

INTRODUCTION

In the interests of more transparent decision-making, and improving the interface between interested parties (such as regulators¹, vendors and other infrastructure providers), in late 2009 ISDA published a governance structure for the OTC derivatives industry's market practice and post trade activities. This document outlines that industry governance structure, and reflects the results of extensive consultations with many constituents of the industry. As the evolution of the market dictates, ISDA will work with members and constituents to revise and update the governance model, and will publish new versions of this governance document as appropriate. This document should be read in conjunction with the accompanying organizational charts.

STRUCTURE OF THIS DOCUMENT

This document is intended to set out the structure and purpose of the industry governance arrangements. Following a brief overview, detailed descriptive coverage is given to each of the 3 "Layers" of the governance model. There is also a brief passage relating to other industry constituents who are not necessarily fully taken account of elsewhere in the structure. For this 2nd edition, an Annex has been added which specifically details both the significance of and the processes deployed in connection with the periodic letters that industry participants address to the global regulatory community. The most recent letter was submitted on 1 March 2010. The Annex demonstrates how the letter process is driven via the governance structure set out below.

OVERVIEW

Broadly speaking, the industry governance structure is a three layered structure comprising of the following layers: The ISDA Industry Governance Committee (IIGC) (Layer 1), the Steering Committees (SCs) (Layer 2) and the Implementation layer (Layer 3). The SCs consist of four committees related to individual asset classes, specifically, Rates, Equities, Credit and Commodities, and two which operate at the cross-product level, specifically; Operations and Collateral. The Implementation layer is comprised of (i) the Implementation Groups (IGs), and (ii) the Working Groups (WGs). Below follows a discussion of the various dimensions of each of these entities. The industry's governance structure determines its

¹ The list of regulators that have been participating in the work done in the market practice and post-trade OTC derivatives areas are: Connecticut Department of Banking (CTDOB), Federal Deposit Insurance Corporation (FDIC), Federal Reserve System, French Commission Bancaire, German Federal Financial Supervisory Authority- Bundesanstalt Für Finanzdienstleistungsaufsich (BaFin), New York State Banking Department (NYSBD), Office of the Comptroller of the Currency (OCC), Securities and Exchange Commission (SEC), Swiss Financial Market Supervisory Authority (FINMA) (Formerly Swiss Federal Banking Commission (EBK)), Japan Financial Services Agency (JFSA) and the UK Financial Services Authority (FSA).

relationships with other industry stakeholders, including regulators and vendors, as well as other industry infrastructure providers.

It is worth stressing at the outset, and for the avoidance of doubt, two underlying and fundamental principles of the governance structure in relation to **(i) where responsibility and ownership lie for the strategic direction of market practice and post-trade activities, and (ii) which groups are responsible for liaising with regulators, and at what levels.**

In respect of (i), it is intended that direction and leadership on all significant cross-asset class issues, either current or emerging, should come from the IIGC. Examples would include cross-asset class strategies for clearing access and trade repositories.. For significant asset class-specific issues, to avoid the risk of any cross-mandates, the authority of the relevant product SC will take precedence over that of any cross-asset class Steering Committee; here examples would include equity MCA prioritisation, varying approaches to portfolio compression by asset class and novation processes in respect of asset classes where novations are prevalent.

The Operations SC will take the lead on issues of an operational or procedural nature with limited business, legal or risk impact; examples would include agreeing confirmation backlog reduction targets, improving electronic confirmation throughput performance, and tracking progress against operations commitments generally (via a Program Management Office function). A key example of where the Collateral SC would lead would be portfolio reconciliation. These Steering Committees also perform a communications role in that their meetings are used as *fora* to report upon the actions and decisions of other Committees and groups.

With regard to (ii), market participants agree that regulatory contact should be conducted at the appropriate level and between appropriate groups and individuals. Accordingly, contact with regulators (whether initiated by industry or regulators themselves) on;

- Cross-asset class strategic issues should take place between regulators and any or all of (as the regulators see fit), (i) the Chairs of the IIGC, and (ii) relevant staff from ISDA, AMG and MFA. and;
- Strategic asset-class specific, or strictly operations or collateral issues, between regulators and any or all of (as the regulators see fit), (i) the Chair of the relevant SC, and (ii) relevant staff from ISDA, AMG and MFA and,
- Technical and delivery-related operations and collateral matters between regulators and any or all of (as the regulators see fit) (i) the (chairs of the relevant Implementation Groups, and (ii) relevant staff from ISDA, AMG and MFA, but discussions at this level should not touch on strategy or direction for the industry.

