

April 12, 2018

To: Commodity Futures Trading Commission (“CFTC”)  
Board of Governors of the Federal Reserve System (“FRB”)  
Department of the Treasury/Office of the Comptroller of the Currency (“OCC”)  
Farm Credit Administration (“FCA”)  
Federal Deposit Insurance Corporation (“FDIC”)  
Federal Housing Finance Agency (“FHFA”)

cc: National Futures Association (“NFA”)

Re: Uncleared Swap Margin Requirements – Legacy Swap Amendments

Ladies and Gentlemen,

The International Swaps and Derivatives Association<sup>1</sup> (“ISDA”) is writing on behalf of its members to request clear and consistent guidance from the US authorities regarding the treatment of amendments and other lifecycle events in respect of derivatives transactions which are exempted from the requirements under the *Margin Requirements for Uncleared Swaps for Swap Dealer and Major Swap Participants; Final Rule*<sup>2</sup> of the CFTC and the *Margin and Capital Requirements for Covered Swap Entities*<sup>3</sup> of the FRB, OCC, FCA, FDIC and FHFA (the “PRs”) (together, the “Swap Margin Rules”) because they were entered into prior to the relevant compliance date(s) under the Swap Margin Rules (“Legacy Swaps”). The issue is whether an amendment or lifecycle event occurring after the relevant compliance date would subject that Legacy Swap to the requirements applicable from that compliance date (the “Margin Requirements”). We refer to this as bringing the Legacy Swap within the scope of the Margin Requirements.

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<sup>1</sup> Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 875 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, 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 web site: [www.isda.org](http://www.isda.org).

<sup>2</sup> 81 Fed. Reg. 636 (Jan. 6, 2016)

<sup>3</sup> 80 Fed. Reg. 74840 (November 30, 2015)

## *I. Introduction*

A market participant has recently received a directive from the OCC to include Legacy Swaps which have been “modified” since the relevant compliance date under the Swap Margin Rules in their regulatory margin netting sets. While a comprehensive list of the modifications which trigger this obligation has not been provided, partial terminations have been specified as an example. The directive implies a broad scope, which may encompass any amendment to a Legacy Swap, regardless of whether it materially alters the economics of the original transaction in a manner which increases the counterparty credit risk (a “material amendment”). A similar request with respect to partial terminations and partial novations has been made to other market participants by the NFA on behalf of the CFTC.<sup>4</sup>

These directives will have industry-wide impact, because implementation of these changes will require firms that are subject to them to agree necessary procedures to identify in-scope transactions with all of their affected counterparties. ISDA intends to help its members coordinate any necessary changes due to these directives, but in order to do so in an effective manner, clear and consistent guidance is needed from the US regulators. To help inform further inter-agency discussion on the matter, ISDA would like to share our requests, suggestions and concerns which we believe are relevant to the consideration of the treatment of amendments to Legacy Swaps.

### *A. Scope impact*

ISDA’s members are concerned about the prospect of a simplistic and overly-broad approach being applied that would mandate that any amendment, regardless of whether it is economically impactful or serves the policy objectives of the Swap Margin Rules, should negate the legacy status of a derivatives transaction. Non-material amendments to a swap either have no impact on the counterparty credit risk or reduce the counterparty credit risk, and thus should not trigger new regulatory requirements.

A negation of the Legacy Swap exemption in the event of any amendment, regardless of its nature, presupposes that any and all amendments are enacted for the purpose of avoiding regulation. This is simply not the case, as evidenced by the fact that the agreement of post-trade amendments is common market practice which precedes margin and other regulations. These events were not created to avoid regulation, rather they are an established part of day to day transaction management. Entering into a new position which offsets the risk of an existing

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<sup>4</sup> In response ISDA has requested the CFTC’s Division of Swap Dealer and Intermediary Oversight issue Interpretive Guidance which would clarify that a Legacy Swap that has notional remaining after a partial termination or novation, or which results in a new swap due to a swaption exercise would not become subject to regulatory margin requirements solely because of the swaption exercise or partial termination/novation.

position is not efficient, as it requires the parties to operationally support multiple transactions for the same net risk profile. The efficient use of post-trade events should not be penalized, and established and prudent market practice should not be artificially forced to evolve solely because it is easier from an oversight perspective to require a single treatment of Legacy Swap amendments rather than relying on established regulatory authority to address a potential case of evasion. In addition, risk-reducing activity that supports policy objectives to mitigate risk should be encouraged rather than disincentivized.

