THE REVIEW OF
SECURITIES & COMMODITIES REGULATION
AN ANALYSIS OF CURRENT LAWS AND REGULATIONS AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 47 No. 9 May 7, 2014

TIME FOR A 2014 ISDA MASTER AGREEMENT

Counterparties that enter into OTC derivative transactions face a number of new protocols required under the Dodd-Frank Act and the European Market Infrastructure Regulation. The authors suggest that market participants may prefer a single document reflecting these new requirements. To that end, they propose updates to the ISDA's 2002 Master Agreement to incorporate the various representations, agreements, and disclosures contained in the protocols.

By John Servidio, Peter Tucker, and Ryan Taylor *

Just as the International Swaps and Derivatives Association (ISDA) 2002 Master Agreement updated the ISDA 1992 Master Agreement to account for lessons learned in the late 1990s, it is time for ISDA to publish a "2014 Master Agreement" updating the 2002 Master in light of the recent financial crisis, Title VII of the Dodd-Frank Act,[1] the European Market Infrastructure Regulation (EMIR),[2] and related ISDA documentation protocols.

BACKGROUND

In July 1997, Thailand let the baht float against a basket of foreign currencies and promptly saw the baht lose over half of its value. The devaluation of the Baht triggered a panic in Thailand, which quickly spread to other Asian economies. Shortly thereafter, the Russian government devalued the ruble and defaulted on its domestic and foreign debt obligations. In September 1998, Long Term Capital Management ("LTCM") suffered massive losses on many of its derivative positions that ultimately required a bailout by the Federal Reserve Bank of New York. Consequently, dealers scrambled to review their 1992 Masters to determine their ability to designate early terminations, obtain market quotations or calculate losses, and, if

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 701–774, 124 Stat. 1376, 1641–1802 (2010) (to be codified in scattered sections of the U.S. Code).

[2] Commission Delegated Regulation (EU) No. 149/2013 of 19 Dec. 2012, art. 12–15, 2013 O.J. (L 52) 20-22.

∗ *JOHN SERVIDIO is a partner in the New York and Chicago offices of McGuireWoods LLP. His e-mail address is jservidio@mcguirewoods.com. PETER TUCKER is a vice president and assistant general counsel in the Equity Derivatives Group at Bank of America Merrill Lynch in New York. His e-mail address is peter.tucker@bankofamerica.com. RYAN TAYLOR is an associate in the Chicago office of McGuireWoods LLP. His e-mail address is rdtaylor@mcguirewoods.com.*

IN THIS ISSUE