



## CLS Bank NDF Protocol FREQUENTLY ASKED QUESTIONS (FAQs)

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CLS Bank has prepared this brief summary of FAQs to assist in your consideration of the CLS Bank NDF Protocol. **Please note that these FAQs may be updated over time, and were last updated on July 14, 2008.**

THESE FAQs DO NOT PURPORT AND SHOULD NOT BE CONSIDERED AS A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE NDF PROTOCOL. PARTIES SHOULD THEREFORE CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING THE NDF PROTOCOL. CLS BANK AND ITS AFFILIATES ASSUME NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR ANY DEFINITION OR PROVISION CONTAINED THEREIN MAY BE PUT.

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This FAQ is divided into six sections:

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## I. INTRODUCTION AND OVERVIEW OF NDF PROTOCOL

### What is the purpose of the NDF Protocol?

CLS Bank has published the NDF Protocol on July 14, 2008. The purpose of the NDF Protocol is to offer market participants an efficient way to address legal and operational issues that arise in connection with NDF Transactions where NDF Opening Instructions are submitted to the CLS System for settlement services in CLS Bank. Specifically:

- Transaction Confirmation of Economic Terms under NDF Multilateral Master Confirmation Agreement (Legal) – to enable parties with NDF Opening Instructions related to their underlying NDF Transaction submitted to the CLS System for Settlement in CLS Bank (A) to agree to be bound by the Multilateral Master Confirmation Agreement for Non-Deliverable Forward FX Transactions (“*Multilateral NDF Master Confirmation*”) published by the Foreign Exchange Committee (FXC), EMTA, Inc (EMTA) and the FX Joint Standing Committee (FX JSC) as cosponsors on October 31, 2007 for such NDF Transaction; and (B) to treat the NDF Opening Instructions that have been matched in the CLS System as a transaction confirmation for the economic terms of the NDF Transaction under the Multilateral NDF Master Confirmation; and
- Multilateral Adoption of Stated Industry NDF Best Practice (Operational) – to enable parties to notify other parties of their respective current positions, as an operational matter, on the stated industry best practice for NDF Transactions of not requiring the receipt of a separate confirmation of an NDF Transaction if the related NDF Opening Instructions have been matched in the CLS System and the NDF Transaction involves a currency pair for which (i) EMTA has recommended template terms or (ii) the parties have bilaterally agreed to template terms for general application to NDF Transactions between them (the “*NDF Best Practice*”). Unlike the transaction confirmation of economic terms under the Multilateral NDF Master Confirmation described above, **this is an optional, not mandatory, provision in the NDF Protocol.**

### How does the NDF Protocol work?

The NDF Protocol reflects a procedure which allows for certain agreements to be made on a **multilateral** basis. It builds on the principle that parties may agree with one or more other parties that certain terms and provisions will apply to their respective relationships now and in the past and future (unless they specifically agree otherwise). Specifically, the NDF Protocol provides a mechanism which enables multiple parties to agree that, in respect of any NDF Opening Instructions that have been or will be matched in the CLS System, certain standardized terms and provisions will apply to their underlying NDF Transactions.

Market participants (“*Adhering Parties*”) indicate their participation in the NDF Protocol arrangement by sending a letter (an “*NDF Adherence Letter*”) by email to CLS Bank; *provided, however*, that market participants that are CLS Bank Members are not required to submit such NDF Adherence Letters because their participation in the NDF Protocol is automatic. CLS Bank Members agree in the CLS Bank International Member Handbook (to which each CLS Bank Member is bound through its Member Agreement with CLS Bank) to be bound by the NDF Protocol. By adhering to the NDF Protocol, an Adhering Party agrees that:

- (i) The Multilateral NDF Master Confirmation is incorporated into the NDF Protocol.
- (ii) With respect to any NDF Transaction to which such Adhering Party and another Adhering Party are both Transaction Counterparties in an NDF Opening Instruction that has been submitted to the CLS System:
  - (A) the two Adhering Parties shall be bound to the terms of the Multilateral NDF Master Confirmation with respect to any such NDF Transactions; and
  - (B) the classification of the NDF Opening Instructions relating to such NDF Transaction as Matched Instructions in the CLS System shall, as between such Adhering Parties, constitute (and satisfy the requirement for) a “Transaction Confirmation” of such NDF Transaction for purposes of the Multilateral NDF Master Confirmation.

In addition, each Adhering Party **may, but is not required to**, indicate its current position regarding the adoption of the NDF Best Practice on a **multilateral** basis by sending a letter (a “*Multilateral Adoption of NDF Best Practice Letter*”) by email to CLS Bank. This Letter will identify which of the Adhering Party’s Identification Codes (e.g., SWIFT BICs and BEI Codes) operationally do not require the receipt of separate confirmations of its NDF Transactions where the NDF Opening Instructions have been matched in the CLS System. An Adhering Party may also identify *additional* Identification Codes that have adopted, or will be adopting, the NDF Best Practice by sending a letter (a “*Multilateral Adoption of NDF Best Practice Supplemental Letter*”) by email to CLS Bank.