For these reasons, we respectfully request that any requirements or guidance carefully considers the impact of bringing Legacy Swaps subject to non-material amendments into scope for the Margin Regulations. Please see section III. for examples and descriptions of types of non-material amendments.

#### *B. Clear, globally consistent guidance*

If regulators or supervisors require material and/or non-material amendments to bring transactions within the scope of the Swap Margin Rules and the corresponding margin requirements in other jurisdictions, it is critical that clear and globally consistent guidance is provided. As technical changes are necessary to firms' compliance systems to alter existing logic, precise instructions are required as to which circumstances negate the exempted status of a Legacy Swap and when such changes are required to apply. Without clear guidance, market participants cannot effect a consistent implementation; any variations will result in portfolio differences and cause margin calculation discrepancies.

If such regulatory guidance is not both transparent and globally consistent, a party being asked to make such changes by its US regulator will face resistance from its counterparties in other jurisdictions to make a corresponding change in their systems and netting sets since the request may be contrary to their domestic regulatory expectations and established market practices. A retroactive application of such changes would further increase the likelihood of introducing portfolio discrepancies since differences in internal systems will mean market participants are unlikely to identify the same population of historically impacted transactions.

If US market participants are required to alter their logic for the treatment of Legacy Swaps, then such changes must be accurately and consistently implemented in a coordinated fashion both in the US and across market participants around the globe. Any domestic or global jurisdictional deviations in the treatment of Legacy Swaps would be extremely difficult to implement, would cause portfolio and margin calculation discrepancies, and would disadvantage market participants subject to oversight by authorities which require a stricter treatment of amended Legacy Swaps.

Market participants in stricter jurisdictions who will come into scope in later phases of the initial margin ("IM") requirements will be disadvantaged over their foreign counterparts since they would have to include a greater scope of amended Legacy Swaps in their regulatory IM

portfolios and will be more likely to breach their IM threshold. We are specifically concerned that US market participants which become subject to regulatory IM requirements under the Swap Margin Rules in September 2019 and September 2020 will be negatively impacted. In addition, foreign counterparties may decide to limit non-material amendments, including that which reduces counterparty credit exposure, with US counterparties in order to avoid a more punitive IM requirement.

For these reasons, we respectfully request that any decision by the US authorities on the circumstances under which a Legacy Swap is no longer eligible for exemption from the Swap Margin Rules be provided in a transparent, clear and globally consistent fashion.

## II. *Global Regulatory Context*

The Swap Margin Rules are 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.”<sup>5</sup>

An agreement to amend a Legacy Swap does not as a general matter constitute the execution of a swap, because the previously-agreed terms of the Legacy Swap will continue to govern the swap other than any specific amendments agreed by the parties. However, we recognize that some amendments to a Legacy Swap could be equivalent to entering into a new derivatives contract (a “New Swap”).<sup>6</sup> If a Legacy Swap were amended after a compliance date under the Swap Margin Rules in a way that is equivalent to entering into a New Swap (i.e. a material amendment), then the provisions of the Swap Margin Rules that apply from that compliance date would apply to that Legacy Swap. We refer to this as bringing the Legacy Swap within the scope of the Swap Margin Rules.<sup>7</sup> Conversely, if an amendment to a Legacy Swap is not equivalent to entering into

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<sup>5</sup> Margin Framework, footnote 20

<sup>6</sup> For example, an amendment to increase the notional size of a Legacy Swap by \$50 million is equivalent to the parties entering into a New Swap on the same terms as the Legacy Swap but with a notional size of \$50 million. The Margin Requirements do not provide details on the types of amendments that could bring a Legacy Swap within scope of the Margin Requirements. In order to promote market consistency, ISDA worked with its members on a list of common lifecycle events to provide general guidelines for determining when an amendment should be considered to bring a Legacy Swap within scope of the Margin Requirements and when it should not. The positions set out in this letter are consistent with that list of the lifecycle events, and with ISDA’s understanding of market practice, both for non-cleared margin and mandatory clearing for swaps.

