ensure a level playing field for EU counterparties on a global level:

1. The availability of the exemption for **cross-border intragroup transactions** from clearing, margin and Credit Value Adjustment capital charge under the Capital Requirement Regulation (CRR) should not be contingent on EMIR Article 13 equivalence decisions relating to the jurisdictions in which relevant non-EU group entities are located. We believe the co-legislators at the time of adoption of EMIR and CRR wanted these exemptions to be available in practice
2. EU firms should be able to compete internationally to avoid duplicative and conflicting clearing, margin and reporting requirements under EU and third country rules, and as such, the conditionality associated with **EMIR Article 13 equivalence** for this purpose should be revisited – in particular the requirement that one of the relevant group entities be 'established' in the third country jurisdiction concerned.
3. The **link of a CCP's qualifying status in the CRR** to the recognition under EMIR seems unnecessary**.** Changes that would make it easier for EU firms to deal with small third-country CCPs would remove a lot of unnecessary friction, both for clearing participants and for regulators.
4. A conditional, limited exemption from the clearing obligation for **Post Trade Risk Reduction (PTRR) output transactions** would make EU clearing and EU capital markets more broadly more attractive, more stable and more efficient.
5. Make the exemption from margin requirements for **single stock equity options and index options** permanent acknowledging the fact that most other major jurisdictions do not subject these instruments to margin rules, and that this does not seem likely to change materially in the future.
6. Reduce barriers to the use of **Money Market Funds (MMFs) as initial margin** under the EU Margin RTS subject to satisfaction of strict risk criteria. In particular, we request that the requirements regarding MMFs as eligible collateral be expanded to include third country MMFs that, based on the counterparties assessment have a similar risk and oversight framework to EU MMFs around the funds' legal framework and the underlying assets.

We have identified a number of additional measures that we believe should be addressed in the upcoming review of EMIR:

7. To increase the **transparency of CCPs' initial margin requirements**, in addition to user friendly margin simulators that provide the impact to margin, add-ons and default fund contributions, CCPs should also provide more transparency on the design of margin frameworks so clearing participants (clearing members and clients) can get comfortable with

these models and can better understand how these models would behave under market stress**.**

8. The **methodology for the calculation of the clearing threshold** should be based on whether a derivative is cleared or not. This approach would recognise the benefits of clearing and be more in line with the approach taken for the calculation of the threshold for the exchange on initial margin (AANA calculation).
9. While we welcome ESMA's recent proposal to increase the **commodities clearing threshold** by €1bn, the proposal does not reflect the changed energy market conditions in 2022 as compared to 2012, and is not suited for facilitating the European energy transition and achieving the climate targets of the European Green Deal. As a short term measure, we urge ESMA and the Commission to increase the commodities clearing threshold set in the RTS to international comparable levels. As a mid-term solution, we urge the Commission to amend the methodology for the calculation of the clearing threshold to make it more risk sensitive and proportionate, and address the competitive disadvantage that EU commodities firms face compared with non-EU commodities firms.
10. Introduce an appropriate **implementation periods for margin requirements** for Non-Financial Counterparties (NFC) that come into scope of the margin rules for the first time because they become NFC+ or their classification change to a FC. This would allow counterparties time to put in place the necessary variation margin arrangements to comply with the requirements.
11. We believe that for OTC derivatives, there are scenarios where **single-sided reporting** could be introduced without compromising the quality of data reported or reduce the market transparency available to regulators. The first is in the case of mandatory delegated reporting and the second is for cleared transactions.
12. **Exempt all transactions with EU and non-EU central banks, debt management offices and multilateral development banks** from obligations under EMIR. This would be consistent with the approach taken in other jurisdictions and would reflect the level of risk posed by these entities.

