

# The ISDA Credit Derivatives Determinations Committees, DC Rules, SRO Rules and POB Rules

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## 1. Overview and history of the ISDA Credit Derivatives Determinations Committees

### 1.1 The pre-Determinations Committee world

The previous version of this book, published in 2007, did not cover Credit Derivatives Determinations Committees. In those, almost pre-industrial revolution days of the credit derivatives market, credit derivatives transactions were settled using physical settlement, cash settlement and, on a case-by-case basis, auction settlement for the larger credit events. Market participants had to adhere to a protocol binding them into an auction process and deemed acceptance of a Credit Event. But the direction of travel was clear even then, objectivity for determining market-wide events, and compulsory auction settlement of larger Credit Events.

Prior to the Auction Settlement Protocols, Physical Settlement was more common than the cash alternative. End users shied away from the subjective nature of Cash Settlement, managed by the market-making banks. Credit Events such as Delphi in 2005, where the volume and price of Delphi Deliverable Obligations had traded at a higher price after it filed for bankruptcy before again declining due to credit protection buyers chasing Deliverable Obligations, had marked the death knell of these large-scale bilateral settlements.

The first Auction Settlement Protocol was released in May 2005, following the Collins & Aikman Credit Event. The accompanying ISDA press release<sup>1</sup> described the new process well:

*[the] protocol offers market participants an efficient way to settle trades on credit derivative indices that include Collins & Aikman. The Protocol enables institutions to amend their documentation for such index trades from physical to cash settlement and to participate in an auction, scheduled for June 14, 2005, which will determine the final price for a Collins & Aikman bond maturing on December 31, 2011. This is a new approach to an issue that can arise when a credit event, such as bankruptcy, triggers the need to settle a large number of derivatives transactions on a finite supply of securities.*

Collins & Aikman was followed by Auction Settlement Protocols for the Credit Event for Delta Airlines, Northwest Airlines and Delphi in 2005; the Dura, Dana and Calpine Credit Events in 2006; and Movie Gallery in 2007. 2008 then saw a wave of

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1 ISDA Press Release, Thursday, May 26 2005.

large Credit Events and accompanying Auction Settlement Protocols with Quebecor, Tembec, Fannie Mae, Lehman Brothers, Washington Mutual, Landsbanki, Glitner, Kaupthing Bank, Masonite and Hawaiian Telecom. A swath of Protocols then followed in the first quarter of 2009, with Tribune, Ecuador, Lyondell, Equistar, Sanitec and British Vita, Nortel, Smurfit-Stone and Ferriti.

These Auction Settlement Protocols operated by adhering market participants agreeing that Auction Settlement would apply to Transactions with other adhering market participants, where both had elected for these to be 'Covered Transactions'.

However, the Protocols were only published post a major Credit Event, and then fine tuned and amended each time.

The 2003 Definitions had incorporated more complex provisions for determining Successors to Reference Entities, Reference Obligations, Deliverable Obligations and Substitute Reference and Deliverable Obligations, than the predecessor version. This, combined with an increasingly complex Restructuring Credit Event and deliverability restrictions, meant that leaving decisions in the hands of a market-making Calculation Agent had become increasingly untenable.

With the onset of the financial crisis, regulatory and political pressure began to build to centrally clear standardised contracts; and by early 2009, ISDA was organising workshops on central clearing for CDS "as part of the credit derivatives industry's commitment to move forward with central clearing for credit default swaps".<sup>2</sup>

It was also ever more important for market-makers and central counterparties, acting in a middleman role, to avoid economic and legal basis risk (ie, the risk that two off-setting transactions could have different outcomes on the same set of market underlying facts eg, a Successor Event). While the individual protocol approach was of great benefit to the market, the voluntary nature of these protocols still incorporated basis risk.

## 1.2 The launch of the Big Bang and Small Bang Protocol 2009

At the end of 2008, in the depth of the ongoing financial crisis, ISDA announced<sup>3</sup> that it would incorporate CDS Auction Settlement provisions into the 2003 Definitions, by means of an update. This was called the hardwiring process. It worked by ISDA publishing an Auction Supplement and 'Big-Bang' Protocol at the beginning of March 2009. After a two-week adherence period, the Protocol and Supplement became effective.

The Auction Supplement amended the 2003 Definitions by incorporating the terms commonly used in the auction protocols described above, and also by establishing Determinations Committees.

Whereas previously it was left to the transaction parties to interpret whether a Credit Event had occurred or a Reference Obligation had changed, this flexibility had left formal or informal dispute proceedings as the only means to resolve an issue. This in turn was perceived to hinder market liquidity.

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2 ISDA Press Release, Wednesday, January 7 2009.

3 ISDA Press Release, Tuesday, December 30 2008.

The Determinations Committees were established to analyse the facts of market events, based on publicly available information, and determine in particular:

- whether a Credit Event had occurred;
- the identity of any Successor Reference Entity;
- whether an auction should be held to determine a CDS settlement Final Price; and
- whether the obligations should be delivered or valued at the auction ie the Deliverable Obligations and the Reference Obligations.

The Auction Supplement also set out in Annex A, the 'Credit Derivatives Determinations Committees Rules'.

The new DC Rules introduced the Determinations Committees in Section 1.1(a) (*Committees*):

*Credit Derivatives Determinations Committees (each, a 'Committee') are committees established for purposes of making determinations in connection with Credit Derivative Transactions that have, or are deemed to have, incorporated the March 2009 Supplement in the relevant Confirmation (each such Credit Derivative Transaction, a 'Relevant Transaction'). Each Committee is governed by the rules set forth in this Annex A to the Definitions, as incorporated into the Definitions by the March 2009 Supplement (the 'Rules').*

The inaugural DC Rules established five regional Determinations Committees for the Americas, EMEA, Japan, Asia Ex-Japan, and Australia/New Zealand. Each regional Committee was made up of 10 dealers and five non-dealer (buy side) members. The dealer group was made up of the eight largest global dealers, common to each Committee, and the two largest dealers in the relevant region. Data was extracted from CDS trade volumes recorded at the Depository Trust and Clearing Corporation (DTCC) to establish this.

The buy side members were randomly selected from ISDA's Non-dealer Committee, and were made up of hedge funds, 'traditional' asset managers and other non-dealer financial institutions. Each Committee also included two non-voting dealers, one non-voting regional dealer per region, and one non-voting non-dealer member.

The make-up of the inaugural Determinations Committees was as follows, with the dealer and non-dealer voting members the same for all regions.

The Dealers were made up of Bank of America/Merrill Lynch; Barclays; Citibank; Credit Suisse; Deutsche Bank AG; Goldman Sachs; JPMorgan Chase Bank, NA; Morgan Stanley; The Royal Bank of Scotland and UBS.

The Non-Dealers were made up of Elliott Management Corporation; Legal & General Investment Management Limited; Pacific Investment Management Company LLC; Primus Asset Management, Inc; and Rabobank International.

The Global Non-Voting Dealers were BNP Paribas and HSBC Bank. The Regional Non-Voting Dealer (for the Americas, Europe, Japan and Australia/New Zealand) was Societe Generale; the Regional Non-Voting Dealer (for Asia Ex-Japan) was Standard Chartered Bank and the Non-Voting Non-Dealer (for all regions) was Prudential Investment Management.

The resolutions of the Determinations Committees became binding on all CDS transactions where the March 2009 Supplement was incorporated. For later transactions, parties could also incorporate these terms.

In July 2009, ISDA launched its ‘Small Bang Protocol’ and Restructuring Supplement.<sup>4</sup> This incorporated auction settlement terms for adhering parties into Covered Transactions following a Restructuring Credit Event, and introduced further revisions to the DC Rules. In particular it had provisions allowing for a convened Determinations Committee to resolve to have multiple auctions for Restructuring Credit Events.

### 1.3 Evolution of the DC Rules

Following the Big Bang and Small Bang Protocols, there have been periodic changes to the DC Rules. The inaugural rules had 60 pages, and the current ones 130. A summary of those changes is set out here:

Date of new version of DC Rules	Summary of changes
December 18 2009	<ul style="list-style-type: none"> <li>• questions became allowed to be raised to a Determinations Committee by any Eligible Market Participant without attribution;</li> <li>• amendments made to clarify provisions for: material errors in DTCC Dealer Lists; the consequences of missing DC meetings and DC votes; timings and quorums for DC meetings; timing of and participation in auctions; establishment of legal subcommittees; External Review provisions; and introduction of public comment period for DC Rules amendments;</li> </ul>
March 29 2011	<ul style="list-style-type: none"> <li>• new provisions for the appointment of Replacement DC Members added;</li> <li>• amendments to clarify provisions for: information provided by the DC Secretary/DTCC to institutions selecting between Global Dealer Consultative Member and Regional Dealer Consultative Member status; status of Non-dealer Voting Members; determinations for the Relevant Transaction Types; Quorum, Participation and Voting Procedures for a Convened DC; and Resolutions of Convened DCs;</li> </ul>

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Date of new version of DC Rules	Summary of changes
June 11 2011	<ul style="list-style-type: none"> <li>• amendments to facilitate CCP observer participation in the DCs;</li> </ul>
April 7 2014	<ul style="list-style-type: none"> <li>• addition of a new Section 5 dealing with US Municipal Reference Entities;</li> <li>• statements to be published following DC meetings, describing the issue(s) considered during the meeting, the resolution of those issue(s) (if any) and the next steps of the relevant DC;</li> <li>• question submitted to the DC by an Eligible CCP on Eligible Cleared Reference Entities to be automatically accepted by the DC with limited rights of dismissal;</li> <li>• inclusion of a form of Eligible CCP Certification Letter;</li> <li>• timing of steps for determining DC Members on each List Review Date to be by reference to London and New York business days;</li> <li>• consequential amendments following publication of the CCP Data Guidelines;</li> </ul>
September 16 2014	<ul style="list-style-type: none"> <li>• broad amendments to introduce the 2014 Definitions;</li> <li>• introduction of the Standard Reference Obligation Rules (appended as Schedule 4);</li> </ul>
March 13 2015	<ul style="list-style-type: none"> <li>• amendments to the Standard Reference Obligation Rules;</li> <li>• inclusion of the new Package Observable Bond Rules (appended as Schedule 5);</li> </ul>
January 20 2016	<ul style="list-style-type: none"> <li>• addition of new Schedule 6 to the DC Rules requiring DC firms to represent in the Standard Agreement that certain written policies and procedures are in place for their DC activities, together with new information and record-keeping requirements.</li> </ul>

This chapter covers the January 2016 Version of the DC Rules, and readers gaining an understanding of the DC Rules should cross-refer against new versions as and when these are brought out. The ISDA website has a section setting out each

version of the DC Rules, and also helpfully provides a blackline version of each new version against the previous one.

Capitalisation in this chapter is on the basis of the 2016 Version of the DC Rules and the 2014 Definitions.

#### 1.4 Activity of the Determinations Committee

In its first year the Determinations Committee was immediately active, resolving more than 50 questions raised by market participants, and determining Credit Events such as Edscha, BTA Bank, Syncora, Visteon, General Motors, Bradford & Bingley, MGM and Aiful.

By May 2012,<sup>5</sup> the combined DCs had considered more than 900 questions, and decided unanimously in 96% of these. The DCs considered 83 times whether or not a Credit Event occurred, answering affirmatively 63 times.

For the 2013 to 2014 period,<sup>6</sup> 44 DC Requests were made for the Americas, 43 for EMEA, with 12 requests made to the other DCs, from market participants. There were 145 DC Decisions made for the Americas, 67 for EMEA, and 18 for the other regions. There were also 17 Auctions and a single External Review in the same period.

The Determinations Committee also had to consider its fair share of contentious matters. For example, the AIFUL Group Credit Event (AIFUL) the Japan Determinations Committee had to consider whether Aiful's approved 'Business Revitalisation Plan', which changed the repayment schedules of participating creditors and obtained further financial support, using a Japanese dispute resolution mechanism, was a Restructuring Credit Event. The Japan DC ruled that it was not: the change was not caused by a separate deterioration in the creditworthiness. Other difficult decisions though were also required for SNS Bank and Seat among others.

## 2. Interaction of the Determinations Committees with the 2014 Definitions

The DC Rules interact principally with the 2014 Definitions in the following areas.

### 2.1 Constitutive Power of the Determinations Committees arising from the 2014 Definitions

The constitutive power of the DC is determined by four key provisions in the 2014 Definitions.

Section 1.6 (*Credit Derivatives Determinations Committee*) defines Credit Derivatives Determinations Committee as "each committee established pursuant to the DC Rules for purposes of reaching certain DC Resolutions in connection with Credit Derivative Transactions".

The DC Rules are then defined in Section 1.7 (*DC Rules*) as "the Credit Derivatives Determinations Committees Rules, as published by ISDA on its website at [www.isda.org](http://www.isda.org) (or any successor website thereto) from time to time and as amended from time to time in accordance with the terms thereof".

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5 ISDA Paper Examining Three-Year History of the ISDA Credit Derivatives Determinations Committees, May 1 2009.

6 As disclosed on the ISDA website.

Various other definitions in the 2014 Definitions then cross-refer to provisions in the DC Rules, allowing the DC Rules to be updated more frequently and without market adaptation. For example, DC Resolution is defined as having the meaning given to the term in the DC Rules, as does Resolve and Final List.

Section 10.2 (*Effect of DC Resolution*) provides that generally any DC Resolution applicable to a Transaction is binding on both the Buyer and Seller. DC Resolutions are specified as binding on the parties.

Finally in Section 11.1 (*Additional Representations and Agreements of the Parties*) the Buyer and Seller are deemed to agree with the other in any Transaction that, with respect to any DC Resolution of the relevant Credit Derivatives Determinations Committee, "if there is any inconsistency between (A) any provision of either (I) the Definitions, as supplemented, or (II) any provisions incorporated in the related Confirmation and (B) the DC Rules, the DC Rules will govern."

## 2.2 Article I Determinations Committee Provisions

In addition to the sections described immediately above, Article I (*Certain General Definitions*) of the 2014 Definitions contains many of the operative provisions for Credit Derivatives Determinations Committees and their decision-making process. These are set out in the table below:

Article I Determinations Committee Definitions	Summary
Section 1.9 ( <i>DC Secretary</i> )	The DC Secretary has been ISDA from 2009 to 2016, although fulfilment of this role may be replaced in the near future.
Section 1.10 ( <i>DC Party</i> )	This is defined in the DC Rules to include DTCC, the DC Secretary, various administrators, Participating Bidders in an Auction as well as any External Reviewer.
Section 1.11 ( <i>Resolve</i> )	Resolved/Resolved/Resolving is defined by cross-referring to the definition the DC Rules, which is currently a Determinations Committee making: a specific determination through a binding vote; and where the applicable voting threshold is not met for a binding vote, the specific determination that is deemed to be made by a Determinations Committee following an external review process. These determinations are defined as DC Resolutions. For the remainder of this chapter, we use these terms in lower case.