The process surrounding adherence to the NDF Protocol and multilateral adoption of the NDF Best Practice is set out in the NDF Protocol itself, which is published on CLS Bank’s website ([www.cls-group.com/CLSBankProtocols](http://www.cls-group.com/CLSBankProtocols)), along with the forms of NDF Adherence Letter, Multilateral Adoption of NDF Best Practice Letter and Multilateral Adoption of NDF Best Practice Supplemental Letter (collectively, the “*Letters*”).

### **Why should my institution consider participating in the NDF Protocol?**

The NDF Protocol’s multilateral procedure saves time and expense that would otherwise be spent on bilateral negotiations with individual counterparties. It is expected that the NDF Protocol will become the standard process used by market participants to efficiently and effectively:

- (i) obtain certainty surrounding the confirmation process (a legal matter); and
- (ii) communicate their respective current positions regarding the multilateral adoption of the NDF Best Practice (an operational matter).

With respect to (i), agreement to the Multilateral NDF Confirmation under the NDF Protocol is valuable to each market participant **even if it is not adopting the NDF Best Practice**. This is because the NDF Protocol, at a minimum, provides legal certainty to each Adhering Party that material terms of any NDF Transaction have been confirmed in the CLS System and/or through the NDF Protocol even if some other form of confirmation was required but for some reason not received. Evidence of some form a confirmation may be legally necessary to satisfy contractual obligations between parties or a legal requirement that there be a writing evidencing the NDF Transaction. In addition to confirming the material economic terms of the NDF Transaction between two Adhering Parties, the NDF Protocol incorporates by reference the Multilateral NDF Master Confirmation, which

in turn (A) applies the relevant template terms recommended by EMTA Inc. (EMTA) applicable to the currency pair that is the subject of the NDF Transaction (an “*EMTA Template Transaction*”), (B) designates the calculation agent(s) for the NDF Transaction, and (C) if no master agreement exists between the two Adhering Parties, identifies the form of master agreement that applies to the NDF Transaction.

With respect to (ii), information on the market participants’ respective positions regarding the multilateral adoption of the NDF Best Practice does not currently appear to be publicly available in a centralized or comprehensive manner. Through the NDF Protocol, Adhering Parties **may, but are not required to**, indicate that they have, as an operational matter, adopted and therefore agree to be bound by the NDF Best Practice on a multilateral basis. In addition, because the NDF Protocol provides legal certainty regarding the confirmation process as described above, there is no risk that an Adhering Party has agreed to be bound by the NDF Best Practice through the NDF Protocol in the absence of such legal certainty. It is important to note, however, that if the NDF Transaction is not an EMTA Template Transaction (*i.e.*, involves a currency pair for which EMTA has not recommended template terms), the Adhering Parties may wish to confirm additional terms on a bilateral basis. The NDF Master Confirmation incorporates any terms for the confirmation of an NDF Transaction in a currency pair that the Adhering Parties have bilaterally agreed to apply generally to all NDF Transactions between them in the currency pair.<sup>1</sup>

### **Where can I locate a copy of the Multilateral NDF Master Confirmation and the templates recommended by EMTA for NDF Transactions?**

The Multilateral NDF Master Confirmation is publicly available at the following website location: <http://www.newyorkfed.org/fxc/ongoingwork/fxoptionsndfs.html>.<sup>2</sup> (Copies are also available on the FX JSC website and EMTA website.)

A list of the currency pairs for which EMTA has recommended templates for NDF Transactions is available at the following website location: <http://www.emta.org/documentation>. The full text of these templates is available to members of EMTA. Institutions that are not members of EMTA are encouraged to contact EMTA directly regarding access to this information.

### **What is the Multilateral NDF Master Confirmation that has been, and why has it been, incorporated by reference into the NDF Protocol? Isn’t confirmation of the economic terms of the NDF Transaction through the match of the related NDF Opening Instructions in the CLS system sufficient?**

It is the expectation of the FXC, FX JSC and EMTA that their Multilateral NDF Master Confirmation will offer market participants adopting it a legal framework for highly efficient confirmation processes for NDF Transactions. In contrast to an FX Transactions (and therefore the CLS Bank FX Protocol) where confirmation of the material economic terms to an FX Transaction is sufficient, it is important to NDF market participants to confirm their agreement on the matters covered by the currency specific EMTA templates. Each EMTA template is a reflection of the industry consensus on certain terms specific to a currency pair involved in an NDF Transaction.<sup>3</sup> The published Multilateral NDF

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<sup>1</sup> See Multilateral NDF Master Confirmation, paragraph 5.

<sup>2</sup> [www.newyorkfed.org/fxc/2007/fxc103107a.pdf](http://www.newyorkfed.org/fxc/2007/fxc103107a.pdf).