Detailed comments

1) **Availability of intragroup transactions exemption**

Equivalence under Article 13 of EMIR is a key condition associated with the ability of EU firms active internationally and of non-EU firms facilitating investment in and from the EU single market to avail of the intragroup transaction exemption (where these intragroup exemptions involve a non-EU group entity). Such intragroup transactions are key to centralised management of risk by EU firms and to the ability to make investment capital available within the EU and globally in large financial, mixed and NFCs. It also has an impact on how the EU is perceived in terms of market openness and attractiveness.

ISDA believes that the level 1 co-legislators at the time of adoption of EMIR (2012) wanted the intragroup exemption to be of practical use. However, because of the complex drafting in the relevant EMIR provision, few equivalence decisions have been adopted. As such, market participants have depended many years on temporary, idiosyncratic derogations provided under the Margin and Clearing Obligation RTSs by the European Supervisory Authorities (ESAs), which have tended to be published just weeks before the expiry of previous iterations of the derogations, and accompanied by forbearance statements to 'bridge' the gap between expiry of the derogations and entry into effect of the renewed derogations (the latest such announcement came on 13 June, 2022).

While the work of the ESAs and the EC to ensure that market participants do not have to margin or clear intragroup transactions is appreciated, this is not a sustainable way to address this issue and is not conducive to orderly business planning.

We also point out that there are other preconditions to availability of the intragroup transaction (inclusion in consolidated accounts and absence of legal impediments to the prompt transfer of own funds or repayment of liabilities between group entities for example).

We therefore recommend that the availability of the exemption for cross-border intragroup transactions from clearing and margin for uncleared trades would not be contingent on EMIR Article 13 equivalence decisions relating to the jurisdictions in which relevant non-EU group entities are located. We also strongly caution against the introduction of any additional conditions to avail of the exemption. In that regard we note that the proposal by ESMA that the derogation should be conditional on EUR and Union currencies risk being centrally managed with the EEA would severely limit the availability of the exemption. It would also negatively impact the perception of the EU in terms of market openness and attractiveness: if every jurisdiction required that intragroup exposures in their currency should be managed in an onshore entity that would be very fragmenting.

ISDA also notes that the availability of the exemption from CVA capital requirements under CRR for cross-border intragroup transactions appears contingent on the adoption of EMIR Article 13 equivalence decisions regarding the jurisdictions in which the non-EU group entities concerned are located. We recommend that either EMIR or CRR is amended to remove Article 13 equivalence precondition to availability of the CVA exemption for intragroup trades.

2) Equivalence drafting under EMIR Article 13: preventing duplicative and conflicting requirements for EU firms competing internationally

Where EU firms could face duplicative or conflicting requirements relating to EMIR requirements (including but not limited to the margin requirements), EMIR Article 13 equivalence enables deference to the other jurisdictions' legal framework, thus allowing EU firms to avoid having to comply (or, more importantly, forcing their clients to comply) with two sets of duplicative and/or conflicting rules.

We recommend that the requirement that one of the would-be group entity beneficiaries of such equivalence should be 'established' in the third country jurisdiction concerned should be amended.

If this term is interpreted to mean "incorporated" then there will be situations where a transaction is subject to duplicative and conflicting rules because a counterparty is subject to the rules of a non-EU jurisdiction, but the equivalence decision for that jurisdiction does not provide relief because neither party is incorporated in the relevant jurisdiction.

Two examples where this situation may arise in practice are:

• Where the relevant non-EU jurisdiction applies equivalent obligations to those under EMIR to foreign entities with a branch in the relevant jurisdiction. For example, this is the case in Hong Kong. So an EU entity with a Hong Kong branch would be subject to obligations both under EMIR and under Hong Kong law, regardless of the jurisdiction of its counterparty. The EU entity would not be able to rely on the equivalence decision for Hong Kong when dealing with counterparties in other jurisdictions as neither party is incorporated in Hong Kong.

