

ISDA Symposium®

Negotiation Strategies: Paragraph 13 of the 2018 Credit Support Annex for Initial Margin (IM)

**3.5 CLE Credit Hours Available (New York)
Transitional and Nontransitional**

***Program Length – 3 hours and 9 minutes
Program Recorded on February 27, 2020***

PROGRAM AGENDA

To assist parties who are preparing for initial margin implementation, this symposium will provide a focused, in-depth examination of specified terms and considerations for negotiating paragraph 13 to the 2018 Credit Support Annex For Initial Margin (IM) (Security Interest – New York Law). The content will focus specifically on the New York law CSA, but the issues to be discussed will also be directly relevant for parties negotiating other “next generation” regulatory initial margin documents.

A. Negotiating Paragraph 13 of the 2018 Credit Support Annex for IM

- What does the Regime Table determine?
- Completing the Regime Table
 - Selecting Regimes
 - The ISDA SIMM™ Exception
 - Fallback to Mandatory Method and number of notice days for effectiveness
 - Mandatory Method
- One Way Provisions and specifying the Posting Party if applicable
- Applying ISDA SIMM as the Method (IM)
 - Choosing the applicable version of ISDA SIMM
 - Designating the SIMM Calculation Currency for each party, and distinguishing it from Base Currency and Termination Currency
 - Standard preferred approach vs. alternative approach in respect of relevant sensitivities for equity indices, funds and ETFs and for commodity indices
- Deciding whether to specify certain terms in the Control Agreement Eligible Collateral (IM) Schedule or in the Eligible Collateral (IM) Schedule
- Base Currency
- Substituted Regimes
- Selection of Margin Approach
- Considerations for what to specify for:
 - Calculation Agent (IM)
 - Threshold (IM)
 - Minimum Transfer Amount (IM)
 - Calculation Date Location (IM) and Calculation Time (IM)
 - Notification Time

Waqas Fahmawi, Director & Associate General Counsel, Bank of America

Ilene K. Froom, Partner, Reed Smith LLP

Darren A. Littlejohn, Partner, Fried, Frank, Harris, Shriver and Jacobson LLP

Miki Navazio, Partner, Seward & Kissel LLP

ISDA Symposium® **Negotiation Strategies: Paragraph 13 of the** **2018 Credit Support Annex for Initial Margin (IM)**

Program Length – 6 hours and 18 minutes

Program Recorded on February 27, 2020

PROGRAM AGENDA

B. Negotiating Paragraph 13 of the 2018 Credit Support Annex for IM (cont'd)

- Conditions Precedent, Specified Conditions and Access Conditions
- Substitution Consent
- Dispute Resolution
 - Consultation Procedure vs. Other Regulatory CSA Procedure
 - Dispute Resolution Time
- Secured Party Rights Event
 - Requirement for non-payment of Obligations
 - Failure to Pay Early Termination Amount
 - Control Agreement Secured Party Rights Event
- Notice of Exclusive Control
 - Related covenants
 - NEC Event vs. Control Agreement NEC Event
- Pledgor Rights Event
 - Pledgor Rights Event vs. Control Agreement Pledgor Rights Event
 - Pledgor Full Discharge Condition
 - Cooling-off Period Condition
 - Pledgor Access Notice covenants
- Delivery in Lieu Right
- Specifying Custody Arrangement terms
 - Custodian (IM)
 - Custodian (IM) Risk
 - Custodian Event and CE End Date in the case of a Custodian Resignation Event and otherwise
- Considerations for making the Control Agreement a Credit Support Document
- Inconsistency with the Control Agreement and Relationship with the Control Agreement
- Collateral Access Breach Additional Termination Event and the number of days for CAB End Date
- Additional information relating to Regulatory Compliance and Concentration Limits
- Amendment to Termination Currency and Minimum Transfer Amount
- Interpretation Clause
- Loss of Required Model Approval
- Japanese Securities Provisions – when, why and how to include

Rubina Ali, Vice President & Assistant General Counsel, Goldman Sachs & Co. LLC

Ilene K. Froom, Partner, Reed Smith LLP

Deborah North, Partner, Allen & Overy LLP

Greg O'Donohue, Director & Senior Legal Counsel, Derivatives, Ontario Teachers' Pension Plan