

October 3, 2023

Ms. Nadia Calviño
President of the Economic and Financial Affairs Council
Council of the European Union

Ms. Danuta Huebner
Member of the European Parliament
European Parliament

Ms. Mairead McGuinness
Commissioner for Financial Services, Financial Stability and Capital Markets Union
European Commission

cc:

Mr. José Manuel Campa
Chairman European Banking Authority
European Banking Authority

RE: EMIR 3: INITIAL MARGIN MODEL VALIDATION – EBA OPINION

Dear Ms. Nadia Calviño, Ms. Danuta Huebner and Ms. Mairead McGuinness,

The International Swaps and Derivatives Association (ISDA)¹ is writing on behalf of its members regarding the need to ensure that EMIR 3² provides for procedures for the validation of initial margin (IM) models that are appropriate, practicable and can be legally enforced under established credit support documentation.

The bulk of market participants that intend to use a quantitative industry wide IM model like the ISDA SIMM[®] (SIMM) are already doing so and such use is subject to oversight under the supervisory framework. Major market participants have been using SIMM to calculate regulatory initial margin since September 1, 2016. The smallest market participants have also been using SIMM to calculate regulatory initial margin since September 1, 2022 following the effective date for the final phase-in period for regulatory initial margin.

ISDA urges the co-legislators to implement the opinion of the European Banking Authority (EBA) on regulatory scope and validation of initial margin models (“EBA Opinion”)³ that requests to amend EMIR level 1 to restrict the scope of application to large institutions and to give the EBA a central validator role for the EU uncleared OTC derivatives framework.

¹ Since 1985, ISDA has worked 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, 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](#).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0697&qid=1694434472962>

³ https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2023/1057303/EBA%20Opinion%20on%20regulatory%20scope%20and%20validation%20of%20initial%20margin%20models.pdf

Application of initial margin model validation to large institutions

The EBA Opinion states that “the regulatory scope of regulatory technical standards on initial margin model validation, as it is imposed by the EMIR, is overly broad”. We agree that it is disproportionate and unnecessary to require smaller institutions to obtain initial margin model approval. Validating the initial margin model used by large credit institutions will indirectly cover initial margin models used by the smaller institutions/clients as the latter will usually have large institutions as their counterparty. We believe that this is the guiding principle for the approval process adopted in other large derivatives jurisdictions like the US, which only applies its approval process to significant banks. We also note that the UK authorities recently proposed to continue relying on existing supervisory powers for assessing initial margin models rather than introducing a formal validation process.

ISDA recommends limiting the scope of the EBA RTS on initial margin model validation to firms that have an aggregate month-end average notional amount of non-centrally cleared OTC derivatives (that is, Average Aggregate Notional Amount (AANA)) for the months March, April and May of the preceding year that exceeds the phase-four threshold of EUR 750 billion.

Central validator for the general aspect of SIMM

The EBA opinion notes that “considering the coordination issue linked to the validation of an industry-wide IM model by a plurality of competent authorities, it is the opinion of the EBA that the EU uncleared OTC derivatives framework would greatly benefit from the introduction of a centralised validator at the EU level.” EBA would express a common view on the general aspects of the model (such as calibration, model design, instruments, and assets class coverage) and would coordinate the views of local regulators to provide a single point of discussion with the industry. ISDA supports this opinion and the proposal that the EBA assume the central validator role for the EU uncleared OTC derivatives framework.

We thank you in advance for your consideration of this important matter. We welcome the opportunity to provide additional information on any of the amendments detailed above and to seek your cooperation on a solution.

Sincerely,



Tara Kruse
Global Head, Infrastructure, Data and
Non-Cleared Margin
ISDA



Nnamdi Okaeme
Head of SIMM
ISDA