



IHS Markit™

# US Stay Protocol: Qualified Financial Contracts

October 2018

## Frequently Asked Questions (FAQs)

### **What is the US Stay Regulation?**

The US Stay Regulation and ISDA US Stay Protocol are intended to allow a regulator to step into a failing bank's operations (typically during a run on the bank), and provide short term liquidity until the bank can find funding, to prevent a collapse (as happened with Lehman in 2008). Over the last few years there have been stay protocols in the UK, Germany, Japan and Swiss jurisdictions.

The ISDA US Stay Protocol is for the US jurisdiction, and has a much broader scope in terms of products (as defined in the next question), as well as entity scope e.g., Qualified Financial Contracts (QFCs) between affiliates of regulated entities are also in-scope) than previous stay protocols.

For any entity that is not in scope and does not sign up to the protocol (or amend their QFC agreements bilaterally), they will need to cease trading as of 1 January 2019. While the mechanism of the protocol is fairly straightforward, the massive size of the impacted population means there will be a huge operational effort to ensure full compliance before 1 January 2019.

### **What is a QFC as defined by the ISDA US Stay Protocol?**

QFCs include swap agreements, repurchase agreements, securities contracts (including all contracts for the "purchase, sale or loan" of securities and certain other assets, including debt securities and mortgage loans), forward contracts and commodities contracts (including futures). However, QFCs are subject to the US Stay Regulation and US Stay Protocol only if they have default or termination rights exercisable against the regulated entity or allow the regulated entity to transfer the QFC without its counterparty's consent. In addition, if the counterparty is a US entity and the QFC is governed by US federal or state law, then the QFC is not in scope for the US Stay Protocol unless it has cross default rights.

### **Who developed the ISDA US Stay Protocol?**

The same working group that helped develop, in consultation with regulators, the operative provisions of the ISDA 2014 Resolution Stay Protocol (ISDA 2014 Stay Protocol), the ISDA 2015 Universal Resolution Stay Protocol (ISDA 2015 Universal Stay Protocol) and the ISDA Resolution Stay Jurisdictional Modular Protocol (ISDA Jurisdictional Modular Protocol) also developed the ISDA US

Stay Protocol. These protocols aim to achieve the same policy goals with respect to the orderly resolution of systemically important financial institutions.

**What kinds of entities can adhere to the ISDA US Stay Protocol?**

The ISDA US Stay Protocol is open to adherence by any entity. Entities may adhere individually in their own capacity or as agents on behalf of clients. See Question 6 for more information on adherence options for agents.

**Can entities that are not ISDA members sign up to the ISDA US Stay Protocol?**

Yes. ISDA members and non-ISDA members alike may adhere to the ISDA US Stay Protocol in the same way.

**Can entities established outside the United States adhere to the ISDA US Stay Protocol?**

Yes. Entities established in the United States and outside the United States may adhere to the ISDA US Stay Protocol in the same way.

**What do asset managers need to do for each of the 30 Global Systemically Important Banks (G-SIBs)?**

1. Sign the protocol on ISDA.org and pay ISDA the protocol fee of \$500.
2. If adhering on behalf of some but not all funds or all except some funds, provide detailed entity list and permissions on Counterparty Manager: ISDA Amend.
3. ISDA Amend provides aggregated data feeds to the bank to ensure all counterparties have signed the protocol and provided the detailed entities by LEI necessary to continue trading post January 2019.

**Does the ISDA US Stay Protocol only cover new QFCs?**

No, amendments to your protocol covered agreements will apply to all existing QFCs. If both parties adhere, new agreements entered into afterwards are not addressed by the ISDA US Stay Protocol. That said, if both parties adhere, they can agree to incorporate the protocol by reference into the new QFC agreement.

**Will the ISDA US Stay Protocol apply to all of my Protocol Covered Agreements if I adhere or just certain of them? Can I specify certain agreements for application of the ISDA US Stay Protocol?**

The ISDA US Stay Protocol will apply to all of your Protocol Covered Agreements with all Regulated Entities that also adhere to the ISDA US Stay Protocol. It will not apply to a Protocol Covered Agreement unless all parties to such agreement adhere. It will also not apply to any agreements to which no Regulated Entity is a party. Like all ISDA protocols, the ISDA US Stay Protocol also will not apply to any agreement in which the parties expressly state that the terms of the ISDA US Stay Protocol do not apply.

