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Expert Analysis Chapter

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1 Documentation and Formalities

1.1 Please provide an overview of the documentation (or framework of documentation) on which derivatives transactions are typically entered into in your jurisdiction. Please note whether there are variances in the documentation for certain types of derivatives transactions or counterparties; for example, differences between over-the-counter ("OTC") and exchange-traded derivatives ("ETD") or for particular asset classes.

In Ireland, over-the-counter ("**OTC**") derivatives are typically documented under the 1992 Master Agreement or 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc (Irish law) ("**ISDA Master Agreement**"), along with the relevant ISDA Schedule, the 1995 ISDA Credit Support Annex (Transfer) or 2016 ISDA Credit Support Annex for Variation Margin ("**VM**") and the ISDA form of Confirmation. OTC arrangements are usually bespoke and negotiated by the counterparties.

Exchange-traded derivatives ("**ETD**") are not typically negotiated and are usually entered into through standardised documentation depending on the exchange where they are traded.

While OTC derivatives transactions are usually entered into using the ISDA documentation outlined above and there are no particular requirements for certain product types, counterparties or asset classes, nevertheless, as these can be negotiated, the terms can vary considerably. Furthermore, there are certain optional ISDA protocols that can be incorporated, such as the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol. There are also a wide range of definition booklets, confirmations, amendment documentation and annexes that are for specific product types such as commodities, credit derivatives, digital asset derivatives, equities and FX.

1.2 Are there any particular documentary or execution requirements in your jurisdiction? For example, requirements as to notaries, number of signatories, or corporate authorisations.

There are no particular documentary or execution requirements for derivatives documentation. If the derivatives documentation is governed by Irish law, the usual requirements for signing documents as either an agreement or a deed should be complied with. While derivatives documentation are generally signed as agreements, where a security package forms part of the derivatives arrangement, such as an Irish security deed, these will usually be signed as deeds. Agreements are generally signed in counterpart and can be electronically signed, and there are no notarisation requirements as a matter of Irish law. If an Irish entity is signing an agreement or deed, then the general Irish law requirements for execution of an agreement or deed should be complied with. If a non-Irish entity is signing the Irish law governed derivatives documentation, that entity must execute in accordance with the legal requirements governing execution of the instrument in question, by such a body corporate in the jurisdiction where it is incorporated. Under Irish law, a deed must be an "instrument" (i.e. in writing), show a clear intention on its face that it is a deed (the "face requirement"), be executed in the prescribed manner, and be delivered.

It is typical for corporate authorisations to be granted to approve entry into the derivatives arrangements, both from a corporate governance perspective and perhaps as a condition precedent to the counterparty entering the arrangement. There may also be a request by the counterparty for a legal opinion on due execution to be provided with accompanying director's certificates.

1.3 Which governing law is most often specified in ISDA documentation in your jurisdiction? Will the courts in your jurisdiction give effect to any choice of foreign law in the parties' derivatives documentation? If the parties do not specify a choice of law in their derivatives contracts, what are the main principles in your jurisdiction that will determine the governing law of the contract?

English law or Irish law are most often specified in ISDA documentation in Ireland.

The Irish courts will generally give effect to a choice of foreign law in the parties' derivatives documentation provided it is in accordance with Regulation (EC) No 593/2008 ("**Rome I**"), which allows the Irish courts to refuse to apply a rule of foreign law if it is manifestly incompatible with the public policy of Ireland. It is the courts of Ireland that determine on a case-by-case basis what the public policy of Ireland is.

If the parties do not specify a choice of law, the Irish courts will again look to Rome I to make the determination on governing law. The Irish courts will first consider whether the contract falls into one of the special categories listed in Rome I. If a contract does not come within one of the special categories, the applicable law will be the law of the country where the party required to effect the characteristic performance of the contract has their habitual residence, unless the contract is manifestly more closely connected with a country other than that, in which case the law of that other country will apply.

2 Credit Support

2.1 What forms of credit support are typically provided for derivatives transactions in your jurisdiction? How is this typically documented? For example, under an ISDA Credit Support Annex or Credit Support Deed.

Credit support for derivatives transactions in Ireland is often provided by way of margin collateral arrangements. In relation to margin collateral arrangements, we typically see credit support documented under one of the Irish law or English law governed credit support documents published by ISDA. Where the parties are not within scope of mandatory regulatory margin rules, these would be in the form of either the 1995 ISDA Credit Support Annex (Transfer – Irish Law), the 1995 ISDA Credit Support Annex (Transfer – English Law), or less typically a 1994 ISDA Credit Support Annex (Security Interest – New York Law) or a 1995 ISDA Credit Support Deed (Security Interest – English Law).

