

# **Adherence with the ISDA Dodd-Frank March 2013 Protocol**

**June 2013**

As discussed in our previous alert, [End-user Adherence with the ISDA August 2012 Dodd-Frank Protocol](#), over-the-counter derivatives trades between dealers and end-users are generally governed by master agreement forms and other documentation published by the International Swaps and Derivatives Association, Inc. (“ISDA”). Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) the trading of derivatives, including over-the-counter derivatives, is subject to regulation by the U.S. Commodity Futures Trading Commission (the “CFTC”) and the U.S. Securities and Exchange Commission (the “SEC”).

By May 1, 2013, swap counterparties were required to comply with the ISDA August 2012 Dodd-Frank (DF) Protocol (the “2012 Protocol”), or alternatively amend their existing swap documentation, to comply with CFTC rules promulgated under the Dodd-Frank Act. Following the 2012 Protocol, ISDA has issued the ISDA March 2013 DF Protocol (the “2013 Protocol”) to allow counterparties to further amend their existing swap documentation to comply with additional CFTC regulations that are scheduled to take effect on July 1, 2013.

The structure of the 2013 Protocol is similar to the 2012 Protocol and includes the following four documents: (1) the “Adherence Letter,” (2) the “Questionnaire,” (3) the “Protocol Agreement,” and (4) the “DF Supplement.”

## **Adherence Letter and Protocol Agreement**

Participation in the 2013 Protocol requires each adhering party to submit an Adherence Letter online to ISDA stating that such party agrees to the terms of the Protocol Agreement. The Adherence Letter and the Protocol Agreement provide the general legal framework for entering into the 2013 Protocol.

## **DF Supplement and Questionnaire**

Following submission of an Adherence Letter, an adhering party must then exchange Questionnaires with its counterparties to amend the swap agreements between the parties. Once Questionnaires are exchanged between two parties, all covered swap agreements between them are deemed amended by the 2013 Protocol.



The DF Supplement includes certain representations, acknowledgments and agreements between the parties to facilitate compliance with certain CFTC regulations regarding swap clearing, portfolio reconciliation and swap trading relationship documentation (as further described below). Similar to the supplement for the 2012 Protocol, the DF Supplement is segmented into four schedules under which some of the provisions that parties may agree to are optional and some are mandatory. The Questionnaire allows an adhering party to select which of these provisions it wishes to agree to with each of its counterparties.

Schedule 1 of the DF Supplements is mandatory for adhering parties and contains the defined terms of the agreement.

Schedule 2 is also mandatory for adhering parties and contains (i) general representations and acknowledgements regarding transaction confirmations, (ii) acknowledgments and representations regarding a party's status for purposes of complying with the CFTC's mandatory clearing requirements, and (iii) acknowledgments regarding the CFTC's end-user exception from mandatory clearing for non-financial entities (i.e., corporate end-users). Corporate end-users have the option to make a standing election to the end-user exemption from clearing so that the presumption will be that such end-user wishes to refrain from clearing all swap transactions unless it notifies its counterparty otherwise.

Schedule 3 includes certain risk valuation procedures and dispute resolution mechanics for swap transactions for counterparties that have not negotiated such provisions under their existing ISDA Master Agreement and Credit Support Annex. Schedule 3 is mandatory for "financial entities," which includes hedge funds, and is optional for corporate end-users.

Schedule 4 includes agreements regarding portfolio reconciliation procedures between counterparties. Under the CFTC rules promulgated under the Dodd-Frank Act, swap dealers and major swap participants are required to reconcile their portfolios and address any discrepancies. The 2013 Protocol gives financial entities and corporate end-users the option of engaging in the portfolio reconciliation process. If an adhering party agrees to include Schedule 4 and wishes to take part in portfolio reconciliation, it has the option of (i) reviewing portfolio data sent to it by its counterparty, or (ii) exchanging portfolio data with its counterparty. A party that chooses to review portfolio data will be required to review the data sent to it by its counterparty and alert the counterparty of any discrepancies. A party that chooses to exchange data will be required to provide certain portfolio information to its counterparties and each party will then review the data against its own portfolio data and must alert the other party of any discrepancies. Adhering parties also have the option to reconcile their counterparties' portfolio data against the data provided by the relevant swap data repository.

### **Compliance Deadline**

Swap dealers and major swap participants are required to comply with the relevant rules that are addressed by the 2013 Protocol by July 1, 2013. Therefore, adhering parties must complete the 2013 Protocol by July 1, 2013 to avoid disruptions in trading with their counterparties.



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