ISDA® Documents: Overview (US)

by Practical Law Finance

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Related Content

A Practice Note summarizing standardized documentation published by the International Swaps and Derivatives Association, Inc. (ISDA) used to document and govern over-the-counter (OTC) derivatives transactions globally. The Note examines the relationships between the various ISDA documents, their mechanics, and how they are used.

The **International Swaps and Derivatives Association, Inc.** (ISDA®) is the primary global trade association for the **swaps** and **derivatives** industry. ISDA publishes standard documents, definitions, and other resources that are used almost universally by swaps and derivatives market participants to document **over-the-counter (OTC) derivatives** transactions. This Note discusses the mechanics of these documents and other ISDA resources, as well as the relationship between them and how they are used to govern swaps and derivatives transactions.

The Note also discusses ISDA initiatives in response to OTC derivatives regulation under Title VII of the Dodd-Frank Act and other global regulations that now require many derivatives transactions to be entered into on exchanges and cleared by **clearinghouses** (see Box, ISDA Adapts to Regulation of OTC Derivatives).

The International Swaps and Derivatives Association

ISDA is the dominant trade association for participants in the OTC derivatives market. ISDA was chartered in 1985 and has more than 800 member institutions from 57 countries. Its members include major financial institutions, private businesses, funds, government entities, law firms, and other interested parties and derivatives market participants.

ISDA provides seminars and conferences designed to promote understanding of its documents and the derivatives markets. ISDA also acts as an advocate on behalf of the derivatives industry, conducting studies, distributing market information, and submitting comment letters to regulators globally.

ISDA Documents

ISDA reduces the risk and cost of transacting in OTC derivatives by publishing standardized documentation used in the derivative markets. In connection with this, ISDA has developed basic standard forms and resources to document derivatives transactions, including:

- The **ISDA Master Agreement** (ISDA Master) (see The ISDA Master Agreement).
- The **Schedule to the ISDA Master** (ISDA Schedule) (see The ISDA Schedule).
- Various **transaction confirmation** templates (see Transaction Confirmation).
- The **ISDA Credit Support Annex** (CSA) (see The ISDA Credit Support Annex).
- General transaction-specific and product-specific definitions (see ISDA Definitions).

- Protocols that allow parties to update their documentation to reflect new market or regulatory developments (see ISDA Protocols and Box, The ISDA Dodd-Frank Protocols).
- Cleared swap documentation and other documents that may be used for other regulatory compliance purposes (see Box, ISDA Adapts to Regulation of OTC Derivatives).

ISDA regularly publishes practice statements, user's guides, commentaries to standard ISDA documents, and supplements to ISDA definitions to help market participants use ISDA documentation and ensure that it is current.

ISDA documents can be obtained on the ISDA website. Many ISDA documents and other resources are available for free to the general public, while others are available for a fee or to ISDA members only.

Advantages of ISDA Documents

Because they are standardized, ISDA documents provide a number of advantages to parties transacting in OTC derivatives, including:

- Saving the time and expense of negotiation and drafting new derivatives transaction documents.
- Enhancing liquidity in the derivatives markets by allowing parties to be familiar with the terms and conditions that apply to products documented using ISDA documentation, which may be traded with confidence in and understanding of underlying transaction terms.
- Improved monitoring and alignment of standard default and termination provisions.
- Reducing uncertainty in the interpretation of standard terms and provisions, achieved by using market discussion, judicial review, and ISDA's procurement of legal opinions on the documents covering various issues and jurisdictions.

