

MARKET IMPLEMENTATION OF THE 2009 COLLATERAL DISPUTE RESOLUTION PROCEDURE WILL TAKE PLACE IN STAGES AND THE TERMS OF THIS DOCUMENT MAY BE SUBJECT TO AMENDMENT AS PART OF THAT PHASED IMPLEMENTATION. PARTIES SHOULD REFRAIN FROM USING THIS DOCUMENT OUTSIDE THE CONTEXT OF THE MARKET IMPLEMENTATION PLAN, AND MAY CONTACT ISDA FOR MORE INFORMATION. THE FORM OF THIS DOCUMENT IS DESIGNED FOR FUTURE ADOPTION VIA SIDE LETTER OR PROTOCOL PURSUANT TO THE IMPLEMENTATION GUIDELINES – SEE ANNEX I FOR MORE INFORMATION.



International Swaps and Derivatives Association, Inc.

2009 COLLATERAL DISPUTE RESOLUTION PROCEDURE

(the “DR Procedure”)

1 Initiation of a Collateral Dispute

- 1.1 Initiation of a Collateral Dispute.** If a Party (a “Disputing Party”) reasonably¹ disputes (a) the other Party’s calculation of a Delivery Amount or a Return Amount or (b) the Value of any transfer of Eligible Credit Support or Equivalent Credit Support, then the other Party shall either (i) waive its demand in whole or to the extent of the disputed amount², or (ii) invoke the Dispute Resolution section set forth below.
- 1.2 Simultaneous Disputes.** In the event that each Party is making a demand on the other for the same Local Business Day, and each Party is a Disputing Party, and the Dispute Resolution section is invoked (by one or both Parties) the provisions of the Dispute Resolution section shall operate in a single consolidated instance with respect to all disputes for that Local Business Day³.

2 Dispute Resolution

2.1 Preliminary Collateralization.

- i) The Parties shall transfer collateral between them with a value equal to the Undisputed Collateral Amount.
- ii) Transfer of such collateral shall be initiated not later than the close of business on the Settlement Day following Day D⁴ (provided that such transfer need not be made prior to the time that such transfer need otherwise be made pursuant to the demand made under the Credit Support Obligations paragraph of the Credit Support Annex).

2.2 Portfolio Reconciliation.

- i) The Parties shall exchange information relating to all transactions under the Agreement between them in electronic form and perform a Portfolio Reconciliation. The information to be exchanged includes the complete set of transactions existing between the Parties, including current mark-to-market values and (if in dispute) collateral asset, balance, interest amount and any other relevant information.
- ii) Using the appropriate Tolerance for each product type, the trades with differences exceeding the Tolerance shall be identified and designated as Transactions Under Investigation. Either Party may

additionally designate other trades whose differences do not exceed the Tolerance as Transactions Under Investigation⁵, or reduce the Tolerance to zero⁶. If collateral assets, balances or related interest amounts or valuations are in dispute then these too are designated as Transactions Under Investigation.

2.3 Consultation and Informal Dispute Resolution.

- i) The Parties shall take steps to consult with each other and internally within each organization in accordance with the non-binding list of activities set out below:
 - (a) Internal Review. The Parties shall internally review all Transactions Under Investigation to verify their population and valuation. This may be done in whatever manner each Party considers appropriate, but must include referral of transactions to personnel necessary to resolve open issues, such as the relevant controller, trader, desk head, attorney or other personnel required to validate marking curves, to ensure that other model parameters are updated, and to confirm that marks are fresh and valid. Investigation may be undertaken to detect incorrect matching of trades, data errors and other items causing “false positive” reconciliation results. This may include a review of records held in central trade registries to assist matching trades
 - (b) Party to Party Review. Parties must consult between themselves at a senior controller, senior trader, desk head or other senior management level to attempt to understand and resolve differences.
 - (c) Alleged Positions⁷. In the case of alleged trades or collateral assets not recognized by one Party, the alleging Party must provide confirmations, trade references or other supporting documentation; both Parties must work to resolve differences due to alleged trades or collateral assets. The Parties must determine the existence (or not) of an unmatched position, except for recently executed trades yet to be confirmed which are excluded from this requirement for a period of five (5) Local Business Days after execution⁸.
- ii) For any Transactions Under Investigation not resolved by the above administrative review and consultation process, the Parties will communicate at an appropriately senior level and may elect one or more of the methods set forth under Informal Resolution Methods.
- iii) If the Parties cannot agree a mutually acceptable resolution by the above administrative review and consultation process or by using any of the Informal Resolution Methods within the applicable Timing, then the remaining Transactions Under Investigation will be designated as Transactions Under Formal Dispute Resolution

2.4 Formal Dispute Resolution. The Parties shall resolve any Transactions Under Formal Dispute Resolution using the procedures set out under Formal Dispute Resolution Method.

2.5 Results. The Results of this Dispute Resolution process shall be any valuations, corrections or adjustments determined (a) administratively during Consultation, (b) by mutual agreement during Informal Dispute Resolution, or (c) as a result of Formal Dispute Resolution. The Results shall be applied to the Closure of Collateral Dispute provision below and the Parties shall act accordingly.

2.6 Notices. When the parties determine the subsets of Transactions Under Investigation and Transactions Under Formal Dispute Resolution they must document this by either exchanging notices, or by use of a common repository for such information, or by such other means as they may agree, all in sufficient detail to permit unambiguous identification of the subject transactions in each case.

3 Closure of a Collateral Dispute

3.1 Resolved Collateral Amount. Based on the Results obtained during Dispute Resolution, the relevant Party or Parties must immediately recalculate the Delivery Amount or Return Amount and amend their demand as necessary, or must withdraw their dispute of the other Party’s demand, as may be appropriate. The collateral requirement thus calculated shall be the Resolved Collateral Amount.

3.2 Transfer of Resolved Collateral Amount. Following a recalculation and amendment and/or withdrawal of demand pursuant to this paragraph, each Party as appropriate shall notify the other of the Resolved

Collateral Amount as soon as possible but in any event not later than the Notification Time on the Local Business Day following the determination of the Resolved Collateral Amount. The appropriate Party will upon demand following such notification make the appropriate transfer of collateral, subject to all applicable terms and conditions under the Credit Support Annex.

3.3 No Event of Default. The failure by a Party to make a transfer of any amount which is the subject of a dispute to which the DR Procedure applies (except for any Undisputed Collateral Amount or any Resolved Collateral Amount) will not constitute an Event of Default for as long as the procedures set out herein are being carried out. For the avoidance of doubt, upon completion of those procedures, an Event of Default under Section 5(a) of the Agreement (as amended and/or supplemented by the Parties) may arise based upon the failure by a Party to make a transfer required of any Undisputed Collateral Amount or Resolved Collateral Amount above on the relevant due date.

3.4 Longevity of Results.

- i) The Parties agree that the Results are temporary in nature and have application to (a) the collateral demand subject to dispute resolution, and potentially (b) future demands as provided for below.
- ii) Except as otherwise provided, the Results shall continue to be used for the purpose of computing margin demands between the Parties until such time as the relevant markets move or additional transparency of fair value develops⁹.
- iii) In respect of future demands under the Credit Support Annex, each Party in its own discretion may determine that a market movement or the development of additional transparency has occurred, and may therefore terminate the continued use of the Results.

3.5 Scope of Results. Without prejudice to section 5.7(iv) below, the Parties agree and acknowledge that Results are intended for the sole and express purpose of permitting the computation of the Resolved Collateral Amount and thus resolving the disputed margin call(s) in question, and that nothing herein shall be construed as an agreement to amend the value of any specific transaction. The Parties expressly disclaim any other use of Results, including (without limitation) use as an input to fair market value determination, use for calculation of Termination amounts and any other purpose. A preference for any means or type of valuation indicated in this DR Procedure applies only with respect to this DR Procedure and has no bearing on any other context, be that dispute resolution not subject to this procedure, close-out or other.

4 Informal Resolution Methods

4.1 Mutual Consent Required. The Parties may elect to use the methods set forth in this section if both agree to do so.

4.2 Temporary Collateral Adjustment¹⁰.

- i) The Parties agree to adjust the Delivery Amount or the Return Amount under the Credit Support Annex by an agreed amount.
- ii) The adjustment is calculated using any methodology the Parties may agree¹¹.

4.3 Common Reference Pricing¹².

- i) The Parties agree to use a specified common reference price source for the purpose of valuing the Transactions Under Investigation and determining the Delivery Amount or Return Amount under the Credit Support Annex.
- ii) The source to be used is any that the Parties may agree.