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<b>Article I Determinations Committee Definitions</b>	<b>Summary</b>
Section 1.17 ( <i>DC Announcement Coverage Cut-off Date</i> )	<p>This definition is relevant to the definition of Event Determination Date and Non-Standard Event Determination Date discussed below.</p> <p>In relation to a DC Credit Event Announcement, the DC Announcement Coverage Cut-off Date is defined as the Auction Final Price Determination Date, or if the Auction is cancelled, the Auction Cancellation Date; or if there is a No Auction Announcement Date, the date that is 14 calendar days following the No Auction Announcement Date.</p>
Section 1.19 ( <i>No Event Determination Date</i> )	<p>Where there is a DC No Credit Event Announcement for a potential Credit Event, then there is deemed to be No Event Determination Date for that event.</p> <p>Any Event Determination Date previously determined for that event is deemed not to have occurred provided that the DC No Credit Event Announcement occurs prior to the Auction Final Price Determination Date, a Valuation Date, the Physical Settlement Date (or, if earlier, a Delivery Date) or the Termination Date.</p>
Section 1.24 ( <i>Post Dismissal Additional Period</i> )	<p>This is the period from and including the date of a DC Credit Event Question Dismissal to and including the date 14 calendar days later.</p> <p>The definition is relevant to the timings in the definitions of Termination Date, Event Determination Date, Non-Standard Event Determination Date and Credit Event Backstop Date discussed below.</p>
Section 1.25 ( <i>DC Credit Event Meeting Announcement</i> )	<p>This is a public announcement by the DC Secretary that a Credit Derivatives Determinations Committee is to be convened to Resolve the matters described in a DC Credit Event Question.</p>
Section 1.26 ( <i>DC Credit Event Question</i> )	<p>This is a notice to the DC Secretary which requests convening of a Credit Derivatives Determinations Committee to Resolve whether a Credit Event has occurred.</p>

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Article I Determinations Committee Definitions	Summary
Section 1.27 ( <i>DC Credit Event Question Dismissal</i> )	This is a public announcement by the DC Secretary that a Credit Derivatives Determinations Committee has Resolved not to determine the matters described in a DC Credit Event Question.
Section 1.28 ( <i>DC Credit Event Announcement</i> )	This is a public announcement by the DC Secretary that the relevant Credit Derivatives Determinations Committee has Resolved that an event constitutes a Credit Event. The announcement will confirm that this has occurred on or after the Credit Event Backstop Date and on or prior to the Extension Date.
Section 1.29 ( <i>DC No Credit Event Announcement</i> )	This is a public announcement by the DC Secretary that the Credit Derivatives Determinations Committee has Resolved that an event that is the subject of a DC Credit Event Question was not a Credit Event.
Section 1.30 ( <i>Credit Event Resolution Request Date</i> )	For a DC Credit Event Question, this is the date that the DC Secretary publicly announces that the Credit Derivatives Determinations Committee has resolved to be the date on which the DC Credit Event Question was effective and on which the Credit Derivatives Determinations Committee was in possession of applicable Publicly Available Information.

### 2.3 Successor Provisions

Article II (Terms relating to the Reference Entity and the Reference Obligation) contains the operative provisions for a Convened DC (see discussion below regarding Convened DCs) to determine a Successor Reference Entity.

Section 2.1 (*Reference Entity*) provides that a Successor will become a Reference Entity where it is identified “by the Calculation Agent” or “pursuant to a DC Resolution in respect of a Successor Resolution Request Date and publicly announced by the DC Secretary” in each case following Section 2.2 (*Provisions for Determining a Successor*).

Section 2.2(l) (*Successor Resolution Request Date*) also sets out the method by which Eligible Market Participants place an applicable Successor question to the DC, with a notice to the DC Secretary requesting that a Credit Derivatives Determinations Committee be convened to Resolve one or more Successors.

Section 3.5 (*Successor Resolutions*) of the DC Rules relates to Successor

determinations and provides at paragraph (b) (*Determination of a Successor*) that a convened DC may make a DC Resolution to resolve market questions on an affected Reference Entity under Section 2.2.

#### 2.4 Substitute Reference Obligations

Following a Substitution Event, a Substitute Reference Obligation can be chosen through a determination of a Convened DC. Section 2.21 (*Substitute Reference Obligation Resolution Request Date*) has introduced a new concept of Substitute Reference Obligation Resolution Request Date. This, in conjunction with the DC Rules, allows eligible market participants to ask the DC to determine a Substitute Reference Obligation.

### 3. DC Rules

The 2016 ISDA Credit Derivatives Determinations Committees Rules (2016 Version) (the 'DC Rules') have six sections. These are:

- Composition of the Determinations Committees;
- Procedures of the Determinations Committees;
- Resolutions of a Convened Determinations Committees;
- External Review;
- Additional Provisions; and
- Definitions.

In addition, there are also six schedules to the DC Rules, and these are:

- Form of Standard Questions;
- The Non-Dealer Committee;
- Form of Eligible CCP Certification Letter;
- Standard Reference Obligation Rules;
- Package Observable Bond Rules; and
- DC Participant Questions.

Each of the six sections and schedules will now be discussed in turn.

#### 4. Composition of DCs

Section 1 (Composition of Credit Derivatives Determinations Committees) provides that the committees are:

*established for purposes of making determinations in connection with Credit Derivative Transactions that have, or are deemed to have, incorporated the 2014 Definitions or the Updated 2003 Definitions in the relevant Confirmation (each such Credit Derivative Transaction, a 'Relevant Transaction'). Each Committee is governed by the rules set forth in these Credit Derivatives Determinations Committees Rules.*

Section 1 of the DC Rules covers the following areas:

- Identifying DC Members, CCP Members and other participants;
- Relevant Lists for Dealers, Non-Dealers and CCPs;
- Selecting Dealers, CCPs and procedures for becoming a DC Member or CCP Member;

- Removal from Eligible Lists and Determinations Committees; and
- Replacement of DC Members and CCP Members.

#### 4.1 Identifying DC Members, CCP Members and other participants

Section 1 identifies and defines most of the participants in the DC Rules. Let us call these the 'Players'. The key Players are set out in the table below (including those defined elsewhere in the DC Rules):

DC Rules relevant Section	'Player'	Role
<i>DC Secretary</i>		
1.1(b)	DC Secretary	The DC Secretary serves as the secretary of each Committee, performing administrative duties and making the determinations required under the DC Rules. The DC Secretary's role is discussed in further detail below.
<i>SRO and POB Administrators</i>		
1.1(e)	SRO Administrator	The SRO Administrator is responsible for maintaining the list of Standard Reference Obligations in the SRO List (ie, the list of Standard Reference Obligations required to be maintained under the 2014 Definitions). The SRO Administrator performs the functions required of it under the Standard Reference Obligation Rules set out in Schedule 4 (Standard Reference Obligation Rules) of the DC Rules.
1.1(f)	POB Administrator	The POB Administrator is responsible for maintaining the list of Package Observable Bonds in the POB List (ie, the list of Package Observable Bonds required to be maintained under the 2014 Definitions). The POB Administrator performs the functions required of it under the Package Observable Bond Rules set out in Schedule 5 (Package Observable Bond Rules) of the DC Rules.

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DC Rules relevant Section	'Player'	Role
<i>Participating Institutions and Ineligible Institutions</i>		
1.1(a)	Participating Dealer Institution	Participating Dealer Institutions are ISDA Members and their affiliates who are 'Dealers' and listed on the List of Participating Institutions maintained by the DC Secretary.
1.1(c)	Participating Non-Dealer Institutions	These are the non-Dealer ISDA Members on the List of Participating Institutions maintained by the DC Secretary.
1.1(a)	Participating Institutions	These are the non-dealer ISDA Members on the List of Non-dealer Committee Members, as well as each dealer ISDA Member that wishes to be considered for membership on the Committees.
1.4(a)	Ineligible Institutions	These are Participating Institutions ineligible for Determinations Committee due to a failure to participate in previous auctions; provide information; execute the Standard Agreement; pay an ISDA Invoice; attend meetings; or resignation.
<i>Eligible Dealers</i>		
1.6(b)	Eligible Global Dealers	These are the Participating Dealer Institutions which are not Ineligible Institutions.
1.6(b)	Eligible Regional Dealers	These are, for each Determinations Committee Region, the Participating Dealer Institutions not Ineligible Institutions.
<i>Eligible Non-Dealers</i>		
1.6(c)	Eligible Non-Dealers	Eligible Non-Dealers are Participating Non-dealer Institutions which are not Ineligible Institutions which have self-identified as one of a 'private investment company manager', 'registered investment company manager' or 'other' and a designation of previous service on a Committee.

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DC Rules relevant Section	'Player'	Role
Definitions	Non-Dealer Committee Members	These are the institutions on the Non-Dealer Committee.
<i>Designated Voting and Consultative Members</i>		
1.6(a)(i)	Designated Global Dealer Voting Members	The Designated Global Dealer Voting Members are the first eight Eligible Global Dealers on the Global Dealer Trading Volume List (see description of the lists maintained by the DC Secretary below).
1.6(a)(ii)	Designated Regional Dealer Voting Members	Designated Regional Dealer Voting Members are for each Region, the first two Eligible Regional Dealers on the Regional Dealer Trading Volume List for that Region that have not already been selected as a Designated Global Dealer Voting Member for the applicable List Review Date.
1.6(a)(iii)	Designated Global Dealer Consultative Member	The Designated Global Dealer Consultative Member is the first Eligible Global Dealer on the Global Dealer Trading Volume List not already selected as a Designated Global Dealer Voting Member on a List Review Date.
1.6(a)(iv)	Designated Regional Dealer Consultative Member	The Designated Regional Dealer Consultative Member is for such Region, the first Eligible Regional Dealer on the Regional Dealer Trading Volume List for that Region not already selected as a Designated Global Dealer Voting Member on a List Review Date.

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DC Rules relevant Section	'Player'	Role
1.6(c)(i)	Designated Non-dealer Voting Members	<p>Designated Non-dealer Voting Members are the five Eligible Non-dealers on the List of Eligible Non-dealer Members, selected in the following order:</p> <ul style="list-style-type: none"> <li>• each then-current Non-dealer Voting Member or Designated Non-dealer Voting Member that is a Holdover Non-dealer Member, if any;</li> <li>• the then-current Non-dealer Consultative Member, if any; and</li> <li>• an Eligible Non-Dealer, selected at random from those Eligible Non-dealers which have not previously served on a Committee.</li> </ul> <p>At least one of the Designated Non-dealer Voting Members selected through this process must be a 'private investment company manager', and another a 'registered investment company manager'.</p> <p>If that requirement cannot be satisfied though, the fifth (and, if necessary, the fourth) Designated Non-dealer Voting Member initially selected will be replaced by an Eligible Non-dealer selected at random from those Eligible Non-dealers which have not previously served on a Committee, and a further detailed fallback provision applies.</p>
1.11(i)	Holdover Non-Dealer Member	<p>Each Replacement DC Member that effectively receives notice that it has been identified as a Replacement DC Member for a Designated Non-dealer Voting Member, Adhered Non-dealer Voting Member or Non-dealer Voting Member after the date falling eight calendar months prior to the start date of the next term for relevant designation.</p>

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DC Rules relevant Section	'Player'	Role
1.6(c)(ii)	Designated Non-dealer Consultative Member	The Designated Non-dealer Consultative Member is an Eligible Non-dealer on the List of Eligible Non-dealer Members, selected at random from those Eligible Non-dealers which have not previously served on a Committee and have not already been selected as a Designated Non-dealer Voting Member on a List Review Date
<i>CCP Members</i>		
Definitions	CCP	A CCP or 'Clearing Entity' is a clearing house, clearing association, clearing corporation, or similar entity which enables among other things each party to a Credit Derivative Transaction to substitute, through novation or otherwise, the credit of the Clearing Entity for the credit of its counterparty.
1.2(b)	Participating CCP Members	Participating CCPs are CCPs which have requested the DC Secretary that they wish to be considered for membership on Committees.
1.7(a)	Designated CCP Members	Designated CCP Members are, for each Region, each Participating CCP that: has notified the DC Secretary that it wishes to be considered for membership for a Region; is authorised to act as a CCP for credit derivatives transactions by the relevant regulators; has an 'Open Interest' in, and makes relevant credit derivatives transactions available for clearing, and is one of the first three CCPs on the Regional CCP Clearing Volume List for the Region.
1.9(c)	Adhered CCP Members	An Adhered CCP Member is a Designated CCP Member that has entered into, acceded to, or renewed adherence to, the Standard Agreement. Adhered CCP Members then cease to be Designated CCP Members.

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DC Rules relevant Section	'Player'	Role
1.12(a)	Exiting CCP	Exiting CCPs are Designated CCP Members, Adhered CCP Member or CCP Member that have failed to adhere to the Standard Agreement or have resigned or been removed pursuant to the DC Rules.
<i>DC Members</i>		
1.8(c)	DC Members	Each Adhered DC Member (ie, Designated DC Members with an active Standard Agreement in place) serving on a Determinations Committee.
1.8(d)	DC Decision Makers	DC Decision Makers are selected on the following bases. Designated DC Members are required to submit to the DC Secretary a list of the names, job titles and departments of all individuals permitted to attend meetings of a Convened DC, decide how the Designated DC Member will cast its vote on any DC Question and/or decide which views the Designated DC Member will present or support in a meeting of a Convened DC.
Definitions	Designated DC Members	Designated DC Members are DC Voting Members or Designated Consultative Members, as applicable.
Definitions	DC Voting Members	DC Voting Members are DC Members that were Adhered DC Voting Members at the time of becoming a DC Member. Adhered DC Voting Members are Adhered DC Members that were Designated DC Voting Members at the time of becoming an Adhered DC Member.

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DC Rules relevant Section	'Player'	Role
Definitions	Dealer Members	The Dealer Members are defined as the Designated Global Dealer Voting Members; Adhered Global Dealer Voting Members; Global Dealer Voting Members; Designated Global Dealer Consultative Member; Adhered Global Dealer Consultative Members; Global Dealer Consultative Members; Designated Regional Dealer; Voting Member, Adhered Regional Dealer Voting Member; Regional Dealer Voting Members; Designated Regional Dealer Consultative Members; Adhered Regional Dealer Consultative Members and Regional Dealer Consultative Members.
Definitions	Convened DC Member	A Convened DC Member is a Convened DC Voting Member, a Convened DC Consultative Member or a Convened DC CCP Member, as applicable.
2.1(e)	Convened DC Voting Members	After receiving a meeting request for a Committee, the DC Secretary convenes the relevant DC Voting Members for the applicable Region. These DC Voting Members then become Convened DC Voting Members.
2.1(e)	Convened DC Consultative Members	At the same time as convening the Convened DC Voting Members the DC Secretary convenes the relevant Consultative Members for the same Region.
2.1(e)	Convened DC CCP Member	Also, at the same time as convening the Convened DC Voting Members, the DC Secretary convenes the relevant CCP Members for the same Region.