Relationship Among ISDA Documents

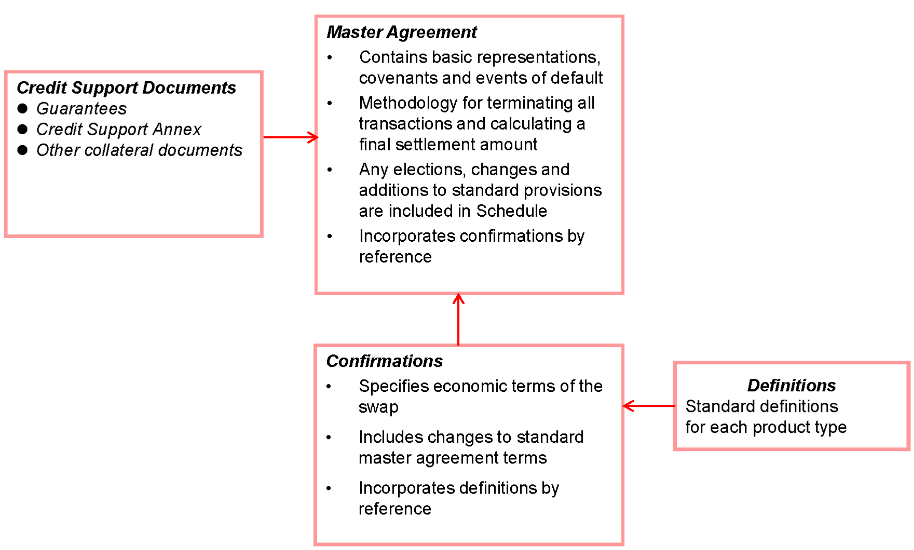
Section 1(b) of the ISDA Master provides that if there is any inconsistency between the ISDA Master, the Schedule, and the transaction confirmation:

- The transaction confirmation prevails over the Schedule and the ISDA Master.
- The Schedule prevails over the ISDA Master.

The ISDA Master and its ancillary documents are subject to the following hierarchy:

- The transaction confirmation trumps all other documents, including the ISDA Master and ISDA Schedule (as supplemented by any CSA) and, along with the ISDA Schedule, modifies, supplements, and forms a part of the ISDA Master.
- The ISDA Schedule modifies, supplements, and forms a part of the ISDA Master.
- The CSA modifies, supplements, and forms a part of the ISDA Schedule.

ISDA Documents: Structure and Relationships



Courtesy of Bart Wall, Bryan Cave LLP

The ISDA Master Agreement

The ISDA Master is a standard umbrella relationship-framework agreement between two parties under which one or more individual OTC derivatives transactions are entered into. The ISDA Master includes a standard set of terms and conditions, including standard representations, covenants, events of default, termination events, remedies, tax provisions, and transaction netting provisions.

The ISDA Master is a standard pre-printed form that is not altered because negotiated modifications are set out in the ISDA Schedule (see The ISDA Schedule), which allows the parties to tailor the terms of the ISDA Master and agree to specific terms that fit their needs while omitting those terms included in the ISDA Master form that do not.

There are two versions of the ISDA Master:

- **The 1992 Multicurrency-Cross Border ISDA Master (1992 Master).** This version is designed for transactions between parties organized in different countries or transactions involving multiple currencies. A 1992 Local Currency-Single Jurisdiction ISDA Master exists for transactions between parties organized in a single jurisdiction engaging in transactions using a single currency. However, it is rarely used because these transactions can be documented using the 1992 Multicurrency-Cross Border ISDA Master while providing the parties with the flexibility to enter into multiple-currency transactions in the future.

- **The 2002 ISDA Master (2002 Master).** This is an updated version of the 1992 Master designed for use on all types of derivatives transactions.

The primary difference between these two versions is the close-out mechanism used for calculating payment upon termination. Both versions of the ISDA Master are commonly used, though parties have gravitated toward the 2002 Master in recent years, as the close-out mechanism in the 1992 Master proved less reliable during the financial crisis.

For a detailed comparison of the 1992 Master and the 2002 Master and a discussion of the differences between these two documents, see Practice Note, Comparison of 1992 and 2002 ISDA Master Agreements.

For a section-by-section explanation of the ISDA Master and Schedule, see Practice Note, Understanding the ISDA Master Agreement and Schedule.

The ISDA Schedule

The ISDA Master and the ISDA Schedule provide the relationship framework for the parties under which individual derivatives transactions may be entered into. The ISDA Schedule allows parties to modify the standard terms of the ISDA Master and tailor it to their specific needs. Within the ISDA Schedule, parties can designate certain terms in the ISDA Master as applicable to both parties, to one party, or to neither.

The parties can also use the Schedule (usually Part 5) to add provisions not included in the ISDA Master. The parties may add any type of provision they deem necessary or applicable to their transaction(s). Although ISDA publishes a standard template of the ISDA Schedule as a guideline, the ISDA Schedule is often subject to significant negotiation, and the final document can look quite different from the ISDA template.

