

Best Practice Statement: OTC Derivatives Interest Compensation Claims

Purpose

The purpose of this Best Practice Statement is to outline the guidelines for the submission and processing of interest compensation claims arising from payments relating to OTC Derivatives transactions confirmed under the terms of the ISDA Master Agreement 2002 (or any earlier version thereof).

This Document describes the industry best practice for compensation and claims arising out of failed settlement of coupon and fee payments on OTC derivative transactions. For claims arising out of a parties failure to meet their obligations with respect to the movement of collateral (cash or securities) please refer to ISDA Best Practices for the OTC Derivatives Collateral Process.

Current State

- Currently numerous market practice guidelines exist for the submission and processing of interest compensation claims produced by market wide organizations that are product or currency specific.
- There are no guidelines currently used across the industry which relate specifically to OTC Products and as a result each institution applies a range of criteria to the various components that make up interest compensation claims including *de minimis* claim amounts, turnaround times and the addition of administration charges.
- Individual ISDA Master Agreements generally contain reference to the contractual right of a disadvantaged party to claim compensation for payments not received on the agreed date and these guidelines are not intended to affect these rights.

Commentary

- The ISDA Interest Compensation Claims Sub Group has discussed current practices for interest compensation claims arising from payments relating to OTC derivative transactions confirmed under the terms of the ISDA Master Agreement 2006 (or any earlier version thereof) and have agreed the following best practice guidelines in order to assist the efficient and orderly management of the settlements function.
- In general, the guidelines will relate to amounts not received on the due date for payment made in the ordinary course of business as a result of administrative errors. Administrative errors may include (but are not limited to) counterparty calculation errors, missing funding deadlines, agent bank handling errors, incorrect SSI data, late confirmation of transactions, payments credited to the wrong account.
- The process outlined is to recover losses incurred by the disadvantaged party resulting from the late payment, and it is understood by all that the claim process is not looking to unnecessarily enrich the disadvantaged party.
- It is hoped that these voluntary guidelines will be widely accepted as standard market practice although they are in no way intended to supersede the terms of individual ISDA Master Agreements. Where possible these guidelines are designed to be consistent with other published compensation guidelines.
- It is understood that these guidelines may not be relevant in certain situations and in these cases it is anticipated that the current practice of bilateral discussion would continue.

Note: Claims arising from Collateral settlements are covered in the Collateral Best Practice Document, available on the ISDA website.

Best Practice Guidelines

Claim threshold (*de minimis*)

Claims of less than USD **500** are regarded as *de minimis* and are not expected to be submitted.

Note: minimum threshold will be subject to review semi-annually, and should there be reasonable industry consensus that minimum needs to be changed; best practice document will be updated accordingly.

Timing of claims processing

Claims after 60 days of the actual settlement date are not expected to be submitted

- Continue G15 best practice of issuing outgoing claims within 30 days
- Current practice does not issue claims on credit payments settling TIW(CLS). This amnesty should continue on TIW(CLS) payments, until there is reasonable industry consensus that the amnesty process needs to be reviewed, and at such time, best practice document to be updated accordingly. However, all non-TIW(CLS) payments will be subject to claim, if minimum claim requirements are met
- Communication method in writing via email or authenticated swift

Acknowledgment of receipt of claim, if receiving bank chooses to provide, should be advised within 15 days of receipt via email.

Acceptance or rejection of claim should be advised within 15 days of receipt via email/swift.

- The claimant will have a window of 15 days to refute any rejected claims (*refutes received after this period may be subject to rejection).
- 15 day cycle will continue until claim is mutually agreed or rejected.

Settlement of claims should be within 30 days of actual claim agreement by recipient.

- Back valuation is an accepted method of settlement of claim, but settlement method needs be agreed at time of claim agreement.
- Netting of claims permissible upon bilateral agreement, and may settle a pre-determined intervals outside of 30 day best practice.

(All dates are calendar based)

Claim Content

All claims should contain the minimum information below in order to facilitate the claims process.

- Legal Name of Claimant (including branch)
- Legal Name of Recipient (including branch)
- Claim ID
- Claimant's trade references
- Recipient trade references (if known by claimant)
- Trade Details
- Product class
- Principal and Currency
- Expected Settlement Date
- Actual Settlement Date
- Claim Amount
- Claim Calculation
- Settlement Method (if settlement method is wire, should include settlement instructions)

Standard reference rates

- FX rates used for conversion in the calculation of the *de minimis* amount should be based on the value date of the original contractual settlement date
- Reuters page BOE SAF should be used as a standard source for FX rates. In the event that this page is unavailable or for currencies not included parties should agree bilaterally based on standard market practice.

