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To the Clearing Corporation of India Limited (CCIL)

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**ISDA final response to CCIL consultation paper on proposed  
margining and collateral solution for  
non-centrally-cleared derivatives (NCCD) trades**

**General Comments**

The International Swaps and Derivatives Association, Inc. (“ISDA”)<sup>1</sup> welcomes the opportunity to respond to the Clearing Corporation of India Limited (CCIL) consultation paper on proposed margining and collateral solution for non-centrally-cleared derivatives (NCCD) trades.

ISDA strongly supports the development of derivatives markets in India and appreciates the continued efforts done notably by the Reserve Bank of India (RBI) to finalize the margin requirements for non-centrally cleared derivatives. The effective implementation of a non-cleared margin framework in India, especially IM, could serve as an opportunity to improve efficiencies of India’s OTC derivatives markets and further strengthen the engagement of international financial market participants and the development of hedging activities.

In our recent response to RBI’s consultation on draft IM Directions<sup>2</sup>, we emphasized the need for one or more third-party custodial service provider(s) to be operational in India, prior to the IM rules being implemented.

And we highlighted that any third-party custodial infrastructure established in India would also need to enable Indian branches of foreign banks comply with the IM segregation and other requirements under the

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<sup>1</sup> ISDA Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 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](http://www.isda.org). Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#)

<sup>2</sup> [ISDA FINAL response RBI Draft-Directions.pdf](#).

margin rules of their home jurisdictions (e.g., requirements in relation to credit quality of the custodian and account structures). IM segregation requirements is a critical requirement under global standards.

ISDA members appreciate the efforts done by CCIL to develop robust infrastructure for payments, **repository of OTC derivatives trades and central clearing notably for derivatives. We equally appreciate that CCIL** proposes to offer certain margin and collateral solutions to facilitate smooth implementation of margin rules in India.

However, ISDA members note that the current offer would require clarifications on the content and scope of certain services and on certain safeguards that are critical to the successful implementation of IM requirements for non-cleared derivatives.

The detailed comments below aims to provide CCIL with suggestion as to how the offer could be amended to better align with international practices and respond to the concerns of the industry about required safeguards.

ISDA members would also urge CCIL to consider forming an industry group and seek input and suggestions on the operational setting of the IM exchange.

## Detailed comments

### 1. Complete segregation of IM is a pre-requisite to the successful establishment of collateral management and custodial services.

ISDA members could consider using CCIL as a third party custodian in India for IM provided it can ensure that it provides complete segregation of IM from the proprietary assets of the collecting party and bankruptcy remoteness from the bankruptcy of the party collecting IM and also of the custodian.

CCIL would need to bring more legal clarity as to how bankruptcy remoteness is proposed to be achieved for IM segregation.

In particular, we note that CCIL proposes to set a '*separate infrastructure*' for the margining and collateral solution for NCCDs and that this structure shall operate under the approval from RBI. BY '*separate infrastructure*', is CCIL considering setting a separate legal entity? ISDA members would need the assurance that the '*separate infrastructure*' would not be affected by any event, such as default or bankruptcy, that CCIL may face when providing other services including but not limited to payments or central clearing.

ISDA members would therefore welcome that CCIL confirm alignment with requirements applicable to custodians in jurisdictions that have been applying non-cleared margin rules. We would support that CCIL goes through the Custodian Review Process

to assure compliance with the custodian requirements under the US and EU rules have been met. The requirements include that:

- The custodian is not an affiliate of either the swap dealer or the counterparty;
- The custodian is subject to a custodian agreement that:
  - a. Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset that qualifies as Eligible Collateral, and such

purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

- b. Is a legal, valid, binding, and enforceable tri-party agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding; and
- c. Notwithstanding the prohibition in a., it may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, the reinvestment or substitution is only to assets that would qualify as Eligible Collateral, and for which the amount net of applicable haircuts would be sufficient to meet the regulatory requirements.

## **2. Clarification would be welcome as to whether CCIL offer a tri-party custodian service**

ISDA members understand from section IV (collateral management for NCCD trades) of the offered services that CCIL would offer Corporate Action handling. We would welcome that CCIL clarifies that this is part of a tri-party custody service.