The terms of the ISDA Schedule apply to all transactions entered into under the ISDA Master to which the Schedule relates.

For detailed information on the ISDA Schedule, including a section-by-section breakdown, see Practice Note, Understanding the ISDA Master Agreement and Schedule: Schedule to the ISDA Master.

The ISDA Credit Support Annex (CSA)

The CSA governs margin collateral arrangements between parties that have entered into uncleared derivatives transactions under an ISDA Master. The CSA is an annex to the ISDA Schedule, which, with the CSA, is incorporated into, supplements, and forms a part of the ISDA Master (see Relationship Among ISDA Documents). Like the ISDA Master and ISDA Schedule, the CSA applies to all transactions entered into under the ISDA Master to which is relates.

Paragraphs 1 through 12 of the CSA are standard pre-printed provisions that are not altered on their face (like the ISDA Master). Modifications to these provisions, as well as any additional provisions that the parties wish to add, are specified in Paragraph 13 of the CSA, which the parties draft based on the standard CSA Paragraph 13 template published by ISDA. CSA Paragraph 13 functions with respect to CSA Paragraphs 1 to 12 much like the ISDA Schedule functions in relation to the ISDA Master.

Among other things, Paragraph 13 typically details the types of collateral that the parties agree are eligible for **posting** to collateralize counterparty **exposure** under the transaction or transactions entered into under that ISDA Master (referred to in the CSA as "Eligible Collateral"), as well as minimum collateral transfer amounts (MTA) and certain exposure thresholds below which collateral need not be posted (see Practice Note, The ISDA Master Agreement: Negotiating the ISDA Credit Support Annex (CSA): Threshold Amount and Minimum Transfer Amount (MTA)).

If there are multiple transactions entered into under a particular ISDA Master and the parties have executed a CSA under that ISDA Master, the parties' positions on all of the transactions are netted to arrive at an aggregate trading position for purposes of determining margin collateral posting obligations under the CSA. The parties use that net position to determine whether or not **variation margin** collateral (captured in the 1994 CSA by the term "Credit Support Amount") must be transferred from one party to the other. The CSA includes dispute-resolution mechanisms in the event the parties disagree on valuation.

Under the CSA, either party may be the pledgor or the secured party (provided the parties elect two-way collateral posting). The CSA also provides for the option of posting of **initial margin** collateral, which is referred to in the 1994 CSA as the "Independent Amount" (or "IA"). Initial margin provides a counterparty with an additional buffer of credit support beyond daily **mark-to-market** variation margin collateral transfers and is designed to protect against future exposure

Historically, parties have used the 1994 ISDA CSA to document their OTC margin collateral arrangements. However, ISDA has published new CSAs designed to accommodate new global margin rules for uncleared swaps (see Practice Note, The New ISDA Credit Support Annexes and Global Margin Compliance for Uncleared Swaps).

For more detail on the CSA and helpful CSA negotiating tips, see Practice Note, The ISDA Master Agreement: Negotiating the ISDA Credit Support Annex (CSA).

Transaction Confirmation

The transaction confirmation sets out the economic and commercial terms of an individual transaction entered into under the ISDA Master (as noted, a single ISDA Master often acts as an umbrella document for multiple transactions).

The transaction confirmation includes:

- Key dates relevant to the transaction.
- Payment obligations and mechanisms for determining transaction payments.
- Administrative details, such as bank account numbers.
- Incorporation of the relevant ISDA definitions (see ISDA Definitions), which delineate what type of transaction is covered by the confirmation (for example, the equity derivatives definitions, credit derivatives definitions, and currency derivatives definitions).
- The transaction's **notional amount**, currency, pricing, spread (or periodic fee to the dealer party, usually expressed as **LIBOR** plus a certain number of **basis points** multiplied by the transaction's notional amount), and other economic denominations.

The transaction confirmation may include other transaction-specific terms as well. Certain equity derivatives include complex payment formulas in the transaction confirmation.

ISDA publishes standard short-form transaction confirmation templates for a variety of derivatives transactions (for example, interest rate, credit, equity, and foreign exchange (FX)) that are commonly used and extensively modified by the parties.