Where the parties are required under the applicable regulation (e.g. under the European Market Infrastructure Regulation ("**EMIR**"); see questions 2.4 and 3.1) to exchange margin, ISDA has produced additional credit support documents that are commonly used in Ireland, including the ISDA 2016 Credit Support Annex for VM (Transfer – Irish Law), the ISDA 2016 Credit Support Annex for VM (Transfer – English Law), and the 2018 Credit Support Deed for Initial Margin ("**IM**") (Security Interest – English Law), among others.

2.2 Where transactions are collateralised, would this typically be by way of title transfer, by way of security, or a mixture of both methods?

Title transfer Credit Support Annexes ("**CSAs**") are commonly used in Ireland when documenting margin arrangements.

On the other hand, Credit Support Deeds ("**CSDs**") or security interest CSAs create a security interest over the collateral. However, we rarely see CSDs used in Ireland outside of circumstances where parties are required to comply with the IM requirements under EMIR (see questions 2.4 and 3.1 for further details). Security interest CSAs are sometimes used when trading under New York law ISDA Master Agreements.

2.3 What types of assets are acceptable in your jurisdiction as credit support for obligations under derivatives documentation?

Unless parties are bound by regulatory margin requirements, they are free to agree the types of assets that will be exchanged as credit support.

As for regulatory margin arrangements, EMIR specifies that qualifying assets can be admitted as eligible collateral for use as VM or IM (as applicable; see question 2.4 for further details).

2.4 Are there specific margining requirements in your jurisdiction to collateralise all or certain classes of derivatives transactions? For example, are there requirements as to the posting of initial margin or variation margin between counterparties?

EMIR requires certain counterparties (namely financial counterparties ("**FCs**") and non-financial counterparties ("**NFCs**") above the clearing thresholds ("**NFC+s**") – see question 3.1 for further details) to exchange margin on their OTC derivatives transactions that are not cleared through a central counterparty ("**CCP**").

The EMIR margin requirements are split into: (i) VM, which provides for the exchange of margin on a daily basis by reference to the mark-to-market (or mark-to-model) value of the OTC derivatives transaction; and (ii) IM, which must be provided by the most systemically important FCs and NFC+s to cover the potential exposure in the collateral between the last collection of margin and the potential liquidating or hedging following a default of the other counterparty and is segregated from the collecting party's own assets (being typically held with a custodian). There are some limited exemptions under EMIR to these VM and IM requirements.

2.5 Does your jurisdiction recognise the role of an agent or trustee to enter into relevant agreements or appropriate collateral/enforce security (as applicable)? Does your jurisdiction recognise trusts?

Ireland is a common law jurisdiction that recognises the concept of a trust. In finance transactions, it is common to see a security trustee hold legal title to secured assets for and on behalf of a lending group and for the security trustee itself (rather than the lenders) to be party to the security documents.

The agent concept is also recognised in Ireland. While some transactions will employ a security trustee, others will use a security agent, which will enter into the security documentation.

Many structures are established such that only the security trustee/agent can appropriate collateral and/or take enforcement action in relation to the secured assets (usually on the instruction of the other parties to the transaction) and there is no issue as a matter of Irish law with trustees or agents being involved in transactions in this way (provided that they have been validly appointed).

2.6 What are the required formalities to create and/or perfect a valid security over an asset? Are there any regulatory or similar consents required with respect to the enforcement of security?

Registration and perfection requirements for security interests depend on the type of secured asset and the type of chargor entity. Title transfers of collateral are not subject to such requirements.

Many security interests created by an Irish registered company must be registered with the Irish registrar of companies (the Companies Registration Office) within 21 days of the security interest being created. The priority of a charge will be determined by the date and time of receipt by the Companies Registration Office of a fully filed charge submission. Failure to register the charge within 21 days has the effect of making the charge void against a liquidator of the company and any creditor of the company. Charges over certain assets are excluded from these rules. This potentially includes security over "financial collateral" such as cash, financial instruments and credit claims (claims under loans made by credit institutions). However, security documents creating these types of security interests are still often registered, due to uncertainty as to whether the financial collateral is "in the possession or under the control of the collateral-taker" (a crucial test for the purposes of the European Communities (Financial Collateral Arrangements) Regulations 2010 (as amended)).