<sup>3</sup> “EMTA is the principal trade group for the Emerging Markets trading and investment community and is dedicated to promoting the orderly development of fair, efficient and transparent trading markets for Emerging Markets instruments and to helping integrate the Emerging Markets into the global capital markets. Above all, EMTA

Master Confirmation allows the content of confirmations for NDF Transactions to be streamlined to material economic terms, such as those matched by the CLS System, because it incorporates by reference terms of effective EMTA currency specific NDF confirmation templates.

Each Adhering Party is strongly advised to review the NDF Multilateral Master Confirmation carefully. In addition to agreeing to apply the relevant EMTA templates to its NDF Transactions, each Adhering Party agrees under the NDF Multilateral Master Confirmation:

- (i) Calculation Agent – If (A) each of the Adhering Parties is a CLS Bank Member or a dealer of a CLS Bank Member, or (B) neither of the Adhering Parties is a CLS Bank Member or the dealer of a CLS Bank Member, the calculation agent for the NDF Transaction shall be both Adhering Parties that have entered into the NDF Transaction. In all other circumstances, the calculation agent shall be solely the Adhering Party that is the CLS Bank Member or a dealer affiliate of a CLS Bank Member.
- (ii) Master Agreement – In the event the Adhering Party has not entered into a master agreement with another Adhering Party which governs FX Transactions, the form of the 2002 ISDA Master Agreement (Multicurrency-Cross Border), without any Schedule (except that the governing law shall be New York law and the Termination Currency or Base currency (as the case may be) shall be U.S. dollars) shall apply to its NDF Transactions with such other Adhering Party.

**How is this Multilateral NDF Master Confirmation different from the industry sponsored bilateral master confirmation agreement for NDF Transactions?**

The NDF Protocol incorporates the Multilateral NDF Master Confirmation that was designed by the FXC, FX JSC and EMTA, as cosponsors, to be implemented on a *multilateral* basis through systems and/or mechanisms like CLS Bank and its NDF Protocol. This is in contrast to the Master Confirmation Agreement for Non-Deliverable Forward FX Transactions, published on December 13, 2006, that was designed by the same cosponsors for use by market participants on a *bilateral* basis.<sup>4</sup>

**Are there any rules of priority with respect to two Adhering Parties that are or become subject to a bilateral master confirmation for NDF Transactions?**

Yes. These rules are contained in section 7(c) of the Multilateral NDF Master Confirmation.

**For whom is the NDF Protocol designed?**

The NDF Protocol is designed for all types of market participants whose NDF Transactions are eligible, and NDF Opening Instructions related to such NDF Transactions are submitted to the CLS System, for Settlement in CLS Bank.

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provides a forum that enables EM market participants to identify issues of importance to the trading and investment community and, when necessary, to review alternatives and develop consensus approaches to addressing industry problems and opportunities.” ([www.emta.org/about](http://www.emta.org/about))

<sup>4</sup> The bilateral form of Master Confirmation Agreement for Non-Deliverable Forward FX Transactions, and accompanying Practice Notes, are publicly available at <http://www.ny.frb.org/fxc/ongoingwork/fxdocumentation.html>.

**Does my institution need to be a CLS Bank Member to participate in the NDF Protocol?**

No. The NDF Protocol is open to non-Members of CLS Bank. As indicated above, all CLS Bank Members are automatically bound to the NDF Protocol.

**Can an Adhering Party, including a CLS Bank Member, opt-out or otherwise subsequently revoke its participation in the Protocol (or agreement to the NDF Best Practice)?**

Once an NDF Adherence Letter has been accepted by CLS Bank, the Adhering Party is bound by the terms of the NDF Protocol with each other party that has already adhered to the NDF Protocol and that may adhere to the NDF Protocol thereafter. As indicated above, CLS Bank Members are automatically bound to the NDF Protocol. An Adhering Party can, however, negotiate and agree to any changes **bilaterally** with any other Adhering Party outside the scope of the NDF Protocol. For example, any Adhering Party, including a Member, may separately agree on a bilateral basis with another Adhering Party that the NDF Protocol shall not apply to any of its NDF Transactions with such other Adhering Party.

The above is true with respect to an Adhering Party's agreement to be bound by the NDF Best Practice. As indicated above, not all Adhering Parties have adopted or agreed to be bound by the NDF Best Practice. However, once a Multilateral Adoption of NDF Best Practice Letter or Multilateral Adoption of NDF Best Practice Supplemental Letter has been accepted by CLS Bank, the Adhering Party may not revoke its agreement through the NDF Protocol that the Identification Codes specified in any such Letter will abide by the NDF Best Practice. An Adhering Party can, however, negotiate and agree to any changes **bilaterally** with any other Adhering Party outside the scope of the NDF Protocol.

**What alternatives, if any, are there to participating in the NDF Protocol?**

The alternative to participating in the NDF Protocol is to address the various issues covered in the NDF Protocol on a bilateral basis with each of your institution's counterparties. These issues could be addressed by way of individually negotiated provisions, or by incorporating certain provisions of the NDF Protocol by reference into the bilateral agreements, with each of your institution's counterparties.