• Where the relevant non-EU jurisdiction applies equivalent obligations to those under EMIR to foreign entities that are connected with the relevant jurisdiction. For example, the US Prudential regulators apply equivalent obligations to foreign entities with no local presence if they have a US affiliate or if they carry on business with local entities that requires them to be registered or authorised under local law. In this case, an EU entity may be subject to obligations both under EMIR and under US law, again regardless of the jurisdiction of its counterparty. The EU entity would not be able to rely on any of the equivalence decisions for the US regulators when dealing with counterparties in other jurisdictions, as neither party is incorporated in the US (nor does either party have a branch or any place of business in the US).

In both cases the Article 13 equivalence decision may give rise to an unlevel playing field between EU firms that are also subject to obligations under Hong Kong or US law (who would not be able to rely on the equivalence decision), and firms incorporated in Hong Kong or the US who deal with EU counterparties (who would be able to rely on the equivalence decision).

In order to give effect to the intent of Article 13 we would welcome: (i) amendment of Article 13(3) EMIR so that it reads "…where at least one of the counterparties is established in or subject to the equivalent requirements of that third country".

Many of the concerns expressed herein on EMIR Article 13 were set out in a more detail in a letter to the Commission in September 2021[1] .

3) Link between CCP recognition under EMIR and qualifying status under CRR

One example of unnecessary links between regulations is the link of the qualifying status in CRR to recognition under EMIR (Article 25). Requiring a CCP to have EMIR recognition status in order to be considered a Qualifying (QCCP) under CRR requires smaller CCPs with no EU domiciled clearing members to gain recognition at considerable expense solely for the CCP to be deemed to be qualifying. This creates situations where CCPs can potentially lose their qualifying status if an equivalence decision has not yet been taken under EMIR. This means that EU firms would be required to increase their own funds for exposures to those CCPs significantly. They would lose membership completely if they access these non-EU CCPs via non-EU branches. In particular, EU clearing members would no longer be able to offer access to the full range of major international CCPs that their EU and non-EU clients expect from any globally active clearing member. This would create an unlevel playing field in clearing at CCPs in these jurisdictions. These capital multipliers under CRR would be applicable only to EU clearing members/their subsidiaries, but not to other third-country clearing members or clearing members in the home jurisdiction of the CCP. As a result, EU clients and non-EU clients would have to appoint non-EU clearing members if they still wanted to transact in the markets that these non-EU CCPs serve. Changes that would make it easier for EU firms to deal with small third-country CCPs would remove a lot of unnecessary friction, both for clearing participants and for regulators.

We recommend that, for smaller CCPs (i.e. often those CCPs for which no recognition determination has been made), clearing members themselves could assess PFMI compliance and determine

[1] ISDA-Writes-to-European-Commission-on-EMIR-Article-13-Equivalence.pdf

whether the CCP should be qualifying for capital purposes in line with the current practices in other jurisdictions such as the US.

4) Exemption from clearing obligation for trades resulting from Post-Trade Risk Reduction

Post-Trade Risk Reduction techniques have the ability to significantly reduce operational and liquidity risk in derivatives business in the EU and to enhance collateral efficiency. A PTRR service technique such as Portfolio Rebalancing, for example, would have significantly reduced the size of the large margin calls made between financial market participants at the height of the COVID-related period of market stress in March 2020. While net variation margin calls increased only modestly during this market stress ((by two to three times), gross variation margin paid and received by counterparties rose from around three or four times the net variation margin to approximately twelve times the net variation margin. This clearly created increased liquidity stresses at precisely the time when funding markets were less liquid.

