

SOCIETE GENERALE PRESENTATION

ISDA Resolution Stay Jurisdictional Modular Protocols (UK, Germany and others in progress) and ISDA 2016 Bail-in Art 55 BRRD Protocol

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ISDA Resolution Stay Jurisdictional Modular Protocol (UK, Germany and others in progress

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I. BACKGROUND

- ❑ The financial crisis of 2008 and G20 Commitments
- ❑ Special Resolution Regimes developed (SRRs)
- ❑ SRR Stay Regulations

II. ISDA PROTOCOLS - BACKGROUND

- ❑ ISDA has developed different Protocols for different requirements :
 - {the ISDA 2014 Resolution Stay Protocol}
 - the ISDA 2015 Universal Resolution Stay Protocol
 - the ISDA Resolution Stay Jurisdictional Modular Protocol (“ISDA JMP”) to facilitate compliance with SRR Stay Regulations
- ❑ The ISDA JMP :
 - Provisions that outline the means by which parties can adhere and become Adhering Parties (including adherence letters)
 - “Jurisdictional Module” with respect to a specific SRR Stay Regulation in a jurisdiction
 - An Adhering Party may elect one or more Jurisdictional Modules to adhere to
 - ISDA UK (PRA Rule) Module open for adherence
 - ISDA German Module open for adherence

III. ISDA RESOLUTION STAY JURISDICTIONAL MODULAR PROTOCOL – ADHERENCE STRUCTURE

- ❑ An entity may adhere to a particular Jurisdictional Module as either :
 - a “Regulated Entity”
 - a “Module Adhering Party”
 - or both
- ❑ A Module Adhering Party can choose between three options for identifying the Regulated Entities that it will amend its contracts with (if they also adhere). These options are :
 - (1) all Regulated Entities;
 - (2) all Regulated Entities that are members of a G-SIB; and
 - (3) one or more specific Regulated Entities (i.e., entity-by-entity selection)
 - A Module Adhering Party can choose to amend agreements with certain Regulated Entities
 - Any Regulated Entity that a Module Adhering Party chooses to amend its agreements with is a “Regulated Entity Counterparty” with respect to such Module Adhering Party
- ❑ In its Adherence Letter for a Jurisdictional Module, a party can elect to adhere :
 - (1) as a principal;
 - (2) as an agent on behalf of all of the principals that it represents; or
 - (3) as an agent on behalf of some, but not all, of the principals that it represents

IV. ISDA RESOLUTION STAY JURISDICTIONAL MODULAR PROTOCOL – JURISDICTIONAL MODULES

- ❑ Provisions amending Covered Agreements will be broadly based on the text of final and fully implemented SRR stay Regulations in a specific jurisdiction
- ❑ Jurisdictional Modules will generically cover all agreements within the scope of applicable regulations, i.e., “Covered Agreements” with respect to the Jurisdictional Module
- ❑ Jurisdictional Modules will amend agreements by adding terms to the Covered Agreements that govern when certain rights may be exercised
- ❑ Jurisdictional Modules will amend transactions under Covered Agreements on prospective and retrospective basis, **even if** not required by SRR Stay Regulations

V. ISDA RESOLUTION STAY JURISDICTIONAL MODULAR PROTOCOL – UK (PRA RULE) JURISDICTIONAL MODULE

- ❑ **UK PRA Rule** is Appendix 1 to the Prudential Regulation Authority’s Policy Statement 25/15 on contractual stays in financial contracts governed by third-country law
- ❑ A **Covered Agreement** under the UK (PRA Rule) Jurisdictional Module is a “*third-country law financial arrangement*” between a Module Adhering Party and a Regulated Entity Counterparty and “*third-country law financial arrangement*” provided by a Regulated Entity Counterparty for the benefit of a Module Adhering Party or provided by a Module Adhering Party for the benefit of a Regulated Entity Counterparty
- ❑ Regulated Entities in scope will need agreements in scope of the regulations amended for the UK PRA Rule in two phase-in periods. The UK (PRA Rule) Jurisdictional Module amends only agreements in scope
- ❑ Adhering Parties (as of 31/10/16): 426

VI. ISDA RESOLUTION STAY JURISDICTIONAL MODULAR PROTOCOL – GERMANY AND OTHERS

☐ GERMANY

- The German Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol enables entities subject to the German Legislation to amend the terms of their Covered Agreements by obtaining from certain counterparties a contractual recognition of the application of stays on termination with respect to requirements of the German Legislation
- This can be done either by adherence to a resolution stay protocol or by agreement to a specific clause by which the counterparty recognises and agrees to be bound by any suspension of termination rights in accordance with the German implementation of BRRD (“SAG”)
- Adhering Parties (as of 31/10/2016) : 12

☐ OTHERS (French draft bill)

VII. ISDA 2016 Bail-in Art 55 BRRD Protocol (Dutch/French/German/Irish/Italian/Luxembourg/Spanish/UK entity-in-resolution version)

- ❑ ISDA published the ISDA 2016 Bail-in Article 55 BRRD Protocol
(Dutch/French/German/Irish/Italian/Luxembourg/Spanish/UK entity-in-resolution version) **(ISDA Bail-in Protocol)**
- ❑ The ISDA Bail-in Protocol offers market participants an efficient way to amend the terms of certain ISDA Master Agreements and certain other master agreements, framework agreements and give-up and execution agreements to reflect the requirements of Article 55 of the EU Bank Recovery and Resolution Directive **(BRRD)**
- ❑ Article 55 of the BRRD requires in-scope entities to include a contractual term in agreements creating any relevant liability governed by a third country (i.e. non-EU or, if the implementation of Article 55 of the BRRD in the relevant jurisdiction extends to liabilities governed by non-EEA law, non-EEA) law whereby the creditor recognises that the liability may be subject to the exercise of write-down and conversion powers (“bail-in”) under the BRRD and agrees to be bound by any such bail-in, provided that such liability is not an excluded liability
- ❑ Adhering Parties (as of 31/10/2016) : 693
- ❑ Interim report on MREL

VIII. CONCLUSION

- DISCUSSION
- THANK YOU