Comparison of ISDA Protocols for Portfolio Reconciliation

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C L I F F O R D

C H A N C E

Comparison of ISDA Protocols for Portfolio Reconciliation

	Dodd-Frank Act		EMIR	
Scope	■ SDs/MSPs must agree in writing on terms of reconciliation with counterparties (does not require reconciliation of swaps cleared by a DCO). ■ Does not apply to swaps if no SD or MSP is involved. ■ Reconciliation can be performed by a third party. ■ Applies to "swaps", not security-based swaps.		■ FCs/NFCs must agree in writing (or other equivalent electronic means) on terms of reconciliation with counterparties for OTC derivatives not cleared by a CCP. ■ Must be agreed before entering into OTC derivatives contract. ■ Reconciliation can be performed by a third party. ■ Applies to all uncleared OTC derivatives.	
Frequency of Reconciliation under Protocol	As believed to be required by CFTC Regulation 23.502, to be specified in a notice by the CFTC swap entity.		Portfolio reconciliation periods as required by EMIR (Art. 13 of RTS 149/2013).	
	For one-way delivery of portfolio data	**For two-way delivery of portfolio data**	**For one-way delivery of portfolio data**	**For two-way delivery of portfolio data**
Data Delivering Party	CFTC swap entity (applicable if one of the parties is not a CFTC swap entity and both parties have agreed in writing that CFTC swap entity will deliver portfolio data).	Both parties (if both parties are CFTC swap entities or both parties have agreed in writing that both parties will deliver portfolio data)	As specified in the elections by the parties when adhering to the protocol If neither party has elected to be a data sending entity, parties will agree an alternate process.	As specified in the elections by the parties when adhering to the protocol
Timing for Data Delivery	CFTC swap entity will specify data delivery dates	Parties will negotiate in good faith to agree data delivery dates that comply with required frequency specified in the notices; except, if frequency is "Daily", then each party will deliver portfolio data to the other party on each joint business day.	As agreed by the parties; if no date is agreed, delivery must be made the joint business day immediately prior to the date on which reconciliation is due.	As agreed by the parties; if no date is agreed, delivery must be made the joint business day immediately prior to the date on which reconciliation is due.
Timing for Reconciliation	On the date on which the portfolio data was delivered or as soon as reasonably practicable, and not later than close of business of second local business day (of the portfolio data receiving entity) following the delivery date	Parties may perform reconciliation on the date on which the portfolio data was delivered or as soon as reasonably practicable	As agreed by the parties, if no date is agreed, the last joint business day of the relevant portfolio reconciliation period (i.e., next joint business day after receipt of portfolio data)	As agreed by the parties, if no date is agreed, the last joint business day of the relevant portfolio reconciliation period

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Deadline for Discrepancy Identification	Notification of all discrepancies in valuation* or "material terms" (as defined for purposes of CFTC Regulation 23.502) required to be provided as soon as reasonably practicable, and in any event not later than close of business of second local business day (of the portfolio data receiving entity) following the date on which the portfolio data was delivered.	No specific requirement to notify the other party of a discrepancy, and no deadline specified.	Notification of any discrepancies that are material to the rights and obligations of the parties required to be provided in writing as soon as reasonably practicable, and before 4p.m. (portfolio data sender's local time) on the fifth joint business day following the date on which reconciliation is due.	Notification of any discrepancies that are material to the rights and obligations of the parties required to be provided in writing as soon as reasonably practicable.
	■ Less than 10% valuation difference is not treated as a "discrepancy" for these purposes.			
Resolution of Discrepancies	If a party provides notice of any discrepancy, parties will consult in an attempt to resolve in a timely fashion.	If a party provides notice of any discrepancy, parties will consult in an attempt to resolve in a timely fashion (but if both parties are CFTC swap entities, each party shall consult with the other to resolve discrepancies as to material terms immediately and discrepancies as to valuations within 5 joint business days).	If party provides notice of any discrepancy, parties will consult to resolve in a timely fashion (using any applicable updated reconciliation data produced in the period while discrepancy outstanding).	
Portfolio Data	■ Information relating to the terms of outstanding swaps between the parties, which includes, without limitation, current valuations attributed by the reporting party to the swaps ■ Provided in a form and standard that is capable of being reconciled, with a scope and level of detail that is reasonably acceptable to each party ■ Covers all outstanding swaps between the parties (including foreign exchange swaps and forwards governed by the relevant Agreement)		■ Key terms: valuation and other terms party deems relevant (with indicative list consistent with RTS) ■ Provided in a form and to a standard capable of being reconciled, with a scope and level of detail reasonable if were receiving party ■ Covers all transactions between the parties that are subject to the EMIR requirements	

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Change of Status/ Frequency	See above for changes to data delivering party. CFTC swap entity may notify changes to required frequency. The parties may in good faith agree to any other procedure for the exchange, delivery and/or reconciliation of portfolio data.	Either party may change status as Portfolio Data Sending Entity or Portfolio Data Receiving Entity with consent of other party (consent not to be unreasonably withheld/delayed). Either party may require change to greater/lesser frequency of reconciliation if believes required (acting reasonably and in good faith).
Agent	Either party may appoint an agent.	Either party may appoint an agent (but consent of other party required for appointment of a non-affiliated agent, consent not to be unreasonably withheld/delayed)
Relation to Other Agreements	Failure to comply not an event of default or termination event.	The protocol is without prejudice to other contractual agreements. Failure to comply not an event of default or termination event.
Reconciliation against SDR Data	Protocol specifies procedure if parties have agreed in writing to reconcile their books and records against swap data repository data.	Not applicable.

This document is not intended to be comprehensive or provide legal advice. For more information, please speak to David Felsenthal at Clifford Chance in New York, Chris Bates or Caroline Dawson at Clifford Chance in London, or your usual Clifford Chance contact.