Where regulatory contact occurs with individual firms for the purposes of gaining market insight or “colour”, it is important that any such inputs are validated with the relevant broader group; additionally it is important that no industry actions or plans are agreed in the course of such contacts.

By emphasising such a structure, the industry believes it can represent itself in a cohesive and comprehensively representative manner to the regulatory community.

LAYER 1

THE ISDA INDUSTRY GOVERNANCE COMMITTEE

ISDA, with a very broad membership of well over 800 members worldwide, is the global trade association for the OTC derivatives industry. It has an all-encompassing range of derivatives industry participants, including global and regional banks, fund managers, investment companies (both long-only and hedge funds), corporates, sovereign entities and sovereign funds. Members also include other non-transacting stakeholders providing services to the industry, such as law firms and technology companies. It is this pivotal position of ISDA, along with its broad representation, long-term presence in the market, and track record of creating well accepted market practices across all facets of the derivatives business, that drives its legitimacy as the most broadly-representative industry body.

ISDA is governed by the ISDA Board of Directors, which is drawn from both the sell-side and the buy-side. There is a well-developed governing structure which determines eligibility for Board participation, election processes, as well as detailed decision-making rules. The ISDA Board has authorised five non-dealer members. ISDA has also formed a Buy-side Advisory Group comprising of buy-side members of the Association. The purpose of the Advisory Group is to create a forum for wider buy-side representation, which can be used for surfacing, discussing and escalating issues of importance to the buy-side to the full ISDA Board. This group will provide a logical point of interaction, coordination and contact with buy-side groups, such as Managed Funds Association (MFA) and The Asset Management Group (AMG)². Finally, the Buyside Advisory Group will be the pool from which buy-side ISDA Board representation will be proposed and nominated.

ISDA brings together the members of the various market segments as they endeavour to drive standardisation and to find common solutions to shared problems and challenges. Typically, ISDA does this via a network of specialist committees of its members, covering topics such as documentation, risk management, tax and regulatory, amongst many.

² ISDA may decide in the future to coordinate with other buy-side associations to ensure global buy-side participation.

The magnitude and pace of the change and re-engineering in the market practice and post-trade arenas led ISDA to form a senior business-led committee (the IIGC) to give oversight to the agenda of work and development. Whilst many of the commitments and plans the industry is making are operational in nature, many have major significance beyond the operations discipline. As such, The IIGC is composed of senior business managers, and is broad-based and inclusive in terms of market sector representation.

The IIGC has elected an ISDA Board Director as Chair. It is composed of senior business professionals, of which a proportion will be ISDA Board Directors. The IIGC has been formed for the purposes of;

- Overseeing all strategic market practice and post-trade issues in the OTC derivatives market;
- Being the main interface (alongside ISDA) for regulatory contact. Authorising the content of any periodic letters, in which the signatory banks listed therein, make commitments to the regulators;
- Helping mobilize industry resources;
- Setting the pace of and leading the regulatory dialogue in market practice and post-trade matters;
- Creating the forum where all of the OTC derivatives disciplines can be engaged in initiatives as they are being considered, planned and implemented; and
- Keeping under review the distribution of committee and group chairships and co-chairships across the firms to ensure no undue dominance or preponderance on the part of any given firms, whilst stopping short of setting “hard limits” on the number of chairships a firm can hold. Providing periodic updated listings of all SCs, IGs and WGs and their Chairs. Validating all SC Chair appointments.
- Tracking progress against regulatory commitments through a retained Program Management Office function

The above represents a broad account of the IIGC’s terms of reference; as necessary, these can be elaborated in more detail.

Membership:

The composition is intended to reflect, on an ongoing basis, a 2/3-1/3 ratio between the sell-side and buy-side respectively; this ratio is used as a general guideline across the industry governance structure.

