ISDA Safe, Efficient Markets

ISDA Proposes Risk-based Framework for Cross-border Comparability Determinations

WASHINGTON, DC, September 18, 2017 – The International Swaps and Derivatives Association, Inc. (ISDA) has published a new paper that sets out a risk-based framework for cross-border comparability assessments, based on a set of risk-based principles.

The proposal is intended to help smooth the process for regulatory comparability assessments, reducing the risk of failure and a resulting fragmentation of markets. By focusing comparability assessments on those rules intended to address or mitigate risk, the proposal is aligned with the objectives of the Group of 20 (G-20) to reduce the risks associated with derivatives transactions, and is consistent with the intent of the Dodd-Frank Act.

"Getting the cross-border derivatives framework right is absolutely critical. Without recognition, firms would be forced to comply with duplicative rules on a jurisdiction-by-jurisdiction basis, which discourages cross-border trading and leads to a fragmentation of liquidity. By assessing only those rules that are meant to tackle risk, and determining whether they achieve comparable outcomes with the rules of another jurisdiction, it avoids an unnecessary, granular rule-by-rule analysis that takes a lot of time and can ultimately result in failure," said Scott O'Malia, ISDA's Chief Executive.

The paper – *Cross-border Harmonization of Derivatives Regulatory Regimes: A Risk-based Framework for Substituted Compliance via Cross-border Principles* – proposes risk-based principles for making the determinations, and then analyzes the derivatives regulatory frameworks of certain G-20 countries against those principles.

The risk-based principles are:

- Foreign regulations that require firms to establish capital and margin requirements pursuant to the G-20 commitments demonstrate comparability.
- Foreign regulations that require firms to establish sound risk management policies to address risks posed by derivatives business demonstrate comparability.
- Foreign regulations that require firms to maintain an effective and accurate system of records demonstrate comparability.
- Foreign regulations that require firms to make swap data available to regulators demonstrate comparability.
- Foreign jurisdictions that have clearing and settlement services that comply with the Bank for International Settlements/International Organization of Securities Commissions principles and that have similar clearing mandates should be deemed comparable.

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If a foreign jurisdiction meets the risk-based principles, ISDA believes it should be granted substituted compliance in full.

This is the latest in a series of papers, letters and responses by ISDA and its members on cross-border issues. In February 2016, ISDA published a paper that compares US and European Union trade execution rules, and concludes there is a strong basis for an outcomes-based comparability determination.

Click here to read the full paper.

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About ISDA
Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 875 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.