Margin requirements for non-centrally cleared derivatives

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Dear Sirs,

Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251

The Associations[1] welcome the opportunity to respond to the PRA and FCA joint consultation[2] on proposals to amend onshored Technical Standards relating to margin requirements for non-centrally cleared derivatives.

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1 The Associations are Investment Company Institute (ICI), Institutional Money Market Funds Association (IMMFA), International Swaps Derivatives Association (ISDA), The Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA AMG), UK Finance. Information on each association is set out in the Annex to this letter.

2 PRA CP 11/22 and FCA CP 22/13

1. Executive summary

The Associations welcome the proposals to extend the list of eligible collateral to include qualifying non-UK funds.

The Associations also support introducing transitional provisions where counterparties become subject to margin requirements for the first time due to a change in status of a counterparty or change in netting status of a relevant jurisdiction.

However, there are significant differences between, on the one hand, counterparties coming in scope due to a change in counterparty status, and, on the other hand, an entire jurisdiction, and we would urge the PRA/FCA to distinguish between these two scenarios.

We also note that, depending on the period used for the AANA calculation period, the proposed transitional period of 6 months will not be sufficient where counterparties become subject to margin requirements for the first time as a result of a change in netting status of a relevant jurisdiction. In that scenario, counterparties will need around 18 months from the change in netting status of a jurisdiction to put in place arrangements for the exchange of initial margin (IM).

2. Detailed comments on the proposals

List of instruments as eligible collateral

The Associations support the PRA and FCA's proposal to expand the list of eligible collateral to cover all third-country funds, including Money Market Funds (MMFs), that meet specified eligibility principles based on the risk and profile of the funds in question.

The new rules will apply following publication of the Policy Statement (PS) from the PRA/FCA, which we understand is expected before the expiry of the current temporary EEA UCITS treatment. While firms could start undertaking risk assessment of EEA UCITS along the lines proposed in the consultation paper, they would have to change significantly their planning if the final rules differed from the proposed ones. To avoid any disruption we would welcome provision by the PRA/FCA of a transitional period for firms to continue to accept collateral compliant with the current rules, either until such time as they can complete the relevant risk assessment, or for a defined period to allow for continuity.

Fall-back transitional provisions

The Associations welcome the proposal to allow for an implementation period where a counterparty becomes subject to margin requirements either as a result of a change in status or change in netting status of a relevant jurisdiction.

There are, however, significant differences between, on the one hand, counterparties coming in scope due to a change in counterparty status, and, on the other, an entire jurisdiction, and we would urge the PRA/FCA to distinguish between these two scenarios.

We would also ask the PRA and FCA to confirm that where a counterparty becomes subject to the margin requirements and as a result is required to calculate its Average Aggregate Notional Amount (AANA), it would do so from the next calculation period after it becomes subject to the margin requirements, rather than looking back to a calculation period that has already passed (i.e. if a firm becomes subject to margin requirements in September 2022, it would calculate its AANA over the period of March, April and May 2023 and start to exchange IM from the start of the following calendar year). Similarly, if a counterparty becomes subject to the margin requirements during an AANA calculation period (e.g. April 2023), we assume it would be required to use the next AANA calculation period (March, April, May 2024). This would avoid a situation where firms are required to calculate AANA on the basis of historical information that may not be available (particularly in the case of NFCs that are unlikely to have the necessary detailed group-wide information available for previous years).

It would also be useful to know how the PRA and FCA intend to reflect the comments in the consultation about "individual assessment" in the rules, as the draft rules provided with the consultation paper only state that the transitional period runs from the date on which a derogation no longer applies.

Change in status of a counterparty

We support the proposal to introduce a 6 month-implementation period to put in place margin arrangements where a counterparty becomes subject to margin requirements for the first time due to a change in status of a counterparty. This would give firms time to put in place standard variation margin (VM) Credit Support Annex (CSA), as well as the operational arrangements necessary to support this. With respect to the exchange of IM, we note that the requirement to first conduct AANA calculations would generally provide a sufficient implementation period. We also note that there are two global implementation dates for IM going forward (1 January and 1 September each year), and that it would be preferable not to introduce a new one.

