

"Top Up Agreement" Leverages ISDA's March 2013 Dodd-Frank Protocol

Background

The European Market Infrastructure Regulation ("EMIR") is the European Union measure that implements the G-20 recommendations for derivatives. It applies generally to the activities of European entities that trade in derivatives, including their trading activities with non-European counterparties.

Article 11 of EMIR requires the adoption of certain risk mitigation techniques in relation to OTC derivatives transactions. Among others, the EMIR risk mitigation techniques relating to portfolio reconciliation and dispute resolution (the "EMIR Portfolio Reconciliation Techniques") come into effect on September 15, 2013.

ISDA has already produced a stand-alone protocol (the "ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol") designed to facilitate compliance with the EMIR Portfolio Reconciliation Techniques. However, a number of adherents to the ISDA March 2013 DF Protocol (the "March DF Protocol") have expressed a preference for a solution that leverages their adherence to that protocol to satisfy EMIR requirements where possible.

Similarity in EMIR and Dodd-Frank Requirements Made "Top Up" Approach Possible.

The portfolio reconciliation requirements of the EMIR risk mitigation techniques are very similar (although not identical) to the requirements of CFTC rule.