4.4 Mutually Agreed Exit of Position.

- i) The Parties agree to exit a Transaction Under Investigation, via several possible mechanisms.
- ii) These include, but are not limited to:
 - (a) Terminating one or more transactions, at a mutually agreed price.

- (b) Assignment of one or more transactions by either Party to a third party willing to take the trade(s), at a privately negotiated price between assignee and assignor.
- (c) Assignment of one or more transactions by both parties to an exchange or clearing house for which the position is eligible, at a price set by the clearing house.

4.5 Other Resolution Method.

- i) Consistent with the ability of the parties to contract subject to applicable law, and the inherent characteristics and conventions of the privately negotiated derivatives market, it is explicitly reserved that the parties may mutually agree any other method of resolution of a dispute existing between them.
- ii) This includes, but is not limited to:
 - (a) A compromise in the collateral requirement due, mutually determined in some other manner.
 - (b) A valuation mutually determined in some other manner¹³.
 - (c) A mutual agreement to not collateralize some or all of the exposure between the parties, including exposure whose amount is uncertain or subject to dispute.
 - (d) A mutual agreement to disagree and to temporarily forebear exercise of other rights or remedies without prejudice to those rights.

5 Formal Resolution Method¹⁴

5.1 Scope. The process set forth below is applied to each Transaction Under Formal Dispute Resolution¹⁵.

5.2 Mutual Consent Not Required. The Parties are required to use the methods set forth in this section if a Result has not been obtained consequent to prior steps in the DR Procedure.

5.3 Market Polling.

- i) The Market Polling process consists of (a) Polling Process Consultation, (b) Quote Gathering and (c) Quote Evaluation to be undertaken in sequence.
- ii) Each Party shall act as a Market Making Party or a Rebutting Party or both, according to the designations determined below, during the Market Polling process.
- iii) If each of the Parties qualifies as a Reference Independent Price Source then the Market Polling process described below shall take place and each Party shall be designated both a Market Making Party and a Rebutting Party simultaneously.
- iv) If one of the Parties qualifies as a Reference Independent Price Source then the Market Polling process described below shall take place and the Party that is a Reference Independent Price Source shall be designated a Market Making Party and the other Party shall be designated a Rebutting Party¹⁶.
- v) If neither of the Parties qualifies as a Reference Independent Price Source then the Market Polling process described below shall take place and each Party shall be designated a Rebutting Party; in this case there is no Market Making Party.

5.4 Polling Process Consultation

- i) Polling Process Consultation starts upon the designation of one or more transactions as Transactions Under Formal Dispute Resolution.
- ii) Polling Process Consultation terminates two (2) Local Business Hours after it has started, or at such other time as the Parties may agree.
- iii) The Parties shall consult with regard to the conduct of the Market Polling process including, but not limited to:
 - (a) Each Party shall affirm whether it acts as a Rebutting Party, or (if qualified) a Market Making Party, or both.

- (b) Each Party shall identify to the other Party the pricing sources (Clearing Houses and Reference Independent Price Sources) from which it intends to solicit Quotes.
- (c) If a pricing source is proposed by both Parties then the Parties may mutually agree which Party shall solicit that pricing source, otherwise, both Parties may solicit that pricing source independently¹⁷.
- (d) The Parties may agree a certain time during the Quote Gathering Period as of which Quotes are to be stated; if they do not so agree, then Quotes may be stated as of any time within the Quote Gathering Period.
- (e) Each Party may exercise the Limited Right of Challenge as set forth below.

5.5 Quote Gathering.

- i) The Quote Gathering Period starts upon the completion of Polling Process Consultation.
- ii) The Quote Gathering Period terminates eight (8) Local Business Hours after it has started, or at such earlier time as the Parties may agree if further time would likely not yield any additional inputs. If the geographic locations of the Parties and/or the relevant markets in which prices for the trade(s) in question will be determined are trans-continentially dispersed, the time allowed for Quote Gathering is extended by eight (8) additional Local Business Hours¹⁸.
- iii) No later than the end of the Quote Gathering Period, each Market Making Party must submit the following to the other Party, each of which was valid as of the relevant time within the Quote Gathering Period:
 - (a) The Market Making Party's re-stated mid-market value¹⁹.
 - (b) The Market Making Party's two-way, firm, executable price for a traded quantity of the product(s) in question, which must bracket the mid-market value stated by the Party, each a "Market Maker Quote"²⁰.
 - (c) If obtained, one or more²¹ Quotes obtained from a Clearing House or Reference Independent Price Source (other than Quotes from the Market Making Party's own affiliates or from the other Party or their affiliates) each a "Reference Quote".
- iv) No later than the end of the Quote Gathering Period, each Rebutting Party must submit the following to the other Party, each of which was valid as of the relevant time within the Quote Gathering Period:
 - (a) The Rebutting Party's re-stated mid-market value²².
 - (b) If obtained, one or more Quotes obtained from a Clearing House or Reference Independent Price Source (other than Quotes from the Rebutting Party's own affiliates or from the other disputing Party or their affiliates) each a "Reference Quote".
- v) Each Party shall make commercially reasonable efforts to obtain Reference Quotes as described above.
- vi) All Quotes shall be provided in accordance with the Responsibilities and Standards for Quote Providers set forth below.

5.6 Quote Evaluation.

- i) Once Quote Gathering has been completed the actions set forth in this section shall be executed as rapidly as possible, and in any event in less than eight (8) Local Business Hours.
- ii) Each Party will disclose all of the Quotes made by or obtained by them, if any. All of the Quotes obtained by the Parties are shared between them - selective exclusion of Quotes is not permitted.
- iii) Quotes obtained by both parties are collated into the categories: (a) two-way, firm, executable; (b) two-way, indicative; or (c) mid-market, indicative. Any Quotes that do not clearly fit into one of these categories are discarded unless the Parties agree otherwise.
- iv) The collated Quotes are then evaluated as set out in the scenarios below to determine the Result:
 - (a) One or More Quotes from a Clearing House²³

If any Quotes²⁴ are obtained from a Clearing House then these quotes only are pooled together. Market Maker Quotes and Reference Quotes on any other basis are discarded. From the pool, the remaining bids are averaged, the remaining offers are averaged, and the mid-point between the average bid and the average offer is deemed to be the Result for the trade(s) in question.

(b) Two Market Making Parties and Two Rebutting Parties

The two Market Maker Quotes and any Reference Quotes that are on a two-way, firm, executable basis are pooled together. Reference Quotes on any other basis are discarded. From the pool, the remaining bids are averaged, the remaining offers are averaged, and the mid-point between the average bid and the average offer is deemed to be the Result for the trade(s) in question²⁵.

(c) One Market Making Party and One Rebutting Party

The Market Maker Quote and any Reference Quotes are pooled together.

1. If the pool contains at least two quotes on a two-way, firm, executable basis²⁶, then quotes on any other basis are discarded and the remaining bids are averaged, the offers are averaged, and the mid-point between the average bid and the average offer is deemed to be the Result for the trade(s) in question.
2. Otherwise, the dispute is resolved as follows:
 - (i) The average mid-market value of indicative Reference Quotes (if any) is calculated; this value is the Indicative Average.
 - (ii) The average of the two mid-market values stated by the Parties and the Indicative Average (if any) is calculated; this value is the Mid-Market Average²⁷.
 - (iii) The bid and offer levels of the Market Maker Quote (the “Bid” and the “Offer” respectively) obtained during the Quote Gathering Period are compared with the Mid-Market Average.
 - If the Mid-Market Average lies between the Bid and the Offer (inclusive) then the Mid-Market Average is the Result.
 - If the Mid-Market Average is higher than the Offer, then the Offer is the Result.
 - If the Mid-Market Average is lower than the Bid, then the Bid is the Result.

(d) No Market Making Party and Two Rebutting Parties

1. If the pool contains at least one Reference Quote:
 - (i) Any Reference Quotes are pooled together. If at least one two-way, firm, executable quote is obtained, indicative quotes are discarded.
 - (ii) The remaining bids (if any) are averaged, the remaining offers (if any) are averaged, and the mid-point between the average bid and the average offer is obtained. This is in turn averaged with remaining mid-market indicative quotes (if any), and the result is deemed to be the Result for the trade(s) in question.
2. If the pool contains no Reference Quotes, the mid-point between the mid-market values of the two Rebutting Parties is the Result.

5.7 Responsibilities and Standards for Quote Providers. All sources that will provide Quotes pursuant to the DR Procedure shall be put on notice of the requirements and responsibilities set out below by the Party soliciting such Quotes:

- i) Standards for All Quotes
 - (a) Quotes must be evidenced in writing or electronically.
 - (b) Quotes must state clearly whether they are (a) two-way, firm, executable; (b) two-way, indicative; or (c) mid-market, indicative.

