

ISDA Amend: Cross-Border Representations

ISDA Amend Dates

Date	Requirement
July 26 th	CFTC published an “Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations”
August 19 th	ISDA: Cross-Border Representation Letter Published (ISDA)
August 30 th	Cross-Border Representations Notification sent to all ISDA Amend Users
September 21 st	Markit Launches ISDA Amend Cross-Border Representations
October 9 th	Cross-Border Representations deadline

ISDA Amend Events

Date	Location	Event
September 12 th	New York	ISDA 2013 Annual North America Conference
September 19 th	London	ISDA 2013 Annual Europe Conference
October 17 th	Sydney	ISDA 2013 Annual Australia Conference
October 22 th	Hong Kong	ISDA 2013 Annual Asia Pacific Conference
October 24 th	Tokyo	ISDA 2013 Annual Japan Conference

Summary

On July 26, 2013, the CFTC published an “Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations” providing guidance as to when the CFTC will assert jurisdiction over swap transactions that have a non-U.S. element. This allows market participants to provide counterparties with status representations needed to determine whether compliance with various CFTC swap regulations is required by the Interpretive Guidance.

To facilitate these additional bilateral delivery requirements, ISDA and Markit have developed a technology-based solution, ISDA Amend, as part of the Markit Counterparty Manager service. It automates the information-gathering process and provides sharing of submitted data and documents to permissioned counterparties.

ISDA Amend Process Flow

Step 1 – Sign up for Markit Counterparty Manager (New Clients)*

Online click through for Markit Counterparty Manager – [sign up](#)

ISDA Amend is a free service to non-swap dealers. All users need to do is log on to Markit's website and register themselves and their firms. They will receive a username and password via email and be contacted by Markit Operations team to begin the on-boarding process.

**If you are already an existing ISDA Amend User, please proceed to Step 3.*

Step 2 – Register for LEI/Pre-LEI

To ensure adequate and efficient client information the LEI/Pre-LEI is a mandatory field on ISDA Amend to facilitate the exchange of entity information to your counterparty. To register for LEI/Pre-LEI for your entity see the following suggested sites: [CICI](#), [GEI](#), [IEI](#).

**If you have already registered your LEI/Pre-LEI(s), please proceed to Step 3.*

Step 3 – Access and Apply Cross-Border Representations

Available date: September 21st, 2013

ISDA Amend Users will be able to access and provide their entity's Cross-Border Representations.

- Selection of U.S. Person Representations: U.S. Person / Not a U.S. Person
- Additional Representations for Non-U.S. Persons:
 - Affiliate Conduit Representation
 - Guarantee Representation - General
 - Guarantee Representation - Financial Entity Status
 - Guarantee Representation - Swap Dealer Affiliate Status

(All applicable fields are Mandatory)

**See Appendix for detailed definitions.*

ISDA Amend Cross-Border Representation Instructions

Existing clients:

1. Log on to ISDA Amend
2. Fill out the Cross- Border Representations chevron under Manage>Entities>Edit Entities
3. Select and permission Counterparties (dealer list) to view your representation(s)

New clients:

1. Sign on ISDA Amend on the click thru: [ISDA Amend](#)
2. Fill out Basic Information chevron under Manage>Entities>Add Entities
3. Fill out the Cross-Border Representations chevron
4. Select and permission Counterparties (dealer list) to view your representation(s)

**Full User Guide and FAQs available on ISDA Amend*

***Bulk Upload template available for clients with entities > 25.*

User Interface View:

Basic Information → ISDA Information → **Cross Border** → Additional Information → Address Information → Documentation → Counterparty Relationships

True Legal Name LEI/ CICI

Cross Border Representation ⓘ

In addition to the instructions provided below, please review the more detailed instructions that are available [here](#). Capitalized terms used in this "Cross-Border Swap Representations" section, including the text that is viewable when you click on blue underlined text in this section, are defined [here](#).

1. US Person Representation

Please check one box below to make the linked representation (please click on the corresponding link to view the text of the relevant representation.)

[Not a US Person](#) [US Person](#)

2. Additional Representations for Non-US Persons

For each pair of boxes below, please check one box to make the linked representation (please click on the corresponding link to view the text of the relevant representation.)

