

BY E-MAIL

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Secretariat to the Financial Stability Board
Bank for International Settlements
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Per e-mail to: fsb@bis.org

Ladies and Gentlemen

Cross-border recognition of resolution action

The International Swaps and Derivatives Association, Inc. (**ISDA**) is grateful for the opportunity to respond to the consultative document (the **Consultative Document**) of the Financial Stability Board (**FSB**) on a proposed approach to the cross-border recognition of resolution action, published on 29 September 2014. We set out in Annex 2 to this letter information regarding ISDA, our members and our activities.

Executive summary:

1. We broadly agree with the themes of the Consultative Document, including, that a contractual approach to the cross-border recognition of resolution measures has certain limitations and a legislative approach is preferable.
2. We see the need to enshrine within any legislative approach the protection of safeguards whilst ensuring transparency and clarity for the market and the resolvability of firms. The immediate and automatic recognition of any such resolution measure on a cross-border basis is preferred provided certain specified safeguards are satisfied. See Part A of this letter.
3. A coordinated approach is needed between jurisdictions to identify a primary regulator responsible for resolution and also to address group questions (i.e. the risk that multiple resolution authorities implement conflicting resolution measures). Existing laws do not provide for an appropriate cross-border recognition framework. See Part B of this letter.
4. We propose the exploration of alternative legislative solutions which aim to achieve the immediate and automatic recognition of a resolution measure to the extent that the specified safeguards are satisfied. We prefer solution 1 of the two solutions which we have proposed. See Part C of this letter.

A. GENERAL APPROACH

Our members comprise a mix of buy-side and sell-side institutions. Sell-side institutions have the perspective both of being required to demonstrate that they are resolvable and also as a creditor of another institution potentially subject to a resolution measure. Generally, the buy-side have the perspective of being a creditor of an institution potentially subject to resolution measures.

Given the varying perspectives, objectives can therefore conflict. Our response therefore seeks to accommodate three themes important to all of these perspectives:

1. **Safeguards:** Safeguards are critical to the integrity, safety and efficiency of the derivatives market and, in principle, have been widely accepted¹. We note that safeguards featured in the previous FSB paper relating to Key Attributes of Effective Resolution Regimes for Financial Institutions (October 2011) (the **Key Attributes Paper**). Recognition of resolution measures should therefore only be to the extent safeguards are preserved. Key safeguards include the following: (a) the protection of netting arrangements; (b) the protection of rights of set-off; (c) the preservation of credit support arrangements (including title transfer arrangements); (d) there is no discrimination between creditors (e.g. the resolution measure does not discriminate on the basis of the nationality of the creditor or the jurisdiction of their claim); (e) the no creditor worse off principle (i.e. the creditor's position is no worse relative to the position the creditor would have been in had normal insolvency proceedings been commenced with respect to its counterparty (including with respect to priority)); (f) appropriate procedural protections are in place (e.g. due process is observed such that, for example, affected parties are given proper notice and the opportunity to be heard); and (g) only resolution measures which have been introduced and are publicly available are recognised (e.g. a press release containing a generic summary of a confidential measure which has been implemented would be insufficient).

The devil is in the detail for these safeguards. The requirement that "appropriate protections" are in place for netting agreements or that "public policy" be taken into account are insufficient and will lead to a divergence of recognition. There is a need to explicitly provide for what is protected and what will not be recognised. Examples include: (i) specifically stating that a bail-in measure can only be applied in respect of the net amount following the termination of an agreement (whereby the termination, valuation and determination of the net sum are effected following the contractually agreed method) and after the application of any security; (ii) all rights and obligations are transferred (i.e. no "cherry picking"); (iii) any security in respect of a secured obligation transfers with the secured obligation including all rights *in rem* and *in personam*; (iv) the suspension of payments runs both ways so as not to distort overall net exposure; (v) in respect of the resolution of a member of a clearing house, the clearing house rules are respected including that client transactions should continue, terminate or transfer in line with the default management processes engaged by the clearing house; (vi) the suspension of termination rights should not affect the exercise of termination rights which do not relate to the resolution measure and such suspension should be strictly limited in time, as contemplated by the Key Attributes Paper; (vii) any transferee is bound by the terms of a transferred agreement; and (viii) if a counterparty is left behind with transferor whilst substantially all the assets are transferred, the exercise of termination rights should be unrestricted. Furthermore, none of the above should be capable of being indirectly undermined (e.g. via a general power to modify contracts so as remove or alter the effect of a netting provision). We recognise that it may be very difficult to identify and agree on a definitive list. As such, we have proposed alternative solutions in Part C of this letter which do not necessarily require the safeguards to be identified.

