

ISDA response to draft Delegated Act amending CDR (EU)2017/567

ISDA's response to the EC's public consultation on the draft amendments to CDR (EU) 2017/567 focuses on the insertion of Article 16a. We strongly believe that legal clarity regarding PTRRS is essential, and greatly welcome this new article.

We agree with the text of Article 16a(2), that PTRRS should include portfolio compression services, rebalancing services, and basis risk optimisation services.

However, we have concerns regarding the drafting of Article 16a(1)(a), (b) and (c).

Regarding Article 16a(1)(a), we have concerns about the use of the term "algorithm", given that it may not always be the case that the entirety of the post-trade risk reduction exercise would be fully automated or determined by an algorithm. In some cases, some level of human input may be required. We consider that it is not the EC's intent to preclude this, but the proposed language might be taken as such.

We also consider that the statement "on an all or nothing basis" is not sufficiently precise.

Accordingly, we recommend that Article 16a(1)(a) be amended to the following:

- (a) they are provided by a third-party service provider on the basis of non-discretionary rules that are set in advance by the third-party service provider based on specified parameters and that result in a transaction or transactions that are accepted in full by all participants, without the ability for those participants to choose which of the resulting transactions should be executed;

We agree with the intent of Article 16a(1)(b), but note that proving a reduction of risk has occurred will be difficult, and a regime to verify such reductions is likely to be administratively complex. In this regard, we note the EC's commitment to simplification and burden reduction.

Also, we note that it is possible for derivative exposures to be managed at the group level rather than at a single entity level. This means that it is often not necessarily the counterparties to the derivative transactions themselves that will submit the portfolios, but rather a different entity within the group.

About 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 76 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 X, LinkedIn and YouTube.

Accordingly, we recommend that Article 16a(1)(b) is amended to the following:

- (b) they shall be for the purpose of achieving a reduction of risk in each derivatives portfolio submitted to the post-trade risk reduction exercise by the counterparties to the derivative transactions, or by their agents;

In respect of Article 16a(1)(c), while PTRRS would not generally change the directional market risk of the portfolios submitted to a post-trade risk reduction exercise, it is common practice for participants to provide a limited set of tolerances within which the PTRRS exercise can operate, such as counterparty credit limits and portfolio risk tolerances. Therefore, we consider that the term “market-risk neutral” is too prescriptive and suggest instead that the focus should be on those risks that are to be reduced.

Accordingly, we recommend that Article 16a(1)(c) is amended to the following:

- (c) they are for the purpose of reducing non-market risks in derivatives portfolios;

If the EC nonetheless feels it is necessary to retain a provision regarding market risk, we urge that less prescriptive language is used, such as:

- (c) they are market-risk neutral within the tolerances defined by the parameters of the post trade risk reduction exercise;

In respect of the other proposed amendments to Commission Delegated Regulation (EU) 2017/567, we agree with the deletion of Chapter II and Articles 16 and 18. We are agnostic regarding Articles 1 to 5 and 4a.

Finally, we note that Article 17 has been retained. We believe this is now a legacy provision that serves no purpose, as MiFIR Article 31(1) no longer refers to portfolio compression. What is more, the purpose of Article 17 has been supplanted by Article 16a(2), which will be inserted by the Amending Delegated Regulation under consultation.

Therefore, we recommend that Article 17 also be deleted.