- (c) Quotes must state any limitations as to their validity, including but not limited to the date and time as of which the Quote was valid, the size for which the Quote was valid, and any relevant benchmark levels in the market which were used in determining the Quote and upon which the Quote is conditioned.
 - (d) Quotes should be obtained on a credit risk neutral basis (ie, not taking account of the specific credit quality or identity of either of the Parties)²⁸.
- ii) Standards for Two-Way Quotes
- (a) Where two-way Quotes are given, they must be for commercially reasonable size consistent²⁹ with the size of the position that is subject to dispute, unless the parties mutually agree to solicit Quotes for some other size.
 - (b) Where two-way Quotes are given, the spread must be commercially reasonable for the product and market conditions at the time, and consistent with spreads applied to price quotations given for similar products and/or for other purposes.
 - (c) For any two-way Quote, the spread between the bid and offer may not exceed the greater of (i) the value stated for the transaction type in question in the Maximum Stressed Spread Table or (ii) a maximum spread for dispute resolution purposes that was previously agreed between the parties. If a two-way Quote is obtained that exceeds the relevant spread width limitations as set forth above, then if practicable within the applicable Timing that Quote may be re-quoted by the source concerned so as to comply with the spread width limitations but will otherwise be invalid for the purpose of the DR Procedure and be discarded.
 - (d) Quotes that are two-way, firm, executable must be posted and maintained during regular trading hours in a public venue on any date as of which such Quote is valid, with appropriate descriptive detail of the trade, in a manner customary for the market in question³⁰. The posting of two-way, firm, executable prices on one or more electronic trading venues shall be deemed to meet this requirement of publication. For the avoidance of doubt, these venues may include organized electronic trading platforms and also the use of electronic dissemination methods where such methods are customary in the market concerned.
- iii) Responsibilities of Sources Giving Two-Way, Firm, Executable Quotes.
- (a) All sources giving two-way, firm, executable Quotes must be willing and able to stand behind the market levels they have made and to execute a transaction at those levels if called upon to do so by either of the Parties or some third party reasonably contemporaneously with the quoting of their firm, executable price.
 - (b) Such obligation to execute is subject to normal commercially reasonable credit, legal and regulatory due diligence (including know-your-client and credit risk appetite for the specific entities concerned), credit pricing adjustment customary for the type of trade in question, and to price adjustment if the time elapsed from the making of the price quotation to the point of execution is such that the underlying market has moved.
 - (c) For the avoidance of doubt, a two-way, firm, executable Quote validly given at which any party attempts to execute but is denied based on the credit considerations noted above shall continue to be a valid two-way, firm, executable Quote for the purposes of the DR Procedure³¹.
 - (d) A two-way, firm, executable Quote at which any party attempts to execute prior to the end of Market Polling but is denied for any reason other than the credit considerations noted above shall no longer be a valid two-way, firm, executable Quote for the purposes of the DR Procedure. In this case:
 - 1. The Quote shall be considered to be two-way, indicative.
 - 2. If the Quote in question was a Market Making Quote, then the Party giving that Quote shall be re-designated to be a Rebutting Party and not a Market Making Party for the margin call in question.
 - 3. The Result shall be re-computed accordingly.

- iv) Market Maker Quotes. Whenever a Market Making Party provides a Market Maker Quote, it will be deemed to certify that the mid-point of its Market Maker Quote accurately reflects the level at which it is marking the transaction for purposes of its books and records.

5.8 Qualification as a Reference Independent Price Source.

- i) Certification of a Third Party. Each Party acting in good faith is permitted to certify that a third party is a Reference Independent Price Source, subject to the requirements of the definition of that term, and subject also to the Limited Right of Challenge set out below.
- ii) Self-Certification. Each Party acting in good faith is permitted to certify that they are themselves a Reference Independent Price Source, subject to the requirements of the definition of that term, and subject also to the Limited Right of Challenge set out below.
- iii) No Compulsion to Self-Certify. A party that declines to certify themselves as a Reference Independent Price Source shall not be a Reference Independent Price Source under any circumstances³².
- iv) Limited Right of Challenge. During Polling Process Consultation, if either Party acting in good faith believes that the other Party or a source proposed by the other Party, as applicable, does not qualify as a Reference Independent Price Source, such Party may challenge the certification of the other Party or the proposed source, as applicable (each such event being a "Challenge"). A Challenge shall be made by presenting Publicly Available Information (as defined in the 2003 ISDA Credit Derivatives Definitions or successor publications, *mutatis mutandis*) that in content demonstrates that either the other Party or the proposed source, as applicable, does not qualify as a Reference Independent Price Source. Upon such non-rebuttable Challenge, as applicable, the other Party shall be deemed to be a Rebutting Party or the proposed source shall be discarded and the Party which had selected that source shall have the opportunity to propose other alternate source(s). If not successfully challenged during Polling Process Consultation, then the selection of Reference Independent Price Sources shall be valid, binding and not subject to challenge after the fact.

6 General Terms and Conditions

- 6.1 **Capitalized Terms.** Capitalized terms shall have the meaning given in this DR Procedure (including but not limited to the Definitions section herein), or in the Credit Support Annex or in the Agreement as may be applicable.
- 6.2 **Obligation to Cooperate.** The Parties shall cooperate together in good faith and a commercially reasonable manner in order to perform the actions set forth in the DR Procedure expeditiously, transparently and in accordance with the applicable Timing.
- 6.3 **Commercial Discretion of the Parties.** At all times the Parties retain the ability to mutually contract as they wish subject to applicable law, and may exercise this right to cause a different timing or method of resolution from that set forth in the DR Procedure.
- 6.4 **No Obligation to Secure Credit Risk.** Unless otherwise established by contract, official rules or statute, the Parties are not under an obligation to secure the associated credit risk of any transaction by means of collateral or other methods if they agree mutually to do otherwise.
- 6.5 **Reservation of Rights Under Applicable Laws and Contracts.** Both Parties expressly reserve all rights that they may have under any contracts between them or pursuant to applicable laws, including but not limited to rights to issue notices of events of default, to exercise of termination provisions or to exercise other rights or remedies. For the avoidance of doubt, nothing in this DR Procedure shall amend, limit, delay, stay or otherwise amend such rights³³.
- 6.6 **Costs.** Each Party shall bear its own costs associated with use of and compliance with the DR Procedure.
- 6.7 **Community Obligation to Support Dispute Resolution By Third Parties.** Any Party that adopts the DR Procedure and is also a Reference Independent Price Source in respect of a particular product hereby commits that (subject to market practice, commercial reasonableness, normal market protocols concerning conflicts of interest, and applicable law and regulation) they will provide a Reference Quote upon request

by any legitimate third party reasonably engaged in resolution of a disputed margin call pursuant to the DR Procedure³⁴.

6.8 Timing. In regard to each particular calculation of a Delivery Amount or a Return Amount under the Credit Support Annex (each a “Margin Calculation”), the following shall apply:

- i) Expression of Timing. All timings are expressed as a number of elapsed business days after Day D.
- ii) Standard Timing. Unless otherwise agreed between the Parties, the steps of the DR Procedure shall start at and end by the timings set forth in Table I below:

Table I - Standard Timing

<i>Paragraph :</i>	Standard Timing	
	Start	End
2.1 Preliminary Collateralization	D	D ⁴
2.2 Portfolio Reconciliation	D	D+1
2.3 Consultation / Informal Dispute Resolution		
2.4 Formal Dispute Resolution	D+1	D+3

- iii) Extended Timing³⁵. If the Parties both consent, the provisions of Standard Timing above shall not apply and the steps of the DR procedure shall start at and end by the timings set forth in Table II below:

Table II - Extended Timing

<i>Paragraph :</i>	Extended Timing	
	Start	End
2.1 Preliminary Collateralization	D	D ⁴
2.2 Portfolio Reconciliation	D	D+1
2.3 Consultation / Informal Dispute Resolution	D+2	D+7
2.4 Formal Dispute Resolution	D+7	D+9

Extended Timing will be invoked at the suggestion of either Party and adopted upon the consent of the other Party, not unreasonably to be withheld.

- iv) Extension^{36,37}. Any step in the DR Procedure may be extended by mutual consent of the parties if they are actively engaged in the process set forth herein and there is a reasonable expectation that resolution will result, subject to a maximum limit of 30 days³⁸ for the overall process.
- v) Acceleration. Regardless of any Timing in force or previously agreed, at any time any step in the DR Procedure may be accelerated or bypassed, either (a) by mutual consent of the Parties or (b) by unilateral declaration of either Party, up to Formal Dispute Resolution which must then be completed.