Both parties to the transaction should carefully examine each transaction confirmation to ascertain whether:

- The confirmation reflects the economic terms agreed to by the parties.
- The confirmation includes or should include any additional terms relevant to the particular transaction and excludes or should exclude any provisions contained in the ISDA Master.
- Credit support should be provided (see The ISDA Credit Support Annex).

If there is any inconsistency between the transaction confirmation and the ISDA Schedule or the transaction confirmation and the ISDA Master, the terms of the transaction confirmation prevail for that transaction.

The transaction confirmation normally provides that it supplements the ISDA Master. In turn, Section 1(c) of the ISDA Master provides that the ISDA Master and all transaction confirmations (and accordingly all transactions evidenced by those transaction confirmations) form a single agreement between the parties. These provisions are designed to facilitate the close-out and termination of all transactions under an ISDA Master after an event of default or termination event has occurred under the agreement, and the determination of a single net settlement amount for all transactions under that particular ISDA Master.

Historically, once an ISDA Master is in place between the parties, individual OTC derivatives transactions would be entered into between the parties by telephone, which forms a binding agreement under Section 9(e)(i) of the ISDA Master. The commercial terms discussed by the parties are then documented by one of the parties in a document, which is then forwarded to the other party for confirmation of the terms. The practice of entering into transactions verbally is becoming less common with more pre-trade recordkeeping regulatory requirements.

For a sample annotated ISDA **interest rate swap** transaction confirmation, see Standard Document, ISDA® Market Agreed Coupon (MAC) Interest Rate Swap Transaction Confirmation (Annotated).

Long-Form Confirmation

Sometimes parties enter into verbal or electronic transactions before an ISDA Master is in place between them to document their trading relationship. In that case, parties often agree to the economic and commercial terms of a transaction using an ISDA **long-form confirmation**. The long-form confirmation includes the economic terms of the particular transaction being entered into by the parties and also includes certain basic standard terms and conditions, such as addresses, account information, and delivery information.

The long-form confirmation usually states that it supplements, forms a part of, and is subject to the terms of a standard form ISDA Master (whether or not one has been executed by the parties), without modification, and that the terms of the ISDA Master govern except as otherwise specified in the long-form confirmation. The long-form confirmation can also state that upon the execution of an ISDA Master between the two parties, the long-form confirmation will supplement, form a part of, and be subject to or superseded by, that ISDA Master.

ISDA Definitions

ISDA periodically publishes standard definitions for particular types of derivatives transactions. These definitions are incorporated by reference into the transaction confirmation (or sometimes the ISDA Schedule), which avoids the need for detailed and complex definitions to be set out within the transaction documents themselves. When negotiating a transaction confirmation, the parties may elect to incorporate, amend, or exclude any provision of the applicable definitions from application to the particular transaction governed by that transaction confirmation.

The 2000 ISDA Definitions and the 2006 ISDA Definitions (designed to replace the 2000 Definitions) set out general terms that can be applied to any transaction documented using ISDA documents. These definitions are often incorporated by reference into OTC interest rate swap transaction confirmations. The market has gravitated toward use of the 2006 Definitions over the 2000 Definitions in recent years.

ISDA also publishes transaction-specific definitions for use in certain types of transactions. These include definitions for foreign exchange and currency options, commodity derivatives, credit derivatives, and equity derivatives. The 2003 or 2014 ISDA Credit Derivatives Definitions, for example, are universally incorporated by reference into transaction confirmations for **credit default swaps** (CDS).

For details on the 2014 ISDA Credit Derivatives Definitions, see Practice Note, Understanding the 2014 ISDA Credit Derivatives Definitions: Key Differences Between the 2003 and 2014 ISDA Credit Derivatives Definitions. See also, Legal Update, ISDA Proposes Credit Default Swap (CDS) Amendments to Address Failure-to-Pay Credit Event Issues.

For information on the ISDA 2011 Equity Derivatives Definitions, see Legal Update, ISDA Publishes 2011 Equity Derivatives Definitions.

ISDA Protocols

ISDA protocols allow parties to incorporate standard ISDA-issued amendments into their ISDA Masters by delivering an adherence letter to ISDA (this may be done electronically). If both parties to an ISDA Master have delivered an adherence letter for a particular protocol, the relevant ISDA Master is then deemed amended by that protocol.

