

ISDA has prepared this explanatory memorandum to assist in your consideration of the form of amendment agreement to the ISDA Master Agreement relating to certain timely confirmation issues (the “**Amendment Agreement**”).

THIS MEMORANDUM DOES NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE AMENDMENT AGREEMENT. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING THE AMENDMENT AGREEMENT. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

The Amendment Agreement is a form of agreement that market participants may find useful as part of their regulatory tool kit in light of the obligations under Article 11(1)(a) of EMIR to provide timely confirmation of the terms of an uncleared OTC derivative contract.

The wording contained in the Amendment Agreement is intended to facilitate bilateral agreement between parties to an ISDA Master Agreement that wish to incorporate some wording into their agreement to reflect certain respective obligations in relation to the timely delivery and return of confirmations. It should be noted that it is not a full, or the only, means of complying with the EMIR obligations and we would refer you to footnote 2 in the Amendment Agreement in this regard.

Parties can elect to use none, all or some only of the draft provisions and or to amend them to meet any particular commercial agreement between them.

The second elective paragraph “x” essentially repeats the requirement set out in EMIR. Parties may consider this useful as a reminder and/or to commit parties that would not otherwise be subject to the EMIR requirement to the same standard.

The third elective paragraph “x” simply provides more detail about what each party is expected to do and by when and assumes a practice whereby one party produces the confirmation and the other party executes and returns it within a time period as agreed between the parties.

The fourth elective paragraph “x” provides a mechanism whereby parties may agree to apply “negative affirmation” to confirmations for specified transaction types. The draft provides a few suggested transaction type definitions for these purposes. These definitions should not be read to mean that using negative affirmation would necessarily be appropriate in these cases, nor that it could not be used in other transaction types. Parties must make their own assessment as to which transaction types (if any) negative affirmation would be appropriate for with respect to any particular counterparty.

The footnotes to the language highlight that the consequence of any breach of any obligation parties may wish to incorporate into their agreement would be the standard Section 5(a)(ii) Event of Default under the ISDA Master Agreement. It is, of course, open to parties to agree otherwise and an example another option is given in the footnotes by way of a draft Additional Termination Event. The two options mentioned are not the sole remedies available to the parties, however. Parties could provide for any other remedy or consequence that they agree.