Note, however, that the registration of a charge at the Companies Registration Office is not a universal registration or perfection filing and does not remove the need to register and/or perfect security over specific assets. The details of these specific requirements are beyond the scope of this publication.

There are no notarisation requirements for security documents under Irish law. There will usually be no Irish regulatory or similar consents required with respect to the enforcement

of security (unless, for instance, it involves enforcement over shares, which results in a direct or indirect change of control of a regulated business). In the case of real property, it may be necessary to obtain a court order for possession if the security holder wishes to go into direct possession.

3 Regulatory Issues

3.1 Please provide an overview of the key derivatives regulation(s) applicable in your jurisdiction and the regulatory authorities with principal oversight.

In Ireland, the key regulations that impact upon the trading of derivatives are EMIR and the MiFID II regime.

EMIR is broadly made up of three key pillars: (i) the requirement on transaction parties to report the details of all OTC and ETD contracts that they conclude, modify or terminate to a trade repository registered with or recognised by the European Securities and Markets Authority ("**ESMA**") by the end of the next working day; (ii) mandatory central clearing obligations in relation to specific classes of OTC derivatives; and (iii) risk mitigation techniques (including the margin requirements outlined at question 2.4 above) in respect of all OTC derivatives transactions that are not subject to mandatory central clearing under (ii). The various requirements of EMIR apply to counterparties based on their categorisation under the regulation as either FCs or NFCs.

Under EMIR, if an FC or NFC exceeds any of the clearing thresholds, it must notify the relevant National Competent Authority ("**NCA**") and ESMA. The NCA in Ireland is the Central Bank of Ireland ("**CBI**").

Directive 2014/65/EU ("**MiFID II**") was implemented into Irish law by the European Union (Markets in Financial Instruments) Regulations 2017. Broadly speaking, it applies to Irish investment firms providing investment services or performing investment activities: trading in a wide variety of derivatives transactions is caught (on the basis that they meet the definition of financial instruments under MiFID II). Irish investment firms are regulated by the CBI. Irish credit institutions (who are subject to the Capital Requirements Directive and Capital Requirements Regulation regime ("**CRD V/CRR II**") and who are regulated by the CBI) are also subject to specific provisions under MiFID II. MiFID II also imposes conduct of business rules requirements (e.g. relating to best execution and reporting) and organisational requirements (e.g. relating to governance, outsourcing, conflicts of interest and inducements).

3.2 Are there any regulatory changes anticipated, or incoming, in your jurisdiction that are likely to have an impact on entry into derivatives transactions and/or counterparties to derivatives transactions? If so, what are these key changes and their timeline for implementation?

Under EMIR Refit, significant changes have recently been made to the EMIR transaction reporting rules. From 29 April 2024, all new reports (including for modifications and terminations of derivatives entered into before that date) need to comply with the new reporting rules. Moreover, by no later than 26 October 2024, reporting entities will also need to update reports for any derivatives outstanding on 29 April 2024 to ensure that these comply with the new requirements.

On 14 February 2024, following negotiation and political agreement with the European Parliament, the Council of the EU released the provisionally agreed text of EMIR 3.0. At the time of writing, we are awaiting formal approval by the European Parliament and the publication of the final legislation in the Official Journal of the EU in due course. EMIR 3.0 is currently expected to enter into force in the fourth quarter of 2024 (although, in many cases, the obligations will not apply until details as to how counterparties should comply have been published by ESMA and finalised).

EMIR 3.0 will introduce amendments to the rules on clearing, transaction reporting and mandatory margining. These include an obligation on FCs who exceed the clearing thresholds ("**FC+s**") and NFC+s who exceed a threshold of €3 billion when all OTC interest rate derivatives denominated in euro and/or Polish zloty and short-term interest rate derivatives denominated in euro ("**SSI Derivatives**") are aggregated at group level to hold at least one active account for SSI Derivatives in an EU authorised CCP. The changes will also include new requirements in relation to data quality and penalties for transaction reporting.

3.3 Are there any further practical or regulatory requirements for counterparties wishing to enter into derivatives transactions in your jurisdiction? For example, obtaining and/or maintaining certain licences, consents or authorisations (governmental, regulatory, shareholder or otherwise) or the delegating of certain regulatory responsibilities to an entity with broader regulatory permissions.

