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3L3 Consultation on Level 3 Impact Assessment Guidelines

ISDA¹ response – endorsement of European Forum of Securities Associations (EFSA) paper

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The International Swaps and Derivatives Association (ISDA) would like to endorse the views put forward to CESR, CEBS and CEIOPS by the European Federation of Securities Associations (EFSA), in response to the 3L3 Consultation on Level 3 Impact Assessment Guidelines.

ISDA would in particular like to underline its support for a number of the EFSA comments.

We welcome the Level 3 Committees' commitment to Better Regulation, as indicated by these Guidelines. Like EFSA, ISDA believes that this commitment to better regulation will improve the quality of European regulation and, ultimately, European competitiveness. ISDA also shares the view of EFSA that the burden of proof should be on regulators to show that regulation is necessary and proportionate, and not on industry to prove otherwise.

ISDA attaches a similar importance (to that attributed by EFSA) to governance in ensuring adequate Impact Assessment systems. We firmly believe that the Impact Assessment process must be independent of the originators of any regulatory initiative. Failure to provide this guarantee undermines the credibility of the Impact Assessment. ISDA endorses the EFSA comment as to the importance of deploying a senior decision-making body, independent from those initiating or responsible for the development of

¹ **About ISDA**

ISDA, which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985, and today has approximately 800 member institutions from 54 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on the Association's web site: www.isda.org.



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new policy, with the power to challenge decisions on whether Impact Assessments or Screening Impact Assessments should take place, or where decisions are taken to progress with an initiative where the Impact Assessment process has been inadequate.

Like EFSA, we welcome the commitment made in the Guidelines to undertake Market Failure Analysis (MFA), but believe that this is a concept that needs careful consideration. We share the view that information asymmetry does not, of itself, amount to market failure. ISDA endorses the view that information is only likely to be a source of market failure if

- It is useful to users (e.g. changing a decision to buy or sell)
- Users are willing to pay for this information; but
- This information isn't available either at all, or at a price users are prepared to pay (we suggest that if there is any dispute about the price of information in any market, this should be a matter for the competition authorities).

ISDA shares the concern of EFSA that the concept of MFA as described in the 3L3 Guidelines may create a bias in favour regulator intervention, and would welcome further discussion between regulators and industry on this point.

We would like to underline that ISDA remains committed to assisting the Level 3 Committees' efforts to accurately assess the impact of all relevant future initiatives.

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