For instance, we would welcome clarifications on how CCIL would secure coupons and redemption.

## **3. Clarification is needed as to the type of collateral that CCIL would hold.**

ISDA members would welcome that CCIL clarifies what type(s) of collateral they will be holding when acting as a custodian for initial margin.

We understand not all securities issued by foreign sovereigns can't be held in India. Therefore, CCIL's ability to hold collateral would be restricted to Indian government securities and a limited pool of foreign securities.

## **4. CCIL should clarify the provision of their services will not affect close-out netting between the parties to the NCCD trade**

ISDA members would welcome that CCIL clarifies that they act as Swap Agent structure, and therefore that the interposition of CCIL does not affect close-out netting between the parties to the NCCD trades.

## **5. Clarifications would be welcome on the scope of the services offered regarding domestic versus cross-border transactions.**

ISDA members would welcome that CCIL clarifies whether the services offered will be in relation to:

- (i) only the transactions between two domestic covered entities (Onshore Transactions); or
- (ii) transactions where the domestic covered entity deals with a foreign covered entity (Cross-border Transactions) as well as Onshore Transactions.

ISDA members would support that CCIL limits the scope of the services offered to handling the IM exchange onshore. Regarding VM, most of the market counterparties have been exchanging VM onshore on a bilateral basis for some time and have entrenched collateral management teams supporting bilateral VM exchange.

We would welcome such clarification of the scope of transactions covered for each type of service considered by CCIL in the consultation.

**6. On valuation services for NCCD trades and calculation of VM and IM, market participants should have an option between services offered by CCIL and their internal methodologies.**

We note that CCIL proposes to provide valuation services for the NCCD trades.

Some ISDA members note that these functions are often performed by the financial institutions internally. Especially, for some international banks, outsourcing of this function (i.e. valuation of NCCD OTC transactions) may not be consistent with their global valuation model. It is natural for these banks to follow their global practice and rely on their own valuations for both Onshore Transactions and Cross-border Transactions as they apply the VM and IM framework globally and consistently.

Similarly, regarding IM computation, they consider that there should be optionality because certain ISDA members are using the services of providers for the calculation of IM exposures and would not need replication of this service.

On the other hand, some other ISDA members would see merits that [an agency provides valuation services on a central basis as it may avoid conversations with multiple counterparties and exchange of multiple amounts](#).

With respect to calculation of VM and IM by CCIL, ISDA members underline that international banks often have their proprietary models/ methodologies to determine VM and parties use their own sensitivity inputs under the ISDA Standardised Initial Margin Model (SIMM) for calculation of IM. This is the common practice followed in jurisdictions that have implemented IM rules for NCCDs. ISDA members therefore highlight that no deviations should be made from this global practice.

**7. Dispute resolution mechanism services requires clarification from CCIL.**

CCIL proposes to provide dispute management services for IM and VM. ISDA members would welcome CCIL to provide details on the proposed dispute resolution process and on the role it would play in resolving the disputes.

As stated in point 6, we would support that the parties have the option to choose the valuation Agent. For instance, for NCCD transactions between two multinational banks, there will most likely be a global CSA and it may not be feasible to use the services of CCIL for cross-border transactions.

CCIL could more easily serve as a Valuation Agent for Onshore Transactions covered under a separate CSA, but we consider that parties should have a choice and not be forced to use CCIL as such.

**8. On VM call management, CCIL should not act as an intermediary.**

On Variation Margin call management, ISDA members consider that this should be optional.

Some ISDA members consider that CCIL would not need to act as an intermediary because VM has been exchanged globally on a bilateral basis..

Some other members consider that CCIL, by acting as an intermediary, might ease operational processes. They note that CCIL should engage a continuous dialogue with the industry to assure the process of VM exchange fits within the title transfer arrangement contemplated under the VM CSAs.

**9. Clarification on ‘CSA management services’ would be welcome**

ISDA members would welcome that CCIL provides details of the CSA management service it proposes to offer.

**10. CCIL should clarify the proposed ‘margin call workflows’ service**

ISDA members would welcome that CCIL clarifies whether they would make margin calls on behalf of parties under the ‘margin call workflows’ service. We note that such service could help parties in reducing their operational workload.