**If my institution signs up to the NDF Protocol, will it cover all my NDF Transactions where related NDF Opening Instructions have been, or will be, matched in the CLS System?**

Yes, unless your institution has bilaterally agreed otherwise with another Adhering Party. In addition, it is important to note that adherence to the Protocol is only effective between your institution and **another Adhering Party** on the later of the Effective Adherence Date specified in the NDF Adherence Letters of your institution and such other Adhering Party. Any NDF Transactions that you may have with a counterparty that is not an Adhering Party is not covered by the NDF Protocol.

**Does the NDF Protocol apply to any of my NDF Transactions where related NDF Opening Instructions are not submitted to or matched by the CLS System? What about NDF Transactions that involve currencies that are not supported by the CLS System?**

The NDF Protocol applies to the NDF Opening Instructions that are submitted to the CLS System. There is no "Transaction Confirmation" for the underlying NDF Transaction under the Multilateral

NDF Master Confirmation, however, unless and until such time as the CLS System has matched the NDF Opening Instructions.

The NDF Protocol does not apply to any NDF Transactions (i) for which NDF Opening Instructions are not submitted to the CLS System or (i) which involve an NDF settlement currency or NDF reference currency that is not eligible for processing in the CLS System.

**How is the Transaction Confirmation affected by the NDF Valuation Instructions for the NDF Transaction to which the matched NDF Opening Instructions relate?**

If NDF Opening Instructions that were classified as Matched Instructions are subsequently classified as Matched Valued Instructions in the CLS System because NDF Valuation Instructions have been successfully applied to the NDF Opening Instructions, the Transaction Confirmation that was created by the matched NDF Opening Instructions shall, upon such classification, be considered supplemented with the additional information provided by the NDF Valuation Instructions that have been applied to such NDF Opening Instructions. If such Matched Valued Instructions are subsequently amended by the Members on a bilateral basis in the CLS System such that the NDF Opening Instructions are re-classified as Matched Valued Instructions, the more recent NDF Valuation Instructions shall supplement the Transaction Confirmation in lieu of the earlier NDF Valuation Instructions.

**How is the Transaction Confirmation affected by amends and rescinds in the CLS System?**

If NDF Opening Instructions that were classified as Matched Instructions are amended on a bilateral basis in the CLS System such that the NDF Opening Instructions are re-classified as Matched Instructions, the notification from the CLS System of such re-classification will constitute an amended "Transaction Confirmation" between the two Adhering Parties for purposes of the Multilateral NDF Master Confirmation. The amended Transaction Confirmation will supersede the earlier Transaction Confirmation of the NDF Transaction.

If the NDF Opening Instructions that were classified as Matched Instructions are (i) amended by a Member on a unilateral basis in the CLS System, or (ii) rescinded by the Member(s) on a unilateral or bilateral basis in the CLS System, the amendment or rescission has no effect on the earlier Transaction Confirmation between the two Adhering Parties for purposes of the Multilateral NDF Master Confirmation. This could be a situation where one Adhering Party is signalling to the other Adhering Party that the payment relating to the NDF Transaction will not be settled using the CLS system. The exception to this, however, is if another pair of NDF Opening Instructions relating to the same NDF Transaction has been classified as Matched Instructions in the CLS System, in which case the earlier Transaction Confirmation will be superseded by the Transaction Confirmation created by the classification of such other pair of NDF Opening Instructions as Matched Instructions.

**Does the Transaction Confirmation affect any confirmations that might be separately sent or exchanged between the Adhering Parties outside the CLS System?**

No. The Transaction Confirmation will not supersede any other confirmation that may be sent by such Adhering Party to another Adhering Party outside the CLS System, whether such other confirmation is received before or after such classification (or re-classification) of the NDF Opening Instructions as Matched Instructions or Matched Valued Instructions in the CLS System.

**Are the NDF Opening Instructions or the Transaction Confirmation affected by any confirmations that might or might not be separately sent or exchanged between the Adhering Parties outside the CLS System?**

No. The processing of any NDF Opening Instruction in the CLS System is not affected by any separate confirmation that may be given, or is failed to be given, to, by or on behalf of any Adhering Party.

**II. HOW DOES THE NDF BEST PRACTICE WORK AND WHAT DOES IT MEAN FOR MY INSTITUTION?**

**What does it mean for a party to have adopted the NDF Best Practice?**

As indicated above, a party that has adopted the NDF Best Practice no longer requires the **receipt** of separate confirmations from its counterparties for any of its NDF Transactions if the related NDF Opening Instructions have been matched in the CLS System and the NDF Transaction involves a currency pair for which EMTA has recommended template terms. It is important to understand that the focus of the NDF Best Practice is on an individual institution's requirement that it "receive" (or rather that it no longer requires the receipt of) separate confirmations, and on any obligations it may have to "send" separate confirmations to its counterparties.