ESMA studied this issue following the mandate given to it under EMIR Refit, and in November 2020 recommended that use of PTRR services should be promoted by permitting a limited and conditional exemption from the EMIR clearing obligation where contracts resulting from PTRR fall within classes of derivatives subject to the clearing obligation and where reduction of risk in the bilateral derivatives portfolio would be more efficient if these non-price forming technical risk-reducing output transactions (that would not exist were it for not for PTRR processes) were retained in the bilateral portfolio rather than put in clearing houses. ESMA made recommendations for the conditions that should be associated with this exemption. In April 2021, the EC (mandated under EMIR Refit to report on and, if appropriate, adopt proposals on this issue) adopted a report on PTRR in which it decided to return to this issue at the time of the EMIR Review. A conditional, limited exemption from the clearing obligation for PTRR output transaction would make EU clearing and EU capital markets broadly more attractive, more stable and more efficient. We urge the EC to address this issue in its forthcoming proposal.

It is worth noting that the UK has proposed to implement a PTRR clearing exemption in the Wholesale Market Review[2.] This raises the prospect that EU firms might be disadvantaged if they cannot participate or can only participate in such risk-reducing exercises with more complicated product types such as swaptions .

5) Permanent exemption from margin requirements for single stock equity options and index options

Article 38 of the Margin RTS provides for a derogation until 4 January 2024 from the margin obligation in respect of all non-centrally cleared OTC derivatives which are single-stock equity options or index options. This temporary derogation is necessary to avoid market fragmentation and to ensure a level playing field for EU counterparties on a global level, because in some major jurisdictions (e.g. the US) single-stock options and equity index options are not subject to equivalent margin requirements. The temporary derogation was intended to allow time for monitoring of regulatory developments in other jurisdictions and was already extended once.

[2] Wholesale_Markets_Review_Consultation_Response.pdf (publishing.service.gov.uk)

However, the situation has not materially changed and many jurisdictions either have not implemented margin requirements for single-stock equity options or index options or have also introduced temporary derogations for these contracts.

As the situation has not materially changed and does not seem likely to change materially in the future, we urge the Commission and the European Supervisory Authorities to permanently exempt single-stock options and equity index options from margin requirements. Many of the concerns were set out in a more detail in a letter[3] to the Commission and European Supervisory Authorities (ESAs) in April 2020.

6) Reducing barriers to the use of Money Market Funds as Initial Margin under the EU Margin RTS subject to strict criteria

Broaden eligible MMFs beyond UCITS

Both in the United States and European Union, the regulatory requirements for the margining of non-cleared derivatives allow for the use of MMFs as collateral. However, each regulatory regime imposes restrictions that, in practice, mean that there are no MMFs that are eligible under both the EMIR Margin RTS and the CFTC Rules or US prudential regulators Rules (the "US margin rules").

Under the rules published by prudential regulators and the CFTC, MMFs meeting certain conditions can be posted as eligible collateral. One condition is that the MMF's assets are limited, so the MMF may not use repos or similar transactions (US MMF).

Under the EU rules, MMFs meeting certain conditions can be posted as eligible collateral. One condition is that the MMF is an EU fund authorized as a UCITS (EU MMF). UCITS are also subject to regulations that oblige them to meet diversification and liquidity requirements, which in practice mean they will standardly use repos.

Therefore, EU MMFs that are UCITS will not be eligible collateral under the margin regimes of US prudential regulators and the CFTC due to their permitted use of repos, and US MMFs are not eligible collateral under the EU margin regime, because they are not EU authorized UCITS

Where substituted compliance is available, the conditions on use of substituted compliance (see section above on EMIR article 13 equivalence decision) mean that, depending on the location of the parties, either US or EU MMFs can be posted, but not both. This restriction significantly decreases the options for viable eligible collateral considering settlement and transfer timing limitations and global fragmentation.

To accommodate a global market, MMFs in additional structures to UCITS must be available. We ask that the European Commission and the ESAs expand the requirements regarding MMFs as eligible collateral to include third country MMFs that invest in government securities and cash and that, based on the counterparties assessment have a similar risk and oversight framework to EU MMFs around the funds legal framework and the underlying assets.

