ISDA Resolution Stay Jurisdictional Modular Protocol and the UK (PRA Rule) Jurisdictional Module

Seth Grosshandler, Partner, Cleary Gottlieb
Knox McIlwain, Associate, Cleary Gottlieb
Samantha Riley, Assistant General Counsel, ISDA
Background

The financial crisis of 2008 and G20 Commitments

- Ending “too big to fail”
- New approaches to ailing/failing systemically important financial institutions (SIFIs)
- Financial Stability Board (FSB) identified parties exercising close-out rights and cross-default rights as impediment to orderly resolution

Special Resolution Regimes developed (SRRs)

- Based on general principles in the FSB’s Key Attributes
- SRRs generally already stay/override exercise of direct defaults and cross defaults in the context of resolution, provided that certain creditor protections are satisfied
- A potential gap relates to the enforceability of stays in non-home jurisdictions

SRR Stay Regulations:

- Jurisdictions are enacting laws, regulations or other binding measures that generally require regulated entities to obtain contractual consent of counterparties to be subject to stays on or overrides of certain termination rights under home-country SRRs
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 Resolution Stay Jurisdictional Modular Protocol –
*NEW Adherence Structure

ISDA Jurisdictional Modular Protocol Boilerplate

- UK Jurisdictional Module
- Other Jurisdictional Modules

- Applicable to all Adhering Parties
- Elected by Adhering Parties who choose to apply terms of such Jurisdictional Module
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
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.
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.

The UK (PRA Rule) Jurisdictional Module uses the terms in the PRA Rule, to the extent possible. Those words are in italics and defined as in the PRA Rule.

The UK (PRA Rule) Jurisdictional Module is interpreted in accordance with the PRA Rule.

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.
ISDA Symposium®

ISDA will be hosting an ISDA Symposium® on the ISDA JMP and UK (PRA Rule) Jurisdictional Module and the next phase, please see link to agenda and details below

ISDA Symposium® - The New ISDA Resolution Stay Jurisdictional Modular Protocol
Including the UK (PRA Rule) Jurisdictional Module
Thursday, May 26, 2016
London