

Canada Deposit Insurance Corporation

c/o
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Dear Sirs/Mesdames:

Re: Canada Gazette, Part I, Volume 155, Number 51: *Canada Deposit Insurance Corporation Eligible Financial Contracts By-law*, published December 18, 2021

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ has been actively engaged for many years with providing input on regulatory reforms impacting derivatives in major jurisdictions globally, including Canada. ISDA appreciates the opportunity to provide comments to the Canada Deposit Insurance Corporation (the “CDIC”) with respect to the proposed *Canada Deposit Insurance Corporation Eligible Financial Contracts By-law* (the “**Proposed By-Law**”) set out in the Canada Gazette, Part I, Volume 155, Number 51, published December 18, 2021.

The importance of the derivatives market in Canada continues to grow, as derivatives play an increasingly important role in the global and Canadian economies.

ISDA therefore is pleased to provide feedback regarding the Proposed By-Law on behalf of its members. Please see below for comments on the Proposed By-Law, specifically requesting an extension of time for compliance in respect of eligible financial contracts (“EFCs”) with non-dealer counterparties.

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¹Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 member institutions from 77 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](#).

As you are aware, following a CDIC resolution order, a temporary stay of two business days applies to the exercise of close-out rights under EFCs (the “**two business day stay**”).² The two business day stay is intended to give CDIC time to figure out what approach it will take to resolve the financial institution’s viability issues.

The Proposed By-Law is intended to ensure that the two business day stay will not be evaded in foreign proceedings. The Proposed By-Law is made pursuant to authority granted under subsections 39.15(7.4) to (7.6) of the *CDIC Act*:

Application of this section

(7.4) A federal member institution that is part of a class prescribed by the by-laws must ensure in accordance with the by-laws that this section — or provisions that have substantially the same effect as this section — applies to any eligible financial contract to which the institution is a party and that is part of a class prescribed by the by-laws.

By-laws

(7.5) The Board may make by-laws respecting the manner in which a federal member institution referred to in subsection (7.4) is to ensure that this section — or provisions that have substantially the same effect as this section — applies to an eligible financial contract referred to in that subsection.

Different treatment

(7.6) The by-laws made under subsection (7.5) may distinguish among classes of federal member institutions and classes of eligible financial contracts.

As a result of the above, the Proposed By-Law would have the effect of requiring every federal member institution ensure that its EFCs governed by foreign law and/or with a foreign counterparty (with certain specified exceptions) contain provisions indicating the parties’ agreement to the application of the “two business day stay” provisions of the *CDIC Act*.

Importantly, the Proposed By-Law currently provides that this requirement applies in respect of EFCs entered into, amended or renewed on or after October 1, 2023 where the counterparty is also a federal member institution, or an institution that has been identified by the Financial Stability Board as a global systemically important bank. In all other cases, the requirement applies in respect of EFCs entered into, amended or renewed on or after October 1, 2024.

CDIC member institutions have had significant difficulties in amending contracts with non-dealer counterparties in a timely manner in order to comply with Canadian rules. Making such changes with these counterparties has taken multiple outreach and educational efforts. A recent example of this has been member institutions’ experience with obtaining necessary counterparty documentation in connection with the Canadian provincial security commissions’ derivatives trade reporting rules. In 2019, five years after these rules’ initial implementation, many

² *Canada Deposit Insurance Corporation Act*, RSC 1985, c C-3 [*CDIC Act*], ss 39.15(7.1)-(7.104) & (7.11).

counterparties had not provided the necessary information for member institutions to comply with the rules.

In light of past experience, we propose a third category of counterparties be set out in the Proposed By-Law so that EFCs with non-dealer counterparties would not need to include the relevant provisions until **October 1, 2025**. EFCs with dealer counterparties would still be required to include the relevant provisions on October 1, 2024.

This could be accomplished by amending the Proposed By-Law to add a new s. 3(c)(iii) and making the following changes (as underlined below):

Prescribed class of eligible financial contracts

3 The class consisting of every eligible financial contract that meets the following conditions and to which a federal member institution is a party is prescribed in respect of that institution for the purpose of subsection 39.15(7.4) of the Act:

...

(c) it meets one of the following conditions:

(i) it is entered into, amended or renewed on or after October 1, 2023 and at least one of the other parties to it is

(A) a federal member institution or an affiliate of a federal member institution, or

(B) an institution that has been identified by the Financial Stability Board as a global systemically important bank or an affiliate of an institution that has been so identified,

(ii) it is entered into, amended or renewed on or after October 1, 2024, and at least one of the other parties to it is a dealer,

(iii) it is entered into, amended or renewed on or after October 1, 2025, or

(iv) at least one other party to it and the federal member institution are together parties to another contract that is part of a class prescribed by this section.

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ISDA and its members would like to reiterate our appreciation to the CDIC for the opportunity to provide feedback on the Proposed By-Law. We are happy to discuss our comments and to provide any additional information that may be helpful.

Thank you for your consideration of these important issues to market participants. Please contact the undersigned if you have any questions or concerns.

Yours very truly,



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