

ISDA DF Protocol and Extension of Compliance Date for EBC Rule

ISDA Legal Department Memorandum

The CFTC recently delayed compliance with certain provisions of the external business conduct rule (see below for details), which are among the provisions covered by the August 2102 DF Protocol.

This development does not impact the need for parties to amend their existing documentation. Nor does it affect the content or functioning of the August 2012 DF Protocol. Therefore, the August 2012 DF Protocol will remain open as is to participants to facilitate compliance.

The August 2012 DF Protocol is designed to address documentation requirements for seven rules (“Covered Rules”) that were finalized by the CFTC prior to publication of the August 2012 DF Protocol, including the external business conduct rule (“EBC Rule”). The compliance date for most of the Covered Rules was originally set for on or about October 15, 2012. On August 27, 2012, the CFTC published the “Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants” final rule. Section III.C of that rule extends the compliance date for the following EBC Rule provisions until January 1, 2013:

- 23.402: “know your counterparty” requirements
- 23.410(c): treatment of confidential counterparty information
- 23.430: requirement to verify counterparty eligibility
- 23.431(a)-(c): requirement to provide disclosures with respect to swaps and incentives/conflicts; requirement to provide scenario analysis
- 23.432: requirement to provide clearing disclosures
- 23.434(a)(2), (b), and (c): counterparty-specific suitability requirements
- 23.440: requirements applicable to SDs acting as advisors to Special Entities
- 23.450: requirements for SDs and MSPs acting as counterparties to Special Entities

While the compliance date for many requirements of the EBC rules addressed by the August 2012 DF Protocol has been deferred until January 1, 2013, **swap dealers will require time to integrate information provided by counterparties through the August 2012 DF Protocol and the Questionnaire into their processes and systems prior to trading with that counterparty.**

Therefore, counterparties should adhere to the August 2012 DF Protocol at their earliest convenience (<http://www2.isda.org/functional-areas/protocol-management/open-protocols/>) and work towards providing the Questionnaire portion of the August 2012 DF Protocol materials to their dealer counterparties as soon as possible thereafter (either by the ISDA Amend solution or by another means as designated by their dealer counterparty). ■