April 20, 2018

Board of Governors of the Federal Reserve System (Board)
[Docket No. R-1596/RIN 7100-AE96]

Farm Credit Administration (FCA)
[RIN 3052-AD28]

Department of the Treasury/Office of the Comptroller of the Currency (OCC)
[Docket No. OCC-2018-0003]

Federal Housing Finance Agency (FHFA)
[RIN 2590-AA45]

Federal Deposit Insurance Corporation (FDIC) [**RIN 3064-AE70]**

Addresses listed in Annex I

Re: MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES; PROPOSED RULE[1]

Ladies and Gentlemen,

The International Swaps and Derivatives Association, Inc.[2] ("**ISDA**") appreciates the opportunity to provide comments to the Board, OCC, FDIC, FCA and FHFA (together, the "**PRs**") in response to the Proposed Rulemaking to amend the *Margin and Capital Requirements for Covered Swap Entities* ("**Swap Margin Rule")**[3] in consideration of the rules adopted by the Board, OCC, and FDIC requiring certain systemically important banking organizations to amend their swaps to incorporate limitations on their default rights for certain non-cleared swaps and other financial contracts ("**QFC Rule**").

[1] 83 Fed. Reg. 7413 (February 21, 2018)
[2] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 68 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.
[3] 80 Fed. Reg. 74840 (November 30, 2015)

Definition of Eligible Master Netting Agreement

ISDA supports the proposal to amend the definition of "Eligible Master Netting Agreement" in the Swap Margin Rule so that it conforms with the amended definition of "Qualified Master Netting Agreement" in the Prudential Regulators' regulatory capital and liquidity rules and amendments which the FCA plans to propose to its capital rules.

Legacy Swap Definition

ISDA agrees with the position adopted in the proposed amendment to the Swap Margin Rule that Legacy Swaps[4] amended solely to comply with the QFC Rule would not become subject to the requirements of the Swap Margin Rule, because such amendments do not change the economic nature of the original transaction.

Although the adoption of the proposed formal rule amendment would provide certainty regarding the application of the Swap Margin Rule with respect to amendments to conform with the QFC Rule for market participants for which one of the PRs is their prudential regulator, ISDA believes it would be more helpful to have more broad based guidance. A more generalized approach would provide certainty with respect to the QFC rule-driven amendments, while also providing guidance with respect to (a) similar requirements from other regulators and (b) other amendments which may be required to Legacy Swaps in the future due to regulatory or legislative developments.

QFC Rules

The Japan Financial Services Authority, the Autorité de contrôle prudentiel et de resolution in France, the Bank of Italy, the Swiss Financial Markets Supervisory Authority, the Republic of Germany and the United Kingdom Prudential Regulation Authority have all adopted regulations or enacted legislation similar to the QFC Rule which require covered entities to amend swaps, which may include Legacy Swaps, to incorporate stay provisions in respect of their early termination rights. However, none of these regulators or governments have proposed amendments to their uncleared margin regulations to codify an exception to the treatment of Legacy Swaps or suggested that such amendments would cause Legacy Swaps to be brought into scope under the regime's margin requirements for uncleared derivatives as a result of complying with the applicable law or regulation. Many prudentially regulated entities are or will be subject to one or more of these international requirements.

[4]Legacy Swaps refers to swaps which are exempted from the Swap Margin Rule because they were entered into prior to the applicable compliance date(s).

Regulatory Amendments

We are aware of a number of cases in which other amendments to Legacy Swaps will be required by either foreign or domestic regulatory and legislative requirements or necessitated by public sector driven initiatives (hereafter referred to as "regulatory amendments") in both the US and various global jurisdictions in the near future. These amendments may be adopted at either the level of the master netting agreement[5] or at the transaction (confirmation) level. Examples of such regulatory amendments currently required or anticipated to be required in the future, include, but may not be limited to:

(i) Ring fencing of derivatives transactions into non-bank entities;
(ii) Interest rate benchmark reform – amendment of existing contracts referencing LIBOR and other IBORs to reference alternative risk-free rates and incorporation of fallback provisions into existing contracts; and
(iii) Novations or other amendments to transactions as a result of the United Kingdom leaving the European Union (Brexit)

For a more in-depth discussion of issues raised by other regulatory amendments, please refer to the "Uncleared Swap Margin Requirements – Legacy Swap Amendments" letter submitted by ISDA on April 12, 2018. Due to the cross-border application of many of the global margin regulations, the lack of a consistent global approach would create uncertainty for market participants regarding how the CFTC and other global regulators would treat any future regulatory amendments.

Request for Guidance

The Swap Margin Rule is based on the *Margin requirements for non-centrally cleared derivatives* published by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions (the "Margin Framework"), which provides guidance on amendments to Legacy Swaps, stating that "Genuine amendments to existing derivatives contracts do not qualify as a new derivatives contract. Any amendment that is intended to extend an existing contract for the purpose of avoiding margin requirement will be considered a new derivatives contract."[6]

Because regulatory amendments to Legacy Swaps are enacted to comply with regulations or legislation or conform with public sector driven initiatives, they are not economically equivalent to bilaterally entering into a new swaps. ISDA believes that regulatory amendments should be

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[5]Except in extraordinary circumstances, we believe that amendments made to the master netting agreement or effected through a standardized protocol should not subject the underlying contracts which are Legacy Swaps to the Swap Margin Rule, as amendments affected at this level do not impact the economics, or the price, of the individual underlying swaps.

[6] Margin Framework, footnote 20

universally recognized by regulators as amendments that would not bring a Legacy Swap into scope of global margin requirements, including the Swap Margin Rule.

We propose that the PRs issue publicly available guidance to prudentially regulated entites which clarifies that both domestic and global regulatory amendments will not bring a Legacy Swap into scope for the Swap Margin Rule. Guidance on the specific regulatory amendments referenced in (i)-(iii) above would be timely in connection with guidance regarding amendments due to the QFC Rule. The PRs could provide specific interpretive guidance in the future for other regulatory amendments where such guidance would be helpful to prudentially regulated entities.

Conclusion

Although the certainty offered by this proposal is appreciated, on balance ISDA believes that guidance from the PRs is a better alternative to the proposed amendment to the Swap Margin Rule.

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Thank you for your consideration of our comments. Please contact me if you have any questions.

Sincerely,

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ISDA Safe, Efficient Markets

Annex I

ADDRESSES

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