<sup>7</sup> We use this term as a simplification because the test for each compliance date under the Margin Requirements is the same, i.e. whether the swap was executed or entered into on or after the relevant compliance date. In practice, a particular swap might be within the scope of the variation margin provisions of the Margin Requirements, but out of scope of the initial margin provisions. A swap that is entered into after the relevant compliance date for variation

a New Swap (i.e. a non-material amendment), the Legacy Swap would remain outside the scope of the Swap Margin Rules.

In the Swap Margin Rules, US regulators elected not to specify that particular types of amendments would not change a trade's legacy status, instead suggesting that the distinction of "material" amendments or "legitimate" novations would overly complicate the process of identifying swaps subject to their rules<sup>8</sup>. But in accordance with the Margin Framework, many global authorities have provided explicit guidance as to circumstances in which an amendment to a Legacy Swap would or would not constitute a New Swap under their Margin Requirements, as follows:

- (i) Australian Prudential Regulation Authority, *Prudential Standard CPS 226*:  
"Genuine amendments to existing derivative transactions do not qualify as a new derivative transaction. Any amendment that extends an existing derivative transaction for the purpose of avoiding margin requirements must be considered a new derivative transaction. The novation of a grandfathered transaction, or a transaction that results from portfolio compression of grandfathered transactions, does not qualify as a new derivative transaction. However, a transaction resulting from compression of both grandfathered transactions and transactions which are subject to mandatory margin requirements is subject to the margin requirements in this Prudential Standard."<sup>9</sup>
- (ii) Hong Kong Monetary Authority, *CR-G-14 Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards (V.1 – 27.01.17)*:  
"Genuine and non-material amendments to legacy contracts do not qualify as a new contract. Any amendment that substantially changes the terms and conditions of a non-centrally cleared derivatives contract ("material amendment") needs to be considered a new contract."<sup>10</sup>
- (iii) Monetary Authority of Singapore, *Guideline No: SFA 15-G03, Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts*:  
"Genuine amendments to existing derivatives contracts do not qualify as a new derivatives contract. These include transactions arising from portfolio compression of existing derivatives contracts entered into before the commencement of these Guidelines."<sup>11</sup>

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margin and before the relevant compliance date for initial margin will be within scope of the variation margin requirements and out of scope of the initial margin provisions.

<sup>8</sup> See 80 Federal Register 74850, 74851 and 81 Federal Register 674, 675

<sup>9</sup><http://www.apra.gov.au/CrossIndustry/Documents/161206-Final-CPS-226-implementation-timetable.pdf>, footnote 7

<sup>10</sup><http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CR-G-14.pdf>, section 2.4.7

<sup>11</sup>[http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%](http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%20)

- (iv) Japan Financial Services Agency, *Summary of the Comments and the FSA's View on such Comments, published on December 11, 2015*: (informal translation)

**Question:** It is specified that “The provisions shall apply with respect to any Non-cleared OTC Derivative Transactions conducted on or after September 1, 2016 the Effective Date”. Please clarify the following cases:

- If the Non-cleared OTC Derivative Transactions conducted before the Effective Date are amended, partially amended or partially cancelled on or after the Effective Date, would such transactions be subject to the margin regulations?
- If the Non-cleared OTC Derivative Transactions conducted before the Effective Date are novated to the third party which is the financial institutions subject to the JFSA margin regulations, would such transactions be subject to the margin regulations?

**Answer:** It will be considered on case by case, but if such amendments or partial cancelations are technical changes or changes of its formality, and not related to margin regulations, it will not be considered as new transactions in principle. However, if such amendments could be considered as an event to avoid margin regulations, for example, the extension of the maturity, it will become subject to the margin regulations.

