

Rt Hon Tom Tugendhat
Minister for Security
Home Office
2 Marsham Street
London
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United Kingdom

22 February 2023

Dear Minister

On behalf of the International Swaps and Derivatives Association (ISDA) and its members, I write to express concern regarding Clauses 66-70 of the National Security Bill for a 'Foreign Activities and Foreign Influence Registration Scheme'. These provisions appear to extend well beyond the laudable aim of improving national security and instead risk criminalising ordinary commercial and industry interactions with key public sector stakeholders of the kind that are crucial to ensuring the ongoing safety and efficiency of financial markets.

Since 1985, ISDA – which is incorporated in the United States of America (USA) and has offices in London, Brussels, Hong Kong, Singapore, New York and Washington - has worked with governments and regulators to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, central banks, 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.

The UK is the largest market in the world for OTC derivatives. ISDA's engagement with UK policy makers is therefore fundamental to delivering our primary goals: to build robust, stable financial markets and a strong financial regulatory framework. ISDA is regularly invited to speak to senior policy makers at the Bank of England, Financial Conduct Authority, Prudential Regulatory Authority, Her Majesty's Treasury and many other regulatory and governmental bodies and to work with them on projects aimed at improving the markets. None of ISDA's activities would appear to naturally fall into the scope of concerns around national security.

As currently drafted, however, the Scheme requires all foreign organisations, including companies, LLPs and industry representative bodies (such as ISDA and its members), to register publicly each of their interactions with UK policy and decision makers, including Members of Parliament (MPs), and senior officials in the Civil Service and regulatory bodies. Failure to comply with the requirements of the regime – including failing to register 'political

influence activities’ – could lead to individuals facing a maximum penalty of two years’ imprisonment, a fine, or both.

For an institution such as ISDA, this might result in registration being required many hundreds of times per year, based on the frequency of engagement with senior regulators/policymakers in the UK. Even seemingly innocuous events could lead to the imposition of criminal charges. For example, under the draft legislation, it seems that ISDA could face criminal charges if it failed to register the attendance of a senior regulator at one of its member conferences (in 2022, ISDA held approximately 80 of these events).

While ISDA supports any efforts to tackle valid concerns about emerging threats from malign states, Clauses 66-70 operate on the presumption that all foreign organisations are suspicious and that policy makers cannot themselves be vigilant against malign foreign influence. As a result, they are grossly disproportionate and threaten to constrain ordinary, non-sensitive regulatory and political engagement.

ISDA therefore supports amendments tabled in the House of Lords by Lord Anderson of Ipswich, Lord Carlile of Berriew, Baroness Hayter of Kentish Town, and Lord Wallace of Saltaire, opposing the Question that Clauses 66 to 70 stand part of the Bill. This would ensure that the provisions for organisations controlled by foreign governments would be retained, but remove the onerous registration requirements for any entity that carries out political influence activities in the UK.

In second order – if these provisions are to be kept in the Bill – ISDA would request in the strongest terms exemptions for ordinary commercial and industry activities carried out by trade associations (such as ISDA) and enterprises (such as its members) from the requirements in the Scheme. In such circumstances, ISDA would endorse the amendments tabled by Lord Anderson of Ipswich and Baroness Noakes which would exempt activities carried out as part of a commercial or business activity, and activities carried out for regulatory or administrative purposes, from the requirements in Clauses 66 – 70. Exemptions for activities carried out as part of a commercial or business activity or by a trade association, such as those included in the USA and Australian regimes, would significantly mitigate our concerns without undermining the overarching principles of the proposed legislation.

We thank you for taking the time to consider our views on these issues. My colleagues and I are available to discuss the details of this letter if that would be helpful to you and/or your officials.

Yours sincerely,



Scott O'Malia
CEO
International Swaps and Derivatives Association