¹ Directive 2001/24/EC on the reorganisation and winding up of credit institutions (the **Winding Up Directive**) and Directive 2014/59/EU of the European Parliament and the Council of 15 May 2014, as published in the Official Journal of the EU on 12 June 2014 (**BRRD**).

2. **Transparency/clarity for the market:** Market participants need the resolution law to be clear in terms of the resolution authority's powers and the extent by which the resolution measures will be recognised on a cross-border basis. This is important to market participants as they need to understand its potential impact at inception of contract. This is necessary for various reasons, including good credit risk mitigation.

Furthermore, at the time of an actual resolution measure, market participants need transparency. In particular, they need quickly to be able to determine what resolution measures have been introduced, when they were introduced, the extent by which they are effective and when they are effective. This is necessary for market stability including to ensure the continuity of business where appropriate (e.g. so a new bank can continue to transact under a transferred netting agreement because it can clearly determine that the governing law of the agreement recognises the transfer).

The remedy for breach of a safeguard should be that the resolution is ineffective to the extent of breach of the safeguard, not, for example, an administrative remedy involving a judicial review claim. By "the extent of breach" we mean for example:

- (a) if the power under the resolution law could in theory involve the splitting of netting sets, but the actual resolution measure which is invoked does not in fact involve the splitting of netting sets, then such resolution measure will be recognised in full; or
- (b) if the transfer of a branch is effected under a resolution measure in such a way so as to split netting sets because the ISDA Master Agreement covers transactions via multiple branches, then such transfer will not be recognised.

There also needs to be consistency in recognition between all jurisdictions (rather than discretions conferred on local courts or authorities).

3. **Resolvability:** This involves ensuring that financial institutions are resolvable on a timely basis. A process which is automatic and immediate is preferable to a mechanism which instead requires fresh local proceedings or action by a domestic authority. An immediate and automatic recognition (subject to safeguards) would help to ensure that institutions are resolvable because the resolution measures can be implemented promptly.

B. RESPONSE TO SPECIFIC FSB QUESTIONS

The Consultative Document raises five specific questions. Taking each in turn:

1. *Are the elements of cross-border recognition frameworks identified in the report appropriate? What additional elements, if any, should jurisdictions consider including in their legal frameworks?*

Themes set out in section 1.2 of the Consultative Document

There is broad agreement with the themes in section 1.2 of the Consultative Document. As stated above, however, there is a preference for automatic and immediate recognition (unless clearly articulated safeguards are not satisfied) without the need for additional domestic steps to implement resolution measures. A general public policy exception to such automatic and immediate recognition should be limited in scope. Individual counterparties should make any determination as to whether safeguards are satisfied rather than wait for a domestic authority to confirm after a period of time.

If there were not to be an automatic and immediate recognition of resolution measures, we anticipate that there could be a significant divergence in terms of : (i) the capacity of domestic authorities to give effect to, and the extent of such effect of, resolution measures; (ii) the process for giving effect to resolution measures; (iii) the grounds for non-recognition of resolution measures; (iv) the requirements as to the equality of treatment of creditors; (v) the speed of implementation of resolution measures; and (vi) the liability of the resolution authority as a result of implementing resolution measures.

A distinction needs to be made between recognition and enforcement. Recognition of the resolution proceedings, in the traditional sense, will not result in the recognition and enforcement of the **effects** (i.e. the actual resolution measure). In order for “recognition” of the resolution actions to be effective, there needs to be both recognition of the proceedings and recognition and enforcement (with appropriate safeguards) of the actual effects of those proceedings.

It is also critical to establish:

- (a) a coherent process for determining the home jurisdiction of a firm and which law predominantly governs its resolution. In this respect, the home state regulator may be appropriate. The centre of main interests (COMI) and establishment concepts are not appropriate in the context of institutions who operate a global business as the concepts are too uncertain and subject to potential challenge; and
- (b) a coordinated approach for circumstances where a group comprises various legal entities (or branches) regulated in different jurisdictions. This needs to be coordinated so different jurisdictions’ resolution measures do not conflict.