(a). Affiliate Conduit Representations

[Not an Affiliate Conduit](#) [Affiliate Conduit](#)

(b). Guarantee Representations - General

[No US Person Guarantees](#) [US Person Guarantees](#)

(c). Guarantee Representations - Financial Entity Status

[US Person Guarantees- No Financial Entity Guarantees](#) [US Person Guarantees - Financial Entity Guarantees](#)

(d). Guarantee Representations - Swap Dealer Affiliate Status

[US Person Guarantees- No Swap Dealer Affiliates](#) [US Person Guarantees - Swap Dealer Affiliates](#)

Regulatory Counterparty Relationship

ADD Apply Cross Border Regulation Remove Cross Border Regulation Apply Relationship to other entities

<input type="checkbox"/> Counterparty Name	<input type="checkbox"/> True Legal Name	<input type="checkbox"/> LEI	<input type="checkbox"/> Cross Border Representation	
<input type="checkbox"/> XYZ Company	XYZ	123455555555A	<input checked="" type="checkbox"/>	
<input type="checkbox"/> ABC Company	ABC	123455555555B	<input type="checkbox"/>	

Save Exit

For further information please contact **ISDA Amend Support:**

+44 (0)20 7260 2102 (Europe)

+1 212 488 4049 (North America)

MCPMsupport@markit.com

Appendix:

U.S. Person Categories

Means the enumerated categories of “U.S. persons” that are provided in the Interpretive Guidance.¹ For informational purposes only, the text of the categories (but not the related interpretive materials) is reproduced below

- (i) any natural person who is a resident of the United States;
- (ii) any estate of a decedent who was a resident of the United States at the time of death;
- (iii) any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than an entity described in prongs (iv) or (v), below) (a “**legal entity**”),² in each case that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States;³
- (iv) any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity;
- (v) any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;
- (vi) any commodity pool, pooled account, investment fund, or other collective investment vehicle that is not described in prong (iii) and that is majority-owned by one or more persons described in prong (i), (ii), (iii), (iv), or (v),⁴ except any commodity pool, pooled account, investment fund, or other collective investment vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons;⁵
- (vii) any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is directly or indirectly majority-owned

¹ Interpretive Guidance at pp. 45316-17.

² See the Interpretive Guidance at p. 45309 regarding the inclusion of legal entities that engage in non-profit activities, U.S. state, county and local governments and their agencies and instrumentalities. The treatment of international financial institutions such as the World Bank is discussed at p. 45353 & fn. 531.

³ The CFTC indicates that the concept of “principal place of business” as applied to collective investment vehicles requires special consideration due to the nature of such vehicles. In particular, the location of senior personnel responsible for implementing the vehicle’s investment strategy and for forming and/or promoting the vehicle is discussed. For discussion of the relevant considerations, see the Interpretive Guidance at pp. 45309-12.

⁴ For purposes of making this determination, the CFTC indicates that collective investment vehicles should “look through” direct investors in certain circumstances. See the Interpretive Guidance at pp. 45313-14 for discussion of when a look-through is required. In addition, the Interpretive Guidance indicates that majority ownership for this purpose is “the beneficial ownership of more than 50 percent of the equity or voting interests.”

⁵ See the Interpretive Guidance at p. 45314 regarding exclusion of collective investment vehicles that are publicly offered only to non-U.S. persons and not offered to U.S. persons from the U.S. Person Categories.

by one or more persons described in prong (i), (ii), (iii), (iv), or (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity;⁶ and

- (vii) any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in prong (i), (ii), (iii), (iv), (v), (vi), or (vii).

Guarantee

Means an agreement or arrangement under which a person commits to provide a financial backstop or funding against potential losses that may be incurred by another person in connection with a Swap.⁷

Affiliate Conduit Factors

Means the four factors identified in the Interpretive Guidance as relevant to considering whether a non-U.S. person is an “affiliate conduit.”⁸ For informational purposes only, the text of the factors (but not the related interpretive material) is reproduced below:

- (i) the non-U.S. person is a majority-owned affiliate of a U.S. person;⁹
- (ii) the non-U.S. person is controlling, controlled by or under common control with the U.S. person;¹⁰
- (iii) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person; and
- (iv) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third-party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s) and enters into offsetting swaps or other arrangements with its U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates.

⁶ Regarding the circumstances in which a majority of the owners of an entity are considered to be U.S. persons with unlimited responsibility for the obligations and liabilities of the legal entity, see the Interpretive Guidance at pp. 45312-13.

⁷ For a full discussion of how the CFTC interprets the term “guarantee,” see the Interpretive Guidance at p. 45320 & fn. 267 and also at p. 45355.

⁸ For the full discussion of how the CFTC interprets the term “affiliate conduit” (or alternately “conduit affiliate”), see the Interpretive Guidance at pp. 45358-59. Note that the discussion indicates that the term “affiliate conduit” is not intended to include affiliates of swap dealers.

