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ISDA Publishes T+2 Settlement Protocol

On July 28, 2017, the International Swaps and Derivatives Association (“ISDA”) published the ISDA 2017 OTC Equity Derivatives T+2 Settlement Cycle Protocol (the “Protocol”)¹, the newest installment of ISDA’s well-tested mechanism aimed at facilitating the multilateral and standardized amendment of swap trading documentation. The protocol enables market participants to adjust their equity derivatives trading documentation to conform to the T+2 settlement cycle mandated by amended Rule 15c6-1(a), promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934. This Client Alert aims to assist market participants in determining whether or not to adhere to the Protocol.

What Does Amended Rule 15c6-1(a) Require?

Until recently, Rule 15c6-1(a) mandated a T+3 settlement cycle for most broker-dealer securities transactions. Effective as of September 5, 2017, amended Rule 15c6-1(a) shortens the settlement cycle to two business days, or T+2, unless otherwise expressly agreed to by the parties at the time of transaction. Our client alert is available [here](#).

How Does Amended Rule 15c6-1(a) Impact OTC Derivatives?²

Settlement and payments of over-the-counter (“OTC”) derivatives transactions generally are structured to conform to the timeframe for settling the underlying reference asset. For example, a market standard physically settled option referencing a given security typically will provide for settlement upon exercise on the same date on which the relevant party is able to deliver the referenced security to the other party. To the extent such an equity derivatives transaction specifies a settlement date of three “business days” instead of generically referencing the period in which settlement of a trade in the underlying securities customarily would occur according to the rules of the relevant exchange, the settlement timing of the derivative and a related cash trade would diverge following the shortening of the current T+3 settlement cycle.

¹ See <http://www2.isda.org/functional-areas/protocol-management/protocol/32>.

² In addition to OTC derivatives, securities lending, repurchase agreements and other similar transactions may also be affected by the new settlement cycle. Clients who engage in such transactions should consider visiting the websites of the industry organizations that promulgate the relevant documentation (e.g., SIFMA) to evaluate whether standard amendments are available.

What ISDA Documentation Is Affected?

Trade confirmations (either single- or multi-transaction) governing one or more OTC derivatives referencing one or more securities and entered into prior to September 5, 2017 are the most likely documents to be affected by the switch to a T+2 settlement cycle. While such confirmations vary widely in style and content, the parties to such confirmations may not have been aware of the T+2 settlement cycle compression at the time they entered into the trade. Thus, such confirmations, absent amendment, may require settlement of the derivative transaction *one day later* than the date on which the related physical securities trade will settle and therefore likely should be adjusted.

How Does the Protocol Help?

By adhering to the Protocol, market participants can update their trade documentation to conform to the new T+2 settlement cycle without having to individually amend each relevant trade confirmation. The Protocol will *not* affect transactions (or portions thereof) that are scheduled to settle prior to September 5, 2017 (so market participants can adhere now without concern of premature amendments to trade documentation).

What Is the Timeline for Adherence?

There is no cut-off date by which market participants must adhere to the Protocol. As is typical, however, ISDA reserves the right to designate a cut-off date on 30 days' advance notice.

Do I Need to Adhere?

There is no legal or regulatory requirement to adhere to the Protocol. That said, market participants likely will wish to amend relevant trade documentation to conform to the new T+2 settlement cycle. While such amendments can be made on a confirmation-by-confirmation basis via bilateral negotiation, adherence to the Protocol may be more efficient (all relevant documents are amended via the submission of a single adherence letter).

How Do I Adhere?

In order to adhere, market participants must provide ISDA (via ISDA's website) with an adherence letter indicating their desire to adhere to the Protocol. While the process of downloading, signing and uploading the signed letter is simple, high volume may lead to delayed response times from ISDA. Accordingly, clients wishing to adhere are advised to process their adherence letters sooner than later.

Adherence letters may be obtained on ISDA's website at the following URL (login required):

<https://www2.isda.org/functional-areas/protocol-management/submit-adherence-letter/>.

ISDA charges a \$500 fee for the submission of each letter.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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