**I am an Asset Manager with many entities, do I need to sign up to the protocol individually for each of my entities?**

ISDA does provide a bulk adherence process, however this is not available on their website. Please reach out to [protocolmanagement@isda.org](mailto:protocolmanagement@isda.org) with your request for bulk action.

### **Can I adhere both as Agent and as Principal?**

If you are adhering as both an investment or asset manager acting on behalf of one or more clients and as a principal for your trades, you should submit two separate Adherence Letters. You should sign one Adherence Letter to adhere as an Adhering Party on behalf of clients and sign a separate Adherence Letter to adhere as an Adhering Party as a principal.

### **What are the different adherence types?**

1. Single Entity Adherence – principal adherence
2. Agency adherence:
  - a. Investment Manager on behalf of ALL funds
  - b. Investment Manager on behalf of SOME funds (ISDA Amend)
  - c. Investment Manager on behalf of ALL EXCEPT some funds (ISDA Amend)

### **What is a Regulated Entity for the purposes of this protocol?**

Regulated Entities generally include members of banking groups that have been designated as G-SIBs.

1. With respect to US G-SIBs, all US and non-US subsidiaries (subject to minor exceptions described below); and
2. With respect to non-US G-SIBs, all US subsidiaries, US branches and US agencies (subject to minor exceptions described below).

### **Who are the G-SIBs?**

A list of G-SIBs from the Financial Stability Board can be found [here](#).

### **How do I sign up to the ISDA 2018 US Resolution Stay Protocol?**

Please see PDF procedures on signing up to protocol on ISDA.org [here](#).

### **Is there a closing date for adherence to the ISDA US Stay Protocol?**

There is currently no cut-off date for adherence, but ISDA reserves the right to designate a closing date of the ISDA US Stay Protocol by giving 30 days' notice on this site.

### **How do I submit an Adherence Letter?**

Each entity executing an Adherence Letter will access the Protocol section of the ISDA website at [www.isda.org](http://www.isda.org) to enter information online that is required to generate its form of Adherence Letter. Either by directly downloading the populated Adherence Letter from the protocol management system or upon receipt via e-mail of the populated Adherence Letter, the entity must print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the protocol management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the ISDA US Stay Protocol adherent will receive an e-mail confirmation of adherence to the ISDA US Stay Protocol. Submit your Adherence Letter [here](#).

### **Is adherence public?**

Yes. A list of Adhering Parties will be published on ISDA's website. Note that this list will contain the names of agents adhering on behalf of clients but will not contain the names of the clients themselves. See Question 6 below for additional information about adherence by agents.

### **What is a conformed copy?**

A conformed copy of the Adherence Letter means that the name of the authorized signatory e.g., Patricia Smith is typed rather than having Patricia Smith's actual signature on the letter. ISDA only posts on its website the conformed copy of all Adherence Letters. A conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory will be published by ISDA so that it may be viewed on ISDA's website.

### **Who is an authorized signatory?**

An authorized signatory to the Adherence Letter is an individual who has the legal authority to bind the adhering institution.

### **Can I change the text of the Adherence Letter?**

No. The Adherence Letter must be in the same format as the form of letter published in the ISDA US Stay Protocol and generated by the protocol management webpage.

### **Are there any costs to adhere to the ISDA US Stay Protocol?**

Yes. Each party adhering to the ISDA US Stay Protocol must submit a one-time fee of US \$500 to ISDA at or before the submission of its Adherence Letter. Each individual legal entity is considered a separate Adhering Party for this purpose, and must pay the adherence fee, except that an investment/asset manager/agent that adheres on behalf of one or more underlying funds or principals for whom it has entered into a Protocol Covered Agreement, using a single Adherence Letter, would only pay a single adherence fee for that Adherence Letter.

Note that ISDA offers pricing for multiple entity corporate or fund groups. If a corporate or fund group has 25-100 entities that adhere to the ISDA US Stay Protocol, they can adhere for a flat fee of \$12,500 total. If a corporate or fund group has more than 100 entities that adhere to the ISDA US Stay Protocol, they can adhere for a flat fee of \$25,000. If your corporate or fund group qualifies for this pricing, please contact [protocolmanagement@isda.org](mailto:protocolmanagement@isda.org) for further details on how to make the payment and submit your Adherence Letters.

### **Now that I have signed up to the protocol, how do I deliver my protocol adherence to the G-SIB's I trade with?**

Since this is a universal protocol, your adherence is immediately made public to your GSIBs. You have no further action.