It would be very helpful if the FSB criteria also encouraged ex-ante coordination between authorities in order to help provide more predictability. For example, support measures around, transfer orders and operational continuity should be planned in advance.

In addition, it would also be helpful if, where practicable, all affected regulators agreed to consult with each other prior to the implementation of any individual resolution measure.

Identification of existing frameworks

The identified statutory frameworks have various advantages and disadvantages. Each of these is considered in turn in Annex 1 below. While aspects of the identified statutory frameworks can be taken and adapted to give effect to foreign resolution measures, each can be improved from the perspective of achieving a good standard of transparency and clarity for the market, resolvability and appropriate safeguards (although it is recognised that achieving perfection would be nigh on impossible). In the corporate insolvency context, the UNCITRAL Model Law is the most appropriate comparator. While implementing an equivalent regime to the UNCITRAL Model Law for resolution is not attractive for the reasons set out below, some of the broad principles set out in the Model Law (and the Winding Up Directive) could be used by way of inspiration for an alternative solution.

Our view is therefore that the FSB should move away from the existing examples of laws relating to cross-border recognition. We propose the consideration of alternative solutions as outlined in Part C of this letter below.

2. ***Do you agree that foreign resolution actions can be given effect in different ways, either through recognition procedures or by way of supportive measures taken by domestic authority under its domestic resolution regime? Do you agree with the report's analysis of these approaches?***

If there is discretion in terms of how each jurisdiction gives effect to the same measure, inconsistencies may be introduced which could undermine any of the three themes. Importantly, there is also the potential to create additional conflicts of laws if the recognition of the resolution action requires what is effectively a local resolution procedure to perfect and give effect to the foreign resolution. See question 1.

We recognise that some of the alternative approaches suggested by us in Part C below may be difficult to achieve. In the event that they are not achieved, "recognition procedures" would be preferable to "support mechanisms" for sections 1.2.1, 1.2.2 & 1.2.3 of the Consultative Document. This is because recognition procedures increase the likelihood that a resolution is carried out in a cohesive and consistent manner (rather than the implementation of support mechanisms which may conflict with each other). However, for the reasons stated elsewhere in this response, we would have concerns that recognition procedures may not be able to cover all of the themes identified: safeguards, transparency and clarity for the market and resolvability.

3. ***Do you agree that achieving cross-border enforceability of (i) temporary restrictions or stays on early termination rights in financial contracts and (ii) 'bail-in' of debt instruments that are governed by the laws of a jurisdiction other than that of the issuing entity is a critical prerequisite for the effective implementation of resolution strategies for global systemically important financial institutions (G-SIFIs)? Is the effective cross-border implementation of any other resolution actions sufficiently relevant for the resolvability of firms that the FSB should specifically consider ways of achieving their cross-border enforceability?***

Broadly speaking, we agree. Depending on the circumstances it could be equally critical to address the recognition of:

- (a) resolution measures which effect the transfer of assets, rights and liabilities of an entity to another entity; and
 - (b) permanent restrictions on termination rights triggered solely as a result of resolution measures.
4. ***Do you agree that contractual approaches can both fill the gap where no statutory recognition framework is in place and reinforce the legal certainty and predictability of recognition under the statutory frameworks once adopted?***

We agree with the Consultative Document that any use of a contractual solution is very much an interim measure, although it is a useful interim solution and backstop. A contractual approach has certain limitations and so a statutory approach is preferred. We have set out some of these limitations below.

- (a) It requires an agreement between the parties concerned. Various market participants have expressed the view that they have no commercial incentive to agree to the resolution measures (and may have fiduciary duties meaning they cannot).
- (b) We agree with the additional concern raised by the FSB that not every entity is regulated meaning the approach of compelling entities by regulation does not seem to be an optimal solution. Inconsistencies in terms of the extent by which each local regulation demands a contractual opt-in may mean the ISDA 2014 Resolution Stay Protocol published on 12 November 2014 (the **ISDA Protocol**) and other similar protocols may not be consistently adopted (e.g. if one regulator demands

recognition of stays of termination rights only, buy-side market participants in that jurisdiction would not agree to sign up to the ISDA Protocol as it goes further than this type of measure).