We welcome that other authorities appear to recognise the importance of expanding the types of MMFs eligible as IM, and strongly encourage the ESAs to do the same. We note that the PRA/FCA

[3] Joint-Association-Letter-on-Equity-Options-Derogation.pdf (isda.org)

are proposing [4] to expand the list of eligible collateral to a wider set of third-country based funds. Similarly, we understand that the CFTC is considering removing its restrictions on sec lending and repos in MMFs.

UCITS concentration limits

We also ask that the European Commission and ESAs reduce the barriers to using MMFs as IM such as the concentration limits applicable to UCITS. MMFs meeting strict criteria provide a secure and easier to segregate alternative to cash, addressing the difficulties noted in Recital 29 of the EU Margin RTS. We ask that Commission Delegated Regulation (EU) 2016/2251 be amended to allow the use of public debt constant net asset value MMFs (as defined in the MMF Regulation) as IM without a concentration limit. For other defined money market funds, the current 15% concentration limit should be raised and the Euro 10 million limit should be removed: as a practical matter it can equate to a concentration limit of below 5%, making money market funds too inefficient for use as initial margin.

7) Transparency of CCPs' initial margin requirements

The phases of high procyclicality in cleared margin and the inability of market participants to anticipate CCP margin calls have highlighted the importance of transparent CCP models. In addition to user friendly margin simulators that provide the impact to margin, add-ons and default fund contributions, CCPs should also provide more transparency on the design of margin frameworks so clearing participants (clearing members and clients) can get comfortable with these models and can better understand how these models would behave under market stress. While we recognise that global standard setters are working on additional, procyclicality specific transparency requirements, basic improvements to CCP transparency as above could be introduced now.

8) **Methodology for the calculation of the clearing threshold**

We support the suggestion by ESMA to amend the methodology for the calculation of the clearing threshold to move from the current approach of whether a derivative is OTC or not to the approach of whether a derivative is cleared or not. This approach would recognise the benefits of clearing and be more in line with the approach taken for the calculation of the threshold for the exchange on initial margins (Aggregate Annual National Amount calculation (AANA). As ESMA points out, it would also remove the need for an equivalence determinations under Article 2a of EMIR. We do not believe that a trade should be considered cleared only if cleared by a CCP authorised or recognised by ESMA. This is not used in the AANA calculation methodology and would add significant complexity for the (by definition) small and non-systemic entities that have to calculate this threshold, without the benefit of reducing systemic risk. Depending on drafting, it might also add the complexity of including futures cleared at smaller CCPs for which the EC has not reviewed or granted equivalence (see comments on point on QCCP above).

9) Commodity threshold

While we welcome ESMA's recent proposal to increase the commodities clearing threshold by €1bn, this would not bring the threshold to a level comparable with the thresholds in non-EU jurisdiction. Also, this proposal does not reflect the changed energy market conditions in 2022 as compared to

[4] CP11/22 - Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251

2012, in particular the commodities clearing threshold has not been adapted to the drastic increase in energy prices. The current/proposed low commodity clearing threshold is also is not suited for facilitating the European energy transition and achieving the climate targets of the European Green Deal. Renewable energy investors and producers typically use tailor-made OTC derivatives, so-called financial power purchase agreements, to hedge their commercial risks, i.e., to provide long-term stable income necessary for financing their renewable projects. However, the current/proposed low commodities clearing threshold severely restricts commodity and energy firms from offering hedging solutions to renewable investors for their renewable energy installations. As a short term measure we urge ESMA and the Commission to increase the commodities clearing threshold set in the RTS to international comparable levels.

As a mid-term solution, we urge the Commission to amend the methodology for the calculation of the clearing threshold to make it more risk sensitive and proportionate, and address the competitive disadvantage that EU commodities firms face compared with non-EU commodities firms. We note that that changes to methodology would not apply before end 2024, hence the need for the increase in the commodities threshold in the short-term.