If you are an investment manager adhering on behalf of "some" or "all except" some funds, you need to go onto ISDA Amend to complete your work item.

### **I'm an asset manager, what should I do?**

First sign on to ISDA.org and fill out the protocol. If your adherence type is on behalf of "some" or "all except" some funds, log onto ISDA Amend, enter in your adherence ID, and create entity lists to securely permission to your relevant counterparty G-SIBs.

### **Why do I need to go both into ISDA.org and ISDA Amend?**

The adherence on ISDA.org is a public adherence. In order to protect the privacy of your separately managed accounts, ISDA has worked with IHS Markit to provide you a secure permissioning facility via the ISDA Amend platform.

### **Is this a phishing email? I see that the email domain is @ihsmarkit.com but the branding of the email is for Bank XYZ.**

No. As you can see, the appropriate email group within [XYZ Bank] is in copy to this email. The reason the email is sent from a vendor is because the vendor, IHS Markit, has been retained for purposes of the outreach coordination.

IHS Markit is the technology vendor that has created a tool that is driving the outreaches. Please note that the email does not ask you to provide any personal information, and only links you directly to the ISDA site for you to provide your adherence.

### **Why am I being contacted?**

A bank has identified in scope QFC contracts with you, and therefore have deemed you in scope for their outreach asking clients to adhere to the US Stay Protocol. You are receiving this email as part of this outreach effort.

### **How did you receive my contact details?**

Your contact details were provided by [XYZ Bank] as part of the outreach, or had been independently saved by IHS Markit because you are a user of Counterparty Manager and have conducted regulatory related activities on the platform.

### **What is the deadline?**

As a technical matter, the compliance dates / deadline by which you need to complete your adherence to the US Stay Protocol are as follows:

1 January 2019: for QFCs with other Covered Entities

1 July 2019: for QFCs with 'financial counterparties' other than small banks

1 January 2020: QFCs with all other counterparties

However, if a Regulated Entity or any of its affiliates enters into any QFC transactions with a counterparty or its affiliates on or after 1 January 2019, then all in scope QFC transactions with that counterparty must be remediated by the relevant Compliance Date. Therefore, it is likely that regulated entities will require counterparties to amend in scope QFCs with such regulated entities by 1 January 2019.

### **When does the ISDA US Stay Protocol become effective?**

As between an Adhering Party and a Regulated Entity the agreement to make the amendments contemplated by the ISDA US Stay Protocol will be effective on the date of acceptance by ISDA, as agent, of an Adherence Letter from the later party to adhere (the Implementation Date). The amendments themselves will be effective on the later of (1) the Implementation Date and (2) the relevant Compliance Date.

### **What are the Covered Entities?**

US G-SIBs: The parent holding company and each of its US and non-US subsidiaries.

Non-US G-SIBs: Each US subsidiary, US branch and US agency.

### **Do I need a Legal Entity Identifier (LEI)?**

LEIs are the most widely used common identifier, and are strongly suggested to ensure data accuracy during compliance to the protocol and data sharing to the 30 G-SIBs. However, LEIs are not required. You can specify and input a different identifier.

### **How do I get an LEI?**

There are various Local Operating Units that issue LEIs, but the most common one in the United States is the [GMEI Utility](#).

### **Do I adhere on behalf of the entity or at institution level?**

Each entity must adhere separately to the extent it is approached to adhere because in scope QFCs with regulated entities are outstanding.

### **Does the ISDA Amend website require a fee for buy-side users?**

There is no fee for buy-side firms to come on to ISDA Amend to provide their entity lists and securely permission them to banks.

### **Are there other jurisdictions currently being supported via the ISDA Amend tool?**

The other Stay resolutions are part of ISDA's Jurisdictional Modular Protocol. Currently there are 4 jurisdictions (UK, Germany, Japan, Switzerland), with Italy and France on its way. All these modules are supported on ISDA Amend.

### **Are the same dealers for ISDA Amend 1.0 and 2.0 available to permission to for US QFC module?**

Yes, all 30 [G-SIBs](#) (dealers) will be available on the ISDA Amend platform.

## **Questions about the US QFC Tool?**

If you have any questions on this process, please reach out to [mcpmsupport@ihsmarkit.com](mailto:mcpmsupport@ihsmarkit.com) for further assistance.

**ISDA Amend Hotline UK:** + 44 (0) 207 260 2102

**ISDA Amend Hotline US:** + 1 212 488 4049

**ISDA Amend Hotline Singapore:** + 65 6922 4120