**Why should my institution consider adopting the NDF Best Practice?**

The Best Practice for FX Transactions was proposed originally by a CLS industry working group and subsequently endorsed by the Foreign Exchange Committee (FXC) of the Federal Reserve Bank of New York (FRBNY) in September 2004 ([www.newyorkfed.org/fxc/2004/fxc040928.pdf](http://www.newyorkfed.org/fxc/2004/fxc040928.pdf)) as a means of:

- (i) reducing operational risk by allowing for the early identification and resolution of discrepancies through the real time matching process of the CLS System; and
- (ii) eliminating the need to send duplicate confirmation messages, which in turn reduces the potential for confusion and/or error while also lowering transaction costs.

It is CLS' understanding from the industry groups that it is not necessary to have the original FX best practice statement formally extended to NDF Transactions. This is because NDFs are FX-related and the best practice statement can be viewed as already applying to NDF Transactions. We wish to remind the institutions, however, that to the extent that the NDF Transactions are non-EMTA Template Transactions, the Adhering Parties should bilaterally agree and confirm those terms which are customarily covered in the templates recommended by EMTA. This can be accomplished by the two Adhering Parties (i) on an individual, transaction by transaction basis, or (ii) through a bilaterally agreed addendum to this NDF Protocol that would apply to the non-EMTA Template Transactions.

**Can I assume that another Adhering Party has adopted the NDF Best Practice since it participates in the NDF Protocol?**

No. Another Adhering Party's adherence to the NDF Protocol (*i.e.*, its agreement that classification of its NDF Opening Instructions as Matched Instructions in the CLS System constitutes a Transaction Confirmation) alone does not provide any indication of whether it has adopted, or will be adopting, the NDF Best Practice. Whether you are required to **send** separate confirmations to another Adhering Party that has **not** agreed to be bound by the NDF Best Practice through the NDF

Protocol on a multilateral basis will depend on the arrangements and agreements which are specific to you and the other Adhering Party (whether currently in place or as amended bilaterally between you and the other Adhering Party) and separate from this NDF Protocol.

**What if my institution is able to adopt the NDF Best Practice bilaterally, but not multilaterally?**

Because the purpose of the NDF Protocol is to allow certain agreements to be made on a **multilateral** basis, you may submit a Multilateral Adoption of Best Practice Letter if you are able to adopt the NDF Best Practice on a multilateral basis.

If you are only able to adopt the NDF Best Practice on a bilateral basis, this is outside the scope of the NDF Protocol. Participating in the NDF Protocol as an Adhering Party is still valuable, however, because the NDF Protocol, at a minimum, provides legal certainty to each Adhering Party that material terms of any NDF Transaction have been confirmed in the CLS System and/or through the NDF Protocol even if some other form of confirmation was required but for some reason not received. In addition, as an Adhering Party, you may request that CLS Bank (via email to [protocols@cls-bank.com](mailto:protocols@cls-bank.com)) inform the other Adhering Parties of your ability to adopt the NDF Best Practice on a bilateral basis, and CLS Bank will include this information in the MS Excel spreadsheet of the List of Adhering Parties on CLS Bank's website.

**Can I assume that another Adhering Party has (or has not) adopted the NDF Best Practice depending on whether it has (or has not) adopted the Best Practice for FX Transactions under the CLS Bank FX Protocol?**

No. Another Adhering Party's adoption of the NDF Best Practice is entirely separate from its decision to (or not to) adopt the Best Practice for FX Transactions.

**If my institution has adopted, or is adopting, the NDF Best Practice and submits a Multilateral Adoption of NDF Best Practice Letter, can my institution stop sending separate confirmations (e.g., MT300 and/or long-form confirmations) to the other Adhering Parties?**

Maybe. Your institution's adoption of the NDF Best Practice in no way affects any existing obligation it may have to send a separate confirmation to any of its counterparties, including any other Adhering Party. This is because in adopting the NDF Best Practice, your institution no longer requires the **receipt** of separate confirmations outside of the CLS System for EMTA Template Transactions. By submitting a Multilateral Adoption of NDF Best Practice Letter, your institution is simply notifying all the other Adhering Parties that your institution no longer requires the receipt of separate confirmations (*i.e.*, such other Adhering Parties no longer have to send separate confirmations to your institution) for EMTA Template Transactions.

In order to determine whether your institution needs to continue to send separate confirmations for EMTA Template Transactions to a particular counterparty, your institution will need to determine whether (i) such counterparty is an Adhering Party, (ii) whether such Adhering Party has submitted a Multilateral Adoption of NDF Best Practice Letter and (iii) review the contents of (*i.e.*, the identification Codes listed in) such Adhering Party's Multilateral Adoption of NDF Best Practice Letter (and, if any, Multilateral Adoption of NDF Best Practice Supplemental Letter(s)). Please see the next FAQ for information about non-EMTA Template Transactions.