We recommend amending the definition and understanding of the term "commercial activity" with respect to hedging. Hedging transactions are excluded from the EMIR threshold calculations for commodities ("EMIR CCT"). However, we believe that the definition and understanding of the term of underlying commercial business ("*commercial activity*") in Art. 10 (3) of EMIR REFIT, which can be hedged through OTC derivatives transactions, is too narrow. It is unclear whether, where commodity derivatives are used as an ancillary part of the overall commodity business, transactions to hedge those exposures can be considered as falling within the carve-out for hedging transactions, and it would be useful to clarify that this can be within the scope of that carve-out.

It is important that hedging the commercial risk of a first (non-hedging) derivative transaction like a financial power purpose agreement entered into with a renewable producer with another second risk-reducing derivative transaction can be recognised as hedging, as economically the latter transaction can reduce the market price risk of the former. Hence, the definition and understanding of the term "commercial activity" could be clarified to cover the hedging of risks stemming from entering into financial instruments (commodity derivatives), when these financial instruments belong to the core commercial activity of an NFC-, e.g., those NFC-s whose core commercial activity is to deal in financial instruments as specialised energy and commodity trading firms do. For example, if an energy trader or other energy firms enter into a financial power purchase agreement, e.g., in the form of a financially settled swap fix-for-floating, with a renewable energy producer. These PPAs are used as a means of investment financing as it secures the renewable energy producer a fixed margin for its produced power quantities. Therefore, the renewable energy industry would in our view greatly benefit from a clarification of the definition of underlying commercial activity to include financial instruments offered by NFCs as a risk management service to third parties for physical renewable energy project development.

We also believe the calculation methodology should be amended so that it does not apply to all trading activities around the globe without restriction, i.e. all world-wide activities count against the EMIR clearing threshold, even if no EU-product, EU-venue or EU-entity is involved. For example, as international subsidiaries contribute to the EMIR clearing threshold of the group, the group may decide to curtail its international activity to remain below the clearing threshold. In particular, we note that for EU commodities firms, this puts them in a competitive disadvantage to companies that are bound by local financial regulation, which is in most cases not as restrictive as EMIR.

10) Implementation periods for margin requirements

We note that ESMA's recommendation is that EMIR is amended to allow counterparties a four-month minimum implementation period where:

- NFCs become subject to margin requirements under EMIR because they exceed a clearing threshold (or do not make the annual calculation of the clearing thresholds).; and
- NFCs become subject to margin requirements under EMIR because they become FCs.

We support ESMA's proposal to introduce an implementation period to put in place margin arrangements where a counterparty becomes subject to margin requirements for the first time due to a change in status of a counterparty[5]. This would give firms time to put in place standard VM CSA, as well as the operational arrangements necessary to support this. With respect to the exchange of IM, we note that the requirement to first conduct AANA calculations would generally provide a sufficient implementation period. We also note that there are two global implementation dates for IM going forward (1 January and 1 September each year), and that it would be preferable not to introduce a new one.

We would also ask the ESAs to confirm that where a counterparty becomes subject to the margin requirements and as a result is required to calculate its AANA, it would do so from the next calculation period after it becomes subject to the margin requirements, rather than looking back to a calculation period that has already passed (i.e. if a firm becomes subject to margin requirements in September 2022, it would calculate its AANA over the period of March, April and May 2023 and start to exchange IM from the start of the following calendar year).

In line with the approach taken for the clearing obligation, transactions entered into prior to or during the implementation period would remain outside the scope of the requirement to calculate and collect margin, and only new transactions entered into after the expiry of the transitional period/calendar year after AANA threshold is breached, would be subject to the margin requirement.

11) Single sided reporting

For regulators to successfully supervise the derivatives markets it is important transaction information is reported accurately and consistently, and we acknowledge that the pairing and matching requirements of EMIR reporting helps verify both counterparties to a trade submit correct information. However, we believe that for OTC derivatives[6], there are scenarios where single-sided reporting could be introduced without compromising the quality of data reported or reduce the market transparency available to regulators. The first is in the case of mandatory delegated reporting and the second is for cleared transactions.

