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Letter From Bank of England to ISDA Chairman Stephen O'Connor

Stephen O'Connor

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**Bank of England
Bundesanstalt für Finanzdienstleistungsaufsicht
Federal Deposit Insurance Corporation
Swiss Financial Market Supervisory Authority**

Mr. Stephen O'Connor
Chairman
International Swaps and Derivatives Association, Inc.
One Bishops Square
London E1 6AD
United Kingdom

Dear Mr. O'Connor:

As you are aware, in the wake of the recent financial crisis, the global regulatory community has focused its attention on the development—both by resolution authorities and by the firms themselves—of strategies to resolve global systemically important financial institutions in a manner that reduces the risk of global financial instability while minimizing moral hazard. A key challenge in the development and implementation of these resolution strategies continues to be the risk of disorderly termination of derivatives¹ contracts, particularly in the cross-border resolution context, arising out of the exercise of termination rights following the commencement of an insolvency or resolution action.

We believe that it is essential for standard International Swaps and Derivatives Association (ISDA) documentation to provide for a short-term suspension of early termination rights and other remedies on the basis of the commencement of an insolvency or resolution proceeding or exercise of a resolution power (e.g., transfer, appointment of a restructuring agent, etc.) with respect to a counterparty or its specified entity, guarantor, or credit support provider. Such a provision would allow, where the operative law permits, the exercise of all applicable types of resolution powers, especially the transfer of the derivative contracts and/or associated guarantee obligations to a third party, including a bridge entity, on an expedited basis, the bail-in of a failing institution through the write-down of liabilities, or the conversion of liabilities into equity.




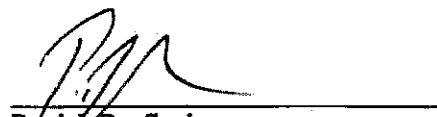
We recognize your efforts to date in considering potential approaches to imposing appropriate limitations on the exercise of termination rights and other remedies with respect to derivatives transactions in connection with the resolution of financial institutions that would have a consistent cross-border effect and would provide a degree of certainty to market participants on an *ex ante* basis. While the international regulatory community continues to work closely together to harmonize statutory approaches, a change in the underlying contracts for derivative instruments that is consistently adopted is a critical step to provide increased certainty to resolution authorities, counterparties, and other market participants, particularly in the cross-border resolution context.

¹ For purposes of this letter, "derivatives" refers to OTC derivatives transactions documented under ISDA agreements.

ISDA has the opportunity to play a pivotal role in providing greater certainty to the treatment of early termination rights and other remedies with respect to derivative contracts in a cross-border resolution scenario. As resolution regimes are developed and implemented in an increasing number of jurisdictions, ISDA is in a unique position to link these regimes by providing consistent and enforceable contractual provisions related to termination and other remedies with respect to derivatives transactions.

We look forward to continuing our dialogue with you as you consider how best to address this important issue.

Sincerely,


Mark Carney
Governor
Bank of England
Elke König
President
Bundesanstalt für Finanzdienstleistungsaufsicht
Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
Patrick Raaflaub
Chief Executive Officer
Swiss Financial Market Supervisory Authority

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