Claim Calculation and Compensation rates

- As agent banks impose different overdraft rates depending on relationship, these guidelines are not looking to set compensation rates but to define the process to calculate the claim amount.
- The rate used to calculate the claim amount should compensate the disadvantaged party for any costs, actual or implied. Typically these will be the overdraft rate charged by the disadvantaged party’s correspondent bank. The claim should not include any additional spread or administration fees.
- The outgoing claim should be clear to distinguish the compensation rate used;
 - Overdraft charges
 - Use of funds (loss of interest) charges
- Back valuation of the original payment may also be used where the effect will equally compensate the disadvantaged party. Back valuation as settlement method needs to be part of claim agreement.

Threshold Grid

Compensation Process	All OTC Derivative Products
Claim Calculation	The rate applied should compensate the disadvantaged party for any costs, actual or implied.
Minimum Claim Threshold	500 USD Equivalent
Initial Claim Submission	In writing within 60 days of actual settlement date
Claim Communication Method	In writing via email or authenticated swift
Initial claim acknowledgement	Acknowledgement within 15 days
Claim Agreement/Rejection	In writing via email within 15 days of receipt of initial claim *claim approval/rejection may also act as acknowledgement
Claim Rebuttal (if rejected)	In writing via email within 15 days of receipt *continue 15 day cycle until claim is agree/rejected
Claim Settlement	Settlement to occur no later than 30 days from claim agreement
Claim Agreement/Rejection	In writing via email within 15 days of receipt of initial claim *claim approval/rejection may also act as acknowledgement
Settlement methods	Via wire or backvaluation where available *settlement method to be agreed at time of claim approval/agreement
Netting of Interest Claims	Netting of claims permissible upon bilateral agreement

Contacts Grid

Note: contacts grid will be reviewed and updated as necessary semi-annually.

Bank	Product	Contact Information
Bank of America/Merrill Lynch	Legacy Merrill Lynch	GMIS_payableintclaims@ml.com (incoming claims) GMIS_interestCompensation@ml.com (outgoing claims)
	Credits	dg.cds_settlements@bankofamerica.com
	Rates	dg.irp_investigations_chicago@bankofamerica.com
	EMEA Credits, Rates	emeagmginterestrecoveries@bankofamerica.com
Barclays	OTC Derivatives	xraDerivativeInteres@barclayscapital.com
BNP Paribas SA	OTC Derivatives	BOInterests.Claims@bnpparibas.com
BNP Paribas Arbitrage	OTC Derivatives	Paris_EQD_Claims_Processing@bnpparibas.com
Citibank New York / CGML / CFPI	OTC Derivatives	Citi.DerINT.ClaimNY@citi.com
Citibank London	OTC Derivatives	claims.derivatives@citi.com
Commerzbank/Dresdner	OTC Derivatives	OTCDerivativesFrankfurtCashInvestigations@commerzbank.com
Credit Suisse	OTC Derivatives	otc-interest-claims@credit-suisse.com
Deutsche Bank	OTC Derivatives	london.claims@db.com
Goldman Sachs	OTC Derivatives	claims@gs.com Hotline: + 91 212 934 1320
HSBC	OTC Derivatives	derivatives.interest.claims@hsbc.com.my
JP Morgan Chase	OTC Derivatives	ibo_derivatives_compensation@jpmorgan.com (corporate) ibo_derivatives_charges@jpmorgan.com (interbank)
Morgan Stanley	Europe	GLAinterest.claims@morganstanley.com
	North America	ICCG@morganstanley.com
Royal Bank of Scotland	OTC Derivatives	GBMIRDClaims@rbs.com
Societe Generale	Credits, Rates	par-oper-otc-claim@sgcib.com
	Commodities	nabila.dogga@sgcib.com
	Equity	pierre.thai@sgcib.com
UBS	OTC Derivatives	SH-DCU-OTC-Claims@ubs.com
Wachovia	Credits	titus.sandy@wachovia.com
	Rates	clayton.meertins@wachovia.com
	Equity	peter.bryan@wachovia.com