If your institution's counterparty is not an Adhering Party or is an Adhering Party that has not submitted a Multilateral Adoption of NDF Best Practice Letter, your institution may wish to contact

that counterparty directly to determine whether it has nonetheless adopted the NDF Best Practice (and to the extent it has, encourage it to participate in the NDF Protocol).

### **Does the NDF Protocol exclude non-EMTA Template Transactions from the NDF Best Practice?**

Although each Adhering Party agrees through the NDF Protocol that the match of NDF Opening Instructions in the CLS System for all its NDF Transactions with each other Adhering Party constitutes a “Transaction Confirmation” under the Multilateral NDF Master Confirmation, the NDF Best Practice does not apply to any NDF Transaction involving a currency pair for which EMTA has not recommended template terms unless the two Adhering Parties have bilaterally agreed to template terms for general application to NDF Transactions between them for the currency pair. As explained above, each EMTA template is a reflection of the industry consensus on certain terms specific to a currency pair involved in an NDF Transaction. If an EMTA template does not exist for a particular currency pair even if such currency pair is supported by the CLS Bank settlement service, the Adhering Parties should bilaterally agree and confirm those terms which are customarily covered in the templates recommended by EMTA. This can be accomplished by the two Adhering Parties (i) on an individual, transaction by transaction basis, or (ii) through a bilaterally agreed addendum to this NDF Protocol that would apply to the non-EMTA Template Transactions.

### **What if my institution is not able to stop sending separate confirmations to another Adhering Party that has submitted a Multilateral Adoption of NDF Best Practice Letter?**

As indicated above, in adopting the NDF Best Practice, an Adhering Party no longer requires the receipt of separate confirmations outside of the CLS System. The NDF Protocol does not obligate the other Adhering Parties to stop sending separate confirmations to that Adhering Party, but rather permits them to stop sending separate confirmations to that Adhering Party if they wish.

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## **III. CLS BANK RULES AND CLS BANK MEMBER HANDBOOK**

### **Since the NDF Protocol uses terms that are defined in the CLS Bank Rules and Member Handbook, how can my institution obtain copies of these documents?**

CLS Bank Members have direct access to these documents which are confidential to CLS Bank. An institution that is not a CLS Bank Member may request copies from a Member that provides third party services to such institution.

For convenience, however, a brief description of the terms used in the NDF Protocol (and defined in the CLS Bank Rules or Member Handbook) is provided below.

- **“Affiliate”** means, in relation to any person, any entity (i) controlled, directly or indirectly, by the person, (ii) that controls, directly or indirectly, the person or (ii) directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting shares of the entity or person or actual control over the business and affairs of such person.
- **“CLS System”** means the hardware and software system used ... to deliver the [CLS Bank Settlement] service...

- **“NDF Opening Instruction”** means a [payment instruction submitted to the CLS System] relating to an underlying NDF Transaction.
- **“NDF Transaction”** means a single non-deliverable foreign exchange forward transaction.
- **“NDF Valuation Instruction”** means a [payment instruction submitted to the CLS System] relating to the valuation of an NDF Transaction.
- **“Identification Code”** means a BIC or BEI Code of an entity or such other identifier indicated in ... the Member Handbook as a valid code for the identification of an entity.

(A “BIC” means a Bank identifier Code, and “BEI Code” means a Business Entity Identifier, in each case identified with such entity in the BIC Directory most recently issued by SWIFT. To date, the Member Handbook also lists **“Fund Identifiers”** as valid codes, i.e., a code assigned to a fund by the custodian, fund manager or similar entity that manages the fund and is used by the CLS Bank Member to identify the fund as the Transaction Counterparty to the underlying NDF Transaction of an NDF Opening Instruction.)

- **“Matched Instructions”** means two [payment instructions submitted to the CLS System whose information] ... is matched in accordance with the parameters specified in the CLS Bank Rules.
- **“Member”** means a Settlement Member or User Member [of CLS Bank].
- **“Settlement”** means the settlement of [eligible payment instructions] . . . across the books and records of CLS Bank by the simultaneous making of debits and credits to the Accounts of the respective Settlement Members specified in the applicable . . . [payment [instructions]].
- **“Transaction Counterparty”** means, with respect to a [payment instruction submitted to the CLS System], the original counterparty to the [NDF] Transaction referenced in such [i]nstruction.

### **What economic terms of an NDF Transaction specified in an NDF Opening Instruction are matched by the CLS System?**

The CLS Bank Rules provide that the CLS System shall attempt to match two NDF Opening Instructions as a pair on the basis of the following information specified therein and, if successful, the two NDF Opening Instructions will be classified as “Matched Instructions”:

- the Identification Codes of the Transaction Counterparties;
- the Settlement Date;
- the Valuation Date;
- the amounts and identities of the buy and sell Eligible Currencies (within certain permitted matching tolerances specified in the Member Handbook); and

- the Identification Codes of the CLS Bank Members that have submitted the NDF Opening Instructions to the CLS System.

