ISDA Safe, Efficient Markets

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Shri Anand Sinha
Deputy Governor
Reserve Bank of India
Central Office Building
Shahid Bhagat Singh Marg
Mumbai 400001
India
anandsinha@rbi.org.in

Shri D.K. Mittal
Secretary (Department of Financial Services)
Ministry of Finance
North Block
New Delhi 110001
India
secy-fs@nic.in

Shri Justice (Retired) B.N. Srikrishna
Chairman
Financial Sector Legislative Reforms Commission
Mittal Court 'B' Wing
1st Floor
224 Nariman Point
Mumbai 400021
India
bnsrikrishna@gmail.com
BCC: uday_a04@yahoo.co.in (PA to Shri Srikrishna)

Dear Sirs

Consistency of netting application to spur financial market growth

1. **Introduction**: The International Swaps and Derivatives Association, Inc. ("**ISDA**")[1] is writing to you in the context of achieving greater consistency in the application of netting directives with regard to financial derivatives transactions in India. With such consistency, our members believe that India's CDS market will grow, the move of OTC derivatives to central counterparty ("**CCP**") clearing, which is one of

[1] ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org.

International Swaps and Derivatives Association, Inc.
50 Collyer Quay
#09-01 OUE Bayfront, Singapore 049321
P 65 6538 3879
www.isda.org

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India's G20 commitments, will be incentivized and take-up rates for margining of INR derivative transactions will receive a boost in line with global moves towards incentivizing bilateral margining of uncleared OTC derivative transactions [2]. The higher capital charges that will result from the implementation of Basel III will also mean that the cost of trading OTC derivatives on a gross exposure basis will increase significantly. Achieving greater consistency on netting in line with the recognition granted to netting under the Basel accords will we believe have a positive effect on the future growth of the INR derivatives markets by reducing costs to the benefit of real economy companies' looking to manage their business risks, banks and other financial institutions as well as the broader financial market in India. We have set out below a summary of our view of the netting position in India and the regulatory capital incentives for netting under the Basel framework and current Indian regulations. This is followed by a number of suggestions where directives and regulatory initiatives in India could benefit from a consistent recognition of netting.

2. **OTC derivatives and the ISDA Master Agreement**: As you know, in India as well as globally, the practice is for OTC derivatives to be traded under the ISDA Master Agreement. The point to note is that transactions entered into under the ISDA Master Agreement are **not** separate, but rather form a single whole: that is, the effect of the ISDA Master Agreement is to treat **all** transactions between two parties which are governed by the agreement as a single legal whole with a single net value upon early termination of such transactions. This is achieved by the close-out netting provisions under the ISDA Master Agreement which consist of three principal elements: early termination; valuation of the terminated transactions; and an accounting of those values, together with amounts previously due but unpaid, to arrive at a single net sum owing by one party to the other.

3. **Enforceability of close-out netting under the ISDA Master Agreement**: Of course, the key issue is whether each of these three elements is enforceable. "Enforceability" in this context comprises two key components: first, enforceability as a matter of contract law under the governing law of the contract (typically English law or New York law); and second, consistency with and enforceability under the bankruptcy laws of the jurisdiction where the counterparty is located. The latter is critical since, regardless of the law selected to govern the contract, local insolvency law in an insolvent party's jurisdiction will always override in the event of an insolvency. Note that "enforceability" relates to the fact of net payments, not to their amount. Parties may from time to time have commercial disagreements concerning the valuation of derivatives, as they can for other financial instruments, but these do not tend to take issue with the enforceability of netting. Note also that the issue of the enforceability of close-out netting is separate from the issue of the legal capacity of a party to enter into derivatives transactions.

4. **Enforceability under Indian law**: As a contractual matter, outside of bankruptcy, all three of these elements contained in the close out netting provisions of the ISDA Master Agreement are effective as a matter of both English and New York law and also under some other laws, including we believe Indian law. With regard to India, we understand that legal experts in India generally concur that enforceability in insolvency is not an issue with regard to entities incorporated under the Indian Companies Act (or previous laws relating to companies) which would include private sector banks – and we believe that this is a view shared by the Reserve Bank of India ("**RBI**")[3]. However, we understand that there may be some doubt as regards enforceability in insolvency insofar as nationalized banks and the State Bank of India and its subsidiaries are concerned. This stems from the fact that the Indian government banks acts[4] provide that no provisions relating to the winding-up of companies shall apply to such banks and that they can only be liquidated by order of, and in such manner as, the Indian Government directs. In any event, ISDA's Indian counsel, Juris Corp, has confirmed that close-out netting

[2] BCBS-IOSCO Consultation Paper on Margin Requirements for non-centrally-cleared derivatives dated July 6, 2012.
[3] Please refer to paragraph 15 below.
[4] Namely the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959 and the Banking Companies (Acquisition and Transfer of Undertakings) Acts, 1970 and 1980.

will ultimately be enforceable even in respect of nationalized banks and the State Bank of India and its subsidiaries.