Adherence letters that ISDA has received, as well as a list of those parties that have signed up to each relevant protocol, are displayed on its website. This allows parties to inventory which of their ISDA Masters have been amended by which protocols.

Major ISDA protocols have included:

- **The Resolution Stay Protocol (RSP).** Under the ISDA RSP, early termination rights under the ISDA Masters of a failed institution are stayed for up to 48 hours after a bankruptcy filing or other equivalent domestic or overseas proceeding. This is intended to give regulators time to facilitate an orderly resolution of a troubled bank. For details on RSP, see Legal Update, ISDA Launches Resolution Stay Jurisdictional Modular Protocol.

- **Auction Settlement CDS and Big Bang Protocols.** The ISDA Auction Settlement and Big Bang Protocols were issued by ISDA in 2009 in response to certain logistical and operational issues that arose with credit derivatives transactions, particularly CDS, during the financial crisis. For details on these protocols, see Practice Notes, Understanding the Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions and Credit Derivatives: Overview (US): Auction Settlement and ISDA's Big Bang: CDS Determinations Committees.
- **Close-out Amount Protocol.** The protocol enables parties to 1992 Masters to amend their agreements to reflect that in the event of a counterparty default, the Close-out Amount provisions in Section 6(e) of the 2002 Master will govern trade valuations. For further details on this protocol, see Legal Update, ISDA Publishes Close-Out Amount Protocol for ISDA Master Agreement.

ISDA has also released a number of protocols designed to facilitate compliance with OTC derivatives regulation under the Dodd-Frank Act, EMIR, and other global regulations (see Box, ISDA Adapts to Regulation of OTC Derivatives).

ISDA Adapts to Regulation of OTC Derivatives

Regulatory initiatives both in the US and globally targeting OTC derivatives (swaps) have impacted:

- The use of ISDA documentation.
- ISDA's direction and focus.

In light of the financial crisis, which OTC derivatives were blamed for exacerbating, regulators in the US and globally have begun to require that many swaps be entered into only on registered exchanges and be cleared by registered derivatives **clearinghouses**, much like futures contracts. In the US, this has been effected primarily through Title VII of the Dodd-Frank Act (see Practice Note, Summary of the Dodd-Frank Act: Swaps and Derivatives: Swap Clearing and Exchange Trading Under Title VII).

It would stand to reason that this shift in the way OTC derivatives are transacted would affect the need for and use of ISDA documentation, which has historically focused on **bilateral** OTC transactions.

However, parties continue to use existing ISDA documentation for derivatives transactions that are:

- **Bespoke** transactions or other specially tailored transactions that cannot be cleared or executed on an exchange or cleared by a clearinghouse.
- Exempt from Dodd-Frank clearing and exchange-trading requirements because they are entered into by end users hedging commercial risk (see Practice Note, US Derivatives Regulation: The Commercial End-User Exception to the Mandatory Swap Clearing Requirement).
- Categorically exempt from Dodd-Frank clearing and exchange-trading requirements, such as FX swaps (see Practice Note, Summary of the Dodd-Frank Act: Swaps and Derivatives: Swap Clearing and Exchange Trading Under Title VII).

To date, bilateral ISDA documentation remains the dominant documentation platform for the OTC derivatives market. The ISDA Master, ISDA Schedule, and CSA will likely continue to play a prominent role in documenting swaps and derivatives trades even after Title VII and analogous OTC regulation in other jurisdictions are fully implemented. Eventually, ISDA is likely to release a new version of its Master Agreement that is designed to address documentational issues created by Title VII and other regulations.

In the meantime, ISDA has taken a number of steps to adapt to the swaps regulatory era.

