

ISDA Accepting Comments on Draft Dodd-Frank "Protocol 2.0"

February 5, 2013

Pursuant to Title VII of the Dodd-Frank Wall Street Reform and Customer Protection Act (Dodd-Frank), the Commodity Futures Trading Commission (CFTC) has adopted a number of final regulations that require swap dealers (SDs) and major swap participants (MSPs) to amend their existing swap trading relationship documentation. To facilitate compliance with these requirements, the International Swaps and Derivatives Association, Inc. (ISDA) initiated a market-wide ISDA Dodd-Frank documentation initiative. The first element of this initiative, the ISDA August 2012 DF Protocol (August Protocol), focused largely on CFTC regulations requiring SDs and MSPs to abide by business conduct standards with respect to their counterparties.

In order to address regulations that the CFTC has adopted since ISDA's publication of the August Protocol, in October 2012 ISDA published an initial draft of a second protocol (which it later revised in November 2012). Similar to the August Protocol, this second protocol (Protocol 2.0) is intended to facilitate SDs and MSPs compliance with regulations the CFTC has adopted pursuant to Dodd-Frank. On January 25, 2013, ISDA published a revised draft of the ISDA 2013 DF Protocol Supplement (Supplement) portion of Protocol 2.0. The Supplement contains the substantive provisions that will be incorporated into existing trade documentation to facilitate SDs' and MSPs' compliance with the following CFTC final rules:

- Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants¹;
- End-User Exception to the Clearing Requirement for Swaps²; and
- Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act (CEA)³.

The Supplement consists of four "Schedules":

- Schedule 1 contains definitions;
- Schedule 2 contains general terms for agreements between the parties and certain specific narrower aspects of the trade documentation, swap portfolio reconciliation, and confirmation rules as well as an optional termination provision and provisions relating to the end-user exception to clearing;
- Schedule 3 pertains to the parties' agreements on daily valuations of swaps for the purposes of internal risk management for SDs and MSPs as well as the dispute resolution process for any such risk valuations; and
- Schedule 4 pertains to how the parties will exchange portfolio data for the purposes of portfolio reconciliation.

¹ 77 Fed. Reg. 55904 (published on Sept. 11, 2012).

² 77 Fed. Reg. 42559 (published on July 19, 2012).

³ 77 Fed. Reg. 74284 (published on Dec. 13, 2012).

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Schedules 1 and 2 are automatically deemed incorporated into existing documentation upon adherence to Protocol 2.0; Schedules 3 and 4 are optional.

On January 29, 2013, ISDA held a market education conference call to discuss the Supplement. A copy of the Supplement may be found on ISDA's [website](#).
In addition, a recording of the market education call may also be found on ISDA's [website](#).

Comments on the revised draft of the Supplement are due to ISDA by **February 8, 2013**.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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