For novation, if such transactions are identified as the same transactions as the original, it could be outside of the scope of margin regulations. If not, such transactions will be considered to be new transactions and become subject to the margin regulations.<sup>12</sup>

- (v) Office of the Superintendent of Financial Institutions Canada, *Margin Requirements for Non-Centrally Cleared Derivatives*: “Genuine amendments to existing derivatives contracts do not qualify as a new derivatives contract. Any amendment that is intended to extend an existing derivatives contract for the purpose of avoiding margin requirements will be considered a new derivatives contract. Novation of grandfathered trades as well as “new” non-centrally cleared derivatives that result from portfolio compression of grandfathered trades do not qualify as a new derivative contract. However, new non-centrally cleared transactions resulting from compressions of both grandfathered transactions and transactions which are subject to mandatory margin requirements are also subject to the margin requirements in this Guideline.”<sup>13</sup>

The guidance specified above is aligned with the principle in the Margin Framework that “genuine amendments to existing contracts do not qualify as a new derivative contract”.

[20Licensing/Guidelines/Guidelines%20on%20Margin%20Requirements%20for%20NonCentrally%20Cleared%20OTC%20Derivatives%20Contracts.pdf](https://www.isda.org/Licensing/Guidelines/Guidelines%20on%20Margin%20Requirements%20for%20NonCentrally%20Cleared%20OTC%20Derivatives%20Contracts.pdf), footnote 17

<sup>12</sup><http://www.fsa.go.jp/news/27/syouken/20151211-1/01.pdf>, comment No. 147

<sup>13</sup><http://www.osfi-bsif.gc.ca/Eng/Docs/e22.pdf>, footnote 17

Reasonable, comprehensive and globally consistent guidance on the treatment of amendments to Legacy Swaps would eliminate the discrepancies and uncertainty which currently exist and would support global policy objectives.

### III. Market treatment of amendments to Legacy Swaps

In order to practically implement harmonized, automated logic, most market participants follow standard industry practice, which is based on the principle in the Margin Framework, in order to identify events that bring Legacy Swaps within the scope of the Margin Requirements. These events are economically material amendments, including a notional increase, a novation transaction resulting from the assignment of all or a portion of the notional of a Legacy Swap to a new in-scope counterparty, a tenor increase, and the addition of a reference underlyer to a portfolio unless allowed under the initial terms of the contract. Such events are recognized by market participants as material amendments which are economically equivalent to entering into a New Swap.

There are many other types of genuine amendments that are not viewed by the market as being economically equivalent to entering into a New Swap. These non-material amendments include administrative amendments, contract-intrinsic events, risk-reducing amendments, and regulatory amendments.

#### A. Administrative amendments

Administrative amendments are effected to correct errors or update clerical information needed to manage the transaction during its term. They are not economically impactful, and include:

(i) Booking errors which may be corrected by either or both parties as part of the affirmation or confirmation process, portfolio reconciliation, or otherwise. Such amendments may be asymmetrical and thus cannot practically trigger a margin obligation for both sides since it is a correction to an error to match the original agreement of the counterparties; and

(ii) A change to notification or settlement information, such as a change to settlement instructions, including account numbers for payments.

#### B. Contract-intrinsic events

Contract-intrinsic events result from the application or exercise of terms originally agreed in the derivatives contract, and therefore are not contract amendments. They may result in entries in a firm's internal systems to recognize the economic impact of the event occurring, and such entries might in some cases be similar to entries for new transactions. But legally and economically, those events are the implementation of the original terms of the contract, and do not result from



an amendment to those terms. As such, they cannot be motivated by an evasive intent. Examples include:

- (i) Rate resets;
- (ii) Swaption exercises or extendable swaps<sup>14</sup>;
- (iii) Credit events on credit default swaps (CDS);
- (iv) Succession events on CDS; and
- (v) Credit support arrangements triggered by certain events such as rating downgrade provisions requiring margining of Legacy Swaps.

### C. Risk-reducing amendments

Risk-reducing amendments decrease the notional, units, tenor and/or underliers of a Legacy Swap, thus decreasing the counterparty credit risk exposure of uncleared derivatives that are not covered by regulatory margin. These events include:

- (i) Partial terminations;
- (ii) Partial remaining party novations;
- (iii) The removal of a reference underlier to a portfolio;
- (iv) A tenor reduction; and
- (v) Portfolio compressions that reduce notional or term.