- (c) Concerns around the lack of motivation of parties are exacerbated in derivatives and other markets (e.g. repo market) as opt-in involves changing existing master agreements so as to have a retrospective effect on existing transactions.
 - (d) Contractual agreements can be overridden by other considerations relevant to the recognising jurisdiction. This observation is made in the Consultative Document with respect to public policy. Other examples include on grounds of capacity, authority, recognition of a foreign composition of local law debt and insolvency clawbacks. As a contract, it is open to challenges, whereas a legislative approach could ensure certainty of outcome (but this may depend on the specifics of the approach, see discussion as to alternative proposals in Part C below).
 - (e) Contractual solutions may not work so as to transfer rights *in rem* (or, if they do, there may be perfection requirements, clawback periods may be reset, the secured party's priority may be changed, third party consent or action may be needed etc.). Consider, for example, an English law charge on securities held in a non-English clearing system as credit support for an English law ISDA Master Agreement with a US bank. If the US bank resolution action involves a transfer to a bridge bank, a contractual opt-in as a matter of English law under the ISDA Master Agreement may not be sufficient of itself to effect a transfer of the property rights as a matter of the law applicable to such cleared securities. This issue will be exacerbated by the move away from title transfer in respect of mandatory requirements for initial margin.
 - (f) Any contractual solution potentially requires thousands of new contracts which will take time (and may be subject to their own negotiations). The mere existence of an ISDA Protocol does not guarantee adherence, particularly when an attempt is made to expand potential adherents more widely, so as to cover all market participants.
 - (g) Whilst it is prudent for market participants to take steps to ascertain the enforceability of any contractual approach, such steps will not represent an assurance that the contractual approach will be enforceable. Legal opinions may have a role in this respect, but their use will be limited and they will invariably contain reasoning based on qualifications and assumptions, and risks will remain. A legislative approach would be better able to mitigate such risks.
5. *Are the key principles for recognition clauses in debt instruments set out in the report appropriate? What other principles or provisions do you consider necessary to support the exercise of 'bail-in' powers in a cross-border context?*

We believe other industry bodies are better suited in providing a response with respect to bond markets.

C. ALTERNATIVE APPROACHES TO RECOGNITION

The alternative approaches suggested below are designed with the intention of accommodating all three themes relating to safeguards, transparency and clarity for the market and resolvability. They are also designed with the objective of managing the inherent conflicts between these themes. These alternative approaches involve immediate and automatic recognition of the resolution measures and proceedings without the need for fresh judicial or administrative proceedings in the recognising jurisdiction. If immediate and automatic recognition of resolution measures and proceedings is in place, clearly safeguards become critical.

We recognise there is no “silver bullet” solution to meet all three themes and we recognise that these solutions are ambitious. However, the concept of being able to provide relief in aid of a foreign insolvency proceeding to the extent available under a law other than the law of the State where the proceedings have been opened has some precedent in the Model Law. Equally, the principle that safeguards can be established by reference to the governing law of the contract has precedent in the Winding Up Directive. Furthermore, it may be helpful in terms of achieving a consensus between sovereign states that the context now is different to previous attempts at cross border recognition of insolvency proceedings (where the relevant insolvency proceedings looked very different). Broadly speaking, resolution powers do look very similar (as do the nature of the safeguards), including because of an attempt by jurisdictions to be consistent with the Key Attributes Paper.

Solution 1 is preferable to solution 2 on the basis of a comparison of their potential respective advantages and disadvantages, as outlined below.

SOLUTION 1: Recognition but let choice of law effect safeguards

This solution effectively provides for the immediate and automatic recognition of resolution measures and proceedings but only to the extent that any such resolution measure and proceeding could have been taken under the governing law of the relevant contract. There is some precedent for this - this approach is analogous to an interpretation of Article 25 of the Winding Up Directive. It may also be helpful to include a temporary (e.g. a 2 business day) restriction or stay on early termination rights in financial contracts arising from such resolution measure (including the exercise of any cross-default rights). This will allow some time for counterparties to map the resolution action against the equivalent resolution regime of the governing law of the relevant contract.

Advantages:

1. This solution respects the choice of law that the parties made when entering into the contract and uses it as a proxy to define the safeguards which protect creditors.
2. Most cross-border contracts are governed by New York or English law, which have robust and reasonably developed regimes.
3. This achieves the protection of safeguards which are already documented (without the need for protracted negotiation between jurisdictions as to the scope and coverage of a fresh list of safeguards).
4. Resolution regimes which are lacking will automatically fail and therefore be unattractive. This may ensure the further harmonisation of regimes with the Key Attributes Paper.