The ISDA Dodd-Frank Protocols

To date, ISDA has released two Dodd-Frank Protocols:

- **The ISDA August 2012 Dodd-Frank Protocol (Protocol 1.0).** Used by parties to amend existing ISDA Masters to comply with final Dodd-Frank external business conduct (EBC) rules for **swap dealers** (SDs) and **major swap participants** (MSPs) (see Practice Note, Practical Law Guide to the ISDA Dodd-Frank Protocols and ISDA Amend: The August 2012 Protocol: Compliance with Final EBC Rules for Swap Dealers and MSPs).
- **The ISDA March 2013 Dodd-Frank Protocol (Protocol 2.0).** Used by parties to amend existing ISDA Masters to comply with final Dodd-Frank internal business conduct (IBC) rules for SDs and MSPs (see Practice Note, Practical Law Guide to the ISDA Dodd-Frank Protocols and ISDA Amend: The March 2013 Protocol: Compliance with Final IBC Rules for Swap Dealers and MSPs).

The ISDA-FIA Cleared Derivatives Addendum

The ISDA-FIA Cleared Derivatives Addendum has become the market standard document used in the US to supplement futures (and futures and options) account agreements so that they cover cleared swaps in addition to other exchange-traded derivatives.

Under Title VII, banks and dealers under Title VII must now be **futures commission merchants** (FCMs) in order to enter into a cleared swap with a customer on a registered exchange. These entities typically use their standard in-house futures account or futures and options account form agreements to govern cleared swaps arrangements with their buy-side customers. These agreements:

- Are not heavily negotiated, as the customer has little negotiating leverage if it wishes to enter into the cleared transaction.
- Typically contain extensive margining provisions for the customer but not for the dealer.

Because these agreements cover futures and other cleared and exchange-traded derivatives transactions but not swaps, they must be supplemented in order to apply to cleared swaps transactions. To accomplish this, ISDA and the Futures Industry Association (FIA) published a standardized clearing addendum, the ISDA-FIA Cleared Derivatives Addendum (2012 Addendum), which is now used to supplement in-house futures agreements in the US, governing cleared swaps transactions.

The ISDA-FIA clearing addendum is an optional template that can be used by FCMs and their buy-side customers for documenting their relationship with respect to cleared swaps they enter into. The clearing addendum:

- Includes representations for each party on certain clearing-related matters.
- Sets out the close-out methodology for cleared swaps, the triggers for liquidation, and provisions for valuing terminated trades.
- Contains provisions governing tax issues for cleared swap transactions.

The clearing addendum may be and often is customized by the parties and includes a schedule that parties can use to make additional representations or otherwise modify the terms of the addendum. The FIA and ISDA also acknowledge that the addendum may need to be altered as a result of future regulations.

The US market has been receptive to this document, which has helped to facilitate the transition to the cleared swaps era in the US. Market participants use the ISDA-FOA clearing addendum for non-US swaps, as it is tailored for the EU clearing model (see Legal Update, ISDA-FOA Cleared Derivatives Addendum Published).

On December 7, 2018, ISDA and FIA published the 2018 Alternative FIA-ISDA Cleared Derivatives Addendum (2018 Addendum) as an alternative to the 2012 Addendum as an optional template for **futures commission merchants** (FCMs) and their customers to use in connection with cleared OTC derivatives transactions (see Legal Update, ISDA and FIA Publish 2018 Alternative Cleared Derivatives Addendum).

Other ISDA Regulatory Protocols and Resources

ISDA has published additional protocols to facilitate regulatory compliance, including:

- **Dodd-Frank ECP guarantor language.** These provisions may be incorporated by reference into loan documents or other transaction documents to address Dodd-Frank rules requiring swap guarantors to be eligible contract participants (ECPs) under the Commodity Exchange Act (CEA) (see Legal Update, ISDA Publishes ECP Swap Guarantor Provisions).
- **2012 FATCA Protocol.** Used by parties to amend existing ISDA Masters to address the effects of the Foreign Account Tax Compliance Act (FATCA) (see Legal Update, ISDA Publishes 2012 FATCA Protocol for Amending Swap Documents).
- **Discontinued Rate Maturities Protocol.** See Legal Update, ISDA Publishes 2013 Discontinued Rate Maturities Protocol.
- **ISDA Illegality/Force Majeure Protocol.** See Legal Update, Eurozone Crisis: ISDA Illegality/Force Majeure Protocol.
- **Swap data reporting disclosure protocol.** See Legal Update, Swap Data Reporting Disclosure Protocol Launched by ISDA.
- **Data reporting delegation agreement.** See Legal Update, ISDA Publishes Trade Data Reporting Delegation Agreement.
- **Prime brokerage business conduct protocol.** See Legal Update, ISDA Releases Prime Brokerage Protocol for Dodd-Frank Swap Dealer Business Conduct Allocation.
- **The 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.** See Legal Update, ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution, and Disclosure Protocol.