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DC Rules relevant Section	'Player'	Role
<i>Authorised Contacts</i>		
1.2(c)	Authorised Contacts	These are the individuals designated to the DC Secretary as points of contact by Participating Institutions and Participating CCPs for each Committee.
<i>Determinations Committees</i>		
1.1(a)	Determinations Committees/ Committees	Determinations Committees are the Committees established for making determinations in connection with Credit Derivative Transactions that incorporate the 2014 Definitions or Updated 2003 Definitions in the relevant Confirmation. These Confirmations are in turn defined as 'Relevant Transactions'.
<i>Non-Dealer Committee</i>		
Definitions	Non-Dealer Committee	This is the committee of non-dealers established in accordance with Schedule 2 of the DC Rules.
<i>DTCC</i>		
1.1(b)	DTCC	<p>For Transaction Type determinations, compilation of Dealer Lists (including identifying Dealer Members) and certain auction determinations, the DC Secretary is allowed to consult data compiled in accordance with the Trading Volume Data Guidelines provided by The Depository Trust and Clearing Corporation or its relevant subsidiary (DTCC).</p> <p>The 'Trading Volume Data Guidelines' are the guidelines adopted by the Participating Dealer Institutions and DTCC to determine the relevant trading volume of Participating Dealer Institutions.</p>

#### 4.2 Relevant Lists for Dealers, Non-Dealers and CCPs

The DC Secretary is required to draw up and maintain multiple lists in Section 1 of the DC Rules. These are as set out in the table below. Almost all of the Lists are updated around the 'List Review Date', which is March 30 in each year.

List	Summary
List of Participating Institutions	A list of each non-dealer ISDA Member on the List of Non-dealer Committee Members and each dealer ISDA Member that, has notified the DC Secretary that it (or an Affiliate) wishes to be considered for membership on the Committees and has provided the necessary consents to DTCC.
List of Participating CCPs	A list of each CCP that has notified the DC Secretary that it wishes to be considered for membership on the Committees and has provided the necessary consents to DTCC.
List of Authorised Contacts	A list of the individual points of contact at the Participating Institutions and Participating CCPs for each Committee.
List of Merged Institutions	A list of each Participating Dealer Institution that is part of an Affiliate Group, including any merger date.
Global Dealer Trading Volume List	This is a list of certain dealer ISDA Members ordered by global trading volume of Credit Derivative Transactions, compiled in accordance with the Trading Volume Data Guidelines.
Regional Dealer Trading Volume List	This is a list for each Region of certain dealer ISDA Members ordered by trading volume of Credit Derivative Transactions referencing any Transaction Type of that Region. The List of Merged Institutions, Global Dealer Trading Volume List and the Regional Dealer Trading Volume List are together known as the DTCC Dealer Lists.
Regional CCP Clearing Volume List	This is a list for each Region, a list of CCPs ordered by the notional volume of cleared credit derivative transactions cleared for that Region.

*continued on next page*

List	Summary
List of Ineligible Institutions	A list of the Participating Institutions which are ineligible for membership of a Committee due to a failure to participate in previous auctions; provide information; execute the Standard Agreement; pay an ISDA Invoice; attend meetings; or resignation.
Lists of Eligible Global Dealer Members	A list of the Participating Dealer Institutions, minus any Ineligible Institutions.
List of Non-dealer Committee Members	This is the list of the institutions on the Non-dealer Committee.
List of Eligible Non-dealer Committee Members	A list of each Participating Non-dealer Institution that is not an Ineligible Institution. The list includes each institution's self-identification as a 'private investment company manager', 'registered investment company manager' or 'other' and a confirmation of previous Committee service.
List of Eligible Regional Dealer Members	This is a list for each Region, for each Participating Dealer Institution, after removing Ineligible Institutions.
Lists of Missed Auctions	This is a list of each Participating Dealer Institution that has failed to participate as a Participating Bidder in one or more Non-LCDS Auctions.
Lists of Missed Meetings	This is a list of each Participating Institution that, while serving as a Convened DC Member, broke DC Rules by failing to attend a Convened DC where a binding vote was held, or failed properly to vote. The list also records the total number of offences for any Participating Institution.
Lists of CCP Missed Meetings	This is a list of each Participating CCP that, while serving as a CCP Member, failed to attend a Convened DC meeting. The List also records the total number of offences for any Participating CCP.

### 4.3 Determinations Committee membership and procedure for becoming a DC Member

The five regional Determinations Committees for the Americas, Asia Ex-Japan, Australia-New Zealand, EMEA and Japan represent and draw from the variety of credit derivatives market-participants on different sides of the market: the sell-side, the buy-side and the CCPs.

Each Regional Determinations Committee is made up of 19 participants, 15 of which are voting members. These comprise:

- 10 sell-side voting firms 'Voting Non-Dealers'; these are:
  - the first eight Eligible Global Dealers on the Global Dealer Trading Volume List: the Designated Global Dealer Voting Members; and
  - for the particular Region, the first two Eligible Regional Dealers on the Regional Dealer Trading Volume not already selected as Designated Global Dealer Voting Members: the Designated Regional Dealer Voting Members;
- five buy-side voting firms the 'Voting Non-Dealers'; these are:
  - five Eligible Non-dealers on the List of Eligible Non-dealer Members, selected in the following order:
    - each then-current Non-dealer Voting Member or Designated Non-dealer Voting Member that is a Holdover Non-dealer Member, if any;
    - the then-current Non-dealer Consultative Member, if any; and
    - selected at random from those Eligible Non-dealers which have not previously served on a Committee;
  - three 'Consultative Members' (the 'Consultative Dealers' or 'Non-Voting Members'), comprising:
    - a Designated Global Dealer Consultative Member: selected as the first Eligible Global Dealer on the Global Dealer Trading Volume List not already selected as a Designated Global Dealer Voting Member;
    - for each Region, a Designated Regional Dealer Consultative Member: this is the first Eligible Regional Dealer on the Regional Dealer Trading Volume List for that Region not already selected as a Designated Global Dealer Voting Member; and
    - a Designated Non-dealer Consultative Member: which must be an Eligible Non-dealer on the List of Eligible Non-dealer Members, selected at random from those Eligible Non-dealers which have not previously served on a Committee and have not already been selected as a Designated Non-dealer Voting Member.
- A Central Counterparty (CCP) Observer Member which must be a Designated CCP Member.

#### **Americas Dealer and CCP members by Determinations Committee: April 2016–April 2017**

The Americas Determinations Committee for April 2016 to April 2017 is comprised as follows:

*Voting Dealers:* Bank of America; Barclays Bank, BNP Paribas; Citibank; Credit Suisse International; Deutsche Bank; Goldman Sachs International; JPMorgan Chase Bank; Mizuho Securities; and Morgan Stanley.

*Consultative Dealers/Non-Voting Members:* Societe Generale.

*Non-Dealer Voting Members:* AllianceBernstein; Elliott Management Corporation; Citadel LLC; Pacific Investment Management Co, LLC; and Cyrus Capital Partners LP.

*Consultative Non-Dealer:* Elliott Management Corporation.

*CCP Member (Non-Voting):* ICE Clear Credit LLC.

Although the table above is for the Americas for the 2016 to 2017 period, there are some interesting points to note: the Voting Dealers are the same for each of the five Regions, and only one Consultative Dealer is identified for the Americas, or indeed any of the Regions. For the 2015 to 2016 period there had been two Consultative Dealers for each Region (in each case Societe Generale and Mizuho Securities. However, Nomura International plc ceased to be a dealer at the end of the 2015 to 2016 period and Mizuho Securities took its place.

The DC Secretary applies a complex process to selecting the DC Members for each regional Determinations Committee as part of an annual process. This process is set out in the table below.

#### **Annual Process for Determining the Composition of the Five Regional Determinations Committees**

**The DC Secretary applies the following process, drawing on the following definitions and roles within the DC Rules:**

- (1) DC Members are *Adhered DC Members* serving on a Determinations Committee.
- (2) *Adhered DC Members* are *Designated DC Members* with an active Standard Agreement in place. The *Standard Agreement* is the agreement under which DC Members (or any representing affiliates) acknowledge and agree to their respective rights and responsibilities under the Rules.
- (3) Designated DC Members are DC Voting Members and Designated Consultative Members.
- (4)(a) *DC Voting Members* are *DC Members* that were *Adhered DC Voting Members* at the time of becoming a DC Member. *Adhered DC Voting Members* are *Adhered DC Members* that were *Designated DC Voting Member* at the time of becoming an *Adhered DC Member*. *Designated Global Dealer Voting Members* are the first eight Eligible Global Dealers on the Global Dealer Trading Volume List.
- (b) *Designated Consultative Members* are *Designated Global Dealer Consultative Members*, *Designated Regional Dealer Consultative Members* and *Designated Non-dealer Consultative Members*. These are:
  - *Designated Global Dealer Consultative Members*: the first *Eligible Global Dealer* on the *Global Dealer Trading Volume List* not already selected

- as a Designated Global Dealer Voting Member on a List Review Date.
- *Designated Regional Dealer Consultative Member* is for a Region the first Eligible Regional Dealers on the Regional Dealer Trading Volume List for that Region not already selected as a Designated Global Dealer Voting Member on a List Review Date.
  - *Designated Non-dealer Consultative Member*: an Eligible Non-dealer on the List of *Eligible Non-dealer Members*, selected at random from those Eligible Non-dealers which have not previously served on a Committee and have not already been selected as a *Designated Non-dealer Voting Member* on a List Review Date.
- (5)(a) *Eligible Global Dealers*: These are the Participating Dealer Institutions who are not Ineligible Institutions.
- (b) *Eligible Regional Dealers*: These are, for each Region, the Participating Dealer Institutions which are not Ineligible Institutions.
- (c) *Eligible Non-Dealers*: These are Participating Non-dealer Institutions which are not Ineligible Institutions which have self-identified as one of a 'private investment company manager', 'registered investment company manager' or 'other' and a designation of previous service on a Committee.
- (6)(a) *Participating Dealer Institutions*: Eligible Non-Dealers are Participating Non-dealer Institutions which are not Ineligible Institutions which have self-identified as one of a 'private investment company manager', 'registered investment company manager' or 'other' and a designation of previous service on a Committee.
- (b) *Ineligible Institutions*: These are Participating Institutions ineligible for membership of a Committee due to a failure to participate in previous auctions; provide information; execute the Standard Agreement; pay an ISDA Invoice; attend meetings; or resignation.
- (7) *Option to Act as a Global Dealer Consultative Member or a Regional Dealer Voting Member*:  
 The DC Secretary notifies each Participating Dealer Institution which qualifies as both a Global Dealer Consultative Member and a Regional Dealer Voting Member.  
 The Participating Dealer Institution may then choose either to be a Designated Regional Dealer Voting Member for the Region(s) for which it has been selected or to be a Designated Global Dealer Consultative Member.
- (a) *Choosing to be a Designated Global Dealer Consultative Member*  
 If the Participating Dealer Institution chooses to be a Designated Global Dealer Consultative Member, it will not be considered a Designated Regional Dealer Voting Member under the Rules for any Region and the selection process resumes to select the proper number of Designated Regional Dealer Voting Members.

(b) *Choosing to be a Designated Regional Dealer Voting Member*

If the Participating Dealer Institution chooses to be a Designated Regional Dealer Voting Member, it will not be considered a Designated Global Dealer Consultative Member under the Rules and the DC Secretary will go about the process of identifying another Designated Global Dealer Consultative Member.

(8) *Identifying Non-Dealer Members on each List Review Date*

(a) *Designated Non-dealer Voting Members*

The DC Secretary identifies the Designated Non-dealer Voting Members as the first five Eligible Non-dealers on the List of Eligible Non-dealer Members, selected in the following order:

- each then-current Non-dealer Voting Member or Designated Non-dealer Voting Member that is a Holdover Non-dealer Member, if any;
- the then-current Non-dealer Consultative Member, if any; and
- selected at random from those Eligible Non-dealers which have not previously served on a Committee.

At least one of the Designated Non-dealer Voting Members selected though must be a 'private investment company manager', and another a 'registered investment company manager'.

If that requirement cannot be satisfied, however, the fifth (and, if necessary, the fourth) Designated Non-dealer Voting Member initially selected will be replaced by an Eligible Non-dealer selected at random from those Eligible Non-dealers which have not previously served on a Committee, and a further detailed fallback provision applies.

Following identification of the five Designated Non-dealer Voting Members, the DC Secretary designates, on a random basis, two as 'First Term Non-dealers', two as 'Second Term Non-dealers' and one as 'Third Term Non-dealers'. A current Non-dealer Voting Member that is again selected as a Designated Non-dealer Voting Member, however, will retain its existing designation.

(b) *Designated Non-dealer Consultative Member*

The DC Secretary also randomly identifies one Eligible Non-dealer on the List of Eligible Non-dealer Members, which has not previously served on a Committee and has not already been selected as a Designated Non-dealer Voting Member: the selected party is the 'Designated Non-dealer Consultative Member'.

(8) *Insufficient number of Dealer Members or Non-dealer Members on a List Review Date*

If the DC Secretary cannot select the appropriate number of Designated DC Voting Members or Designated Consultative Members it may instead select an Ineligible Institution.

(9) *CCP Members*

The DC Secretary also attempts to select a Designated CCP Member for



each Region. These are each Participating CCP that: has notified the DC Secretary that it wishes to be considered for membership for a Region; is authorised to act as a CCP for credit derivatives transactions by the relevant regulators; has an 'Open Interest' in, and makes relevant credit derivatives transactions available for clearing, and is one of the first three CCPs on the Regional CCP Clearing Volume List for the Region. At any time, a Convened DC may also resolve on a majority basis to approve a Participating CCP as a member for the relevant Region, notwithstanding that it has not met the eligibility criteria.

(10) *Failure to identify 15 Members*

If there are fewer than 15 DC Members for one or more Regions and the empty voting positions cannot be filled, each Convened DC for the relevant Region will proceed instead with the filled positions only, until the DC Secretary can find replacements.

#### 4.4 **Removal from the Eligible Lists and the Determinations Committees**

The DC Rules contain detailed provisions for removing participants from the Eligible Lists and the Determinations Committee.

At any List Review Date, any Global Dealer Voting Member failing to qualify as a Designated Global Dealer Voting Member or any Regional Dealer Voting Member failing to qualify as a Designated Regional Dealer Voting Member for a Region is replaced.

Also at any List Review Date, a CCP Member failing to qualify as a Designated CCP Member for a Region where it is serving will also be removed.

##### 4.5 The DC Secretary

The role of the DC Secretary is integral to the DC Rules. The DC Secretary acts as a secretary to each of the Regional Determinations Committees. It carries out administrative duties. Although it has no vote, it is responsible for making many determinations under the DC Rules.

As set out in detail above, the DC Secretary compiles and maintains the many lists of dealers, non-dealers and CCPs. Following the provisions set out above, it is also responsible for selecting each region's Determinations Committee annually, as well as filling vacancies that arise, and removing institutions no longer eligible for a particular role.

Additionally, the DC Secretary manages the various Determinations Committee processes that go on, and organises meetings. The DC Secretary must also publish information on its website such as DC Questions, information on DC votes, and other information approved by a Determinations Committee.

## 5. **Procedures for Determinations Committees**

### 5.1 **Convening a Determinations Committee**

Section 2 (Procedures of Credit Derivatives Determinations Committees) provides the process and provisions for convening a Credit Derivatives Determination Committee.

**(a) *Notifying the DC Secretary***

The first step is for an Eligible Market Participant is required to request a meeting and convening of a Determinations Committee by notifying the DC Secretary of an issue which it believes should be deliberated. This then becomes a 'Potential DC Issue'.

The Eligible Market Participant must notify the DC Secretary of its request and set out the issue it believes should be considered in reasonable detail, together with, if possible, supporting information which is consistent with Publicly Available Information (as per the 2014 Definitions).

