



T-H Client Alert
May 29, 2013

Questionnaire to the ISDA March 2013 Dodd-Frank Protocol Now Available on ISDA Amend
Deadline to Adhere is July 1, 2013

*Earlier this year, ISDA finalized and published the ISDA March 2013 DF Protocol (the “March Protocol”).¹ Most market participants that adhere to the March Protocol will utilize the ISDA Amend system jointly offered by ISDA and Markit to exchange questionnaires associated with the March Protocol. The March Protocol questionnaire was made available on ISDA Amend last week,² so it is now possible to complete and exchange questionnaires in respect of the March Protocol using the ISDA Amend system. **The deadline for adhering to the March Protocol and exchanging associated questionnaires is July 1, 2013.***

Note: The March Protocol is NOT an updated version of the ISDA August 2012 DF Protocol (the “August Protocol”). The August Protocol and the March Protocol address different sets of CFTC rules that are applicable to swap transactions.

- **What it Does:** The March Protocol allows parties to:
 - supplement existing swap documentation with certain representations and agreements to facilitate compliance with a number of new Commodity Futures Trading Commission (“CFTC”) rulemakings (see list below); and
 - elect whether to enter into an “ISDA March 2013 DF Protocol Master Agreement” to govern swaps that are not governed by an existing master agreement and are not intended by the parties to be cleared by a derivatives clearing organization.

¹ Final versions of the documents associated with the March Protocol (including the questionnaire) are available at <http://www2.isda.org/functional-areas/protocol-management/protocol/12>.

² ISDA Amend can be accessed via the following link: <http://www.markit.com/en/products/distribution/counterparty-manager/isda-amend.page?>



• Why: The March Protocol is intended to facilitate compliance with the requirements of the following CFTC rules:

- CFTC, Final Rule, *Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 77 Fed. Reg. 55904 (Sept. 11, 2012);
- CFTC, Final Rule, *End-User Exception to the Clearing Requirement for Swaps*, 77 Fed. Reg. 42559 (July 19, 2012); and
- CFTC, Final Rule, *Clearing Requirement Determination Under Section 2(h) of the CEA*, 77 Fed. Reg. 74284 (Dec. 13, 2012).

• Protocol Architecture: Similar to the August Protocol, the March Protocol consists of the following four documents:

- (1) the ISDA March 2013 DF Protocol Adherence Letter (the “Adherence Letter”);
- (2) the ISDA March 2013 DF Protocol Agreement;
- (3) the ISDA March 2013 DF Supplement (the “DF Supplement”); and
- (4) the ISDA March 2013 DF Protocol Questionnaire (the “DF Questionnaire”).

The March Protocol allows parties to amend and supplement their swap trading relationship documentation with certain provisions by electing to incorporate schedules set out in the DF Supplement. The DF Supplement is comprised of four schedules:

- Schedule 1: Definitions used throughout the DF Supplement
- Schedule 2: Confirmation documentation, clearing notifications and representations, end-user exception and orderly liquidation authority notifications



- Schedule 3: Calculation, dispute and notification of risk valuations
- Schedule 4: Frequency of required portfolio reconciliation, portfolio data review or exchange, discrepancy resolution and reconciliation against SDR data

Schedules 1 and 2 of the DF Supplement apply automatically to all adherents to the DF Protocol. Schedules 3 and 4 will only apply if the parties so elect in the DF Questionnaire or are deemed to have so elected based on their regulatory status.

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- Next Steps: Similar to the August Protocol, parties are able to execute and deliver the Adherence Letter to ISDA via its website and then exchange DF Questionnaires via ISDA Amend in order to amend and supplement the relevant swap documentation between them. As with the August Protocol, there is a \$500 fee to adhere to the March Protocol via ISDA's website.
- When: T-H recommends that firms intending to adhere to the March Protocol submit their Adherence Letter to ISDA and exchange DF Questionnaires with their counterparties by June 15, 2013 to avoid trading disruptions on the July 1, 2013 compliance deadline for the rules addressed by the March Protocol. Failure to effectively adhere to the March Protocol and exchange questionnaires by July 1, 2013 may cause a firm to be unable to trade swaps until compliance with the relevant rules can be achieved.