The practice of engaging in risk-reducing amendments is consistent with the Margin Requirements' stated policy of reducing counterparty credit risk. A partial termination or partial novation by its nature reduces the counterparty credit risk in a swap, because it reduces the size of that swap<sup>15</sup>.

Portfolio compression is widely recognized by both the industry and regulators as an important post-trade processing mechanism for reducing risk and improving operational efficiency<sup>16</sup>. Because of these benefits, most market participants regularly engage in portfolio compression for their uncleared swaps, and many are required to do so by the CFTC's risk mitigation requirements for swap dealers and major swap participants<sup>17</sup>.

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<sup>14</sup> The CFTC's clearing requirement does not apply to swaption exercise or extended swap unless the underlying swap was executed after the applicable compliance date. 77 Fed. Reg. at 74316.

<sup>15</sup> A partial novation reduces the size of the swap as between the original counterparties, and the novated portion to a new counterparty may be subject to the Margin Requirements (depending upon the date of the novation and the regulatory status of the parties to which the swap is novated).

<sup>16</sup> See, for example, the CFTC's *Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 77 Federal Register 55904

<sup>17</sup> *Id.* at 55960



As reducing counterparty credit risk is a key policy objective of the Margin Regulations, it would be contradictory to disincentivize the use of portfolio compression by requiring that either the Legacy Swap (with reduced notional) or a new transaction which results from the compression of Legacy Swaps be subject to the Swap Margin Rules. This requirement would significantly hinder, and in many cases totally suppress, the risk mitigation efforts of portfolio compression due to the unpredictable swings in margin requirements which market participants would be exposed to.

Furthermore, it represents inconsistent behaviour when compared to clearing mandates, which sought to reduce interconnectedness and complexity in the financial markets. Partially terminated trades are not brought into scope for the CFTC's clearing mandate following a compression exercise, if they were originally executed prior to the compliance date.<sup>18</sup>

#### *D. Regulatory amendments*

*Regulatory amendments* are those necessitated by regulatory or legislative requirements from one or more jurisdictions and amendments necessitated by public sector driven initiatives. These amendments may be adopted at either the level of the master netting agreement or at the transaction (confirmation) level. Examples of such regulatory amendments currently required or anticipated to be required in the future, include:

- (i) The incorporation of provisions recognizing the effectiveness of stays in resolution;
- (ii) Ring fencing of derivatives transactions into non-bank entities;
- (iii) 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
- (iv) Novations or other amendments to transactions as a result of the United Kingdom leaving the European Union (Brexit).

As an example of our concerns regarding regulatory amendments, we note that, in consideration of their regulations requiring certain systemically important banking organizations to amend their swaps to incorporate limitations on their default rights<sup>19</sup> (“QFC Rules”), the PRs have recently issued proposed amendments to their Swap Margin Rules to clarify that a Legacy Swap will not be deemed a covered swap if it is amended solely to conform to the QFC Rules.

<sup>18</sup>CFTC Letter No. 13-01, Re: No-Action Relief from Required Clearing for Swaps Resulting from Multilateral Portfolio Compression Exercises

<sup>19</sup> For example, the Federal Reserve Board's, *Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations...* 82 Federal Register 42882

The adoption of the rule as proposed would provide certainty regarding the application of the Swap Margin Rules with respect to these specific amendments, but would create uncertainty both domestically and internationally with respect to (a) similar requirements from other regulators<sup>20</sup> and (b) other amendments which may be required to Legacy Swaps in the future due to regulatory or legislative requirements, including those referenced above.

If such a precedent for the QFC Rule were established, an amendment to the Swap Margin Rules would need to be adopted to provide certainty for other amendments to Legacy Swaps required by either foreign or domestic regulatory and legislative requirements or necessitated by public sector driven initiatives. Uncertainty is likely to prevail with respect to other global rules which require the incorporation of provisions recognizing the effectiveness of stays in resolution and amendments associated with the other examples referenced above.