The DC Secretary is then responsible for notifying the relevant DC Members and CCP Members of the request for a meeting of a Committee in accordance with Section 2.2(a) (Notifying the Committee).

Any Potential DC Issue may be designated as a 'General Interest Question' by the Eligible Market Participant submitting it (a 'General Interest Question'). Where this occurs, the identity of the Eligible Market Participant will not be publicly disclosed.

**(b) *Determining the Relevant Transaction Type***

Following a valid meeting request for a Committee, unless the Rules provide that a Committee for each Region has to be convened, the DC Secretary determines:

- each relevant Reference Entity for the meeting request (each, an 'Affected Reference Entity'); and
- the Transaction Type of each Affected Reference Entity based on the Transaction Types in the Credit Derivatives Physical Settlement Matrix. This is called the 'Implicated Transaction Type'; and if there is more than one Implicated Transaction Type for a meeting request, the DC Secretary liaises with DTCC to determine, using the Trading Volume Data Guidelines, which Affected Reference Entity and Transaction Type has the highest notional trading volume. That Transaction Type will then be the 'Dominant Transaction Type'.

The DC Secretary will then determine that the 'Relevant Transaction Type' will be the Implicated Transaction Type, or where there is more than one Implicated Transaction Type for a meeting request, the Dominant Transaction Type is deemed to be the Relevant Transaction Type.

**(c) *Convening the DC Members and establishing a Convened DC***

Following receipt of a request for a meeting of a Determinations Committee, the DC Secretary convenes the DC Members as follows:

<b>How the DC Secretary Convenes the DC Members</b>		
DC Member	How it is Convened	Role after being Convened
DC Voting Members	The DC Secretary convenes the relevant participants: for each Region, where the DC Rules provide that a Committee for a relevant Region is to be convened; or for the Region that includes the Relevant Transaction Type, where the Rules do not provide that a Committee for that Region is to be convened.	Convened DC Voting Member
Consultative Members	"	Convened DC Consultative Member
CCP Members	"	Convened DC CCP Member

Once the DC Secretary has identified the Convened DC Members in the manner described above, each Determinations Committee composed by Convened DC Members, becomes a 'Convened DC'.

**(d) *Notifying the Committee and Determining the DC Questions***

Following the establishment of the Convened DC, the DC Secretary then notifies the Authorised Contact of each Convened DC Member of the Potential DC Issue which has been raised.

At least one Convened DC Voting Member must agree to deliberate a Potential DC Issue by notifying the DC Secretary of the same, in order for a meeting of a Convened DC to go ahead.

Where a Potential DC Issue has been designated a General Interest Question, then there is an enhanced deliberation requirement that at least two Convened DC Voting Members must agree to deliberate the Potential DC Issue.

On passing these hurdles, the Potential DC Issue becomes a 'DC Issue'. The DC Secretary does not disclose the identity of any Convened DC Voting Member that agrees to deliberate a Potential DC Issue.

If the hurdles are not satisfied then the Potential DC Issue is deemed to have been rejected by the Convened DC. Should this occur, the DC Secretary will publish the rejection on its website. A Convened DC is entitled to refuse to consider a Potential DC Issue which is solely a bilateral dispute between two Eligible Market Participants.

(e) **Determining and Rephrasing the DC Questions**

The DC Secretary forms the meeting agenda for a Convened DC, by phrasing specific questions for each of the DC Issues (each, a ‘DC Question’): DC Questions should be phrased or rephrased to conform to the standard format of the relevant question set out in Schedule 1 to the Rules (see further discussion below).

A Convened DC may also resolve on a majority basis to rephrase, the phrasing determined by the DC Secretary.

5.2 **Quorum requirement for a Convened DC**

A Convened DC can only engage in any deliberations or take a vote if a quorum is obtained.

The ‘Quorum’, is met by meeting the 80%/60%/50% requirements set out below.

<b>Quorum requirements for Convened DCs</b>	
80% Requirement	At least 80% of the Convened DC Voting Members, of whom at least three are Non-dealer Voting Members, must be present (either in person or by telephone, videoconference or web conference) to engage in any deliberations or take a vote.
60% Requirement	If the 80% Requirement is not satisfied at any meeting of the Convened DC, at least 60% of the Convened DC Voting Members, without regard to the number of Non-dealer Voting Members included in the 60%, must be present for the next meeting and all subsequent meetings of the Convened DC.
50% Requirement	If the 60% Requirement is not met, at least 50% of the Convened DC Voting Members, without regard to the number of Non-dealer Voting Members included in the 50%, must be present for all subsequent meetings.

5.3 **Binding votes**

DC Questions are resolved through binding votes, and these take place whenever a majority of the Convened DC Voting Members participating in a Convened DC meeting have a quorum and request one to take place.

However, a Convened DC must hold a binding vote on each DC Question by the second Relevant City Business Day after the day on which the first meeting when the DC Question was deliberated, subject to the Convened DC agreeing to extend this deadline.

‘Relevant City Business Day’ is usually the day on which the commercial banks are open for general business. Relevant City in turn means if the Relevant

Transaction Type is in the Americas, New York; and if it is in Asia Ex-Japan, Australia-New Zealand, EMEA or Japan, London.

Binding votes must be on a 'Majority' or a 'Supermajority' basis. 'Majority' means more than 50% of those participating in a binding vote have voted in favour of the relevant answer. 'Supermajority' means at least 80% of those participating in a binding vote have voted in favour of that answer. For the rest of this chapter we will describe 'Majority' as being 'on a majority basis' and 'Supermajority' as being 'on a supermajority basis'. Whether a binding vote or resolution of a Convened DC is required to be a majority basis or supermajority basis, is as described below.

A DC Question is considered to be resolved once the applicable majority or supermajority voting threshold as described below has been satisfied.

If the majority or supermajority threshold is not met, the decision is sent out for an External Review. This is described in detail below.

#### **5.4 Adding DC Issues**

Eligible Market Participant may through the DC Secretary or a Convened DC Member request, at any time before the Convened DC has resolved the DC Questions before it, that the Convened DC deliberates an additional Potential DC Issue. The additional Potential DC Issue must relate to the Affected Reference Entity or its affiliates and may cover any determination that the Convened DC is permitted to make. Such a request is subject to the same procedure as an original Potential DC Issue.

#### **5.5 Joint Convened DC meetings**

Convened DCs are allowed to meet jointly with any other Convened DCs, if all the Convened DCs resolve to do so on a majority basis.

Where this happens, the joint meeting is considered, for each Convened DC, a separate meeting under the Rules and votes shall be taken separately for each Convened DC.

#### **5.6 Completing the agenda**

Once a Convened DC has answered a DC Question, by resolving, transferring or dismissing it, the Convened DC will dissolve.

#### **5.7 Third Party Advice and Legal Sub-Committees**

Convened DCs are allowed, following a majority vote, to solicit advice and information from third parties. Convened DCs may also resolve on the same basis to form legal sub-committees consisting of each Convened DC Member to consider questions relevant to the credit derivatives market generally.

#### **5.8 DC Meeting Statements**

At the conclusion of each Convened DC meeting, the DC Secretary produces a draft DC Meeting Statement. The draft DC Meeting Statement will then normally be published, although the DC Rules do provide a detailed methodology for agreeing and challenging a statement.

## 6. Resolutions of a Convened DC

Section 3 of the DC Rules sets out the Resolutions that a Convened DC can make. These fall into the following categories:

- Credit Event and Potential Repudiation/Moratorium Resolutions;
- Auction Resolutions, potential Auction Resolutions; and other Auction-related Determinations;
- Deliverable Obligation Terms;
- amendments to the Credit Derivatives Auction Settlement Terms;
- decisions not to hold an Auction;
- Deliverable Obligation Resolutions;
- Post-Final List Determinations where Mod R or Mod Mod R is applicable;
- Successor Resolutions;
- Substitute Reference Obligation Resolutions;
- Merger of Reference Entity and Seller;
- interpretations and amendments to the 2014 Protocol;
- determinations relating to the overall market;
- Standard Reference Obligation Determinations; and
- Calculation Agent determinations.

### 6.1 Credit Event and Potential Repudiation/Moratorium Resolutions

The Credit Event and Potential Repudiation/Moratorium Resolutions that a Convened DC can make comprise the four following categories:

- *Publicly Available Information Resolutions*: This is where the DC confirms, on a majority basis the date of a DC Question. This corresponds to the date the DC Secretary received a request to convene the Committee for a Potential Repudiation/Moratorium Resolution or a Credit Event Resolution; as well as when it received accompanying Publicly Available Information. The determinations made are defined as a 'Potential Repudiation/Moratorium Request Resolution' and a 'Credit Event Request Resolution'.
- *Post Potential Repudiation/Moratorium Request Resolution*: Following a Potential Repudiation/Moratorium Request Resolution, the Convened DC can Resolve for an Affected Reference Entity on a supermajority basis: whether a Potential Repudiation/Moratorium has occurred; and if so, the date on which the Potential Repudiation/Moratorium occurred. The determinations made here are defined as 'Potential Repudiation/Moratorium Resolutions'.
- *Post Credit Event Request Resolution*: After a Credit Event Request Resolution, a Convened DC can resolve on a supermajority basis whether: a Potential Failure to Pay or a Potential Repudiation/Moratorium has occurred; whether the Credit Event referred to in the DC Question has occurred. On the same basis, the Convened DC can resolve the date on which these occurred.
- *Further Determination following a DC Resolution of a Restructuring*: In Index Transactions, following a Restructuring Credit Event which impacts on an Affected Reference Entity, the Index Transaction is split in two, with a 'Component Transaction' being created for the Affected Reference Entity.

When this occurs, the Convened DC can resolve on a majority basis the form of documentation that will apply for the Component Transaction. The Convened DC may also resolve by supermajority basis the date of any Exercise Cut-off Date and/or a Movement Option Cut-off Date, if applicable, if it decides that these dates should not be those set out in Sections 1.41 and 6.17 of the 2014 Definitions.

## 6.2 Auction Resolutions, potential Auction Resolutions and other Auction-related Determinations

The resolutions which a Convened DC can make for Auction-related matters fall into the following categories:

- Holding one or more Auctions: Following a Credit Event Resolution, a Convened DC can resolve to hold one or more Auctions on a majority basis. This is an 'Auction Resolution'.

A Convened DC can, however, only make an Auction Resolution if the 'Relevant Transaction 300/5 Criteria' are met.

For the '300' part of the criteria, as of the date of the Credit Event Resolution, there must be at least 300 or more relevant Transactions specifying Auction Settlement as the Settlement Method. These must also be likely to be covered by one single set of Credit Derivatives Auction Settlement Terms.

For the '5' part of the Criteria, for the minimum 300 transactions at least one of the parties must be from any of five or more Global Dealer Voting Members and/or Global Dealer Consultative Members; and/or five Regional Dealer Voting Members and/or Regional Dealer Consultative Members for the Affected Reference Entity's Region in its Transaction Type, of the applicable Convened DC.

Following an effective Auction Resolution, an Auction will be held on the basis of the Credit Derivatives Auction Settlement Terms, with any amendments thereto as the Convened DC resolves.

Restructuring Credit Events where either Mod R or Mod Mod R are applicable are excluded from the above: the Relevant Transaction 300/5 Criteria do not apply. Instead, a Convened DC may resolve on a majority basis to hold one or more separate Auctions for these Credit Events. This is called a Potential Auction Resolution and again any Auction will be held on the basis of the Credit Derivatives Auction Settlement Terms, with any amendments thereto as the Convened DC resolves.

Where the standard Deliverable Obligation Provisions for all relevant Transactions for a Credit Event Resolution are not materially equivalent, a Convened DC can resolve to hold separate Auctions for each of these.

For each of these the Convened DC may resolve the set of Deliverable Obligation Terms that will apply, respectively, for purposes of each such Auction in accordance with Section 3.2(c) (*Deliverable Obligation Terms*).

For a Restructuring Credit Event, where for a relevant Transaction either Mod R or Mod Mod R is applicable, the Convened DC may resolve on a majority basis to hold one or more Auctions based on the respective

Limitation Dates (or, where the Transactions that are triggered by the Seller, the Maximum Maturity) applicable to such Relevant Transactions.

- Other Auction-Related Determinations: The Global Dealer Voting Members and Regional Dealer Voting Members of a Convened DC resolve on a majority basis for each Auction, the following:
  - Auction Date: Unless otherwise decided this will be “the third Relevant City Business Day immediately preceding the 30th calendar day after the Credit Event Resolution Request Date”;
  - Participating Bidder Letters: whether an institution (other than the Voting Members and Consultative Members) which submits a Participating Bidder Letter with respect to an Auction may be a Participating Bidder in the Auction.
  - Supplemental Auction Terms: any Supplemental Auction Terms.

### 6.3 Deliverable Obligation Terms

A Convened DC may resolve on a majority basis that a separate set of Deliverable Obligation Terms should be published for each set of Credit Derivatives Auction Settlement Terms.

The Convened DC can also resolve by way of supermajority to add one or more sets of Deliverable Obligation Terms (including publishing a single set of Credit Derivatives Auction Settlement Terms with multiple Deliverable Obligation Terms).

Each set of Deliverable Obligation Terms is to include among other things the Deliverable Obligation Category and Deliverable Obligation Characteristics; whether the Deliverable Obligations are to be determined by reference to any Additional Provisions; and whether ‘All Guarantees’ is applicable.

The Convened DC shall also determine whether the 2014 Definitions, the Updated 2003 Definitions, or both, shall apply to an Auction.

### 6.4 Amendments to Credit Derivatives Auction Settlement Terms

For a specific Auction, any amendment to the Credit Derivatives Auction Settlement Terms, that is not provided for in Section 3 (Resolutions of a Convened DC) can be made after a public comment period. Notwithstanding this requirement, the Convened DC may vote on a supermajority basis to dispense with the comment period.

Eligible Market Participants are, however, given the opportunity to provide comment in all circumstances, and any change may only be made on a supermajority basis.

A Convened DC has a further power to resolve by supermajority to amend the Credit Derivatives Auction Settlement Terms and Final List. This applies where it considers that the Credit Derivatives Auction Settlement Terms and Final List are not broadly reflective of the Deliverable Obligations which would have been used in a Physically Settled Transaction. For this power to apply the Convened DC must also determine that this would cause prejudice to either the Buyer or the Seller under an Auction Settled Transaction.



## 6.5 Decision not to hold an Auction

There are two circumstances in which a Convened DC can decide not to hold an Auction following a Credit Event Resolution on a majority basis.

First, subject to the requirements of the Relevant Transaction 300/5 Criteria and the Triggered Transaction 300/5 Criteria described above following a Credit Event Resolution.

Secondly, on the same basis, up to an Auction's Auction Final Price Determination Date, that any previously announced Auction will not be held.

Also, a Convened DC may resolve, at any time, by a supermajority, that no Deliverable Obligations exist for the Reference Entity and so therefore, no Auction will take place.