- **The 2013 EMIR NFC Representation Protocol and Timely Confirmation Amendment Agreement.** See Legal Update, ISDA 2013 EMIR NFC Representation Protocol and Timely Confirmation Amendment Agreement.

ISDA Title VII Business Conduct Representation Letters

ISDA has published several representation letter templates to facilitate compliance with certain safe harbors included in the final Title VII EBC rules for parties that are not adherents to the August 2012 Protocol, including:

- **Special entities letter.** A letter that may be used by SDs entering into swaps with special entities, which are certain local, state, and federal government entities and qualified retirement plans. The letter is designed to help SDs document their independence from non-ERISA special entities with which they enter into swaps (see Legal Update, ISDA Publishes Sample 'Special Entities' Letter for Swap Dealers).
- **ERISA special entities letter.** A letter that may be used by SDs to help document their independence from ERISA special entities with which they enter into swaps (see Legal Update, Safe Harbor 'ERISA Special Entity' and 'Non-Special Entity' Letters Published by ISDA).
- **Non-special entities letter.** A letter that may be used by SDs to help document their independence from non-special entities with which they enter into swaps (see Legal Update, Safe Harbor 'ERISA Special Entity' and 'Non-Special Entity' Letters Published by ISDA).

ISDA Dodd-Frank Cross-Border Resources

ISDA has published the following in connection with Dodd-Frank cross-border swaps rules:

- **Cross-border rep letter.** A letter that may be used by market participants in connection with the Commodity Futures Trading Commission's (CFTC's) final cross-border swaps guidance and policy statement published in July 2013 (see Legal Update, ISDA Publishes Cross-Border Swaps Representation Letter and Methodology).
- **US bank letter.** A letter that may be used by US banks in connection with the CFTC's cross-border swaps final guidance and policy statement published in July 2013 (see Legal Update, Cross-Border Swaps Representation Letter for US Banks Published by ISDA).
- **2013 Dodd-Frank agreement for non-US swap transactions.** This document is designed to facilitate compliance with the CFTC's cross-border guidance on the application of Dodd-Frank swaps rules to certain swaps with an indirect connection to the US (see Legal Update, 2013 Dodd-Frank Agreement for Non-US Swap Transactions Published by ISDA).

Documentation Related to Dodd-Frank Optional Margin Segregation Rules for Uncleared Swaps

Under Section 724(c) of the Dodd-Frank Act (7 U.S.C. § 6s(l)), codified in CEA Section 4s(l) and CFTC Regulation 23.701 (17 C.F.R. § 23.701), if a swap is not cleared and one party to the swap is an SD, MSP, **security-based swap dealer** (SBSD), or **major security-based swap participant** (MSBSP), the SD, MSP, SBSD, or MSBSP party must notify its counterparty that the counterparty has the right to require segregation with an independent third-party custodian of any initial margin collateral that it posts in connection with the swap (see Practice Note, US Derivatives Regulation: Derivatives Collateral Rules).

ISDA has published a suite of documents designed to facilitate compliance with various aspects of these rules. For further information and links to these documents, see US Derivatives Regulation: Swap Documentation Checklist: Documentation Related to Uncleared Swap Margin Segregation Rules.

The ISDA SIMM™ and 2016 Variation Margin CSA

As a result of margin rules for uncleared swaps in the US, EU, and Japan that took effect in September 2016, ISDA has published and continues to refine its Standard Initial Margin Model (SIMM), which may be used by parties to facilitate compliance with these rules. For details on the ISDA SIMM, see Legal Update, ISDA Launches SIMM 2.0 for Calculating Uncleared Swaps Initial Margin.

ISDA has also released the 2016 Variation Margin Credit Support Annex. For further information, see Legal Update, ISDA Publishes 2016 Credit Support Annex for Variation Margin (New York Law).

PRODUCTS

PLC US Finance, PLC US Financial Services, PLC US Law Department, PLC US Real Estate