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#### **IV. PROCESS FOR ADHERING TO NDF PROTOCOL AND OPTIONAL MULTILATERAL ADOPTION OF NDF BEST PRACTICE**

##### **How can my institution participate in the NDF Protocol?**

Your institution can participate in the NDF Protocol by downloading all necessary information from CLS Bank's website and then submitting a signed NDF Adherence Letter in the proper form by email to CLS Bank in New York. In addition, your institution **may, but is not required to**, agree to the NDF Best Practice by submitting a signed Multilateral Adoption of NDF Best Practice Letter (and, if applicable, signed Multilateral Adoption of NDF Best Practice Supplemental Letter(s)) in the same manner.

##### **How does my institution send in its Letters?**

Each NDF Adherence Letter must be delivered by email to protocols@cls-bank.com. The NDF Adherence Letter(s) should be on your institution's letterhead. In the email, **your institution must submit both your conformed and executed copies of the NDF Adherence Letter as separate PDF attachments**. A signed copy and a conformed copy of the NDF Adherence Letter must be received by CLS Bank in order for CLS Bank to list your institution on the website as having adhered to the NDF Protocol.

Nothing in the form of NDF Adherence Letter available on CLS Bank's website may be changed with the exception of completing the details of your institution's name, signature block and the Effective Adherence Date.

No other documents (including an original signed copy of NDF Adherence Letters) are required of, nor will be accepted from, a party wishing to participate in the NDF Protocol.

The above also applies to any Multilateral Adoption of NDF Best Practice or Multilateral Adoption of NDF Best Practice Supplemental Letter that an Adhering Party **may, but is not required to**, submit to CLS Bank under the NDF Protocol. In the case of such Letters, however, nothing in the form of these Letters available on CLS Bank's website may be changed with the exception of completing the details of your institution's name, signature block, the Effective Adoption Date and the list of Identification Codes.

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

An authorized signatory for an Adhering Party is an individual who has the legal authority to bind the adhering institution.

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

A conformed copy of a Letter means that the name of the authorized signatory (e.g., John Doe) is typed rather than having John Doe's actual signature on the letter. CLS Bank only publishes on its website the conformed copy of the Letters.

Your institution must also submit an executed, or signed, copy of the NDF Adherence Letter in addition to the conformed copy of the NDF Adherence Letter. CLS Bank keeps the executed copy of the NDF Adherence Letter for its files and does not share the executed copy with anyone else.

**Are parties required to provide evidence of signing authority to CLS Bank?**

No. Each Adhering Party makes certain representations in the NDF Protocol itself regarding the execution and delivery of each Letter. No supporting documents are required of, nor will be accepted from, a party wishing to participate in the NDF Protocol.

**How can my institution check the signing authority of other Adhering Parties?**

For security reasons, NDF Adherence Letters on CLS Bank's website will have signatures conformed into type and signing authority information will not be displayed. Should parties wish to take steps to ascertain signing authority, each published NDF Adherence Letter will include a contact name and contact details for the relevant Adhering Party. This will also be required of any Multilateral Adoption of NDF Best Practice Letter and Multilateral Adoption of NDF Best Practice Supplemental Letters.

In the case of CLS Bank Members, no NDF Adherence Letters are available because the adherence by each Member to Protocol is evidenced in the provisions in the CLS Bank International Member Handbook to which each Member is bound through its Member Agreement with CLS Bank. In addition to publishing the current list of CLS Bank Members on its website, CLS Bank will publish an extract of this provision in the Member Handbook.

**Can my institution obtain copies of supporting documents for, or hard copies of, the Letters?**

Yes. If your institution wishes to obtain supporting documents for, or hard copies of, any Letter, each Letter posted on CLS Bank's website will include a contact name and contact details for the person at the Adhering Party who can send your institution such materials. CLS Bank can also provide certified copies of the conformed Letters.

**Which party in a corporate group must adhere to the NDF Protocol?**

Each legal entity with NDF Transactions where related NDF Opening Instructions have been, or will be, submitted to the CLS System may adhere separately in its own capacity if it wishes to adhere to the NDF Protocol. The Protocol also contemplates adherence by a group of separate legal entities.

**Can an institution use one Letter for some or all its affiliates or funds that it manages?**

Yes. An institution may submit a single Letter adhering it and one or more of its affiliates to the NDF Protocol (or agreeing to the NDF Best Practice). The same is true of an investment or asset manager acting on behalf of one or more funds it manages. In both cases, the institution represents to each other Adhering Party that it is authorized to act on behalf of any affiliates or funds, as the case may be, that may be identified by the institution in the Letter.

**Are the affiliates of CLS Bank Members automatically bound to the NDF Protocol?**

No. An affiliate of a CLS Bank Member that wishes to adhere to the NDF Protocol (or agree to the NDF Best Practice) must either submit its own Letter, or arrange for its affiliated CLS Bank Member,

acting on behalf of the affiliate, to adhere the affiliate to the NDF Protocol (or agree to the NDF Best Practice). This is because the provisions of the CLS Bank Member Handbook only apply to CLS Bank Members and does not apply to its affiliates.