## 6.6 Deliverable Obligation Resolutions

Convened DCs may make several resolutions/determinations relating to Deliverable Obligations. These fall into 10 categories:

- *Identifying Deliverable Obligations following an Auction Resolution of Potential Auctions Resolution:* following an Auction Resolution, the Convened DC can identify Deliverable Obligations for an Auction in line with the procedure below. Where there is a Potential Auction Resolution, the Convened DC will identify 'Permissible Deliverable Obligations'. Applicable for Restructuring Credit Events where Mod R and Mod Mod R apply, these are Deliverable Obligations which satisfy the Restructuring Maturity Limitation Date and Fully Transferable Obligations requirements in the case of Mod R. In the case of a Mod Mod R Restructuring Credit Event, the Deliverable Obligations must satisfy the Modified Restructuring Maturity Limitation Date Requirement and Conditionally Transferable Obligation requirement.
- *Proposing Obligations:* Convened DC Voting Members are allowed to propose an Affected Reference Entity's obligations for an initial list of potential Deliverable Obligations This is called the 'Initial List'.

Eligible Market Participants may also propose to the DC Secretary that an obligation is added on the Initial List. Any proposed obligation though can only be added through a majority vote of a Convened DC.

The DC Secretary is obliged to publish the Initial List on its website.

- *Adding Obligations:* Eligible Market Participants are allowed to propose to the DC Secretary obligations which are not on the Initial List. These are included on a further list of potential Deliverable Obligations. Each of these obligations is defined as a 'Supplemental Obligation' and these obligations together with the obligations on the Initial List, form the 'Supplemental List'. The DC Secretary is required to publish any Supplemental List on its website.
- *Challenging Potential Deliverable Obligations:* Any Eligible Market Participant is allowed to challenge an obligation being included on the Supplemental List and/or Initial List, by notifying the DC Secretary, subject to the timetable set out in the DC Rules.
- *Final List of Deliverable Obligations:* After the Supplemental List is published,

a Convened DC is allowed to challenge any obligation on the Supplemental List on a supermajority basis, following a set timetable in the DC Rules.

Each obligation which a Convened DC resolves falls within a set of Deliverable Obligation Terms for a Credit Derivatives Auction Settlement Terms is then included on a 'Final List'. The Final List is then published by the DC Secretary on its website.

- *Timetables:* A Convened DC is allowed to amend any deadline or time period for the resolutions under the DC Rules for Deliverable Obligations on a supermajority basis.
- *Other Deliverable Obligations-related Determinations:* A Convened DC may resolve on a majority basis for each Deliverable Obligation, the longest number of Transaction Type Business Days for physical settlement taking account of that current market practice.

A Convened DC will also determine on a majority basis any specific assignment, novation or other document desirable in connection with a Buyer's Delivery.

- *Determinations relating to the Outstanding Principal Balance:* A Convened DC is entitled to determine that a Deliverable Obligation's Outstanding Principal Balance is other than at par. If this occurs, it may resolve the Outstanding Principal Balance on a supermajority basis.
- *Other Determinations relating to the Asset Package:* A Convened DC may make various resolutions relating to Asset Package and Asset Package Delivery:
  - on a supermajority basis, it can decide whether Asset Package Delivery is applicable, and if it is, any Asset Package for a Prior Deliverable Obligation or Package Observable Bond;
  - on a majority basis, where it is necessary to determine the Largest Asset Package; and
  - on a supermajority basis, whether any element of an Asset Package constitutes a Non-Transferable Instrument or a Non-Financial Instrument. Following this the Convened DC will determine on a majority basis, the methodology or valuation process to calculate the Asset Market Value of the Non-Transferable Instrument or Non-Financial Instrument.
- *Loan Documentation:* For Loan Deliverable Obligations, a Convened DC may determine on a supermajority basis, which documentation is customarily used to deliver the Loan including any necessary amendments.

#### 6.7 Post-Final-List Determinations where Mod R or Mod Mod R is applicable

Following a Credit Event Resolution that a Restructuring Credit Event has occurred for a Reference Entity, a Convened DC must determine whether additional parallel Auctions must be held for different sets of Reference Entity's Deliverable Obligations based on their Limitation Date (ie, maturity date) or Maximum Maturity.

This consideration is applied to Relevant Transactions which specify that: the Restructuring Credit Event applies; Mod R or Mod Mod R are applicable; and Auction Settlement is the applicable Settlement Method.

We have previously discussed, that following a Credit Event Resolution, a Convened DC can resolve to hold one or more Auctions on a majority basis; and that this is called an 'Auction Resolution'.

Each Potential Auction will be based on the respective Limitation Date (or, where the Transactions that are triggered by the Seller, the Maximum Maturity) applicable to such Relevant Transactions.

Once the Final List has been published, the Convened DC will determine the number of affected Mod R/Mod Mod R/Auction Settled Transactions.

It has the means to do this by confirming with DTCC the number of affected Transactions for which a Notifying Party has delivered an effective Credit Event Notice on or prior to the Exercise Cut-off Date.

The DC Rules define this effective delivery of a Credit Event Notice, as a 'Trigger', and each affected Transaction which has been Triggered, as a 'Triggered Transaction'.

However, a Convened DC can only make an Auction Resolution if the 'Triggered Transaction 300/5 Criteria' are met. This operates in the same way as the Relevant Transaction 300/5 Criteria, described above.

For the '300' part of the criteria, as of the date of the Credit Event Resolution, there must be at least 300 or more of any group of relevant Transactions specifying Auction Settlement as the Settlement Method for which the same Permissible Deliverable Obligations apply, and would be likely to be covered by the same set of Credit Derivatives Auction Settlement Terms.

For the '5' part of the Criteria for the minimum 300 Triggered Transactions at least one of the parties must be from: any of five or more Global Dealer Voting Members and/or Global Dealer Consultative Members; and/or five Regional Dealer Voting Members and/or Regional Dealer Consultative Members for the Affected Reference Entity's Region in its Transaction Type, of the applicable Convened DC.

For each Potential Auction where the Triggered Transaction 300/5 Criteria are met, an Auction will be held on the basis of the Credit Derivatives Auction Settlement Terms, with any amendments thereto as the Convened DC resolves.

Exceptions to the above are where the Convened DC resolves by a supermajority that there are no Deliverable Obligations in existence; or by a majority that notwithstanding that the Triggered Transaction 300/5 Criteria have not been met, an Auction will nonetheless take place for the applicable group of Triggered Transactions.

## 6.8 Successor Resolutions

A Convened DC may resolve on a majority basis the date on which the DC Secretary first received a request to convene a Committee to decide on an Affected Reference Entity's Successor: a 'Successor Request Resolution'.

For non-Sovereign Affected Reference Entities a Convened DC may also resolve on a supermajority basis having regard to Eligible Information, the Relevant Obligation(s) including any adjustments required to be made under the 2014 Definitions if there is a Steps Plan. As well as the proportion of the Relevant Obligation(s) succeeded to by each potential Successor; and also the Succession Date.

For Sovereign Affected Reference Entities the Convened DC will carry out the

same procedure except that it will determine whether or not there has been a Sovereign Succession Event, rather than a Succession Event.

Having completed this process the Convened DC will determine the identity of any Successor(s), on a majority basis: a 'Successor Resolution'.

Following a Successor Resolution a Convened DC may resolve on a majority basis to make adjustments to the SRO List and POB List. Where a non-Sovereign Reference Entity has a Standard Reference Obligation on the SRO List, or a Sovereign Reference Entity has a Package Observable Bond on the POB List, a Convened DC may resolve on a majority basis to adjust to SRO List or POB List. To do this it will either make an 'SRO Successor Determination Adjustment Resolution' to the SRO Administrator; or a 'POB Successor Determination Adjustment Resolution' to the POB Administrator.

### **6.9 Substitute Reference Obligation Resolutions**

A Convened DC may resolve on a majority basis the date on which the DC Secretary first received a request to convene a Committee to decide on an Affected Reference Entity's Substitute Reference Obligation: a 'Substitute Reference Obligation Request Resolution'.

The Convened DC may also resolve on a supermajority basis whether a Substitution Event has occurred for any Relevant Transactions which should result in a Substitute Reference Obligation being identified.

The Convened DC must also resolve on the same basis, the Substitution Event Date and any Substitute Reference Obligation. Where the Convened DC determines more than one potential Substitute Reference Obligation, it will also resolve on a majority basis which potential Reference Obligation most closely "preserves the economic equivalent of the delivery and payment obligations of two hypothetical parties to a Relevant Transaction that would be affected by the identification of a Substitute Reference Obligation in accordance with Section 2.10(d) of the 2014 Definitions". The accompanying DC Resolution is a 'Substitute Reference Obligation Resolution'. The date on which the Substitute Reference Obligation Resolution is made is deemed to be the Substitution Date for the 2014 Definitions.

### **6.10 Merger of Reference Entity and Seller**

A Convened DC may resolve on a supermajority basis whether an entity that acts as a credit protection seller under Relevant Transactions "has consolidated or amalgamated with, or merged into, or transferred all or substantially all its assets to" an Affected Reference Entity or vice versa. The Convened DC may also resolve on the same basis whether the credit protection seller and an Affected Reference Entity have become Affiliates.

### **6.11 Interpretation and Amendments to the 2014 Protocol**

The 2014 Protocol is the Protocol which through adherence allows parties to import the 2014 Definitions into existing credit derivatives transactions.

A Convened DC may resolve on a supermajority basis any question of interpretation or potential amendment regarding the provisions of the 2014 Protocol.

### 6.12 Other Determinations relating to the overall market

Each regional Committee may resolve on a separate supermajority basis any contractual interpretation matter of importance to the credit derivatives market generally. To this Convened DC Members may engage in consultations with other market participants.

### 6.13 Standard Reference Obligation Rules

A Convened DC can resolve any determination required to be made by it pursuant to the Standard Reference Obligation Rules.

### 6.14 Calculation Agent Determinations

Finally, a Convened DC can resolve on a supermajority basis any determination otherwise described in the 2014 Definitions which is required to be made by the Calculation Agent but is not explicitly referred to in the DC Rules.

## 7. External Review

The DC Rules contain a rarely used fallback for when a Convened DC cannot attain an 80% supermajority for a resolution. This involves the decision being sent for an 'External Review' by a panel of experts in an arbitration-style arrangement, with the result then being used by a Convened DC for its decision. Between January 1 2013 and June 30 2016, there were only two External Reviews: one for the Cemex Credit Event in the Americas and one for the Novo Banco Credit Event EMEA.

### 7.1 A rarely used power

The CEMEX Credit Event related to Cemex SAB de CV, a Mexico-based holding company for a construction conglomerate. Here the Americas Determinations Committee resolved, on the basis of an External Review where the Americas DC had had a six 'Yes' votes, nine 'No' votes split, that a Restructuring Credit Event had occurred.

The Novo Banco Credit Event in 2016 related to a Reviewable Question arising from the mandatory reversal of a change of obligor of five senior bonds from Novo Banco SA (a restructured 'good bank') to Banco Espirito Santo SA (a previously created 'bad bank'), by the Bank of Portugal. The Reviewable Question related to the interpretation of the new Governmental Intervention Credit Event and asked whether "a Governmental Intervention Credit Event occurred with respect to Novo Banco SA on or about December 29 2015?".

This time the EMEA Determinations Committee resolved, on the basis of an External Review, that a Governmental Intervention Credit Event had not occurred.

The rare usage of the External Review power can be seen positively. The 2014 Definitions and DC Rules are sufficiently robust that there is usually limited room for doubt when questions are referred to a Convened DC. Where there is room for doubt, and this is likely to be inevitable given how the Anglo-American 2014 Definitions are required to be applied and interpreted in the context of local insolvency and restructuring laws throughout the globe, then the External Review process is designed to provide an objective mechanism to resolve uncertainties.

## 7.2 What DC Questions can be sent for External Review

Although the two External Reviews related to the occurrence/interpretation of Credit Events, a broader range of unresolved DC Questions may become 'Eligible Review Questions' which can be sent for External Review. The following DC Questions may be sent for External Review where a supermajority cannot be obtained from a Convened DC:

- a Potential Repudiation/Moratorium Resolution;
- a Credit Event Resolution;
- a decision to not hold an Auction;
- the composition of a Final List of Deliverable Obligations;
- determinations relating to the Outstanding Principal Balance of an Obligation;
- determinations relating to content of an Asset Package;
- the documentation customarily used in the relevant market for delivery of a Loan;
- the determination of a Successor Reference Entity;
- resolutions relating to Substitute Reference Obligation;
- a merger of Reference Entity and Seller determination;
- determinations on certain sections of the SRO Rules or the POB Rules; and
- "any other matter of contractual interpretation relevant to the credit derivatives market generally (that is not merely a matter of bilateral dispute solely between two Eligible Market Participants)".

Whether or not an Eligible Review Question becomes a 'Reviewable Question' and is sent for External Review is decided by a Convened DC on a majority basis.

The DC Secretary will adapt and rephrase any Eligible Review Question referred to it to the standard format for that type of question set out in Schedule 1 to the DC Rules.

Once rephrased, an Eligible Review Question becomes a 'Reviewable Question', and at this point is promptly published by the DC Secretary on its website. Also published is the answer provided for each 'Presented Position' on the Reviewable Question and the Submission Deadline for the Reviewable Question (see further below).

## 7.3 Selection of External Reviewers and External Review Panel

Under the DC Rules, Pool Members are individuals nominated by ISDA Members and confirmed by a Convened DC. The DC Secretary maintains an 'External Review Panel List' consisting of a list of 'Pool Members' for each region, ie eligible External Reviewers for each Region. These are published from time to time on the DC Secretary's website.

Once there is an Eligible Review Question, any Convened DC Voting Member can select any Pool Member for the relevant region as a 'Potential External Reviewer' for the External Review Panel.

Following the disclosure of availability and any potential conflicts for Potential External Reviewers, the Convened DC may select on a unanimous basis up to five

Potential External Reviewers. The fourth and fifth of these are designated as first and second alternates. Once selected, the first three External Reviewers are deemed to form an 'External Review Panel'.

For the Novo Banco External Review the External Review Panel comprised Adrian Beltrami and Mark Hapgood, both Queen's Counsel with considerable experience in derivatives litigation; and Sir Bernard Rix (chairman), a retired Lord Justice of Appeal and an arbitrator and mediator.

#### 7.4 Presented Positions

The inability to obtain a supermajority on a DC Question means that there are opposing views. The DC Rules therefore provide for opposing views to be presented to the External Reviewers. The DC Rules define this as a 'Presented Position'. Reviewable Questions in the standard format described above are usually phrased to be answered either 'yes' or 'no'; and the Presented Positions also set out arguments on a 'yes' and 'no' basis.

Where the Reviewable Question is not phrased as answerable as 'yes' or 'no', then the Presented Positions consist of the arguments in favour of "the two answers that were supported by the most Convened DC Voting Members during the binding vote held by the Convened DC". A fallback is provided where a number of votes in favour of either of the two answers is tied with one or more other answers, in this case the tied answers are also included as Presented Positions.

#### 7.5 Advocates

Advocates are responsible for coordinating communications with the External Reviewers, and presenting their arguments to the External Review Panel and participating in 'Oral Arguments'.

Simultaneously with the appointment of an External Review Panel, Voting and Consultative Members who are supporting a Presented Position, identify one or more 'Advocates', likely, although not required to be, legal counsel.

In the Novo Banco External Review, Timothy Howe QC, was instructed by Linklaters, to forward the 'Yes' position. Robert Miles QC and Andrew de Mestre was instructed by Mayer Brown to put forward the 'No' position.