Broadly, Irish sell-side firms require CBI authorisation to carry on regulated activities. These regulated activities include entering into a wide variety of derivatives transactions as principal with counterparties. The firm's scope of permission, which should include entering into the relevant types of derivatives transactions, appears on the Financial Service Provider Register maintained by the CBI. The vast majority of non-financial corporate entities on the buy-side are not subject to this CBI authorisation requirement.

3.4 Does your jurisdiction provide any exemptions from regulatory requirements and/or for special treatment for certain types of counterparties (such as pension funds or public bodies)?

EMIR previously exempted transactions with certain EU pension schemes from the clearing obligation. However, this exemption expired on 18 June 2023.

EMIR 3.0 will introduce an exemption from clearing for EU counterparties who are over the clearing thresholds where they enter transactions with third-country pension schemes if those schemes are authorised, supervised and recognised under national law and are within the scope of a clearing exemption in their home jurisdiction. On 27 March 2024 and pending the entry into force of EMIR 3.0, ESMA issued a public statement on deprioritising supervisory actions linked to the clearing obligation for third-country pension scheme arrangements.

There are also additional exemptions under EMIR (including for certain public sector entities from the clearing obligation and separate intra-group exemptions provided that certain specified criteria are met) that are beyond the scope of this publication.

4 Insolvency / Bankruptcy

4.1 In what circumstances of distress would a default and/or termination right (each as applicable) arise in your jurisdiction?

In a typical ISDA Master Agreement, a distressed situation could give rise to a bankruptcy event of default under Section 5(a)(viii). Broadly speaking, a bankruptcy event of default will arise

where a party or its credit support provider or specified entity is dissolved, becomes insolvent or unable to pay its debts or faces a resolution for its winding up or liquidation. In the context of an Irish company, this could include where the company is placed into liquidation or examinership or is the subject of a petition to appoint a liquidator or examiner, or enters into a scheme of arrangement with its creditors.

Certain other events of default may also be relevant, such as failure to pay (Section 5(a)(i)) or cross-default (Section 5(a)(vi)).

4.2 Are there any automatic stay of creditor action or regulatory intervention regimes in your jurisdiction that may protect the insolvent/bankrupt counterparty or impact the recovery of the close-out amount from an insolvent/bankrupt counterparty? If so, what is the length of such stay of action?

The Companies Act 2014 prohibits certain enforcement steps from being taken, except with the leave of the court, against a company after the presentation of a petition for the appointment of an examiner. This prohibition continues for so long as the examiner remains appointed. An examiner may remain appointed for a maximum period of 100 days during which time the examiner must complete a report to formulate proposals for a compromise or scheme of arrangement in relation to the company concerned. Following the submission of this report to the court, the court may extend the period of appointment by such further period as the court considers necessary to enable it to take a decision as to whether it confirms the proposals set forth by the examiner.

Since 2021, the Companies Act 2014 also makes provision for a rescue process for "small" and "micro" companies, which involves the appointment of a process adviser. It entitles a process adviser to apply to court for an order prohibiting certain enforcement steps from being taken, except with the leave of the court, against a company after the appointment of a process adviser. This prohibition continues for so long as the process adviser remains appointed or such other period as the court sees fit. A process adviser will normally remain appointed for a maximum period of 70 days during which time the process adviser must formulate proposals for a rescue plan in relation to the company concerned and put that plan to meetings of affected members and creditors of the company for approval. The period of appointment of a process adviser may be extended in certain circumstances, for example, if any affected member or creditor takes proceedings objecting to the rescue plan.

Certain classes of Irish counterparty may also be subject to special statutory or regulatory regimes. For example, credit institutions and investment firms may be subject to the EU Bank Recovery and Resolution Directive (as transposed into Irish law), which permits regulators in certain circumstances to impose a stay on enforcement against such counterparties.

4.3 In what circumstances (if any) could an insolvency/bankruptcy official render derivatives transactions void or voidable in your jurisdiction?

See our answer to question 4.4 below relating to the circumstances in which a transaction (which could include a derivatives transaction) may be set aside for fraud or unfair preference.

It should be noted that security interests may also be rendered void or voidable in certain limited circumstances. For example, a floating charge will be invalidated where it has been created within 12 months (or, in the case of a floating charge created in favour of a "connected person" of the company, two years) of the company entering into insolvency proceedings unless it is proven that the company was solvent immediately after the creation of the charge.

