

ALERTS

ISDA Launches Security Based Swaps Top-Up Protocol

March 19, 2021

On March 15, 2021 the International Swaps and Derivatives Association Inc. (“ISDA”) launched the “ISDA 2021 SBS Top-Up Protocol” (“SBS Top-Up Protocol”)[1] in order to facilitate industry compliance with regulations adopted by the U.S. Securities and Exchange Commission related to Security-Based Swaps (“SBS”) in compliance with the regulatory requirements imposed under Title VII of the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).

The SBS Top-Up Protocol will allow parties who had previously adhered to the ISDA August 2012 DF Protocol Agreement and the ISDA March 2013 DF Protocol Agreement (together, “CFTC DF Protocols”) in relation to their “Protocol Covered Agreements” (such as the ISDA 2002 Master Agreement) to address regulatory and documentation requirements applicable to security-based swap dealers and major security-based swap participants with respect to transactions in SBS. The CFTC DF Protocols allowed adhering parties to comply with Dodd-Frank rulemakings promulgated by the Commodity Futures Trading Commission (“CFTC”). This new SBS Top-Up Protocol will now allow the terms previously included by the parties for CFTC compliance to be “topped up” for SEC compliance.

The SBS Top-Up Protocol was launched in anticipation of the upcoming compliance dates for certain SEC SBS rules and the related deadline for SBS dealer registration thereunder by Nov. 1, 2021.

ISDA also published, on Jan. 15, 2021, an “ISDA U.S. Self-Disclosure Letter”[2] intended to assist market participants with the exchange of

information necessary to determine whether compliance with SBS rules is applicable to the trading relationship.

ISDA is separately developing a further protocol intended to assist market participants who did not adhere to the CFTC DF Protocols to amend their agreements in compliance with the SBS rules. ISDA is also developing an initial margin segregation notice for use by SBS dealers and their counterparties, as well as supplements to the ISDA credit support documentation for SEC initial margin rules. ISDA has stated that these documents should all be available later in 2021.

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If you have any questions concerning this *Alert* or would like assistance with the topics discussed, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] The SBS Top-Up Protocol may be found here.

[2] The Self-Disclosure Letter may be found here.

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