⁹ The concept of a majority-owned affiliate for these purposes is discussed in fn. 591 of the Interpretive Guidance.

¹⁰ The concept of “control” for these purposes is discussed in fn. 592 of the Interpretive Guidance.

Cross-Border Representation FAQs

What is Cross-Border Representation letter?

On July 26, 2013, the CFTC published an “Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations” (“**Interpretive Guidance**”) providing guidance as to when the CFTC will assert jurisdiction over swap transactions that have a non-U.S. element. The “**Cross-Border Swaps Representations**” on ISDA Amend are designed to assist market participants in providing counterparties with status representations needed to determine whether compliance with various CFTC swap regulations is required by the Interpretive Guidance. The representations in the Cross-Border Swaps Representations section on ISDA Amend are solely for the purposes of making such determinations.

The Cross-Border Swaps Representations on ISDA Amend are based on the “[Cross-Border Swaps Representation Letter](#)” published on August 19, 2013 by the International Swaps and Derivatives Association, Inc. (“**Cross-Border Swaps Representation Letter**”).

The Interpretive Guidance is available at 78 Fed. Reg. 45292 (July 26, 2013) and at the following link: <http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankFinalRules/ssLINK/2013-17958a>.

Why does my entity need to provide Cross-Border Representations?

Your counterparty(ies) need these representations to determine whether the regulatory scheme for swaps adopted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank**”), in whole or in part, would apply to the transactions or the trading relationship between you.

What are the implications if I do not complete the Cross-Border Swaps Representations?

The effect of failing to provide counterparties with the representations found in the Cross-Border Representations section may vary from counterparty to counterparty. If you fail to provide a counterparty with the representations found in the Cross-Border Representations section your trading with such counterparty could be disrupted.

If you would like to determine the consequences of not completing the Cross-Border Swaps Representations, please contact your counterparty(ies).

What if I am a “U.S. person” but have not previously been identified as such?

If you are a U.S. person, your counterparty(ies) may require certain information and agreements from you in order to bring your trading relationship into Dodd-Frank compliance. One element of this could include, among other things, adherence to the [ISDA August 2012 DF Protocol](#) and the [ISDA March 2013 DF Protocol](#). The questionnaire information associated with each of these protocols may also be completed via ISDA Amend.

To whom can I send Cross-Border Swaps Representations via ISDA Amend?

Participants may send representations to any counterparty that appears on the “Counterparties” list. See below for further detail on the use of ISDA Amend.

If I send Cross-Border Swaps Representations to a counterparty that appears on the “Counterparties” list, will I also receive Cross-Border Swaps Representations from such counterparty?

Yes, these representations will be provided to you automatically if the relevant counterparty has uploaded its own Cross-Border Representations onto ISDA Amend.

Where can I find the “paper” version of the Cross-Border Representation Letter?

See the following Link: [ISDA - Cross Border Representation Letter](#).

Is there a service fee associated with providing this information via ISDA Amend?

There is no service fee for buy-side market participants on ISDA Amend.

Do I need to sign an adherence letter?

The Cross-Border Swaps Representation Letter and the Cross-Border Swaps Representations section on ISDA Amend are not associated with an ISDA protocol and thus, no adherence letter is required. Parties may provide representations directly to counterparties by completing the Cross-Border Swaps Representations on ISDA Amend without further action.

Is the LEI/Pre-LEI a mandatory requirement for ISDA Amend?

Yes. To ensure accurate entity information is delivered to your counterparties, ISDA Amend requires a registered LEI/Pre-LEI to be associated with your entity(ies) on the platform. To register for LEI/Pre-LEI for your entity see the following suggested sites: [CICI](#), [GEI](#), [IEI](#).

What do I need to do on ISDA Amend? (See ISDA Amend User Guide for further details)

Existing clients:

4. Log on to ISDA Amend
5. Fill out the Cross- Border chevron under Manage>Entities
6. Select Counterparties (dealer list) to view your reps

New clients:

5. Sign on ISDA Amend on the click thru: [ISDA Amend](#)
6. Fill out basic information chevron under Manage>Entities
7. Fill out the Cross-Border chevron
8. Select Counterparties (dealer list) to view your reps

Can I bulk upload my Cross-Border Representations for my entities?

Yes, bulk upload capabilities are available – see ISDA Amend User Guide.

Can I bulk upload the permissioned relationships for my entities?

Yes, bulk upload capabilities are available for selected ISDA Amend dealers – see ISDA Amend User Guide.