6.9 Conversion Between Prices and Values. Where the terms “quote”, “price” and “value” are used in the DR Procedure they shall be interpreted equivalently and where expressed numerically shall be converted one to the other as the context requires for the purpose of performing calculations under the Credit Support Annex³⁹.

6.10 Form of Consent. Where the DR Procedure calls for mutual consent, this may be given orally⁴⁰ or in writing (including via email).

6.11 Failure to Perform. If a Party fails to perform the actions required in any step of the DR Procedure with respect to any transaction(s) between the Parties that are the subject of the DR Procedure by the prescribed time periods(s) set forth herein or as otherwise agreed between the Parties and such failure is not remedied within 2 Local Business Hours after written notice of such failure is given to such Party, then as may be

applicable their calculation of Delivery Amount or Return Amount or their disputation of such, as applicable, shall be void and the calculation or opinion of the other Party shall stand as the Result with respect to such transactions.

7 Definitions

Agreement	An ISDA Master Agreement between the Parties.
Clearing House	A central counterparty, clearing organization or other similar company that provides clearing and settlement services for financial transactions and is supervised by a national financial services regulatory agency in relation to those activities. For the purposes of the DR Procedure, such a company will qualify as a Clearing House only in respect of transaction types for which it ordinarily provides clearing and settlement services ⁴¹ and furthermore such transaction types must be economically equivalent to the Transactions Under Formal Dispute Resolution ⁴² .
Credit Support Annex	An ISDA Credit Support Annex ⁴³ between the Parties.
Day D	A day on which a demand made by a Party pursuant to the section entitled “Credit Support Obligations” under the Credit Support Annex is disputed by the other Party.
Financial Institution	Any corporation, partnership, or limited liability entity that is either (a) a registered bank, broker or dealer; (b) an investment fund exceeding \$100 million of investable assets that is managed by an investment manager that is registered with the appropriate regulatory agency or operating pursuant to an exemption; (c) an entity whose principal business is the provision of financial services that is supervised by a national financial services regulatory agency; or (d) any other entity that is a valid source of market prices as the parties may from time to time agree; and which in all cases (a), (b), (c) and (d) has the necessary legal capacity and authority to enter into the trades in which it holds itself out to be a Reference Independent Price Source.
Local Business Hour	A period of 60 minutes occurring on a day that is a Local Business Day.
Maximum Stressed Spread Table	A table or other written expression setting forth maximum allowable stressed market spread ranges for derivative transaction types for the express purpose of use with this DR Procedure, as published by ISDA from time to time ⁴⁴ .
Party	A legal entity that has adopted the DR Procedure via subscription to a multi-lateral protocol document, bilateral contract or other means and that is a party to the relevant transaction(s) subject to this DR Procedure.
Portfolio Reconciliation	Any method that the parties agree to identify and isolate the items contributing most significantly to the dispute between them. This may include (but is not limited to) a systematic line by line, field by field matching process performed using technological means such as a portfolio reconciliation service or technology engine.
Quotes	Prices and/or values obtained during the Quote Gathering Period, including the mid-market values of the Parties, any Market Maker Quotes and any Reference Quotes.
Reference	A Financial Institution that (a) regularly maintains an executable, two-sided market

Independent Price Source	consisting of a simultaneous bid and offer for a traded quantity of the product in question, or in the case of illiquid instruments, is willing to make an executable, two-sided market for an extended and commercially reasonable period of time; and (b) is of Reputable Credit Quality.
Reputable Credit Quality	A Financial Institution will be deemed to be of Reputable Credit Quality if it is not the subject of a Bankruptcy (as defined in Section 4.2 of the 2003 ISDA Credit Derivatives Definitions) and does not suffer from any distressed credit standing in the market that would present a commercially reasonable impediment to either Party to enter into non-risk-reducing trades of the general type disputed with the Financial Institution ⁴⁵ .
Timing	The set of start and end timings for activities under the DR Procedure set forth (and varied, if applicable) in accordance with section 6.8 herein.
Tolerance	A standardized degree of difference applicable to the two Parties that will still be considered “matched” for the purpose of Portfolio Reconciliation ⁴⁶ , as published by ISDA from time to time.
Undisputed Collateral Amount	<p>The largest amount that would be undisputed by one Party, calculated as follows:</p> $UCA = \text{MINIMUM}(X, Y)$ <p>WHERE:</p> <p>UCA = UNDISPUTED COLLATERAL AMOUNT</p> <p>X = ABSOLUTE VALUE OF THE DELIVERY AMOUNT OR RETURN AMOUNT DEMAND OF ONE PARTY</p> <p>Y = ABSOLUTE VALUE OF THE DELIVERY AMOUNT OR RETURN AMOUNT DEMAND OF THE OTHER PARTY</p> <p>If both Parties are making a demand on each other simultaneously, there is no UCA.</p>



International Swaps and Derivatives Association, Inc.

ANNEXES AND NOTES TO THE 2009 COLLATERAL DISPUTE RESOLUTION PROCEDURE

The following material is provided as a convenience to readers of the 2009 DR Procedure. It does not form part of the DR Procedure, is not binding upon the Parties and in the event of any discrepancy between this material and the DR Procedure the latter shall be governing.

TABLE OF CONTENTS

Annex I	Adoption of the DR Procedure between Parties	i
Annex II	Background to the DR Procedure	iii
Annex III	Outline of the Dispute Resolution Procedure	iv
Annex IV	Concept and Rationale for Spread Based Moderation	v
Notes		viii

ANNEXES

I. Adoption of the DR Procedure between Parties

It should be noted that adoption of the DR Procedure across the market will take place in stages, and terms may be subject to amendment as part of that phased implementation. Parties should refrain from using the DR Procedure outside the context of the market implementation plan, and may contact ISDA for more information.

At the appropriate stage of the phased implementation plan, Parties wishing to adopt the DR Procedure may elect to do so in either Non-Exclusive or Exclusive form, depending on whether they wish to retain their existing CSA dispute resolution language as a fall back or to replace it entirely by the DR Procedure. It is anticipated that in the early stages of market adoption during a Trial Period the DR Procedure will be used in Non-Exclusive form, but the expectation from financial regulators is that eventual broader market adoption will be Exclusive. See also the companion document "Implementation Guidelines for the ISDA 2009 Collateral Dispute Resolution Protocol" (ISDA, 2009) for more extensive discussion of implementation considerations.

In due course, a pair of counterparties wishing to adopt the DR Procedure may do so via a side letter to their existing CSA. It is also contemplated that adoption via a mass protocol mechanism will be available. In either case adoption may be accomplished by use of the sample draft language outlined below in an appropriate document.

DRAFT



International Swaps and Derivatives Association, Inc.

AMENDMENT

dated as of [DATE]

to the

ISDA MASTER AGREEMENT

dated as of [DATE]

between

[PARTY A] (“Party A”) and [PARTY B] (“Party B”)

(the “Agreement”)

The parties have previously entered into the Agreement, which includes a Credit Support Annex (the “Credit Support Annex”) and have now agreed to amend the Agreement by the terms of this Amendment (this “Amendment”).

Accordingly, in consideration of the mutual agreements herein contained, the parties agree as follows:

1. Amendment of the Agreement

[Non-Exclusive Form of Adoption: Whenever the section of the Credit Support Annex that is entitled “Dispute Resolution” is invoked, the parties shall in the first instance not apply any of the provisions of that section and shall instead [in good faith and in a commercially reasonable manner] apply sections 1 through 7 inclusive of the 2009 Collateral Dispute Resolution Procedure, as published by the International Swaps and Derivatives Association, Inc. on [DATE] (the “DR Procedure”) in order to resolve a disputed margin call; provided that, failing mutually satisfactory resolution of the relevant dispute pursuant sections 1 through 7 inclusive of the DR Procedure, either party may elect to apply the provisions of the “Dispute Resolution” section in the Credit Support Annex.

[Exclusive Form of Adoption: The Credit Support Annex shall be amended and restated such that the section that is entitled “Dispute Resolution” shall be deleted in its entirety and replaced by sections 1 through 7 inclusive of the 2009 Collateral Dispute Resolution Procedure, as published by the International Swaps and Derivatives Association, Inc. on [DATE] (the “DR Procedure”).]

2. Representations

Each party represents to the other party in respect of the Agreement, as amended pursuant to this Amendment, that all representations made by it pursuant to the Agreement are true and accurate as of the date of this Amendment.

3. Miscellaneous

(a) **Entire Agreement; Restatement.**

- (i) This Amendment constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- (ii) Except for any amendment to the Agreement made pursuant to this Amendment, all terms and conditions of the Agreement will continue in full force and effect in accordance with its provisions on the date of this Amendment. References to the Agreement will be to the Agreement, as amended by this Amendment.