#### 7.6 Establishing a timetable and schedule

The DC Rules contain prescriptive rules for timetable, conduct and hearings, which are adversarial similar to arbitration rules. Notwithstanding this, a Convened DC is allowed to resolve by supermajority to modify any aspects of the 'External Review Schedule' for a particular question. This gives the option to add more time, where a question is particularly complex. Additionally, the External Reviewers are also given powers to schedule the time, place and date of any oral hearing, as well as to allow longer briefs and witness testimony. So the DC Rules provide a happy balance between prescription and flexibility. This is particularly important as the External Review process is new and will develop over time.

The External Reviewers and the Advocates must hold an administrative meeting, within four relevant Business Days of the DC Secretary referring an Eligible Review

Question to the DC Secretary for External Review. Other meetings may also be called during the process.

### 7.7 **Communication and Written Materials**

Any communication by the External Reviewers with the Convened DC must be through either the DC Secretary or the Advocates. No oral communication between the External Reviewers and any individual Advocate is permitted unless an Advocate for each Presented Position is given the opportunity to be present or included in the relevant communication. Written communication between the External Reviewers and any Advocate must also be transmitted at the same time to all other Advocates.

'Written Materials' are materials prepared to support a Presented Position. They are submitted to the External Reviewers via the DC Secretary. They can be provided by any ISDA Member, not just those involved directly in a Convened DC or External Review. Permitted Written Materials may be a 'Brief' of no more than 20 pages plus exhibits.

Written Materials may also set out new information which was not available to the Convened DC at the time of the relevant vote for purposes of returning the Reviewable Question to the Convened DC.

Where an ISDA Member does submit Written Information to the DC Secretary it is deemed to represent and warrant that the information has been disclosed and can be made public "without violating any law, agreement or understanding regarding the confidentiality of such information and each DC Party may rely on such representation". The DC Secretary is required promptly to publish all Briefs along with any accompanying exhibits on its website.

There is a seven relevant Business Day 'Submission Deadline' for any party to submit Written Materials following referral of an Eligible Review Question to the DC Secretary for External Review.

### 7.8 **Oral Arguments**

The External Reviewers are required to hold at least one set of proceedings where the Advocates present their 'Oral Arguments' in favour of their Presented Position. The External Reviewers are responsible for deciding a date and time for an Oral Argument to be heard. This takes place between two and four Relevant City Business Days following the Submission Deadline.

Oral Argument may be held in person, or alternatively by video or web conference or by any other means that the External Reviewers decide. Advocates are also allowed to participate by telephone. When an Oral Argument is held in person, it has to be held in the 'Relevant City'. This is New York, if the Relevant Transaction Type is included in the Americas; and London if Relevant Transaction Type is included in Asia Ex-Japan, Australia-New Zealand, EMEA or Japan.

Oral Arguments may only include information that was available to the Convened DC at the time of the relevant vote. However, new, and clearly identified, information may be included that was not available to the Convened DC prior to the relevant vote for the purposes of returning the Reviewable Question to the Convened DC.



Advocates for each Presented Position are allocated an aggregated one hour to present their arguments.

### 7.9 Returning a Reviewable Question to a Convened DC

At any time before the External Review Panel makes a 'Final Decision' on a Reviewable Question, a Convened DC can resolve, on a majority basis, to withdraw a Reviewable Question from External Review. It may do this where there is new relevant information that was not available prior to the original DC Vote. The External Reviewers also have the same power.

If a Reviewable Question is returned in these circumstances the External Reviewers can continue to deliberate but cannot reach a decision on the Reviewable Question before the Convened DC has held a new binding vote. Once this is done, the deadline for holding a binding vote by the Convened DC is reset. The External Review Schedule is only suspended, however (and not reset) until the Convened DC either resolves or again fails to resolve the Reviewable Question. If the Convened DC does resolve the Reviewable Question then the DC Secretary notifies the External Reviewers to cease deliberations, and if not to re-commence them.

### 7.10 The Review and Decision Process

The External Reviewers are required to interpret the Reviewable Question on the basis of the relevant governing law. The DC Rules specify this to be if the Relevant Transaction Type is included in: the Americas, then New York law (ignoring any conflict of laws provisions); and for everywhere else, English law. No regard is taken of the governing law of any Relevant Transaction.

Unless the timetable has been agreed to be altered, the External Reviewers have a 'Decision Deadline' to give their Decision by 5:00pm Relevant City Time no later than five Relevant City Business Days following the Submission Deadline.

The External Reviewers are required to notify their votes to the DC Secretary by the Decision Deadline and provide a single summary setting out their underlying reasoning and analysis (including any dissenting views).

The External Reviewers are required to make a 'Selection' of one of the Presented Positions. The answer to the Reviewable Question is then determined using different methodology depending on the outcome of the original vote.

All procedural decisions under the Rules are decided by a Majority of the External Reviewers.

Where the original DC vote had more than 60% but less than the 80% Supermajority of the participating Convened DC Voting Members voting for a position, then this decision stands unless the External Reviewers unanimously determine that another Presented Position is 'the better answer'. If that happens the Reviewable Question is determined on the basis of the Selection of the three External Reviewers.

Where the original DC Decision had less than or equal to 60% but less than the 80% Supermajority of the participating Convened DC Voting Members voting for a position the Reviewable Question is Decided as per the DC Vote of the Reviewable Question, unless at least two out of the three External Reviewers conclude that 'the

better answer' is another Presented Position. If that happens the Reviewable Question is determined on the basis of the Selection of the majority of the External Reviewers.

The External Reviewers also notify the DC Secretary by the Decision Deadline of their Decision. The Decision then becomes a 'Final Decision' by means of the DC Secretary publishing it on its website, together with the External Reviewers' votes, and the written summary, within five hours of receiving the information from the External Reviewers.

Once the Final Decision is published, the Convened DC is then deemed to ratify the Final Decision and the Final Decision is deemed to constitute a DC Resolution.

If the External Review Panel cannot make a Decision within the applicable timetable, then a new External Review Panel is constituted, and the process begins again.

## **8. Additional Provisions**

Section 5 of the DC Rules sets out a series of Additional Provisions. These are as follows.

### **8.1 Waivers and Disclaimers by DC Parties**

The DC Rules provide that DC Parties agree that DC Parties, their legal counsel and professional advisers are not liable to each other for any negligence performing their duties or giving advice under the rules. There is though a carve-out for gross negligence, fraud or wilful misconduct and also for DC Parties to sue their own counsel and advisers. DC Parties also agree to waive any claims on a similar basis.

The DC Rules also provide an equivalent protection for DC Parties, legal counsel and professional advisers from having a duty of care, or for liability for damages or any action to any party to a Relevant Transaction. So, for example, a party to a Relevant Transaction would not be able to litigate in relation to a perceived misapplication of the Successor rules, unless a carve-out applied.

### **8.2 Confidentiality**

The DC Parties agree to keep their non-public deliberations confidential. This restriction includes treating discussions, deliberations or proceedings on DC Questions and Reviewable Questions, as well as the results of any non-binding vote and the details of any meeting, as confidential material.

This restriction does though have a carve-out for where disclosures are otherwise contemplated by the DC Rules, as well as where there are legal, regulatory, self-regulatory or supervising authority disclosure requirements. There are also additional provisions for where a DC Party is obliged to make a disclosure as part of a legal or regulatory process. Here, following notification by the affected DC Party to the DC Secretary, other DC Parties may attempt to obtain protective orders or other remedies.

### **8.3 Allocations of Regions and Transaction Types**

The Board of Directors of ISDA is permitted under the DC Rules at any time to add a

new region to the definition of 'Region' for purposes of the Rules. Currently the Regions are the Americas, Asia Ex-Japan, Australia-New Zealand, EMEA and Japan.

If this occurs, the DC Secretary may re-allocate the existing Transaction Types or add new ones to specific Regions by publishing the changes on its website.

#### **8.4 Amendments to the Selection Criteria for the Non-dealer Committee and Triggered Transaction Data Guidelines**

Any proposed amendment to Schedule 2 (The Non-Dealer Committee) has to be approved by a majority of the institutions on the List of Non-dealer Committee Members, at that time.

Proposed amendment to the Trading Volume Data Guidelines proceed on the following two-step basis.

As a first step:

- *Regional Dealer Trading Volume Lists*: by each Committee for each affected Region; or
- *Global Dealer Trading Volume List*: by each Committee for each Region, by 80% of the Global Dealer Voting Members and Regional Dealer Voting Members of each Committee.

As a second step, following completion of the first step, a majority of the Participating Dealer Institutions at the time of the first step approval, who submit a vote to the DC Secretary within 15 calendar days of the first step approval, must also agree to the amendment.

#### **8.5 Amendments to the Relevant Transaction and Triggered Transaction Data Guidelines**

Amendments to the Relevant Transaction and Triggered Transaction Data Guidelines must be approved by at least 80% of each Committee's Global Dealer Voting Members and Regional Dealer Voting Members.

#### **8.6 Amendment to the Rules**

Any ISDA Member or the DC Secretary can propose an amendment to the DC Rules and its attached Schedules. Following receipt of the proposed amendment text, the DC Secretary treats this as a request to convene a Committee under Section 2.1(a) (Notifying ISDA) of the DC Rules and convenes a Committee for each relevant Region.

A proposed change can only take effect following a two-step process.

- Step 1: for each applicable Region, a supermajority of Convened DC Voting Members must approve the proposed amendment; and Eligible Market Participants are allowed to comment on the proposed amendment to the DC Secretary in the week following the proposed amendment's publication on the DC Secretary's website.
- Step 2: on the DC Business Day following one week after the DC Secretary published the proposed amendment on its website, the DC Secretary notifies all relevant Convened DCs of all comments received by the DC Secretary on the proposed amendment. Each relevant Convened DC then may agree with

each other relevant Convened DC to make any necessary or desirable changes which are set out in the proposed amendment. To do this each Convened DC must agree to do so on a supermajority basis.

Notwithstanding Step 1 and Step 2, this process can be overridden by a Convened DC resolving by a supermajority to alter the public comment period for an amendment, or indeed to dispense with a public comment period altogether.

Once the process has been completed, the relevant amendment or a revised version of the DC Rules is published on the DC Secretary's website.

### **8.7 Reconstituting the Committees with respect to Regional Dealer Members**

The List Review Date is the DC Business Day occurring on or immediately prior to March 30 each year. It is a relevant marker for determining for example, the Global Trading Volume List, DTCC Dealer Lists, lists of DTCC Accounts and mergers for Participating Dealer Institutions, as well as identifying DC Members.

Participating Dealer Institutions may, at any time, set a new List Review Date for one or more Regions to assist in reconstituting a Committee's regional representation on the relevant Committee(s) by following the approval.

A change to the List Review Date is not though deemed to change the current Global Dealer Voting Members, Global Dealer Consultative Members or Non-dealer Members.

### **8.8 Governing law**

The DC Rules are governed by New York law, without regard to its conflict of laws provisions.

## **9. Schedules**

The DC Rules have six schedules attached. These are for:

- Form of Standard Questions;
- The Non-Dealer Committee;
- Form of Eligible CCP Certification Letter;
- Standard Reference Obligation Rules;
- Package Observable Bond Rules; and
- DC Participant Representations.

### **9.1 Schedule 1: Form of Standard Questions**

Section 2.1(a) of the DC Rules provides that to convene a Committee, an Eligible Market Participant must request a meeting of a Committee by notifying the DC Secretary of "the issue(s) it believes should be deliberated by such Committee (each, a 'Potential DC Issue')".

For a Convened DC to deliberate a Potential DC Issue, at least one Convened DC Voting Member (two for General Interest Questions) has to agree to deliberate the Potential DC Issue by notifying the DC Secretary. At this point the Potential DC Issue becomes a 'DC Issue'.

Section 2.2(b) of the DC Rules provides that: "with respect to a Convened DC,

the DC Secretary shall form the meeting agenda by phrasing specific questions for each of the DC Issues (each, a ‘DC Question’).” The section continues:

*Where applicable, DC Questions should be phrased in order to resemble, as closely as practicable, the standard format of the relevant question in Schedule 1 to the Rules; provided that the relevant question in Schedule 1 may be broken down into component questions for a specific DC Issue, which will each constitute a DC Question for purposes of the Rules.*

Additionally, Section 4.2(b) of the DC Rules, which relates to forming Reviewable Questions for External Review provides:

*the DC Secretary shall rephrase such Eligible Review Question in order to resemble, where applicable, the standard format of the relevant reviewable question in Schedule 1 to the Rules.*

Schedule 1 sets out the form of standard questions for these purposes. It contains sets of questions including for the following categories: Credit Event and Potential Repudiation/Moratorium questions; Auction and Deliverable Obligation questions following a Credit Event; Substitute Reference Obligation questions; Merger of Reference Entity and Seller questions; Standard Reference Obligation (SRO) identification questions; and Package Observable Bond (POB) identification questions.

For each category, the table format specifies the relevant section of the DC Rules; a possible or probable DC Question which could be submitted; and the format of a reviewable question.

The table also has a column for ‘Deemed Vote’ (ie, what the DC Rules specify will happen if the vote of the Convened DC is tied).

Extracts of two Schedule 1 questions are set out in the table below.

Section	DC Question	Reviewable Question	Deemed Vote (if the vote of the Convened DC is tied)
Credit Event and Potential Repudiation/Moratorium Questions:			
3.1(a)	Has a Potential Repudiation/Moratorium occurred with respect to [Affected Reference Entity] and Relevant Transactions with a Scheduled Termination Date occurring on or prior to [date]? [As modified for any component DC Question]	Has a [type of Potential Repudiation/Moratorium] Potential Repudiation/Moratorium occurred with respect to [Affected Reference Entity] and Relevant Transactions with a Scheduled Termination Date occurring on or prior to [date]? [As modified for any component DC Question]	No (or for any component DC Question, in favour of the answer which negates the occurrence of a Potential Repudiation/Moratorium)

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Section	DC Question	Reviewable Question	Deemed Vote (if the vote of the Convened DC is tied)
Successor Questions:			
3.5(b)(i)(C) and 3.5(b)(ii)(D)	What is the Succession Date with respect to [Affected Reference Entity]?	Is the Succession Date with respect to [Affected Reference Entity] [date with the highest Convened DC votes] or [date with the second highest Convened DC votes]?	In favour of the most recent date out of the choices sent to External Review

**9.2 Schedule 2: The Non-Dealer Committee**

Both Dealer and Non-dealers can be DC Members of Determinations Committees. For a Non-dealer to be eligible to be DC Member of a Determinations Committee, it must satisfy the criteria of the Non-Dealer Committee.

The Non-dealer Committee is a committee of non-dealers ('Non-Dealer Committee Members') established under Schedule 2 of the DC Rules. Its functions are not outlined in the DC Rules.

The Non-dealer Committee was initially composed of the non-dealer ISDA Members that actively participated in the ISDA meetings which drafted the March 2009, 'Big Bang' Supplement.

A Non-dealer ISDA Member can apply to join the Non-dealer Committee by providing a credit derivatives experience statement to the DC Secretary, together with: proof of US\$1 billion of assets under management; and on a snapshot date and over a one-year period, an aggregate CDS exposure to a single Reference Entity in excess of US\$1 billion.