Admission criteria:

- The IIGC is made up of the following individuals (i) ten ISDA Board members, not including any ISDA Board members who are serving SC Chairs, and subject to an affirmative vote in excess of 75% by the IIGC to add further individual ISDA Board members. (ii) the Chairs of the Steering

Committees, and (ii) two additional buy-side representatives, by each of the AMG and MFA.. In making their nominations, AMG and MFA may consider geographical representation, significance within their respective industries, as well as diversity regarding business activity (i.e, long-only money versus hedge funds, corporates as well as other end-users).

- If other sufficiently-engaged trade associations emerge over time, which wish to nominate members to the IIGC, this will be considered on a case by case basis.
- IIGC membership implies a capacity and a willingness to commit resources to participate at all industry levels.
- Individuals nominated by a trade association to this and any other Committees shall speak on behalf of (and where relevant, vote for) their nominating trade association, unless such individual specifically makes clear that he or she is speaking on behalf of his or her own firm.

Decision-Making Process:

A consensus approach is strongly recommended. However, if consensus is not possible and a decision needs to be reached, on occasion a vote executed on a one-vote-per firm basis will be conducted as follows. If any form of merger or integration takes place between two IIGC firms, their two votes will become a single vote from the time of announcement of any such merger or integration. For the avoidance of doubt, these rules will be applied on a vote-by-vote basis, as appropriate to the circumstances.

- All member firms of the IIGC will be eligible to vote, other than in cases where the issue in question is only relevant to a subset of the entire Committee. In these circumstances, this subset will form a "Voting Group"
- The IIGC or Voting Group³ as the case may be, will meet and agree the voting options and rules⁴ prior to commencing voting on the possible outcomes, and will determine whether the vote will be conducted on a Straight Majority or a Super Majority basis (both as defined below). The IIGC (or Voting Group) is responsible for recommending any review processes, which may involve producing a short-list for final voting from all initial possible outcomes presented;

"Straight Majority" means:

A result is carried if it receives at least 51% of the votes cast, and such majority includes at least 1 sell-side and 1 buy-side vote, provided that where the IIGC or Voting Group determines that the result of the

³ Voting Group must consist of a minimum of 50% of the sell-side and 50% of the buy-side of the firms represented on the Committee(s) identified as eligible for purposes of the relevant vote.

⁴ Abstaining once the review process commences is not allowed, firms must opt out of the Voting Group prior to this.

vote only affects one sector of the market, it will not be necessary to have votes from both sides of the market.

In the event that a dead heat occurs (or, if appropriate, the majority vote does not include at least 1 vote from each of the sell-side and the buy-side) the following procedure will be adopted:

- The IIGC or Voting Group will convene a meeting to discuss the outcome and understand the differentiating factors;
- A second vote will be conducted according to the criteria described in this section;
- Failure to determine an outright winner in this second vote shall require the issue to be escalated to the ISDA Board.

“Super Majority” means:

A result is carried if it receives at least 2/3 of the votes cast. Such majority must include at least 1 sell-side and 1 buy-side vote unless the IIGC or Voting Group determines unanimously that the subject of the vote affects only one side of the market.

In the event that the vote does not deliver a result that satisfies the above criteria the following procedure will be adopted:

- The Voting Group will convene a meeting to discuss the outcome and understand the differentiating factors;
- A second vote will be conducted according to the criteria described in this section;
- Failure to determine an outright winner in this second vote shall require the issue to be escalated to the ISDA Board.

Escalation:

If on the basis of a simple majority, the IIGC decides that either a decision made by it, or an issue being debated by it, should be escalated to the ISDA Board, the IIGC Chair will present the decision or issue to the ISDA Board Chair.

IIGC Governance and Appointment of Chairs:

Term of Chair; The IIGC Chair tenure commenced on 1 Dec 2009 for a period of 1 year; the term is yearly thereafter. Re-appointment (in the absence of any alternative candidates) or re-election of the incumbent Chair is permitted.

Candidates; Any IIGC member, including the incumbent Chair, can offer to stand as Chair. If more than one candidate stands then either (i) the IIGC agrees to their acting as Co-Chairs, or (ii) an election will be held. All candidates (other than incumbents seeking re-appointment) must be seconded, and may present a submission to the IIGC if they wish.