(b) **Amendments.** No amendment, modification or waiver in respect of the matters contemplated by this Amendment will be effective unless made in accordance with the terms of the Agreement.

(c) **Counterparts.** This Amendment may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(d) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(e) **Governing Law.** This Amendment will be governed by and construed in accordance with [English Law][the laws of the State of New York (without reference to choice of law doctrine)].

IN WITNESS WHEREOF, the parties have executed this Amendment on the respective dates specified below with effect from the date specified on the first page of this Amendment.

[PARTY A]

[PARTY B]

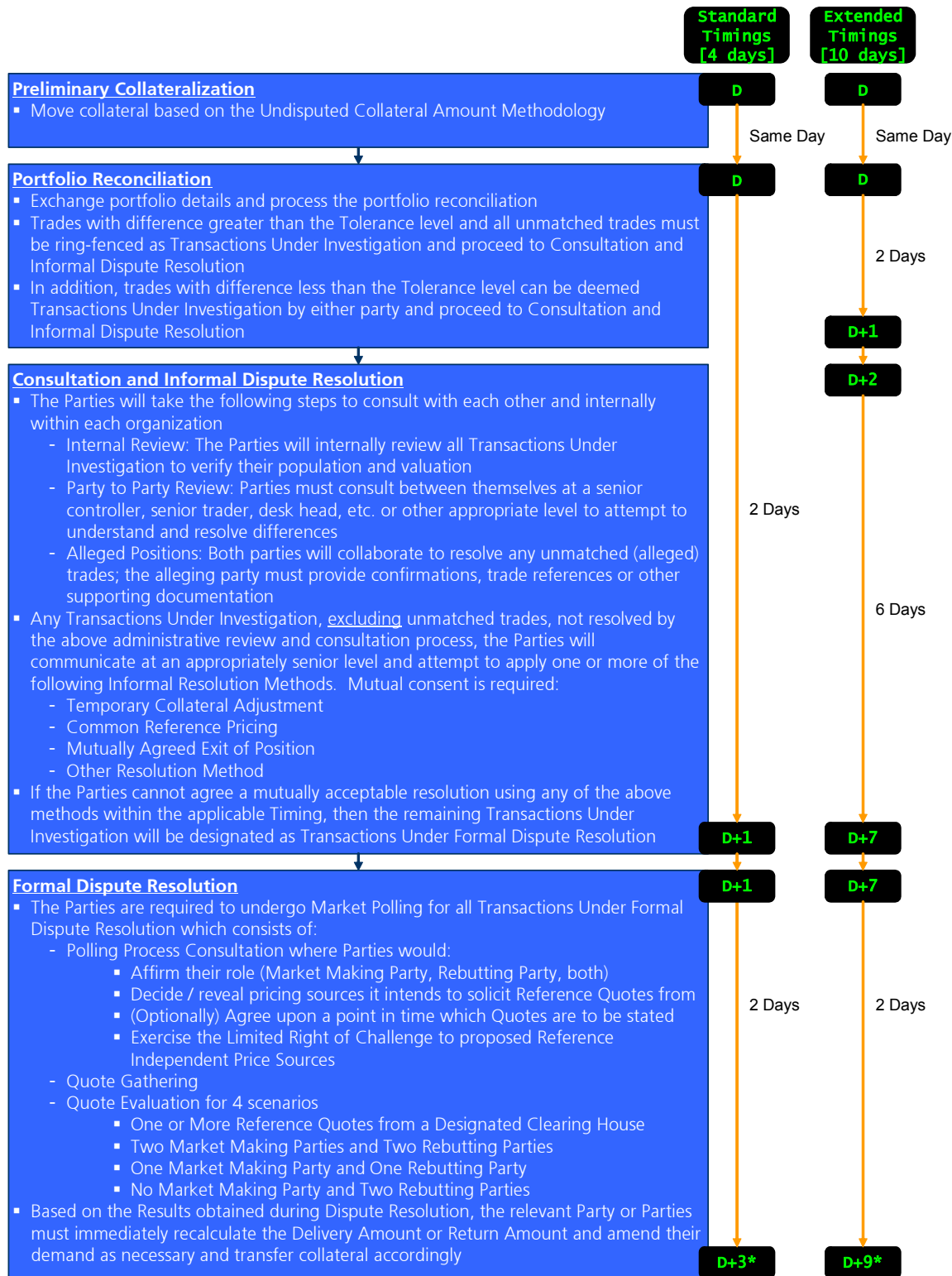
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II. Background to the DR Procedure

- A. At the direction of ISDA's Board of Directors, the ISDA Collateral Committee in consultation with the ISDA Product Steering Committees and other industry associations developed the 2009 Collateral Dispute Resolution Procedure (the "DR Procedure") between January and September 2009.
- B. The DR Procedure is responsive to a request to the derivatives industry made by the Federal Reserve Bank of New York, on behalf of a broader group of financial regulators. The commitment to develop the DR Procedure is contained in a letter to the Federal Reserve Bank of New York, sent from ISDA, MFA, SIFMA and several derivative market participants and dated October 31, 2008.
- C. The purpose of the DR Procedure is to provide a dispute resolution process for collateralized OTC derivatives that:
 - 1. Achieves timely identification of the root causes of disputed collateral calls
 - 2. Ensures the prompt movement of as much collateral as the parties can mutually agree
 - 3. Provides the parties with a flexible range of methods to narrow and/or resolve their dispute to be consistent with their risk tolerance
 - 4. Creates consistent and predictable process, timing and behavior in case of disputes across the market
 - 5. Eliminates present uncertainties and delays that increase risk for the parties
- D. The DR Procedure will bring to the market improved structure, transparency and probability that resolution of differences is ultimately effective.
- E. ISDA wishes to thank all its member firms and also other industry associations who contributed to the development of the DR Procedure.

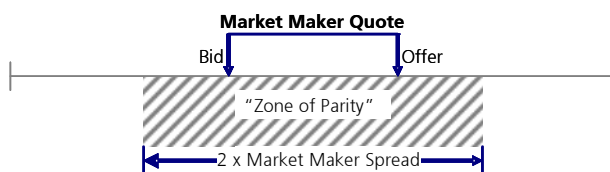
III. Outline of the Dispute Resolution Procedure



*If the geographic locations of the parties and/or the relevant markets in which prices for the trade(s) in question are trans-continentially dispersed, the time allowed for Quote Gathering is extended by eight (8) additional Local Business Hours (e.g. Under Standard Timings, Formal Dispute Resolution will complete on D+4 instead of D+3)

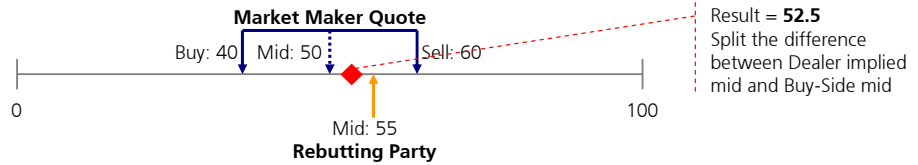
IV. Concept and Rationale for Spread Based Moderation

- A. In development of the DR Procedure one particularly problematic scenario was encountered by the drafters, where one party is a derivative dealer willing to make a two-way, firm, executable market; the counterparty is an end-user; and upon attempting to perform Market Polling neither party is able to obtain any executable price level from third party market participants. In the terminology of the DR Procedure, this scenario is: one Market Making Party, one Rebutting Party and no two-way, firm, executable Reference Quotes.
- B. The DR Procedure generally gives high informational value to the quotes provided by any entity (party, counterparty or third party) that is willing to make a two-way, firm, executable price. This recognizes that such two-way, firm, executable prices are not lightly given by market participants because they may result in a trade being executed and thus have high levels of management scrutiny, imply a willingness to commit the firm's capital and a willingness to take risk. Two-way, firm, executable prices are the essence of a traded market, and therefore if they are available during the dispute resolution process they are presumptively an indication of where "the market" lies.
- C. However, in the scenario described earlier, the only such indication of "the market" comes from one of the disputing parties, and there is no corroborating evidence from third parties. How, then, can this dispute be resolved? The solution developed is known as Spread Based Moderation and described below
- D. In essence, this approach gives equal weight to the mid-market valuations of the two parties and the average of any other indicative Reference Quotes obtained, but with the result bounded by the outer limits of the spread quoted by the dealer.
- E. Method
1. The result is the average of (a) the mid-point of the Market Maker Quote, (b) the Rebutting Party's mid-market value, and (c) the average of all indicative Reference Quotes; but the result will be capped (or floored) at the Market Maker's Offer (or Bid)
- F. Concept:
1. The result will always lie somewhere between the quoted bid and offer of the Market Maker Quote - the outer boundaries of the only observable, tradable market in the instrument. Therefore, a Market Making Party actually has an incentive to make a narrow (but still commercially reasonable) market because this sets the outer bounds on where the result may end up. Narrow spreads promote liquidity, which is systemically positive for the market and leads to improved price discovery and thereby less likelihood of disputed margin calls.
 2. The Rebutting Party also has an incentive to mark moderately – ignoring the possible presence of indicatives, if their mark is within two times the spread of the Market Maker Quote then their value is afforded equal status to the Market Making Party's value (see below for explanation). However, if they mark extremely far outside the spread, then they gain no benefit from that in terms of resolving the margin dispute.
 3. Ignoring indicatives and just considering the opinions of the two Parties, there is a "Zone of Parity" inside which both Parties' mark-to-market values carry equal weight. Mathematically it can be shown that the width of this zone is equal to two times the dealer spread.



