



26 August 2015

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BY E-MAIL

Dear Sirs,

Comments on the Prudential Regulation Authority's Consultation Paper CP 19/15 on contractual stays in financial contracts governed by third-country law – May 2015

We are pleased to provide a response to the above consultation paper on behalf of, the International Capital Market Association ("ICMA"), the International Securities Lending Association ("ISLA"), and the Securities Industry and Financial Markets Association ("SIFMA"), together the "Associations",

The Associations have reviewed the PRA Consultation Paper (CP 19/15) and are providing our response following discussion with our members. We are aware that a number of our members firms will be providing a response directly to the PRA.

A. General Comments

As you will be aware, the Associations have been working to develop a Securities Financing Transaction Annex ("SFT Annex") to the ISDA 2014 Resolution Stay Protocol ("ISDA Stay Protocol") in order to provide users of the SFT master agreements published by the Associations the ability to comply with the requirements under the proposed rules outlined in the consultation paper ("Proposed Rules"). The SFT Annex is being developed with guidance from the Bank of England and we therefore hope that both the PRA and Bank of England will support the use of the SFT Annex as a suitable mechanism for firms to comply with the Proposed Rules.

Whilst we would not expect there to be explicit reference to the SFT Annex in the new rules, we would support the PRA making a statement in any associated formal guidance confirming that regulated financial institutions which are subject to the Proposed Rules ("Covered Entities") will be considered to have satisfied the conditions of the Proposed Rules for any financial arrangements which are the subject of the SFT Annex.

We believe that such a reference would provide comfort to Covered Entities and more generally support broader adherence to the ISDA Stay Protocol and SFT Annex.

The SFT markets are international in nature and we are aware that similar rules covering the resolution of important financial institutions are being developed in a number of jurisdictions.

To avoid disruption to markets and the creation of an un-level playing field for Covered Entities we believe that the scope and compliance schedule of such regulations be harmonized as much as possible. In relation to the Proposed Rules, we strongly urge the PRA to consult with other financial regulators (in particular the US authorities), in order to agree on a coordinated approach.

Failure to do so will create competitive distortions and exacerbate compliance challenges.

As directed in section 1.26 of the consultation, we have set out below some more specific comments on the proposals.

B. Comments on the Scope of the Proposed Rule

The Associations believe that the scope of the Proposed Rules should be consistent with the scope of the resolution stay powers afforded to the Bank of England under the UK Banking Act 2009 (the “Banking Act”). Whilst we believe that as proposed this is generally the case, we are concerned that there are some instances where the scope of the Proposed Rules is inconsistent with the Banking Act:-

I. Group subsidiaries that are included within the scope of the rule

The Associations believe that the scope of the Proposed Rules should be consistent with the scope of the temporary stay powers under the Banking Act. We therefore agree that the inclusion of regulated firms’ subsidiaries makes sense for those that would be covered by Bank of England resolution measures. However we believe that where subsidiaries of PRA regulated banks are outside of the scope of such Banking Act resolution powers they should not be included in scope for the Proposed Rules. Further clarification is requested as to whether the scope of the rule should be limited to firms and subsidiaries that are subject to potential Bank of England resolution.

II. The financial arrangements to which the Proposed Rules apply

The Associations note that the rule applies to new obligations and materially amended obligations under non EEA law governed financial arrangements. We believe that the rule should provide clarity as to what is meant by “materially amended” in the context of SFTs. Whilst the introduction to the Proposed Rules provides some guidance (“*This would not include changes that occur automatically by the terms of the contract, such as interest or exchange rate resets, nor would it apply to simple administrative changes.*”) It would be helpful if this guidance included more examples that would be specifically relevant to SFTs. In SFTs, the contracts anticipate a number of adjustments that routinely occur during the lifetime of the transaction. These would include changes in the composition of collateral

pools, the transfer of margin to cover changing transaction exposures, extension of termination dates for term trades and repricing (as a method of margin maintenance or to reflect current market pricing for transactions with open end dates). The Associations believe it would be helpful to include these as examples of changes that would not be considered as materially amending an existing contract.

III. Transactions which are terminable on demand

The Associations would appreciate confirmation that transactions that are terminable on demand but also have additional termination rights are not financial arrangements subject to the requirements in the Proposed Rules.

C. Comments on the timing and structure of the transitional arrangements

A technical point we wish to raise is that where the Proposed Rules reference counterparties that act on an agency basis (3.2), it should be clarified that it is intended that agreements from such parties need to be made in relation to parties on whose behalf the agent acts.

Finally we would appreciate clarification as to which implementation date would apply where the counterparty is a fund (other than an AIF, UCITS or insurer).

We hope that the comments in the response will be helpful to you in finalizing the Proposed Rule and should you wish to discuss any of the matters we have raised please do not hesitate to contact us.

Yours Sincerely



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Managing Director and General
Counsel

International Capital Market
Association



Kevin McNulty
Chief Executive

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Robert Toomey
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About the Associations

The **International Capital Market Association (ICMA)** represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. It has almost 500 member firms located in 57 countries. ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years, providing the framework of rules governing market practice which facilitate the orderly functioning of the market. ICMA actively promotes the efficiency and cost effectiveness of the capital markets by bringing together market participants including regulatory authorities and governments

<http://www.icmagroup.org>

The **International Securities Lending Association (ISLA)** is a trade association established in 1989 to represent the common interests of participants in the securities lending industry. ISLA works closely with European regulators and policymakers, and in the United Kingdom has representation on the Securities Lending and Repo Committee, a committee of market practitioners chaired by the Bank of England. The Association has contributed to a number of major market initiatives, including the development of the UK Securities Borrowing and Lending Code of Guidance and the industry-standard lending agreement, the Global Master Securities Lending Agreement (GMSLA).

ISLA has over 100 members comprising of insurance companies, pension funds, asset managers, banks, securities dealers and service providers representing more than 4,000 underlying clients. ISLA represents members from more than twenty countries globally.

<http://www.isla.co.uk>

The **Securities Industry Financial Markets Association (SIFMA)** is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit

<http://www.sifma.org>