An application is deemed to be approved unless two-thirds of the Non-Committee Dealer Members vote to deny the request.

Non-dealer Committee Members identify themselves on the Committee as 'private investment company manager', a 'registered investment company manager' or 'other'.

A Non-dealer Committee Member may be removed from the Non-dealer Committee by a binding vote of 80% of the Non-dealer Committee Members.

**9.3 Schedule 3: Form of Eligible CCP Certification Letter**

Section 2.2 of the DC Rules provides that:

*The DC Secretary shall maintain an up-to-date list of each CCP (the 'List of Eligible CCPs') that has executed and delivered to the DC Secretary a letter agreement substantially in the form of Schedule 3 hereto or such other form substantially to the same effect as the DC Secretary may publish from time to time on its Website in replacement thereof (the 'CCP Letter Agreement' and each CCP on such list, an 'Eligible CCP').*

Eligible CCPs may join Determination Committees. An Eligible CCP can also

submit Potential DC Issues, in the form of Qualifying CCP Questions. CCPs have the following special status in submitting questions to a DC, with Section 2.2(a) providing:

*With respect to a Potential DC Issue that, (i) is submitted in accordance with Section 2.1(a) (Notifying ISDA) by an Eligible Market Participant that is an Eligible CCP, (ii) is not designated as a 'General Interest Question' and (iii) relates to (A) an Eligible Cleared Reference Entity with respect to such Eligible CCP and (B) a matter subject to resolution under any of Section 3.1 (Credit Event and Potential Repudiation/Moratorium Resolutions), 3.3 (Deliverable Obligation Resolutions), 3.5 (Successor Resolutions), 3.6 (Substitute Reference Obligation Resolutions) or 3.7 (Merger of Reference Entity and Seller) (such Potential DC Issue, a Qualifying CCP Question), the DC Secretary will not be required to obtain the agreement of any Convened DC Voting Members to deliberate the Qualifying CCP Question and, instead, a meeting of the relevant Committee will always be convened in accordance with Section 2.4(b) (Convening the Committee for the First Time) (subject to the provisions of Section 2.4(c)(ii) (Dismissing a Particular DC Question)).*

The key representation set out in the Form of Eligible CCP Certification Letter is that the signing entity is a 'Clearing Entity' that:

- enables a Credit Derivative Transaction party to substitute the credit of the Clearing Entity for the credit of its counterparty;
- arranges for the settlement or netting of obligations from Credit Derivative Transactions executed by participants in the Clearing Entity; or
- otherwise provides clearing services that mutualise or transfer among participants in the Clearing Entity the credit risk arising from Credit Derivative Transactions executed by its participants.

Other representations include that each credit default swaps cleared by the Clearing Entity (a 'Cleared Contract') constitutes a Credit Derivative Transactions which incorporates the 2014 Definitions, and that no amendments have been made to these Transactions which would affect the applicability of DC Resolutions to a Cleared Contract. Further representations are also designed to limit interference by alternative bodies in the DC Rules process.

#### 9.4 **Schedule 4: Standard Reference Obligation Rules**

Section 2.5 (*Reference Obligation*) of the 2014 Definitions defines Reference Obligation as the 'Standard Reference Obligation, if any', before listing a series of provisos where this will not be the case.

Standard Reference Obligation is defined in Section 2.6 (*Standard Reference Obligation*) of the 2014 Definitions as "the obligation of the Reference Entity with the relevant Seniority Level, which is specified from time to time on the SRO List".

The SRO List, defined in Section 2.18 (*SRO List*) of the 2014 Definitions, is the list of Standard Reference Obligations which is published by ISDA on its website. The list is a new initiative to reduce Reference Obligation mis-matches between back-to-back CDS trades and also to facilitate clearing of standardised contracts.

The SRO List of Standard Reference Obligations, which consists of commonly

traded obligations for a Reference Entity, is deemed to apply for each credit derivative transaction where 'Standard Reference Obligation' is specified as applying in the Confirmation. These trades automatically update to the current Standard Reference Obligation if changed by ISDA thereby ensuring consistency across trades since they will all have the same Reference Obligation.

If the SRO List is updated by ISDA, trades with 'Standard Reference Obligation' specified in the confirmation will automatically roll to the new specific Reference Obligation.

The selection and replacement of Standard Reference Obligations included on the SRO List for a Reference Entity for an applicable Seniority Level are governed by the Standard Reference Obligation Rules/SRO Rules set out in Schedule 4 (*Standard Reference Obligation Rules*) of the DC Rules.

Under the SRO Rules, each regional Committee has to compile and maintain an SRO List for the Reference Entities whose Transaction Type are included in that Region. An SRO Administrator performs most of the functions required by the SRO Rules.

The SRO Rules principally cover identification and replacement of Standard Reference Obligations; dealing with 'Identified Non-Conforming Standard Reference Obligations' or 'Incros'; and managing the effect of Successor Resolutions on the SRO List.

Key provisions of the SRO Rules are as follows:

**(a) *Identifying Standard Reference Obligations***

Eligible Market Participants may at any time propose to the SRO Administrator that a Standard Reference Obligation be selected for a specific Reference Entity and Seniority Level (an 'SRO Request'). The SRO Rules provide detailed requirements as to the contents and procedures for making an SRO Request.

SRO Requests are processed by a relevant Convened DC on a quarterly cycle basis. A Convened DC can, however, agree to amend this timetable.

For valid SRO Requests the SRO Administrator is required promptly to publish the request on its website together with the identity of the Eligible Market Participant who submitted the request, together with any supporting information. At regular intervals during a quarterly roll cycle, the SRO Administrator also gives 'SRO Request Notifications' to each relevant Convened DC when it receives them.

An SRO Request Notification will request the Dealer Members of a Convened DC to endorse an accompanying SRO Request and the Obligation submitted with it. Any endorsement must be made on a qualified majority basis. An exception to this is where the SRO Request has been submitted by a Relevant CCP and relates to a Reference Entity and Seniority Level that are cleared by the Relevant CCP. Here the SRO Request is deemed to be automatically endorsed.

For each 'Endorsed SRO Request', the SRO Administrator tries to identify a 'Potential SRO' for the relevant Seniority Level from a hierarchy of choices provided in the SRO Rules.

Following identification of the Potential SRO, the SRO Administrator notifies legal review counsel, who then diligence the Potential SRO, and advise the relevant



Convened DC whether the Potential SRO is a Conforming Obligation and satisfies the relevant Seniority Level.

A 'Conforming Obligation' is an obligation of a Reference Entity which is a Deliverable Obligation determined in accordance with Section 3.2(a) (*Deliverable Obligation*) of the 2014 Definitions. If the legal counsel advises that the Potential SRO does not clearly satisfy these requirements, the relevant Convened DC will then pass an SRO Non-Identification Resolution for the Potential SRO and the SRO Administrator and the process will repeat for the next Potential SRO.

Assuming that legal counsel has positively confirmed that the Potential SRO meets the above requirements then a Convened DC will be required to resolve the same on a supermajority basis. It will also be required to resolve on a majority basis whether the Potential SRO is suitable and appropriate as the Standard Reference Obligation for the Reference Entity and Seniority Level.

If both of these DC Resolutions are passed, together they constitute an 'SRO Identification Resolution'. If either of the resolutions is negative, this will constitute an 'SRO Non-Identification Resolution'. The relevant identification resolution is then published on the SRO Administrator's website.

Providing that there is no challenge to an SRO Identification Resolution, then the Potential SRO will become the Standard Reference Obligation for the Reference Entity and Seniority Level and the SRO Administrator will then publish the Standard Reference Obligation, the Reference Entity and Seniority Level and the relevant SRO Relevant Transaction Type on the SRO List.

Alternatively, if there is a No SRO identified Resolution for the relevant Reference Entity then there is deemed to be no Standard Reference Obligation for that Reference Entity and Seniority Level identified on the SRO List until a Standard Reference Obligation is selected by repeating the process described above.

Any Eligible Market Participant is allowed to challenge a Standard Reference Obligation DC Resolution. The challenge has to be received before a 'Challenge Deadline' provided in the Rules. The challenge must set out full reasoning, if applicable an alternative Standard Reference Obligation, together with an agreement to pay the costs of an unsuccessful challenge.

The relevant Convened DC will resolve any challenge on a majority basis, with the DC Secretary publishing the resulting DC Resolution on its website, and the SRO Administrator doing the same.

If the DC Resolution has been for a successful challenge, then the Convened DC is deemed to have resolved that the Standard Reference Obligation DC Resolution was not indeed passed. The Convened DC will then determine on a majority basis the next steps needed to identify a new Standard Reference Obligation.

For Endorsed SRO Requests for Sovereign Reference Entities where one or more Package Observable Bonds have been published the Relevant Convened DC may pass an SRO Identification Resolution in respect of the Relevant Package Observable Bond of that Reference Entity, without further requirements. The SRO Identification Resolution may not be challenged and the relevant Package Observable Bond will become the Standard Reference Obligation for that Sovereign Reference Entity.

**(b) Identify Replacement Standard Reference Obligations**

**Quarterly Replacement and Standard Reference Obligation Process:** The SRO Administrator attempts, on a quarterly basis, to identify any SRO Substitution Events relating to Standard Reference Obligation. SRO Substitution Events are events such as the Standard Reference Obligation being redeemed in whole; or aggregate amounts of it being reduced past a threshold, or falling below certain liquidity requirements. If this happens the Standard Reference Obligation becomes an Affected SRO.

The SRO Administrator then reports on any Affected SROs and SRO Substitution Events in a quarterly report. At this point the SRO Substitution Events become Substitute SRO Determination Requests, and are published on the SRO website. Eligible Market Participants may also notify the SRO Administrator of SRO Substitution Events, subject to providing supporting information.

Substitute SRO Determination Requests are also processed on a quarterly basis by a Convened DC on the same basis as described above from the replacement of Standard Reference Obligations.

**Consequences of a Substitute SRO Determination Request:** Once the replacement Standard Reference Obligation has been identified to replace the Affected SRO then the effect on the existing Standard Reference Obligation will depend on which of two SRO Substitution Event scenarios applies.

The first scenario is where the Standard Reference Obligation has been redeemed in whole; or for any reason, other than due to a Credit Event; or the Standard Reference Obligation is no longer a Reference Entity Obligation. Here with effect from the SRO Substitution Event Date, the Affected SRO is deemed to have been removed from the SRO List and immediately ceases to be a Standard Reference Obligation.

The second scenario is where any of: the aggregate amounts due under the Standard Reference Obligation have fallen below a threshold; the Reference Entity is an M(M)R Financial Reference Entity and the Standard Reference Obligation has a remaining maturity of less than one year; where the Reference Entity is not an M(M)R Financial Reference Entity and the Standard Reference Obligation has a remaining maturity of less than six months; or, at any time before a Credit Event Resolution Request Date, a relevant Convened DC resolves on a majority basis that that the Standard Reference Obligation ceased to satisfy certain liquidity requirements.

Here the Affected SRO will remain on the SRO List until the earlier of the date on which a replacement Standard Reference Obligation is identified and the date on which any of the events in the first scenario occur.

Where a replacement Standard Reference Obligation is not available for the Affected SRO, then the relevant parties will continue to attempt to find a replacement on the basis of the above rules.

**Subordinated Credit Derivatives Transactions entered into after certain SRO**

**Substitution Events and prior to identification of a replacement Standard Reference Obligation:**

Where:

- ‘Standard Reference Obligation’ is specified in a Confirmation, or no election is indeed made, for the Subordinated Level of a Reference Entity; and
- there is no Reference Obligation applicable for the relevant Transaction,

the SRO Rules provide that the most recent Standard Reference Obligation for the Reference Entity for the Subordinated Level is deemed to be the ‘Prior Reference Obligation’.

**(c) INCROs**

An ‘Incro’ or ‘Identified Non-Conforming Standard Reference Obligation’ is defined in the SRO Rules as for a Reference Entity and Seniority Level as:

*an obligation of the Reference Entity which would be a Conforming Obligation on the relevant date of determination but for one or more reasons (each such reason, a ‘Deliverability Flaw’) other than that the obligation has an Outstanding Principal Balance or Due and Payable Amount that is not greater than zero.*

The SRO Administrator is required to update the SRO List for SRO Substitution Events. It is also required to update the SRO List where a Standard Reference Obligation’s terms have been amended such that it has become an INCRO or, for existing INCROs, where the Deliverability Flaws have changed.

Eligible Market Participants may at any time notify the SRO Administrator of Standard Reference Obligations believed to have become INCROs or of changed Deliverability Flaws, where this can be backed up with supporting documentation.

**(d) Successor Resolutions**

Following a Successor Resolution on a Reference Entity which has a Standard Reference Obligation which is included on the SRO List, the SRO Administrator will update the SRO List as directed by the relevant Convened DC on the basis of any SRO Successor Determination Adjustment Resolution.

If, following a Successor Resolution, the SRO Administrator decides that a Standard Reference Obligation and Seniority Level should be selected for a Successor and/or the original Reference Entity, it can begin the Standard Reference Obligation selection process on the basis set out above as if a valid SRO Request had been received.

**9.5 Schedule 5: Package Observable Bond Rules**

The definition of Deliverable Obligation provides in Section 3.2 (Deliverable Obligation) that Deliverable Obligations include where ‘Asset Package Delivery’ is applicable (ie, an Asset Package Credit Event has occurred and the Reference Entity is a Sovereign) any Package Observable Bond.

The Asset Package Credit Event provisions are designed to enable obligations which existed immediately prior to certain Restructuring Credit Events as capable of being deliverable, notwithstanding that the intervention changed their characteristics and prevented them from being otherwise deliverable.

For Sovereign Reference Entities, if 'Restructuring' is specified as applicable in the relevant trade Confirmation, then Restructuring constitutes an Asset Package Credit Event.

Package Observable Bonds apply only to Sovereigns, and refer to bonds that are specified on a list published by ISDA on its website and which fall within the first two limbs of the definition of Deliverable Obligation (ie, "any obligation of the Reference Entity (either directly or as provider of a Relevant Guarantee) determined pursuant to the method described in Section 3.14 (*Method for Determining Deliverable Obligations*)"; or any Reference Obligation).

The POB List is the list of Package Observable Bonds which is published by ISDA on its website.

The selection and replacement of the Package Observable Bonds to be included on the POB List for Sovereign Reference Entities is governed by the Package Observable Bond Rules (the 'POB Rules'), set out in Schedule 5 (*Package Observable Bond Rules*) of the DC Rules.

The POB Rules are a new initiative to identify Package Observable Bonds and provide an infrastructure for doing so. Package Observable Bonds identified through the POB Rules are deemed to apply for each credit derivative transaction where there is a Sovereign Reference Entity and Asset Package Delivery is specified as applicable in the Confirmation.

These trades automatically update to the current Package Observable Bond if changed through the POB Rules, thereby ensuring consistency across trades since they will all have the same Package Observable Bond.

Under the SRO Rules, each regional Committee has to compile and maintain a POB List for the Sovereign Reference Entities whose Transaction Type are included in that Region. A POB Administrator performs most of the functions required by the POB Rules.

The POB Rules principally cover identification and replacement of Package Observable Bonds and managing the effect of Successor Resolutions on the POB List.