4.4 Are there clawback provisions specified in the legislation of your jurisdiction that could apply to derivatives transactions? If so, in what circumstances could such clawback provisions apply?

Yes. Broadly speaking, an Irish court may order that a transaction (which could include a derivatives transaction) or disposition made by an Irish company be set aside if it had the effect of perpetrating a fraud on the company, its creditors or members. Certain transactions may also be set aside if done within six months (or, in the case of transactions with a "connected person" of the company, two years) of the commencement of a winding up of a company with a view to giving any creditor of the company an unfair preference over other creditors. Any conveyance of property done by a company with the intention of defrauding a creditor or other person is voidable by any person thereby prejudiced.

4.5 In your jurisdiction, could an insolvency/bankruptcy-related close-out of derivatives transactions be deemed to take effect prior to an insolvency/bankruptcy taking effect?

There are no decisions of the Irish courts as to the effectiveness of provisions that purport to automatically terminate/close-out derivatives transactions prior to an insolvency/bankruptcy taking effect, but the general view is that it is likely that the Irish courts would uphold such a contractual provision.

4.6 Would a court in your jurisdiction give effect to contractual provisions in a contract (even if such contract is governed by the laws of another country) that have the effect of distributing payments to parties in the order specified in the contract?

The Irish courts would generally be expected to uphold such contractual provisions, unless they are contrary to the relevant requirements of Irish insolvency law. The Companies Act 2014 prescribes the manner in which the property of a company should be distributed on its winding up, with unsecured creditors generally ranking *pari passu* among themselves. It is possible for secured creditors to agree among themselves the order of application of the proceeds of the enforcement of their security so far as their secured claims are concerned.

It should also be noted that certain liabilities of the company, such as expenses relating to an examinership or liquidation and certain taxes, rates and employee claims, have priority over liabilities that are unsecured or secured by a floating charge.

5 Close-out Netting

5.1 Has an industry-standard legal opinion been produced in your jurisdiction in respect of the enforceability of close-out netting and/or set-off provisions in derivatives documentation? What are the key legal considerations for parties wishing to net their exposures when closing out derivatives transactions in your jurisdiction?

Yes, an ISDA industry opinion has been prepared on the enforceability of close-out netting in the 1992 and 2002 ISDA Master Agreements. In general, Ireland is viewed as a good netting jurisdiction.

Broadly speaking, the close-out netting and set-off provisions contained in the 1992 and 2002 ISDA Master Agreements should be enforceable where both parties are solvent. In the event that

an Irish counterparty becomes insolvent (or enters into examinership or one of the other processes discussed in section 4), the enforceability of such netting and/or set-off provisions will depend on various factors. These include whether those provisions form part of a "financial collateral arrangement" for the purposes of the European Communities (Financial Collateral Arrangements) Regulations 2010 or a "netting agreement" for the purposes of the Netting of Financial Contracts Act 1995, and whether there is mutuality between debts to be set off.

5.2 Are there any restrictions in your jurisdiction on close-out netting in respect of all derivatives transactions under a single master agreement, including in the event of an early termination of transactions?

A creditor of an Irish counterparty that is within the scope of the European Union (Preventive Restructuring) Regulations 2022 may be restricted from withholding performance of, terminating, accelerating or otherwise modifying certain executory contracts to the detriment of the company solely because of the appointment of or petition for the appointment of an examiner or (in the case of an essential executory contract) because the company is unable to pay its debts.

5.3 Is Automatic Early Termination ("AET") typically applied/disapplied in your jurisdiction and/or in respect of entities established in your jurisdiction?

In our experience it is more typical for AET provisions to be disapplied.

5.4 Is it possible for the termination currency to be denominated in a currency other than your domestic currency? Can judgment debts be applied in a currency other than your domestic currency?

Yes, it is possible for the parties to choose a currency other than euro as the termination currency. While a judgment or order awarded by the courts of Ireland may be expressed in a currency other than euro, any such judgment or order may be issued in euro by reference to the official rate of exchange prevailing on the date of issue of such judgment or order.

In relation to the contractual currency provisions of Section 8 of the ISDA Master Agreement, it should be noted that an Irish court might not enforce the benefit of currency conversion or indemnity clauses, and in insolvency or similar proceedings Irish law may require that all claims or debts are converted into euro at an exchange rate determined by the court.