[5] The implementation period needed where counterparties become subject to the margin requirements because a jurisdiction becomes a netting jurisdiction under art 31 EMIR RTS is not addressed in this paper.
[6] This paper does not cover ETD reporting

Mandatory delegated reporting

The mandatory delegated reporting requirements – implemented as part of EMIR Refit – are designed to reduce the reporting burden on NFC- entities. An NFC- entity still retains some responsibility to ensure data is reported correctly, for example regarding counterparty reference data, which implicitly means an NFC- entity will need to remain informed of the EMIR reporting obligations.

Additionally, when an FC reports on behalf of itself and an NFC- client, the data populated in both reports originates from the same sources, i.e. the FCs trade booking/risk systems. As a result, the trade data for both messages will be the same (some information, such as the direction, would be the inverted values). This includes counterparty reference data now that an FC message will include NFC- entity data such as 'Nature of the counterparty 2', 'Corporate sector of the counterparty 2' and 'Clearing threshold of counterparty 2'.

Taking the above into consideration, we propose that when an FC trades with an NFC- client, single-sided reporting where only the FC required to submit a trade message will remove the remaining NFC- obligations while retaining data quality and transparency submitted to NCAs.

Cleared trades

For cleared trades, the data submitted for both counterparties can also be expected to be the same. Although both parties to a cleared trade submit a transaction message – as opposed to mandatory delegated reporting where the FC reports on behalf of both parties – the data populated within the messages originates from the same source, i.e. the CCP, and the non-CCP counterparty would not be expected to manipulate that data before reporting. Therefore, it is reasonable to expect cleared transactions to match given there is a single source of the trade data.

As such, we propose that single-sided reporting could be applied to cleared trades – there the only the CCP would report – without compromising the reliability of the data or reducing the transparency provided to NCAs.

12) Exempt all foreign central banks, MDB and DMOs from EMIR

ISDA supports insertion of a legally certain, full exemption of non-EU Central Banks (CBs), Debt Management Offices (DMOs) and Multilateral Development Banks (MDBs) from all EMIR requirements. This is in line with the treatment of members of the European System of Central Banks under EMIR and with the rules of the CFTC and five US prudential regulators under the US Dodd-Frank Act, which exempts transactions conducted with (US-based and non-US based) CBs, DMOs and MDBs/International Financial Institutions (IFIs) from regulatory requirements such as registration, trading, clearing and margining.

While EMIR does give the European Commission the power to adopt Delegated Acts exempting specified non-EU CBs, this mechanism is cumbersome and lengthy. To date, CBs from only eight jurisdictions have been exempted (US, Japan, Australia, Canada, Hong Kong, Mexico, Singapore, and Switzerland), against, for instance, the more than sixty jurisdictions that ISDA has considered for derivatives trading when commissioning legal opinions . Applying the EMIR requirements to non-EU CBs and DMOs also does not appear to be justified given that the trading relationships with non-EU CBs and DMOs are adequately addressed under EU bank capital rules which set capital requirements where collateral is not held against positions. Banks' internal risk controls also limit exposure to CBs. If firms that are subject to EMIR are required to call margin and report transactions with non-EU CBs and DMOs, while their competitors from other jurisdictions are not, they will find themselves at a competitive disadvantage. In general, such a competitive disadvantage is not justified by the level of risk associated with trading with these counterparties.

In respect of MDBs, both within and outside of the EU, there should be a complete exemption from EMIR requirements, including reporting. This reflects MDBs' unique role and position in financial markets, as well as the wider global economy.

We thank you for taking the time to consider our views on this issue. If you have questions on any of the issues addressed in this letter, we are happy to discuss them with you at your convenience.

Yours sincerely,

Scott O'Malia

CEO
International Swaps and Derivatives Association

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 990 member institutions from 78 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