



*15 December 2017*

Committee Secretary  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**Email:** economics.sen@aph.gov.au

Dear Committee Secretary

**Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures)  
Bill 2017**

The International Swaps and Derivatives Association, Inc. (“ISDA”)<sup>1</sup> is grateful for the opportunity to provide a submission on the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017 (“Reforms”)<sup>2</sup> which strengthens the Australian Prudential Regulation Authority’s (“APRA”) crisis management toolkit in relation to banks and insurers.

Since its inception, ISDA has pioneered efforts to identify and reduce the sources of risk in the derivatives and risk management business through documentation that is the recognized standard throughout the global market, legal opinions that facilitate enforceability of agreements and collateral arrangements, the development of sound risk management practices, and advancing the understanding and treatment of derivatives and risk management from public policy and regulatory capital perspectives.

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<sup>1</sup> **About ISDA:** 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> In this regard, we note that the Reforms were referred to this Economics Legislation Committee by the Senate on 16 November 2017 for inquiry and report.

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Consistent with our mission, we make some observations in this letter on the international context in which the Reforms are being made. ISDA actively engages with, and provides input in relation to, regulatory proposals in the Asia Pacific region, the United States, Canada and the European Union and ISDA's comments in this letter are derived from this international experience and dialogue. Given our focus on the OTC derivatives markets, we note that other respondents, in particular, those with a broader and less sector-specific focus and mission than ours, are better placed to comment in detail on other parts of the Reforms. Accordingly, our submission is limited to the specific issues raised below and our members may choose to make their own individual submissions in relation to the Reforms.

### *Submissions*

#### **Consistency with international reforms**

We note that the Reforms strengthen APRA's crisis resolution toolkit in relation to banks and insurers. In particular, these Reforms strengthen APRA's powers to facilitate the orderly resolution of banks and insurers, to set appropriate prudential requirements, and to take action in relation to resolution planning to ensure these entities are better prepared for resolution.

The Explanatory Memorandum to the Reforms states that the proposals in the Reforms:

*“help to provide a framework for resolution that is consistent with these international developments, in a manner that is appropriate for the Australian financial system. In a cross-border context, the proposals in the Bill help ensure APRA has resolution powers which could be applied in a coordinated manner with authorities in other jurisdictions, where relevant, consistent with the Key Attributes”<sup>3</sup>*

The Financial Stability Board (“FSB”) adopted its *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“*Key Attributes*”) in its Plenary meeting in October 2011. The *Key Attributes* set out the core elements that the FSB considers to be necessary for an effective resolution regime and were endorsed by the G20 Heads of States and Government at the Cannes Summit in November 2011 as “a new international standards for resolution regimes”.<sup>4</sup> The *Key Attributes* have formed the basis for significant resolution reforms in other jurisdictions. For example, the European Bank Recovery and Resolution Directive 2014/59/EU (“*BRRD*”) establishes a framework for the recovery and resolution of credit institutions and investment firms.<sup>5</sup> The BRRD is considered to be “fully in line with the FSB recommendations”.<sup>6</sup>

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<sup>3</sup> Explanatory Memorandum to the Reforms, [1.14].

<sup>4</sup> Communiqué G20 Leaders Summit – Cannes – 3-4 November 2011, Section 13.

<sup>5</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014.

<sup>6</sup> European Commission, Press Release Database, ‘Memo: EU Bank Recovery and Resolution Directive (BRRD): Frequently Asked Questions’ (15 April 2014, Brussels).

# ISDA

We consider that the Reforms implement a framework which is broadly consistent with the Key Attributes and has a number of similar features to the resolution frameworks in place in the jurisdictions of many of Australia's important partners. Accordingly, from the perspective of promoting international best practice and regulatory consistency across jurisdictions, ISDA is broadly supportive of the Reforms.

## Conclusion

We thank you for the opportunity to provide a submission on the Reforms. We would be very happy to discuss this matter further at your convenience. Please do not hesitate to contact Keith Noyes, Regional Director, Asia Pacific [REDACTED], Erryan Abdul Samad, Assistant General Counsel [REDACTED], Jing Gu, Senior Counsel [REDACTED] or Rishi Kapoor, Director, Public Policy, Asia-Pacific [REDACTED] if we may be of further assistance.

Yours sincerely,

For the **International Swaps and Derivatives Association, Inc.**

[REDACTED]  
Keith Noyes  
Regional Director, Asia-Pacific