Elections; Each IIGC institutional member (ie not individual) has one vote. Votes will be cast by email to ISDA, and the election will be conducted on the basis of a simple majority. In the event of a dead-heat, the Chair of next most senior Committee (ISDA Board) will have the casting vote. ISDA will announce the result of any election as soon as is practicable.

Responsibilities of Chairs(s); Chairs and Co-Chairs are selected on the basis of the personal level of input and the leadership which they demonstrate. There is no as-of-right institutional entitlement to a Chair or Co-Chair position at firm level. Responsibilities include; (i) the efficient and equitable conduct of all meetings; (ii) agreeing the frequency and agenda of meetings; (iii) acting as escalation conduit where necessary and (iv) Responding in a prompt fashion to requests for input into regulatory or governmental enquiries and consultations, or making sure that these are properly delegated to appropriately senior and informed IIGC members.

Meeting Frequency:

Monthly, or more frequently if needed.

Record-keeping:

Minutes of all meetings will be taken, with action points assigned as relevant. The minutes will be circulated promptly to committee members and more broadly as may be appropriate from time to time.

De-selection and Resignation:

If the IIGC determines that a member has not evidenced sufficient commitment to the committee in terms of attendance or input, it can summarily remove that member from the committee. A member is free to resign their seat at any time by giving notice to (i) the Chair and (ii) ISDA.

LAYER 2

THE STEERING COMMITTEES

The Steering Committees (SCs) comprise the second layer of the industry governance. These groups draw authority and receive strategic direction and guidance from the IIGC regarding all issues that cannot be resolved at this level. Each of the product-related SCs brings senior business management representation at the asset class level focusing on business and market practice issues. The Operations and Collateral SCs are made up of senior figures from those fields.

The SCs create the forum for representatives from the business side to discuss, formulate and propose solutions for the market place. They comprise top participants that are drawn from the major dealer firms and the buy-side community with input from MFA and AMG. SC participants are typically trading heads/senior traders and/or COOs from the respective product areas or senior managers in the case of

the Operations and Collateral SCs. SCs exist for Credit, Rates, Equities, Commodities, Operations and Collateral. The SC Chairs have seats on the IIGC. In addition, they receive regular updates from the groups responsible at Layer 3 for delivering the agenda.

Essentially, they are responsible for;

- Implementing the market practice and post-trade agenda at asset class level, as well as for operations prioritization;
- Leveraging resources as the need arises;
- Interfacing with regulators;
- Coordinating the collective industry regulatory operational commitments;
- Overseeing and coordinating the work of the IGs, and sharing best practices between them;
- Coordinating relations with vendor and infrastructure providers;
- Setting detailed targets such as target levels of electronic production and confirmations backlogs; and
- [Moved to IIGC].

Membership:

As the SCs develop further, it is expected that their composition will reflect the 2/3 -1/3 ratio between the sell-side and buy-side respectively, which is used as a general guideline across the industry governance. The SCs include the chairs of all the IG's in their membership.

Admission criteria:

Admissions to the SCs may be made by either (i) invitation from the IIGC, or (ii) as a result of an approach being made by a firm to the SC Chair which has been seconded, discussed and approved in the SC. Considerations in making such appointments are:

- Significant market presence, geographical representation, and a demonstrated expertise in the specific asset class or subject matter.
- Sell-side members are nominated by the dealer banks while MFA and AMG, in their absolute discretion, provide nominations for buy-side representatives within the 2/3 (sell-side)-1/3 (buy-side) ratio context. MFA and AMG, in making such nominations, should consider geographical representation, as well as diversity regarding business activity (*i.e.* long-only money versus hedge funds, corporates, as well as other end-users).
- If other sufficiently-engaged trade associations emerge over time, which wish to nominate members to the IIGC, this will be considered on a case by case basis.
- Finally, SC membership implies a capacity and a willingness to commit resources to participate at all industry levels where most of the work is being carried out.

Decision-Making Process:

As for IIGC, with the exception that references to “IIGC” should be read as references to “relevant SC” and the reference to “ISDA Board” should be read as a reference to “IIGC”.