Change in status of a jurisdiction

We note that counterparties must be allowed sufficient time to prepare to exchange margin following a change in the netting status of a relevant jurisdiction. This is because a number of steps must take place before firms can exchange margin. Once industry standard netting opinions for that jurisdiction are available, firms will need to complete their own internal assessment of netting enforceability. It is only when their internal assessment is completed that firms will start to engage with their counterparties to put the relevant terms and arrangements in place to comply with the margin requirements. This process will include at least:

- Engagement with local clients to raise awareness of the requirements;
- Bilateral negotiation of documentation with clients. This can be a very protracted process where clients are less sophisticated and not familiar with the margin requirements;
- Engagement with local regulators in the jurisdiction to explain required approach;

- Adaptation of any necessary local market standard documents where banks operate in China through a branch and undertake onshore derivatives trading;
- Putting in place appropriate segregation and custody arrangements.

In addition, UK counterparties may face challenges in agreeing the necessary documentation with all relevant counterparties in time because of the number of relevant counterparties in the newly netting jurisdiction, and resourcing bottleneck on both the UK and netting jurisdiction side.

We therefore urge the PRA/FCA to provide an implementation period of around 18 months from the change in netting status of a jurisdiction at least for the exchange of IM. If the PRA/FCA confirm that where a counterparty becomes subject to the margin requirements, it must look forward to the next AANA calculation period, we believe counterparties would have sufficient time to put in place IM arrangements. As noted above, this would mean that a firm that becomes subject to margin requirements in September 2022, would calculate its AANA over the period of March, April and May 2023 and start to exchange IM from the start of the following calendar year (January 2024).

However, if the PRA/FCA are of the view that where a counterparty becomes subject to the margin requirements, it must look backwards to the previous AANA calculation period, we urge the PRA/FCA to introduce a 12 month-implementation period starting the calendar year following the AANA calculation for the exchange of IM. This is essential for counterparties to have adequate time to put in place margin arrangement. This would mean that a firm that becomes subject to margin requirements in September 2022, would calculate its AANA over the period of March, April and May 2022 and start to exchange IM from the start of the following calendar year + 12 months (January 2024).

We would also ask the PRA and FCA to confirm that transactions entered into prior to or during the implementation period would remain outside the scope of the requirement to calculate and collect margin, and only new transactions entered into after the expiry of the transitional period/calendar year after AANA threshold is breached, or existing transactions that are so materially amended that they would be considered to be new transactions, would be subject to the margin requirements.

Application of the margin requirements to CCPs

We support the PRA proposal to exempt CCPs recognised by the BoE from the margin requirements, where the relevant transaction relates to an activity carried on by the CCP in connection with activities for which it is recognised. As the exemption includes a purposive test, which could only be validated by the CCP, we urge the PRA/FCA to clarify in their PS that counterparties of CCPs can rely on assurances provided by recognised CCPs that their transactions meet the necessary conditions, and hence such counterparties are not required to undertake onerous transaction level validations.

We thank you for taking the time to consider our views on this issue. If you have questions on any of the issues addressed in this letter, we are happy to discuss them with you at your convenience.

Yours sincerely,

/s/ Annette M. Capretta

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UK Finance

Annex

About Investment Company Institute

The Investment Company Institute (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Its members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia and other jurisdictions. Its members manage total assets of $29.6 trillion in the United States, serving more than 100 million investors, and an additional $8.1 trillion in assets outside the United States. ICI has offices in Washington, DC, Brussels, London, and Hong Kong and carries out its international work through ICI Global

About IMMFA

The Institutional Money Market Fund Association (IMMFA) is the trade association which represents, promotes and supports the development of the European short term money market fund (MMF) industry. IMMFA has 27 members comprising full members who manage one or more MMFs meeting the IMMFA criteria, and associate members who provide services, such as fund administrators or authorised credit rating agencies. IMMFA member MMFs are regulated UCITS funds which are AAA rated by one or more authorised credit rating agency. IMMFA assets under management are currently EUR878bn equivalent and comprise over half of the European industry total. More information about IMMFA, its activities and members is available on the Association's web site www.IMMFA.org

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 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 @ISDA.

About SIFMA AMG

SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing around 300 member firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We work for and on behalf of our members to promote a safe, transparent and innovative banking and finance industry. We offer research, policy expertise, thought leadership and advocacy in support of our work. We provide a single voice for a diverse and competitive industry. Our operational activity enhances members' own services in situations where collective industry action adds value.