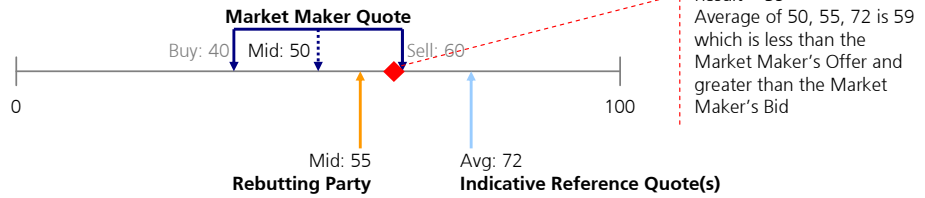
- G. The following examples illustrate some of the possible scenarios (they are not exhaustive). For these examples the Market Maker Quote will be: Bid = 40; Offer = 60; Mid-Market = 50
1. Inside the Spread:
 - a) If there are no indicative Reference Quotes, the Result is to split the difference between the Market Maker and the Rebutting Party.

Result is Split the Difference

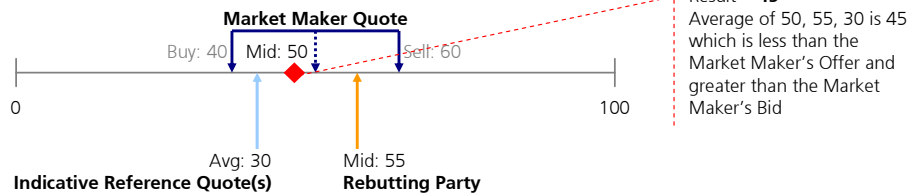


- b) If there are indicative Reference Quotes, it is possible for the Result to be above (or below) both of the disputing Parties' mid market values.

Result is Higher than both Mids

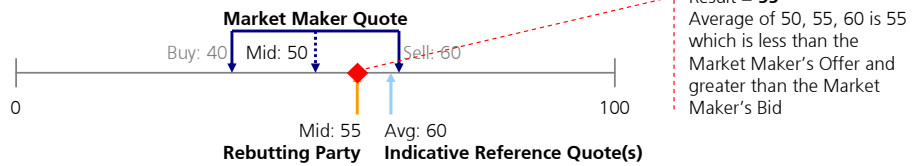


Result is Lower than both Mids

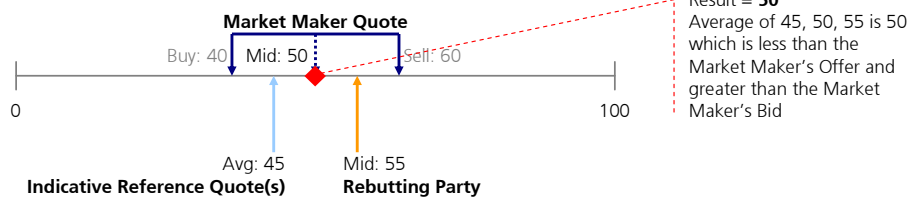


- c) It is also possible for the Result to be exactly either the Market Maker Mid or Rebutting Party Mid.

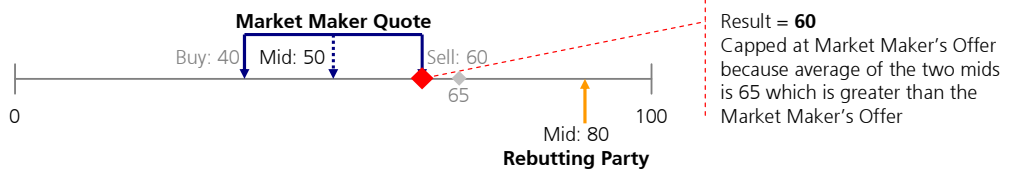
Result is Rebutting Party's Mid

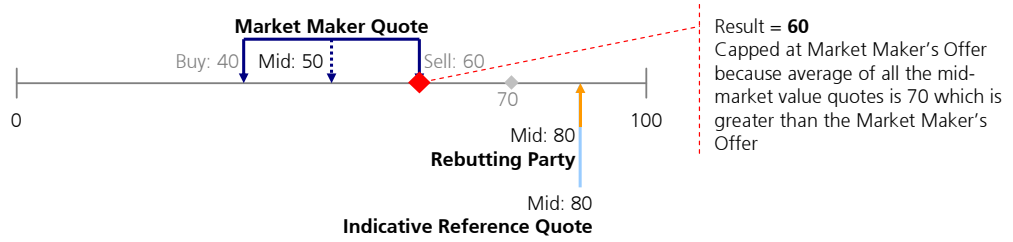


Result is Market Maker's Mid

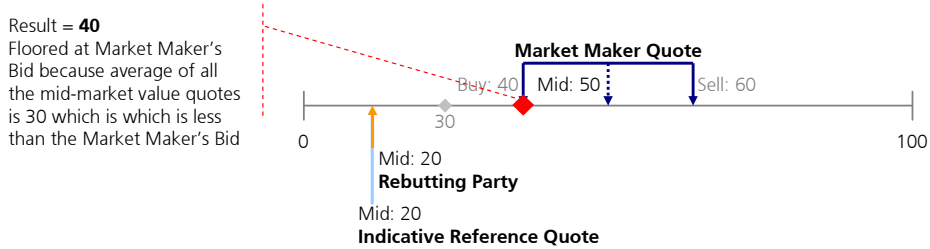
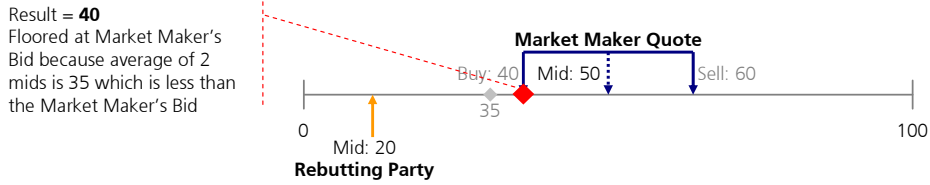


2. Outside the Spread (High) - The Result will always be capped at the Market Maker's Offer





3. Outside the Spread (Low) - The Result will always be floored at the Market Maker's Bid



NOTES

To be read in association with the numbered notations contained in the text of the DR Procedure