6 Taxation

6.1 Are derivatives transactions taxed as income or capital in your jurisdiction? Does your answer depend on the asset class?

Derivatives are taxed in Ireland following general principles of taxation. In this regard, derivatives transactions may be taxed as both income or capital depending on the nature of the transaction in question. Generally, where derivatives are entered into wholly and exclusively for the purposes of a trading activity, gains or losses in respect of that derivative may be treated as trading income or losses. Alternatively, where a derivative is entered into for investment purposes or in respect of a capital asset, the gains of losses are more likely to be subject to capital gains taxation. In this regard, the asset class that is subject of the derivative (and the purpose for entering into the derivative) may be relevant in determining its tax treatment.

6.2 Would part of any payment in respect of derivatives transactions be subject to withholding taxes in your jurisdiction? Does your answer depend on the asset class? If so, what are the typical methods for reducing or limiting exposure to withholding taxes?

Generally, derivative payments are not subject to Irish withholding tax. There is a longstanding published practice from the Irish Revenue Commissioners confirming this point. Irish withholding tax can apply to other forms of interest payments, including interest payments, dividend payments and so-called "annual payments".

6.3 Are there any relevant taxation exclusions or exceptions for certain classes of derivatives?

Ireland does not have any specific tax provisions that deal with the taxation of gains or losses (or income or expense) arising from derivatives transactions. Instead, derivatives transactions are subject to first principles taxation in Ireland and there are no specific exclusions or exemptions from direct taxation for any class of derivatives.

7 Bespoke Jurisdictional Matters

7.1 Are there any material considerations that should be considered by market participants wishing to enter into derivatives transactions in your jurisdiction? Please include any cross-border issues that apply when posting or receiving collateral with foreign counterparties (e.g. restrictions on foreign currencies) or restrictions on transferability (e.g. assignment and novation, including notice mechanics, timings, etc.).

There are no general cross-border restrictions on posting or receiving foreign currency, though consideration should be given on a case-by-case basis as to whether particular restrictions (e.g. sanctions) may apply in the context of the particular counterparty.

Under Irish law, counterparties to a contract are generally free to transfer the contract, subject to the specific agreement between the parties (e.g. if the contract requires notice or consent prior to transfer, the Irish courts will generally enforce that requirement). Under Irish law, only the benefit (i.e. rights under the contract) and not the burden (i.e. obligations under the contract) can be transferred by assignment. If a party wishes to transfer its obligations under a contract it must do so by novation, which results in a new contract being entered into between the transferee and the remaining counterparty.

8 Market Trends

8.1 What has been the most significant change(s), if any, to the way in which derivatives are transacted and/or documented in recent years?

In recent years, derivatives markets have become increasingly regulated, resulting in more complex documentation requirements and the need to implement more detailed policies and operational procedures in order to ensure compliance. The CBI,

as the regulator with responsibility for EMIR compliance in Ireland, has been proactive in guiding the market on its expectations and in November 2023 issued its first fine for failures in EMIR reporting compliance, fining an investment fund €192,500 for repeated reporting failures.

Since 2018, ISDA has published a number of Irish law governed versions of their template documents, including Irish law governed versions of the 2002 ISDA Master Agreement, 1995 ISDA Credit Support Annex, 2016 Credit Support Annex for VM and various forms of Irish law governed security and custody documents. These Irish law governed versions are increasingly used when trading with Irish counterparties, particularly for finance-linked hedging transactions.

8.2 What, if any, ongoing or upcoming legal, commercial or technological developments do you see as having the greatest impact on the market for derivatives transactions in your jurisdiction? For example, developments that might have an impact on commercial terms, the volume of trades and/or the main types of products traded, smart contracts or other technological solutions.

Over the coming year, the market will need to integrate changes arising from the EMIR Refit reporting rule changes and EMIR 3.0 (see question 3.2).

There is a growing regulatory divergence between the EU and the UK. Irish counterparties with operations in both the EU and the UK are facing increasingly complex operational requirements as they deal with compliance with multiple regulatory regimes, and different regulatory obligations depending on whether their counterparties are located within or outside the EU.

There is an increase in focus on AI tools, smart contracts and distributed ledger technology. ISDA has established a number of working groups to examine potential developments in these areas and in particular has published guidelines on the use of smart contracts and proposed amendments to collateral documents to allow the posting of digital assets as collateral.

Acknowledgments

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