Escalation:

As for IIGC, except that references to “IIGC” should be read as references to “relevant SC” and that references to the “ISDA Board” should be read as references to “IIGC”.

Committee Governance and Election / Appointment of Chair:

As for IIGC, except that that references to “IIGC” should be read as references to “SC”.

Meeting Frequency:

Bi-weekly, or more frequently if needed.

Record keeping:

As for IIGC.

De-selection and Resignation:

As for IIGC, except that that references to “IIGC” should be read as references to “SC”.

LAYER 3

IMPLEMENTATION

The IGs and WGs at Layer 3 are responsible for the tactical implementation and delivery of the agenda determined for the industry by the IIGC and the SCs. There are a number of different groups within the Implementations Layer I, with diverse make-ups and terms of reference, as befits their purposes.

Implementation Groups

The IGs are responsible for the implementation of all initiatives at the asset class level. They and their terms of references are established, at the discretion of the relevant SC. It is a matter for each individual SC whether they deem it necessary to establish and maintain Implementation Groups. Their chairs are members of the relevant SCs, and they work closely with the WGs (see below). Essentially they are responsible for;

- Discussing and proposing industry target levels to regulators, via the SCs;

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- Owning and tracking all operations commitments made to regulators at the tactical level; and
- Providing direction to the WGs and ratifying (along with input from the SCs) proposals from them.

Membership:

As for the IIGC except that the reference to “IIGC” should be read as “IG”

Admission criteria:

As for the SCs, except that references to “IIGC” should be read as references to “SC”, and reference to “SC” should be read as “IG”.

Decision-Making Process:

As for the IIGCs, except that references to “IIGC” should be read as references to “IG”, and references to “the ISDA Board” should be read as “SC”.

Escalation:

As for the IIGC except that references to “IIGC” should be read as references to “IG” and references to “the ISDA Board” should be read as “SC”.

Committee Governance and Appointment / Election of Chair:

As for the IIGCs, except that references to “IIGC” should be read as references to “IG”..

Meeting Frequency:

Weekly, or more frequently as required.

Record keeping:

As for the IIGC

De-selection and Resignation:

As for the IIGC, except that the reference to “IIGC” should be read as “IG”.

The Working Groups

These groups of specialist professionals are responsible for the detailed and technical deliverables that contribute towards the meeting of the more structural and strategic commitments. The pattern of the Working Groups necessarily varies considerably by asset class and so does their life-cycle, depending upon the issues they are dealing with. As a result, membership and governance rules are minimal except that:

- Working Groups are formed on an “as needed” basis, but they must be ratified by ISDA in order to avoid duplication and/or proliferation of working groups;
- Members may be nominated by the members of the relevant IG (or SC where no IG exists). Other firms can nominate non-voting members; and.
- Unresolved issues are escalated to IGs, or to the relevant SC, where no relevant IG exists.

OTHER INDUSTRY CONSTITUENTS

The industry governance structure aims to identify the OTC derivatives industry’s governing bodies in the market practice and post-trade areas, and aims to describe their respective responsibilities and the way in which they interact. The ISDA committee structure provides other *fora* which focus on and specialize in various aspects of the OTC derivatives industry (such as, legal & documentation, risk and capital management, regulatory, technology and policy issues). Expert input from and to the ISDA committee structure is channelled through the IIGC, SCs or IGs, as appropriate.

Similarly, MFA and AMG have industry groups which bring additional insight and expertise towards addressing industry issues. Expert input from and to these is channelled through the buy-side representation and participation at all levels.

In addition, there are a number of other industries that support the OTC derivatives industry. These include the infrastructure providers, the wholesale market broker community, clearing platforms, and other vendors providing hardware, software and data solutions, as well as consulting and project management services. . The asset class SCs are the most appropriate primary contacts for matters regarding markets, such as data applications (such as, Bloomberg, Markit, etc.), trading platforms, or brokers.

At a broader level, these industry constituents, although they are not formally part of the industry governance structure, interact with the various bodies of the industry governance at all levels. The industry governance structure has made it easier for these constituents, as well as the industry participants, to identify the proper *fora* in which to introduce issues and conduct their interactions.