ISDA® Safe, Efficient Markets

December 9, 2016

Department of the Treasury/Office of the Comptroller of the Currency
[Docket No. OCC-2011-0008/RIN 1557-AD43s]

Farm Credit Administration
[RIN 3052-AC69]

Board of Governors of the Federal Reserve System
[Docket No. R-1415/RIN 7100 AD74]

Federal Housing Finance Agency
[RIN 2590-AA45]

Federal Deposit Insurance Corporation
[**RIN 3064-AE21]**

Commodity Futures Trading Commission
[RIN 3038-AC97]

Addresses listed in Annex I

Re: Summary of Variation Margin Implementation Challenges

Ladies and Gentlemen,

As discussed during the November 17th meeting of the ISDA SIMM Governance Forum and the US Regulators, market participants are faced with significant challenges in preparation for the March 1, 2017 deadline for complying with the regulatory variation margin ("VM") requirements. As requested by the US Regulators, the International Swaps and Derivatives Association[1] ("ISDA") is providing this written summary of the challenges which were conveyed during the November 17th meeting.

1. T+1 Variation Margin

Discrepancies in timing for settlement of variation margin pose significant challenges for some market participants and create an uneven playing field across jurisdictions. The US rules require

[1] Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 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.

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VM to be settled on T+1, while the EMIR rules allow for a pledge of VM by T+1, meaning the call is agreed and collateral instructed; settlement itself may occur after T+1. Meanwhile, Japanese rules require collection of collateral as variation margin from a counterparty 'without delay' after the call and Canadian regulations allow for T+2 settlement.

Many market participants will not be able to post cash in all cases, so will only have the choice of moving securities, which they may not be able to settle on the same day. The posting of securities as collateral will be costly and, for many firms, impractical, since it depends on their ability to have such securities on hand to post as VM, or to repo such securities (in which case they will be dependent on the speed of local repo markets and settlement cycles for those securities). Divergences between jurisdictions' rules regarding eligible collateral increases the difficulties for counterparties, in particular those not in Phase 1. For example, the eligibility of corporate bonds and publicly traded debt and equity differs between the rulesets.

In addition, recall risk drives up funding costs for all parties due to two facts a) all CSAs mandate the return of the same exact instrument to a party when exposures swing back in the pledgers favor, and b) recipients of collateral often reuse / hypothecate collateral to satisfy other margin calls. As a result, it may not be possible to return the collateral timely if the pledger asks for their collateral back.

Finally, the time available to the counterparty to secure and post these securities will be further limited by the fact that the counterparties won't know how much collateral they have to post or receive until the books close at the end of the day. Where the parties are in significantly different time zones (e.g. one counterparty is a US bank, and the other party is in Asia), the relevant closing times could greatly reduce the time period available to settle by T+1. This disadvantages market participants in certain regions where they may find it impracticable to meet the T+1 settlement deadline.

2. Non-Netting Jurisdictions

There is a lack of consistency between different jurisdictions on limitations to firms' ability to trade with counterparties in non-netting jurisdictions.

For example,

- The US Regulators' rules say that if a covered swap entity cannot conclude that it can rely on a clean netting opinion, it must treat the swaps on a gross basis for collection, but it can net the swaps for purposes of posting.
- The EU rules allow exemption from posting and collecting margin with counterparties up to a 2.5% threshold (sum of notional amounts entered into since entry into force, over total

sum of notional amounts), although there is a lack of clarity as to the conditions for being able to access the threshold.

There is a general concern that these requirements will stifle financial dealings with counterparties in these jurisdictions, with firms limited in their ability to use other forms of credit risk mitigation.

3. State of Readiness

The scale of the industry effort to execute new or amended VM CSAs and put in place new operational processes to settle regulatory VM in advance of March 1, 2017 is enormous. ISDA has developed new documentation and execution processes to help the implementation, but there is still a tremendous amount of work for firms to do themselves. Many firms have tens of thousands of CSAs to execute or amend and the progress is hampered by the necessity to educate other market participants regarding the application of the VM rule to them, regardless of their resident jurisdiction.

Both ISDA and its member firms are actively engaged in outreach to the industry to explain the requirements and the need for expedited cooperation to execute new or amended CSAs and put in place the necessary operational changes to exchange regulatory VM. However, many clients are unaware of the application of the VM regulations and/or lack the staff and systems to handle the CSA negotiations and implement the requisite operational changes. Even where market participants understand the need for new documentation, there is not a one-size-fits-all CSA solution that works for all market participants. A significant percentage of these counterparties are characterized by very different levels of sophistication, including smaller banks and financial end-users, and may lack the resources to renegotiate documentation with all of their counterparties in the limited time remaining.

Due to the challenges described above and despite persistent efforts by market participants, not all documentation will be completed by March 1, 2017. As a result, some clients will lose their ability to trade and be unable to hedge their risk, thus reducing, rather than improving, the safety of the markets.

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The industry is committed to implementing the requested changes necessary to comply with the US Regulators' VM requirements as effectively and efficiently as possible and ISDA is assisting with documentation and education hurdles. ISDA appreciates the opportunity to convey these concerns to the US Regulators' and looks forward to continued engagement on these matters prior to, and following, March 1, 2017.

Thank you for your consideration and please contact us if you have any questions.

Sincerely,

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Annex I

ADDRESSES

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