We note that with respect to the public sector initiative on interest rate benchmark reforms, the United Kingdom's Financial Conduct Authority has advised members of the Working Group on Sterling Risk-Free Reference Rates that it does not think that amending a reference rate or adding a fallback rate would trigger application of the European Markets Infrastructure Regulation margin requirements<sup>21</sup>, and indicated its intention to discuss the matter with other relevant authorities to provide clarification on this point.

Because regulatory amendments are enacted to comply with regulations, legislation, or public sector driven initiatives, and not to effect bilaterally negotiated material changes to Legacy Swaps in lieu of entering into New Swaps, they should be universally recognized by regulators as amendments which would not bring a Legacy Swap into scope of the Swap Margin Rules.

#### *E. Summary*

ISDA and its members feel strongly that non-material amendments, including contract-intrinsic events and administrative, risk-reducing and regulatory amendments to Legacy Swaps should not negate their exemption from the Swap Margin Rules. Non-material amendments either have no impact on counterparty credit risk or else reduce the counterparty credit risk, thus serving the policy objectives behind the Swap Margin Rules. If any other amendment or modification occurs to a Legacy Swap, and the relevant counterparty(ies) continue to treat such Legacy Swap as exempted from the Swap Margin Rules, the CFTC or appropriate PR maintains the statutory

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<sup>20</sup> We note that the Japan Financial Services Authority, the Autorité de contrôle prudentiel et de résolution 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.

<sup>21</sup> <https://www.bankofengland.co.uk/-/media/boe/files/minutes/2018/rfr-february-2018.pdf?la=en&hash=D8F2F5CEDFDAEE45FFF8FDD0E46B0E31E7D17D4C>

authority to curtail any such “unsafe or unsound practice” and prevent such abuse of the exemption for Legacy Swaps.<sup>22</sup>

#### IV. Conclusion

ISDA is greatly concerned that inconsistent US and global expectations regarding the treatment of amendments to Legacy Swaps will increase margin disputes and create an unlevel playing field for entities in jurisdictions where a stricter treatment is applied to the definition of Legacy Swaps.

In order to facilitate a consistent industry implementation of changes to the treatment of Legacy Swaps, if necessary, we respectfully request that the US authorities, in consultation with global authorities, undertake a coordinated review of the treatment of Legacy Swaps which are subject to amendment, and provide clear and consistent guidance on the circumstances under which a Legacy Swap is no longer eligible for exemption from the relevant Margin Requirements. In accordance with the guidance in the Margin Framework, we further request that any such guidance provide that contract-intrinsic events do not bring a Legacy Swap within scope of the Margin Requirements and that administrative amendments, risk-reducing amendments and regulatory amendments be deemed “genuine amendments” which do not bring the Legacy Swap into scope for the Margin Requirements. If changes to existing industry practices are deemed necessary by global regulators, we ask that such changes be applied prospectively and that a reasonable implementation period be allowed so ISDA can help coordinate an efficient transition.

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<sup>22</sup> [See 12 U.S.C. § 1818 \(pursuant to Section 8 of the Federal Deposit Insurance Act, enforcement actions may be initiated for violations of laws and regulations and unsafe or unsound practices, generally providing PRs the power to require correction of unsafe and unsound practices and compliance with any law, rule, or regulation applicable to the entities regulated by a PR and subject to the Swap Margin Rules. The enforcement authority of the PRs includes, among other things, \(i\) the ability to assess civil money penalties, \(ii\) to issue cease-and-desist or removal orders requiring the regulated entity to take appropriate corrective actions and \(iii\) to initiate injunctive actions against a regulated entity subject to the Swap Margin Rules\); see also 17 CFR §§ 1.3 \(definition of “swap”, subpart \(6\)\), 1.6 and 50.10 \(cited rules provide for the CFTC’s general anti-evasion authority and enforcing anti-evasion laws based on the “abuse” of an exemption\).](#)

Thank you in advance for your consideration of this important matter. Please contact me if you have any questions or require further information.

A handwritten signature in black ink, appearing to read "S. O'Malia". The signature is fluid and cursive, with a large initial "S" and a stylized "O'Malia".

Scott O'Malia  
Chief Executive Officer  
**International Swaps and Derivatives Association, Inc.**