Disadvantages:

1. This approach requires a comparison between two regimes. This analysis could prove to be time consuming and difficult in some circumstances.

SOLUTION 2: Recognition mirrors contractual approach under ISDA Protocol

This solution effectively proposes the implementation of the ISDA Protocol as a legislative solution. The legislative framework, as in the ISDA Protocol, would specify six identified regimes between which there is automatic recognition of any resolution measure.

In respect of other regimes, there would be automatic recognition of resolution measures subject to the safeguards. Alternatively, the six identified regimes could: (i) collectively agree (or agree via the FSB's existing peer review programme) whether or not to admit other jurisdictions to the club of six regimes or (ii) individually agree their own recognition of such other jurisdictions on a bilateral and reciprocal basis.

Advantages:

1. This approach capitalises on the degree of political consensus already agreed between the six identified regimes which led to the development of the ISDA Protocol.
2. This approach would also encourage other regimes to implement laws that achieve the higher status afforded to such identified regimes.
3. As most derivative contracts are governed by English and New York law, this may be highly effective to the extent of rights *in personam* (because both the UK and the US are identified regimes).

Disadvantages:

1. Certain changes may need to be made in order to fit the ISDA Protocol into a legislative framework. For example, is it politically acceptable for the Annexes (which, broadly speaking, limit recognition to the extent of the current law and anticipated changes in certain laws in each of the six jurisdictions) to be reflected as a concept in a cross-border treaty? Equally, is it politically acceptable for Section 2 of the ISDA Protocol (*Limitation on Exercise of Default Rights upon U.S. Insolvency Proceedings*) to be reflected?
2. The safeguards for regimes (other than the identified regimes) need to be agreed in detail by each relevant jurisdiction
3. This is dependent on reciprocity. The identified six regimes agreeing safeguards may mean that they will recognise resolution measures implemented by other regimes but does not mean such other regimes will recognise resolution measures introduced by the identified regimes.
4. The two tier system of recognition may not be palatable for jurisdictions outside of the six identified regimes.
5. This solution may not be ambitious enough.

We hope that you find our comments useful in your continuing deliberations on the cross-border recognition of resolution action. Please do not hesitate to contact the undersigned if we can provide further information about the derivatives market or other information that would assist the FSB in its work in relation to the implementation of a legislative framework for the cross-border recognition of resolution action.

Yours faithfully,



Scott O'Malia

Chief Executive Officer

ANNEX 1

EXISTING STATUTORY FRAMEWORKS

UNCITRAL Model Law (as expanded to cover entities subject to resolution):

This statutory framework is potentially unsuitable because it cannot deliver appropriate protections for safeguards, transparency and clarity for the market and resolvability for the following reasons.

- (a) It is subject to local law implementation which results in divergences in scope and approach.
- (b) There is no concept of automatic recognition of proceedings. Instead, recognition is by way of court application and there can be differences in views as to what proceedings are capable of recognition.
- (c) Save for an automatic, but limited, stay (see (d) below), upon recognition of the proceedings everything is discretionary before the courts, which could result in an inconsistent application of safeguards.
- (d) The court process for discretionary relief (e.g. the extension of the stay, the grant of an order preventing the termination of contracts) can take an extended period of time. For example it is possible for such process to take between three to six months (although shorter periods are possible). The appeal process can also lengthen this process (e.g. *Fairfield Sentry Limited, Debtor Kenneth Kryz v Farnum Place, LLC*² in the US and *Fibria Celulose S/A v Pan Ocean Co. Ltd & Anor*³ in the UK).
- (e) The ability to recognise the effect of a foreign law (e.g. the effects of resolution measures) is unclear. In particular, it is unclear as to whether this is possible (e.g. we understand that, broadly speaking, the position in the US is yes, whereas, the position in the UK is no) and, if so, in what circumstances and to what extent foreign law will be applied (e.g. the recognition of a foreign composition). However, the ability to provide discretionary relief in the form of **any** relief that may be available under the laws of the State that has recognised the foreign insolvency proceeding (the **Recognising State**) does provide a helpful precedent. Clearly, it contemplates a Recognising State giving effect to a foreign proceeding to the extent that the relevant measure is available under the laws of the Recognising State⁴. This principle is analogous to solution 1 of our suggested alternate approaches.
- (f) The automatic stay is not very effective (and its precise scope is subject to local law implementation) as the stay's principal effect applies only in relation to commencing or continuing legal proceedings in respect of the debtor's assets and preventing the debtor from transferring or disposing of its assets. It is not a stay on contractual termination rights or other self-help steps such as the suspension of payment obligations or the enforcement of security.
- (g) It does not cover financial institutions and also relies on COMI. See earlier comment on how this concept is not suitable for credit institutions.