- ¹ Note that whereas the 1995 Credit Support Annex According to English Law includes the qualifier “reasonably” in connection with the disputation of a margin call, the 1994 Credit Support Annex According to New York Law does not. Therefore this paragraph may modify the triggering of the right to dispute under the New York law version and harmonizes the two documents in this respect.
- ² It should be noted that a Party is not obligated to prosecute a collateral demand that has been disputed by the other Party (by invoking the DR Procedure or otherwise). There may be occasions when the scale of the dispute when considered relative to portfolio size, counterparty credit quality and market conditions does not merit recourse to the full DR Procedure. See also 6.3 and especially 6.4 .
- ³ The DR Procedure is agnostic as to which Party is calling and which disputing.
- ⁴ The timing refers to initiation of the transfer, but it is noted that depending on the collateral asset concerned, settlement may become final some later date in accordance with the normal settlement conventions for the market concerned.
- ⁵ It is possible that a dispute exists but no trades are initially designated as Transactions Under Investigation (ie no trades exceed the Tolerance). This could occur if a large portfolio contains many trades with individually small differences that in aggregate lead to a large difference. In this case, the Parties may designate any other trades with smaller differences as Transactions Under Investigation, in order to ensure they are investigated and subjected to an appropriate dispute resolution methodology.
- ⁶ If the counterparties wish to include all trades, this may be accomplished either by reducing the Tolerance to zero by consent or by either Party unilaterally designating all trades as Transactions Under Investigation.
- ⁷ Note that the context for Alleged Positions is after the application of the Tolerance to narrow down the portfolio to the specific Transactions Under Investigation. Thus alleged trades where the difference between the two Parties is less than the mark-to-market value of the alleged trade by the alleging Party (the other Party by definition having no value for such trades alleged against it) will not be included under this section unless one of the Parties designated such an alleged trade as an additional Transaction Under Investigation. This considerably reduces effort expended investigating economically immaterial alleged trades during the time-critical DR Procedure (although note that regardless of economic materiality for DR purposes, all alleged positions represent a risk and should be thoroughly investigated and resolved in the ordinary course of business).
- ⁸ This is because it is undesirable to initiate an additional process to resolve these differences in parallel to the existing confirmation process designed to achieve the same objective. The risk of this exclusion is limited due to its brevity and the fact that most (but not all) trades are done close to par and so contribute little net MTM impact to the margin call. Note that the Parties are entirely free to accelerate their normal confirmation process and to expedite confirmation of these trades.
- ⁹ Note that this provision applies to the Results, not the Resolved Collateral Amount. This means that the Parties use the Results from the dispute resolution cycle in order to resolve the specific disputed margin call in question by calculating the Resolved Collateral Amount, but then can continue to re-use the Results to calculate future margin demands, thus avoiding repeated dispute resolution cycles. This allows for the fact that the overall portfolio composition and valuation may change over time, but for a particular transaction that has been disputed and for which no additional market information has developed it may make sense to continue to use the Results from a prior dispute resolution cycle. As stated, either Party in its sole discretion can make the determination that additional market information has developed and therefore truncate the continued use of prior Results. Notwithstanding the foregoing, in practice, it is expected that Parties may also informally agree to some period of time during which they will use the Results and then review the situation, repeating the dispute resolution process if then warranted.
- ¹⁰ The objective is to agree adjustment(s) to the margin calculation, not necessarily to generate definitive or estimated valuations for specific transactions. Thus, adjustments are temporary and are applied to the collateral calculation, not the trade valuation. It is important to correctly characterize adjustments as temporary and applying to the collateral calculation not the valuation of the underlying transaction(s). This approach specifically allows that each Party to a dispute may receive only partial satisfaction of their claim, and that for the balance of the difference they may in effect agree to differ. This is entirely consistent with the idea that Parties be free to transact on a fully, partially or un-collateralized basis in the privately negotiated derivatives market, within the boundaries of their prudential risk appetites.
- ¹¹ Such methods may include but are not limited to the Mid Point Collateral Amount Methodology (see below) and the Spread Based Moderation Methodology (see annex IV).

The methodology of moving collateral based on the mathematical midpoint between the two Parties’ valuations operates as follows:

$$M = (X - Y) / 2$$

(If M is positive, collateral is due from Party B to Party A. If M is negative, collateral is due from Party A to Party B.)

where:

M = Collateral amount to be moved

X = The Delivery Amount owing to Party A (+) or the Delivery Amount owing to Party B (-) or the Return Amount owing to Party A (+) or the Return Amount owing to Party B (-), each as calculated by Party A

Y = The Delivery Amount owing to Party A (-) or the Delivery Amount owing to Party B (+) or the Return Amount owing to Party A (-) or the Return Amount owing to Party B (+), each as calculated by Party B

¹² Prices from these sources would be used instead of counterparties' proprietary mark-to-market calculations for the sole purpose of computing disputed collateral calls. The dispute would be avoided, since the collateral call would be re-computed based on common pricing.

¹³ The Parties may use any method that is mutually agreeable. Some suggestions that have been made include:

- Pre-agreeing, prior to any dispute, that for certain highly structured or illiquid trades a specified alternate pricing approximation will be used
- Submission of the dispute to arbitration or mediation services
- Posting of disputed collateral into escrow

These are listed here for information only, and their inclusion is not an endorsement or recommendation - the essence of this provision is that two Parties free to contract may select any mutually acceptable method of resolution as suits the particular facts and circumstances at the time.

¹⁴ Formal Dispute Resolution is intended to produce a market-based determination where possible of the value to be ascribed to trades which are causing a margin call to be disputed. It is expressly understood that while the result is an approximation for the calculations that would occur in the event of a termination under the ISDA Master Agreement between the Parties, it may not be the same as the results that would occur from the application of the full Market Quotation, Loss or Close Out methods that would apply in the event of termination. Formal Dispute Resolution will always yield a result so there should never be an intractable dispute. The Formal Dispute Resolution process is based on two key principles of informational precedence:

- (a) Price Discovery - As a general principle, designated Clearing Houses will have transparency to the greatest number and diversity of most recent market transactions; firms that are Reference Independent Price Sources will have transparency to a wide number and diversity of recent market transactions; other firms will have more limited market transparency based on any transactions they have executed. All firms may have access to price quotes (firm and/or indicative) from Reference Independent Price Sources, which may be useful sources of supplemental or rebuttal information. It is also noted that pricing and practice within designated Clearing Houses and Reference Independent Price Sources are subject to applicable regulatory regimes.
- (b) Price Firmness - As a general principle, two-way, firm executable prices will be more likely to be accurate than two-way indicative prices, one-way indicative prices or mid-market indicative prices. However depending on price availability and the particular circumstances it may be appropriate to use any of these types of prices.

Therefore:

- (a) Prices stated by Clearing Houses are presumptively correct; for the purpose of the DR Procedure this presumption is non-rebuttable.
- (b) Prices stated by Reference Independent Price Sources have informational value and prices stated on a two-way, firm, executable basis have particularly high informational value for the purpose of dispute resolution, subject to rebuttal.
- (c) Prices are applied in the following order of priority:
 1. prices quoted by designated Clearing Houses first; if none then
 2. two-way, firm, executable prices next; if none then
 3. indicative prices (two-way and mid-market).

It should be emphasized that this "cascade" approach is designed specifically to be a practical mechanic for resolution of disputed margin calls and is not necessarily relevant to any other situation.

¹⁵ Although the majority of disputed margin calls are caused by differences in trade population or valuation, it is possible that other factors can give rise to a dispute - for example, a disagreement about collateral balances, the branches covered by the Agreement, the products to be collateralized, etc. Many of these dispute causes are not determinable by reference to market pricing, which is the focus of Formal Dispute Resolution. In practice, such disputes would rarely if ever fail to be resolved administratively or the informal part of the process. If, however unlikely, a dispute over such non-market-determinable parameters does end up in the Formal Dispute Resolution section, it is anticipated that the Parties will agree suitable modifications to the defined process.

¹⁶ A Party that does not qualify as a Reference Independent Price Source but nevertheless wishes to express a two-way, firm, executable price as an input to the DR Procedure may do so as follows, a process known as "sleeving" a quote. The non-qualifying Party may contact another third party (for example, a broker) that would qualify as a Reference Independent Price Source and make arrangements for that third party to present the quote of the non-qualifying Party at arm's length in the third party's own name. The third party (qualified as a Reference Independent Price Source) would thus provide a Reference Quote during the Quote Gathering Period, and it would be treated like any other such Quote. Naturally, the third party must meet all Responsibilities and Standard for Quote Providers, including the possibility that one or more market participants may wish to execute at the quoted prices; it is presumed that the non-qualifying Party would need to indemnify or otherwise protect the third party in this case, although that is a matter for those parties to contract as they wish.

¹⁷ The intention is that third parties shall not be asked by both Parties to provide prices for the same trade during a dispute resolution cycle. This promotes efficiency and avoids an excess of duplicative requests for pricing from third parties. If both Parties obtain Quotes from a

single source then those Quotes are utilized in the normal way during the remainder of the process. This means that where the Quotes are of the same category (e.g., two-way, firm, executable; two-way, indicative; or mid-market, indicative), then in effect during the remainder of the process the average of such Quotes will be utilized (this is a natural consequence of the mechanisms defined in Formal Dispute Resolution - the Parties need do nothing special to accomplish this effect). If both Parties solicit a single third party source which provides two different prices to the two Parties at slightly different times within the Quote Gathering Period, then of course both are valid and will end up being blended together as described above.

¹⁸ Note that pursuant to the provisions of section 6.8(iv) it is possible for the Parties to mutually agree a longer period of time for Quote Gathering. This might be appropriate in the case of complex, structured transactions that may require longer for other dealers to evaluate, in a circumstance where there is no immediate credit concern and the Parties can mutually agree a longer timeframe.

¹⁹ This recognizes the fact that time may have passed and mid market levels may have changed from those used in the original margin call.