**Is an investment or asset manager required to list the legal name or other identifier of funds it manages in the Letters?**

No. An investment or asset manager may identify the funds it is acting on behalf of by listing the funds in the Letter by their respective legal names or fund identifiers and/or by reference to the master agreement between the investment or asset manager and another Adhering Party. If the funds are identified by reference to the master agreement, the investment or asset manager may have the Letter apply to funds included in the master agreement (i) as of the Effective Adherence Date (or Effective Adoption Date) or (ii) as of and after the Effective Adherence Date (or Effective Adoption Date).

**Can an investment or asset manager act on behalf of clients other than 1940 Act registered funds?**

Yes. The term “fund” in the NDF Protocol is not specific to registered funds. For purposes of the CLS Bank settlement service, the term “fund” essentially refers to collective assets that are managed by a custodian, fund manager or other similar entity. The “fund” is represented as the Transaction Counterparty using unique identifiers referred to as “Fund Identifiers” in the NDF Opening Instructions and NDF Valuation Instructions submitted to the CLS system for processing. It is important to note, however, that no Instruction may identify a natural person as a Transaction Counterparty.

**Do Adhering Parties have to accept all of the NDF Protocol provisions?**

As indicated above, all Adhering Parties have agreed that if NDF Opening Instructions relating to their NDF Transactions have been matched in the CLS System, the match of such NDF Opening Instructions shall constitute a confirmation of each term so matched. However, each Adhering Party **may, but is not required to**, agree to the NDF Best Practice; evidence of any such agreement to the NDF Best Practice will be provided by the execution and delivery of a Multilateral Adoption of NDF Best Practice Letter by email to CLS Bank.

**Can I modify the wording of the NDF Protocol or any of the forms of Letters attached thereto?**

No. Any changes to the standardized wording set out in the NDF Protocol or to the standard form Letters will be considered invalid and unenforceable.

Counterparties can, of course, negotiate and agree to any changes bilaterally outside the scope of the NDF Protocol. The NDF Protocol in no way inhibits freedom of contract whether the parties have adhered to the NDF Protocol or not.

**Is there a deadline for participating in the NDF Protocol?**

No.

## **What does my institution need to do after sending in its Letters?**

It will be the responsibility of each Adhering Party to check that its NDF Adherence Letter is being displayed properly on CLS Bank's website. Each Adhering Party should monitor other institutions' adherence to the NDF Protocol and, if applicable, their current positions regarding the NDF Best Practice.

## **How will my institution know (i) who has adhered to the NDF Protocol and (ii) which Adhering Parties have adopted the NDF Best Practice?**

A current list of Adhering Parties is displayed on CLS Bank's website. Similarly, the website will indicate whether the Adhering Party has submitted a Multilateral Adoption of NDF Best Practice Letter. The website also offers access to PDF copies of each Letter from an Adhering Party. For security reasons, only the conformed copies of Letters are displayed. Adhering Parties therefore simply need to monitor the website to determine which other market participants have adhered to the NDF Protocol, as well as which of such Adhering Parties have adopted the NDF Best Practice (and, more specifically, which of their Identification Codes).

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## **V. CLS BANK'S ROLE**

### **What is CLS Bank's role in the NDF Protocol?**

CLS Bank acts, for certain purposes, as an agent for each party participating in the NDF Protocol. As expressly stated in each Letter, CLS Bank has been appointed as the Adhering Party's agent for the limited purposes of the NDF Protocol and such Adhering Party waives, and releases CLS Bank and its affiliates from, any rights, claims, actions or causes of actions whatsoever arising out of or in any way relating to the Letters or actions contemplated as being required by CLS Bank under the NDF Protocol.

CLS Bank receives Letters, updates its website from time to time and posts PDF conformed copies of the Letters. CLS Bank takes a minimal role in reviewing each Letter when submitted (e.g., to check that no pages are missing and the Letter is signed). It will be the responsibility of each Adhering Party to check that its Letters are displayed properly on the website and, if desired, verify the information in the Letters of another Adhering Party or whether such Letters were duly executed by the Adhering Party.

CLS Bank also publishes the NDF Protocol and provides information about it to interested parties.

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## **VI. MISCELLANEOUS**

### **How much does participation in the NDF Protocol cost?**

There is no charge for participation in the NDF Protocol.

**How can I encourage a counterparty to participate in the NDF Protocol?**

CLS Bank has prepared a standard form letter (which is available on its website) to assist Adhering Parties that wish to encourage others to participate in the NDF Protocol.

**How can my institution obtain a copy of the NDF Protocol and other relevant information?**

Copies of the NDF Protocol, the form of Letters, the form of counterparty letter and information about CLS Bank's role and other aspects of the NDF Protocol (including the Procedures) are available on CLS Bank's web site ([www.cls-group.com/CLSBankProtocols](http://www.cls-group.com/CLSBankProtocols)).