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Support for reform of netting legislation in Slovakia

Dear Madam and Sirs,

We are contacting you on behalf of The International Swaps and Derivatives Association (**ISDA**)[1] and our Slovak and foreign members in relation to the netting reform proposal in Slovakia. We are aware of the initiative of the Slovak energy companies aimed at broadening the scope of the current Slovak close-out netting legislation and this letter is to support that initiative. The initiative is also supported by the European Federation of Energy Traders (**EFET**)[2].

As you know from our previous contacts in relation to netting and collateral legislation in Slovakia, ISDA is committed to promoting development of sound risk management practices on international financial and commodity markets closely relying on adequate legal and regulatory treatment of over-the-counter (**OTC**) derivatives and similar transactions and thereby fostering greater harmonization of international and European standards in order to cope with difficult market conditions.

ISDA and EFET members including a number of Slovak financial institutions and corporates have benefited greatly from the legal certainty provided by the current Slovak recognition of close-out netting as set out in Section 180 of the Slovak Bankruptcy Act No. 7/2005 Coll. Yet these benefits are currently limited to trading between counterparties of which at least one is a financial institution. Consequently, the benefits are limited to the financial market.

1 Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 990 member institutions from 78 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, intermediaries, 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 website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

2 The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org

ISDA

In recent years, ISDA and EFET members experienced surge in trading volumes, exposures and also volatility in energy and broader commodity markets. Recent conflict in Ukraine and resulting pressure on the markets had only exacerbated these trends. Increasingly, the integrity and stability of energy markets is becoming similarly important as the integrity and stability of financial markets, taking into account potential impacts on broader economy and ultimately households and citizens. Participants in the energy markets however are usually not financial institutions.

As a result of legal uncertainties of the treatment of close-out netting between two corporate counterparties in the Slovak Republic, the Slovak corporates and in particular Slovak energy companies trading in the European wholesale energy markets are in our view at a competitive disadvantage. That is because their counterparties inside and outside the Slovak Republic cannot confidently net their exposures from any kind of commodity or energy transactions (whether derivative or not) against their Slovak corporate counterparties. Non-availability of close-out netting typically leads to exposures being calculated on a gross basis, which in turn dramatically increases the margin requirements (i.e. requirements for covering the outstanding exposure by cash collateral). By the same token, Slovak energy companies seeking to hedge or simply cover their supply needs are disadvantaged since they face higher fees and margin costs when trading on the international energy markets and/or have restricted or even completely limited access to them as a consequence.

Based on the experience of ISDA and its members, it is extremely important, especially in the times of turbulence on the markets, to provide the market participants with netting and collateral protection which is as wide as possible. Such protection should not discriminate between the types of counterparties, types of transactions or governing laws. In most other member states of the European Union, including the Czech Republic, Germany, Austria, The Netherlands, Belgium, France, Italy, Denmark, Slovenia and also in the UK (most of which countries are major trading partners of the Slovak Republic), the close-out netting agreements between two corporate counterparties are protected either by specific netting statutes (similar to Section 180 of the Slovak Bankruptcy Act) or by general doctrine, recognition and no limitation of netting, set-off and similar arrangements in insolvency.

In cooperation with local market participants and legal experts, ISDA and EFET would like to offer their assistance to the Slovak authorities in discussing these issues further. ISDA and EFET hope to be helpful, building on considerable experience in assisting numerous legislators in similar cases. The economic benefits to the Slovak Republic of such reform would be significant.

If we can be of any help in this process, we hope that you will not hesitate to contact us.

Yours sincerely

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