² *Fairfield Sentry Limited, Debtor Kenneth Kryz v Farnum Place, LLC* 768 F.3d 239 (2nd Circuit 2014)

³ *Fibria Celulose S/A v Pan Ocean Co. Ltd & Anor* [2014] EWHC 2124 (Ch)

⁴ Although it should be noted that the scope of the relevant provision in the Model Law is untested in this context in the UK

Swiss Legislation

Based on the description contained in the Consultative Document, this statutory framework, is unhelpful in terms of delivering appropriate safeguard protections, transparency and clarity for the market and resolvability for the following reasons:

- (a) the two month period for the recognition of proceedings is too long; and
- (a) the issues raised are similar to those which arise in respect of non-Member States under BRRD. Please see further under “BRRD/Winding Up Directive” below.

Monetary Authority of Singapore (MAS) Act

Based on the description contained in the Consultative Document, this statutory framework, is unhelpful in terms of delivering appropriate safeguard protections, transparency and clarity for the market and resolvability for the following reasons:

- (a) the exercise of power to transfer shares is subject to Ministerial approval, which creates high political risk; and.
- (a) there is limited assistance as the power only relates to the transfer or issuance of shares and therefore is not wide enough.

We note, however, that as there is no need to go to a court, this is helpful for resolvability.

BRRD/Winding Up Directive

Recognition between Member States

This provides for automatic recognition between Member States (of both proceedings and, subject to exceptions, the effects of the proceedings). As such, this framework is generally helpful for resolvability, safeguards and transparency and clarity for the market. However, the devil is in the detail and, in certain respects, discretion is conferred on individual Member States. Examples of where these legislative frameworks defer to local implementation (which may diverge) include the following.

- (a) There is a discretion in how the safeguards are transposed by Member States. For example, see Article 77 of BRRD.
- (b) The scope of the exceptions (safeguards) in the Winding Up Directive is unclear in many aspects and in need of clarification from the CJEU and/or EFTA court. This is unhelpful from the perspective of achieving transparency and clarity for the market.⁵

⁵ Broadly speaking, the Winding Up Directive sets out the basis of recognition by each member state of other member states' resolution measures. It provides for very broad recognition by one member state of another's resolution laws. There are various exceptions to this, for example, with respect to "netting agreements" (including standard ISDA Master Agreements). Article 25 of the Winding Up Directive provides that netting agreements will be governed solely by the governing law. The prevailing view, at least from English law perspective, is that, taking an example of an English law governed ISDA Master Agreement with an Italian credit institution under resolution, the use of "solely" confirms that the governing law of the contract (i.e. English law) will be unamended by the Italian reorganisation measures. It will, however, include English insolvency law assuming that the Italian credit institution had undergone the closest equivalent English proceedings or measures. The Winding Up Directive is unclear, however, and there are other views. Assuming this is the correct interpretation, broadly speaking, this means Italian resolution will be recognised via the Winding Up Directive under English law contract if you could do the same thing under for example the Banking Act 2009. See second solution in Part C below as to how this approach could be adapted.

Recognition in respect of non-Member States

In terms of recognition in respect of non-Member States, the safeguards are so broad and potentially politically biased so that it may become difficult for market participants to predict how they will be applied in practice. The result is that it is also unclear in terms of resolvability. Recognition of non-Member States resolution measures is subject to exceptions which can be construed quite broadly. The dual approach applied in BRRD of: (i) enforcement of the resolution proceedings in accordance with national law; together with (ii) ensuring that domestic resolution authorities have certain minimum powers to implement and perfect aspects of the foreign resolution in their State are bad for transparency and clarity. It also has the potential to create another conflict of laws, between the foreign law resolution measure and the domestic actions in support of the foreign law resolution measure.

ANNEX 2

ABOUT ISDA

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC 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 including exchanges, clearinghouses 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.