Key provisions of the POB Rules are as follows:

**(a) Identifying Package Observable Bonds**

**POB Requests:** Eligible Market Participants may at any time propose to the POB Administrator that a Package Observable Bond is selected for a specific Sovereign Reference Entity (a 'POB Request').

The POB Rules provide detailed requirements as to the contents and procedures for making a POB Request.

POB Requests are processed quarterly by a relevant Convened DC. A Convened DC can, however, agree to amend this timetable.

**Quarterly Package Observable Bonds Selection Process: General:** POB Requests are processed on a quarterly cycle basis by relevant Convened DCs. A Convened DC can, however, agree to amend this timetable. The cycle is based on Quarterly Roll Dates (March 20, June 20, September 20 and December 20 in each year).

**Endorsing a POB Request:** For valid POB Requests the POB Administrator is required promptly to publish the request on its website together with the identity of the Eligible Market Participant who submitted the request, together with any supporting information. At regular intervals during a quarterly roll cycle, the POB Administrator also gives 'POB Request Notifications' to each relevant Convened DC when it receives them.

A POB Request Notification will request the Dealer Members of a Convened DC to endorse an accompanying POB Request and the Obligation submitted with it. Any endorsement must be made on a qualified majority basis. An exception to this is where the SRO Request has been submitted by a Relevant CCP and relates to a Sovereign Reference Entity that is cleared by the Relevant CCP. Here the POB Request is deemed to be automatically endorsed.

**Identifying Potential POBs:** For each 'Endorsed POB Request', the POB Administrator tries to identify a 'Potential POB' from a hierarchy of choices provided in the POB Rules. There are several key definitions in the POB Rules relevant to making these determinations and these are:

Definition	Summary
Assessment Date	This is the date on which the POB Administrator selects the Potential POB (or Package Observable Bond, as applicable). The Assessment Date is though deemed to be the Quarterly Roll Date immediately following the POB Administrator's selection when determining the remaining maturity of any obligation.
POB Maturity Period	POB Maturity Period is defined as for any Assessment Date each/any of 'POB Maturity Period 1', 'POB Maturity Period 2' and 'POB Maturity Period 3'. 'POB Maturity Period 1' is "the period from but excluding the date that is 1 year following the Assessment Date to and including the date that is 2.5 years following the Assessment Date", with POB Maturity Period 2 running from 2.5 to 10 years and POB Maturity Period 3 running from 10 to 30 years.
POB Slot	Each combination of POB Maturity Period and POB Governing Law type.
POB Governing Law Type	This is either the Sovereign Reference Entity's Domestic Law (law of the home jurisdiction, with the exception of English and New York law) or applicable International Law (a governing law other than Domestic law).

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Definition	Summary
International Law Sovereign:	An International Law Sovereign is a Sovereign Reference Entity for whom the relevant POB Reference Transaction Type includes 'Not Domestic Law' as a Deliverable Obligation Characteristic.
General Criteria POB	<p>An obligation of the Sovereign Reference Entity (including by way of guarantee) that on the Assessment Date is a Bond with an outstanding principal balance of at least the Minimum Size satisfying the Remaining Maturity Limit and Minimum Liquidity Requirement.</p> <p>Here the 'Minimum Size' varies from region to region. For EMEA it is an outstanding principal balance of €1 billion; for Asia ex-Japan, US\$750 million; and otherwise US\$1 billion or equivalent.</p> <p>'Remaining Maturity Limit' means an obligation to have a remaining maturity of at least a year.</p> <p>'Minimum Liquidity Requirement' means that at least five major dealers are making daily markets in the obligation.</p>
Quarterly Roll Date:	March 20, June 20, September 20 and December 20 in each year.

In doing this the POB Administrator will attempt to identify a relevant number of obligations of the Sovereign Reference Entity (either directly or as provider of a guarantee) to fill the POB Slots. To do this it will carry out the following steps:

Step	Action
Step 1:	<p>The POB Administrator uses reasonable efforts to identify the Relevant Number of obligations of the Sovereign Reference Entity.</p> <p>'Relevant Number' is defined as six obligations, unless the Sovereign Reference Entity is an International Law Sovereign, in which case, this means three obligations.</p> <p>One of the Relevant Number must be an obligation governed by International Law. Unless the Sovereign Reference Entity is an International Law Sovereign, one obligation must be governed by Domestic Law.</p> <p>The obligations forming the Relevant Number must match each POB Maturity Period, ie the 0 to 2.5 years; 2.5 to 10 years; and 10 years to 30 years maturity buckets described in the table.</p>

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Step	Action
Step 2	The Relevant Number of obligations selected in Step 1 are the 'Potential POBs' and these are further grouped together into POB Slots, ie each combination of POB Maturity Period and POB Governing Law type, as described in the table.
Step 3	<p>The POB Administrator identifies an obligation for each POB Slot from the following pool of Sovereign Reference Entity obligations and in the specified order of priority, moving to the next category in the waterfall if no obligation is available. All obligations (other than the Standard Reference Obligation, must meet the same criteria as the General Criteria POB, described in the table above):</p> <ul style="list-style-type: none"> <li>(i) any Standard Reference Obligation published on the SRO List;</li> <li>(ii) any unsecured direct obligation;</li> <li>(iii) any unsecured guarantee;</li> <li>(iv) secured direct obligation; and</li> <li>(v) any secured guarantee of the Sovereign Reference Entity.</li> </ul>
Step 4	<p>Where the POB Administrator identifies more than one 'General Criteria POB' (other than the Standard Reference Obligation) then the POB Administrator will proceed to identify a Potential POB for each available POB Slot by applying the General Criteria POB Priority Rules.</p> <p>With General Criteria POBs grouped into their POB Slots, the POB Priority Rules provide for the POB Administrator to apply the following prioritisation waterfall to selecting one General Criteria POB per POB Slot:</p> <ul style="list-style-type: none"> <li>• first the POB Administrator selects the General Criteria POB with the longest remaining maturity;</li> <li>• if, after this selection, there is more than one General Criteria POB with an applicable longest remaining maturity, it will select whichever of these General Criteria POBs has the largest outstanding principal balance;</li> <li>• if, following this step, the POB Administrator is left with more than one General Criteria POB, with equal remaining maturity and outstanding principal balance, then the most recently selected General Criteria POB will be selected; as a final tie-breaker if the POB Administrator is left with two or more General Criteria POBs which cannot be prioritised then the POB Administrator may randomly prioritise these.</li> </ul>

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Step	Action
Step 5	If no Potential POB can be identified for one more POB Slots under Step 4 then a relevant Convened DC may resolve on a majority basis to reduce the Minimum Size to a smaller outstanding principal balance (the 'Lower Minimum Size'). The POB Administrator will then repeat the process for any empty POB Slots.

**Legal Review of Potential POBs:** Following the identification of one or more Potential POBs for the POB Slots, the POB Administrator provides outside counsel with details of each Potential POB, together with publicly available background and legal documentation.

Following diligence of the Potential POB, Legal Review Counsel will advise the relevant Convened DC whether the Potential POB satisfies the 'Legal Terms Requirement'.

Meeting the Legal Terms Requirement means that Potential POB is a Deliverable Obligation determined in accordance with Section 3.2(a) (Deliverable Obligation) of the 2014 Definitions. For the purposes of the 'Not Subordinated' Deliverable Obligation Characteristic, the POB Rules deem that there is no Reference Obligation and that the Prior Reference Obligation is an unsecured Borrowed Money Obligation.

The Deliverable Obligation Category and Deliverable Obligation Characteristics, as well as other obligation-specific details are deemed to be as specified in the applicable Relevant Transaction Type for the most recently published Credit Derivatives Physical Settlement Matrix.

If the legal counsel advises that the Potential POB does not clearly satisfy these requirements, the relevant Convened DC will then pass a POB Non-Identification Resolution for the Potential POB and the POB Administrator and the legal review process will repeat until one or more further Potential POBs is identified during the quarterly cycle.

Assuming that legal counsel has positively confirmed that Potential POB meets the above requirements then a Convened DC will be required to resolve the same on a supermajority basis. It will also be required to resolve on a majority basis whether the Potential POB is suitable and appropriate as the Package Observable Bond for the POB Slot and Sovereign Reference Entity.

If both of these DC Resolutions are passed, together they constitute a 'POB Identification Resolution'. If either of the resolutions is negative, this will constitute a 'POB Non-Identification Resolution'.

However, if:

- the relevant Convened DC passes a POB Non-Identification Resolution for all of the Potential POBs for a POB Slot; or
- the POB Administrator cannot identify any Potential POBs for a particular POB Slot during the corresponding Potential POB identification and legal review period,



then the relevant convened DC may resolve on a majority basis to pass a ‘No POB Identified Resolution’ that for the particular POB Request there are no obligations available for selection as the Package Observable Bond for the POB Slot. The POB Slot is then deemed to constitute an ‘Empty POB Slot’.

All relevant resolutions described above are then published on the POB Administrator’s website.

**(b) *Challenging Package Observable Bond DC Resolutions***

Any Eligible Market Participant is allowed to challenge a Package Observable Bond DC Resolution. The challenge has to be received before a ‘Challenge Deadline’ provided in the Rules. The challenge must set out full reasoning, including, if applicable whether the requirements of a Potential POB or Legal Terms Requirement have not been satisfied; or whether the Potential POB is not in the correct POB Slot, on indeed whether another obligation would be more suitable as the Package Observable Bond for a particular POB Slot. The challenger must also agree to pay the costs of an unsuccessful challenge.

The relevant Convened DC will resolve any challenge on a majority basis, with the DC Secretary publishing the resulting DC Resolution on its website, and the POB Administrator doing the same.

If the DC Resolution has been for a successful challenge, then the Convened DC is deemed to have resolved that the Package Observable Bond DC Resolution was not indeed passed. The Convened DC will then determine on a majority basis the next steps needed to identify a new Package Observable Bond for the relevant POB Slot.

The Relevant Convened DC may not pass a POB Identification Resolution for another obligation of Sovereign Reference Entity unless the obligation is: a General Criteria POB, satisfies the Legal Terms Requirement, and matches the relevant POB Slot.

Any POB Identification Resolution passed for a successful challenge may also be challenged under the same procedure.

**(c) *Identify Replacement Package Observable Bonds***

**Quarterly Replacement and Standard Reference Obligation Process:** The POB Administrator attempts, on a quarterly basis, to identify any POB Substitution Events relating to Package Observable Bonds. POB Substitution Events are events such as the Package Observable Bond being redeemed in whole, or aggregate amounts of it being reduced past a threshold, or falling below certain liquidity requirements, or no longer satisfying the Legal Terms Requirement. If this happens the Package Observable Bond becomes an Affected POB.

The SRO Administrator then reports on any Affected POBs and POB Substitution Events as soon as reasonably practicable, and publishes this on the POB website.

**Consequences of a POB Substitution Event:** If the POB Substitution Event has resulted in an Empty POB Slot, then assuming that there has not been a Credit Event Resolution Request Date, the relevant Convened DC will identify the replacement Package Observable Bond to replace the Affected POB as described below.

There are three sets of circumstances where this may happen. The scenarios are captured under the definition of POB Substitution Event, and these, and the relevant consequences, are set out in the table below.

Scenario/POB Substitution Event		Consequence
1.	<p>Affected POB:</p> <ul style="list-style-type: none"> <li>• has been redeemed in whole;</li> <li>• for any reason, other than due to an Asset Package Credit Event, it is no longer a Reference Entity Obligation; or</li> <li>• no longer satisfies the Legal Terms Requirement.</li> </ul>	<p>With effect from the Package Substitution Event Date, the Affected POB will be removed from the POB List as soon as reasonably practicable and immediately ceases to be a Package Observable Bond.</p>
2.	<p>Outstanding principal balance of the Package Observable Bond has been reduced by redemption or otherwise, below the POB Substitution Threshold.</p> <p>‘POB Substitution Threshold’ is defined as meaning that a Package Observable Bond: for EMEA Package Observable Bonds, €750 million; for Asia Ex-Japan Package Observable Bonds, US\$500 million; and for all other regions, US\$750 million or equivalent currency.</p>	<p>The Affected POB will remain on the POB List until the earlier of: the date on which the replacement Package Observable Bond is identified in accordance with the procedures in the POB Rules described below; and the date on which any of the events in Scenario 1 occurs.</p> <p>The Affected POB is then deemed to be removed from the applicable POB Slot with effect from the date of such POB Substitution Event.</p>
3.	<p>Convened DC resolves on a majority basis that the Package Observable Bond no longer satisfies the Minimum Liquidity Requirement; or did not satisfy the Minimum Liquidity Requirement as at the Assessment Date.</p> <p>‘Minimum Liquidity Requirement’ means that at least five major dealers make daily markets in the obligation.</p>	<p>The Affected POB will remain on the POB List until the date on which any of the events in Scenario 1 occurs.</p> <p>The Affected POB is then deemed to be removed from the applicable POB Slot with effect from the date of such POB Substitution Event.</p>

**Empty POB Slot Request:** For each Quarterly Roll Date, the POB Administrator identifies any Empty POB Slots for Sovereign Reference Entities which have one or more POBs published on the POB List and then notifies the relevant Convened DC. The POB Rules define this as an ‘Empty POB Slot Request’ and the POB Administrator promptly publishes the Empty POB Slot Request on the POB website.

Empty POB Slot Requests which are notified by the POB Administrator to the Relevant Convened DC are processed as described above.

**Successor Resolutions:** Following a Successor Resolution on a Sovereign Reference Entity which has a Package Observable Bond included on the POB List, the POB Administrator will update the POB List as directed by the relevant Convened DC on the basis of any POB Successor Determination Adjustment Resolution.

## 9.6 Schedule 6: DC Participant Resolutions

Section 1.8(b) (*Standard Agreement*) of the DC Rules requires that as of each List Review Date, the DC Secretary must have in place a standard agreement under which DC Members (or any representing affiliates) acknowledge and agree to their respective rights and responsibilities under the Rules (the ‘Standard Agreement’). An identical provision is in place for CCP Members under Section 1.9(b) (*Standard Agreement*). Both sections require that each Standard Agreement includes the representations set out in Schedule 6.

Schedule 6 provides that Standard Agreements shall include the following representations, which will be deemed to be repeated continuously by the relevant DC Members and CCP Members (each, a DC Participant).

The DC Participant has written policies and procedures for identifying and managing conflicts of interest arising from its duties and trading and price-sensitive securities positions.

The written policies and procedures must include limitations on which individuals from an institution serve as decision makers.

Where the DC Participant is a DC Voting Member, the DC Voting Member represents to ISDA that it has detailed written voting governance policies and procedures.

DC Participants also represent to ISDA that written policies and procedures are in place for:

- appropriately handling material non-public information in compliance with securities laws and regulations;
- ongoing internal oversight of compliance with the DC Rules and any related policies and procedures, including any staff training; and
- and retention of copies of any written policy or procedure used to satisfy the above requirements; and that these copies will be kept for five years.

*This chapter ‘The ISDA Credit Derivatives Determinations Committees, DC Rules, SRO Rules and POB Rules’ by Edmund Parker is from the title Credit Derivatives: Understanding and Working with the 2014 ISDA Credit Derivatives Definitions, published by Globe Law and Business.*