²⁰ According to section 5.3 any firm that is a Reference Independent Price Source is presumptively a Market Making Party, and under section 6.7 they commit to give a Market Maker Quote (subject to commercial reasonableness). Thus a Party to the dispute that qualifies as a Reference Independent Price Source is strongly encouraged to make a two-way price, which should tend to improve the quality of marking practice and price transparency in the market. If a Party to the dispute that is a Reference Independent Price Source declines to give a Market Maker Quote, then for the purpose of the DR Procedure for the margin call in question, they shall be deemed to be a Rebutting Party and not a Market Making Party.

²¹ There is no limit to the number of Reference Quotes that each Party may submit.

²² This recognizes the fact that time may have passed and mid market levels may have changed from those used in the original margin call.

²³ This provision applies regardless of the number and status of Market Making Parties and Rebutting Parties - prices from a Clearing House essentially trump all other prices in the DR Procedure

²⁴ Including both Reference Quotes and Market Maker Quotes.

²⁵ In the case where there are only the two Market Maker Quotes and no Reference Quotes can be obtained, this calculation yields the mathematical mid-point between the two Parties.

²⁶ That is, the Market Maker Quote and at least one Reference Quote.

²⁷ Note that any indicative Quotes are first averaged together to find the Indicative Average, and then this composite result is averaged with the stated mid-market values of the two Parties to yield the final average. This two-step averaging process gives equal weighting to the opinions of the two Parties and to the composite market opinion expressed by the Indicative Average. It avoids a situation where a large number of indicative Quotes severely dilutes the two-way, firm, executable Market Maker Quote, but at the same time gives appropriate and equal weight to the Rebutting Party and the wider indicative market.

²⁸ However, note the provisions of section 5.7(iii)(b) that provide for the factoring of credit considerations into an adjusted price in the event that an actual transaction is contemplated on the basis of such quotes. Although quotes should be credit neutral for the purpose of determining the value to be used in collateral calculations, any actual transaction will need to correctly reflect the credit appetite and risk premium existing between the specific counterparties to such transaction at the time.

²⁹ It is intended that quotes be for a standard commercial size approximately equal to the size of the position between the Parties. Quotes need not be obtained on an exact basis for odd-lot positions.

³⁰ Please see section 5.7(iii) Responsibilities of Sources Giving Two-Way, Firm, Executable Quotes regarding pricing adjustments to Quotes based on credit considerations and market movements after the time of the Quote. The detail to be provided with each such Quote is that which it is customary to publish in the relevant market when making a two-way, firm, executable price, noting that this will likely be only a brief summary of details and will not include proprietary information; it is also noted that in some structured markets there are no established customs for this purpose, in which case the Parties must use their discretion.

³¹ The remedy of the denied party in this case would be to access the quoted price by transacting through an intermediary third party willing to transact in that capacity.

³² Since the definition of Reference Independent Price Source is predicated on being willing to make a two-way market, any party may decline to do so and thus not be a Reference Independent Price Source. This is not subject to rebuttal or Challenge.

³³ The DR Procedure is not intended to curtail any existing right a Party has to deliver a notice of default. If one Party feels that it is appropriate to deliver a notice of default and permitted under the Agreement, they may do so.

³⁴ Although two-way, firm, executable prices are encouraged and expected as part of this market-based method of resolving disputes, it is noted that no firm can be forced to make an executable price or to enter into a transaction against its commercial judgment.

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- ³⁵ To avoid fragmentation of behaviours in the market, a pre-defined set of Extended Timings is provided for Parties who exercise the option for extension.
- ³⁶ The DR Procedure sets forth specified Standard Timings for each step. The Standard Timings are calibrated to a situation where credit distress is evident with respect to one or both Parties. In these circumstances it will be desirable to execute the DR Procedure as expeditiously as possible. The Standard Timings are therefore deliberately tight. This is because it would be unhelpful to start with more extended timeframes and then expect the Parties to be attempting to agree reduced timeframes during a period of credit distress. It is more conservative to start with short timeframes and permit them to be extended where credit distress is not apparent. In circumstances where there are no immediate credit concerns and there are operational or other extenuating reasons, and both Parties concur, they may adopt longer timeframes to allow operational processes to be resourced in a commercially reasonable manner. It is also noted that the time required for each step in the DR Procedure may properly vary according to the size and complexity of the portfolio between the Parties. Therefore the DR Procedure is based on the idea of Standard Timings which can be varied in certain circumstances. These circumstances may include (but are not limited to):
- (a) Disputed collateral calls caused by transaction differences that have already been thoroughly investigated, and may not therefore require the full Standard Timing to progress through the DR Procedure
 - (b) Situations where especially complex transactions are being progressed through the DR Procedure but require additional time for investigation
 - (c) High credit stress situations in which an expedited approach is desirable to mitigate risk
 - (d) Unstressed credit situations in which an extended approach is desirable to manage resources and costs in a commercially reasonable manner.
- ³⁷ Extensions need not follow the Extended Timings provision - they may be of any mutually agreed length subject to overall time limits. The concept of Extended Timings is simply to promote coherent practice among market participants where suitable.
- ³⁸ If the Parties reach D+30 without resolution, it is expected that they shall continue to engage in efforts to secure a resolution – i.e. it is not the case that on day 31 all discussions cease.
- ³⁹ Margin calculations under the CSA are based on the value of the underlying transactions or positions in question. The market convention for some instruments or products may be to quote a general unit price rather than a specific value. Typically the conversion from price to value entails multiplying the price by the notional amount or traded quantity of the position, yielding the actual specific value that can then be utilized in CSA margin calculations.
- ⁴⁰ It is not intended that the obtaining of mutual consent be a laborious, time consuming or delaying process. If oral means of communication are used, it is recommended that recorded lines be used in case of any controversy.
- ⁴¹ The high informational value attached to prices sourced from Clearing Houses extends only to those transactions or products that the Clearing House supports in the ordinary course of business. This is intended to exclude situations where a price is provided by an entity that otherwise qualifies as a Clearing House but which, in fact, is not active in the relevant product and thus cannot be presumed to have superior price information over other sources.
- ⁴² The definition is conditioned on economic equivalence of the transactions in which the Clearing House is active with the transactions that are being resolved through the DR Procedure. “Economic equivalence” does not mean exactly identical, because trades processed through a Clearing House may be somewhat different in form or contractual detail to their OTC counterparts; but it does require that the Clearing House trades be substantially similar in economic terms. It is intended that this should prohibit the use of Clearing House prices in situations where a transaction type processed by a Clearing House may be considered a general proxy for the OTC transaction under dispute resolution, but is not economically equivalent - for example, using a Clearing House price for a broad-based index as a proxy to determine value for a specific security whose price is not observable would be prohibited; however, using a Clearing House price for an exchange-traded option on a specific security to determine value for an economically equivalent OTC option on the same security would be permitted.
- ⁴³ The 2009 DR Procedure is designed to operate in relation to the 1994 Credit Support Annex According to New York Law and the 1995 Credit Support Annex According to English Law. The Parties should take qualified legal advice to ensure compatibility before using this document with other forms of collateral agreement.
- ⁴⁴ The Maximum Stressed Spread Table (“MSST”) is used to limit the width of spreads used for two-way Quotes under the DR Procedure. Its purpose is to avoid excessively wide spreads being quoted by a Market Making Party or a third party which may conceal the fact that despite issuance of a two-way Quote a genuine two-way market is not actually being made, or that only a one-way market is really being made. If this were to occur, it could skew the results of Spread Based Moderation. The values in the MSST are based on historical experience and represent the widest spreads experienced or likely to be experienced under highly stressed market conditions. MSST spreads are not indicative of normal market conditions - in fact, quite the opposite, they represent the most extreme circumstances likely to be encountered, and thus represent a reasonable outer limit of spread width while not constraining the pricing discretion of market makers in any kind of market. The MSST will be published by ISDA and updated from time to time as required by evolving market conditions. It is anticipated that the values provided in the MSST will be determined by ISDA’s Product Steering Committees (or their successors) and will be informed in part by consideration of other maximum spread concepts employed in other parts of the market, as well as history and judgment.

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- ⁴⁵ New trades that are risk-reducing (for example, unwinds or offsetting trades) may be acceptable to a Party even in a distressed credit situation. A willingness to enter into these types of trade, or the actuality of having done so, does not infer a general willingness to enter into any type of trade and is therefore not a barrier to disqualification of a potential price source on these grounds.
- ⁴⁶ Tolerance is set by ISDA from time to time and is subject to change without notice. Use of the Tolerance to select Transactions Under Investigation ensures that excessively large differences cannot remain uninvestigated; note that either Party may require that specific trades with differences below the Tolerance be added to the list of Transactions Under Investigation.