5. **Netting of exposures for regulatory capital purposes**: Basel requires banks to set aside a prescribed minimum percentage of capital (that will increase significantly with Basel III) against their risk-weighted assets (counterparty credit exposure multiplied by a risk-weight percentage). If close-out netting is enforceable, under the Basel framework, counterparty credit exposure is treated as the sum of positive and negative replacement costs[5] of all the outstanding transactions between the bank and that counterparty. If close-out netting is not enforceable, counterparty credit exposure is treated as the sum of positive replacement costs (with negative replacement costs deemed to be zero). Thus, the ability of banks to net their exposures has a significant impact on their regulatory capital requirements and in turn, the price that they will have to charge the counterparty for entering into a transaction.

6. **Position of Reserve Bank of India on netting exposures for regulatory capital purposes**: RBI in its Master Circulars on Prudential Guidelines on Capital Adequacy and Market Discipline – New Capital Adequacy Framework ("**Prudential Guidelines Master Circular**") requires banks to **not** net their exposures for regulatory capital purposes. Thus, in India, Indian-incorporated banks and Indian branches of foreign banks cannot net their exposures for regulatory capital purposes.

7. **RBI's Circulars on Prudential Norms for Off-Balance Sheet Exposures of Banks ("Prudential Norms Circulars")**: In its Circular on Prudential Norms for Off-Balance Sheet Exposures of Banks – Bilateral netting of counterparty credit exposures dated October 1, 2010, RBI stated as follows: *"On receipt of requests from banks, the issue of allowing bilateral netting of counterparty credit exposures, in such derivative contracts, has been examined within the existing legal framework. Since the legal position regarding bilateral netting is not unambiguously clear, it has been decided that bilateral netting of mark-to-market (MTM) values arising on account of such derivative contracts cannot be permitted. Accordingly, banks should count their gross positive MTM value of such contracts for the purposes of capital adequacy as well as for exposure norms."* This position was reiterated in RBI's Circular on Prudential Norms for Off-balance Sheet Exposures of Banks dated August 11, 2011: *"Since the legal position regarding bilateral netting is not unambiguously clear, receivables and payables from/to the same counterparty including that relating to a single derivative contract should not be netted."*

8. **Concerns caused by the Prudential Norms Circulars**: In the Prudential Norms Circulars, RBI, a regulator, has expressed the view that the "*legal position regarding bilateral netting is not unambiguously clear*". In order to net exposures for regulatory capital purposes in any particular jurisdiction, Basel requires a bank to satisfy its national supervisor that the legal basis for netting is clear and that it has inter alia "*written and reasoned legal opinions*" that confirm the enforceability of netting under the relevant agreement. Basel states further that: "*The national supervisor, after consultation when necessary with other relevant supervisors, must be satisfied that the netting is enforceable*". We understand that various ISDA member banks had, in reliance upon the ISDA-commissioned legal opinion for India[6], taken the position that close-out netting is enforceable against all banking entities and corporates established in India and the potential adverse impact of RBI's expressed view, particularly given the reference in Basel to consultation with the national supervisor and with other relevant supervisors, is a concern for all banks trying to comply with the Basel framework.

[5] When a transaction is in-the-money for the bank, it has a positive replacement cost and when a transaction is out-of-the-money for the bank, it has a negative replacement cost.

[6] We understand that a number of banks have separately obtained additional advice from ISDA's opinion counsel (Juris Corp) on specific points. In their update opinion of February 17, 2011, ISDA's opinion counsel (Juris Corp) confirmed that their view on enforceability remained unchanged notwithstanding RBI's Circular of October 1, 2010.

9. **Impact on onshore margining**: We understand that currently the bulk of INR derivatives transactions are traded on an uncollateralized basis in India. While there are a number of issues associated with margining (or collateralization) arrangements for OTC derivative transactions in India, one key factor that disincentivizes the use of margining arrangements is non-availability of bilateral netting of exposures for regulatory capital purposes under RBI's Prudential Guidelines Master Circular. While RBI's Prudential Guidelines Master Circular implements Basel and allows banks to offset the adjusted collateral value against the adjusted exposure using the comprehensive approach where the collateral arrangements meet *inter alia* the general requirements for legal certainty, there are the following aspects:

(a) The collateral agreement best suited to India's legal system and regulatory regime that is generally used when margining arrangements are put in place in connection with OTC derivatives transactions is the ISDA English law Credit Support Annex ("**English law CSA**"). It is relevant to note here that RBI has, in the context of the Indian CDS market, permitted the use of the English law CSA for either: (i) onshore INR CDS transactions only, or (ii) all onshore transactions including INR CDS transactions. From a legal standpoint, the English law CSA constitutes a confirmation of a transaction under the ISDA Master Agreement and is not a separate or security document as that term is commonly understood. The effectiveness and enforceability of the English law CSA therefore hinges upon close-out netting under the ISDA Master Agreement. There is now a concern that courts in India, in light of RBI's expressed view in its Prudential Norms Circulars that *"the legal position regarding bilateral netting is not unambiguously clear"*, may take the position that the English law CSA does not meet the requisite level of legal certainty to allow for collateral received under the English law CSA to be recognized as risk reducing under the Basel framework. Further, as the English law CSA is deemed to be a transaction under the ISDA Master Agreement and as RBI's Prudential Guidelines Master Circular directs banks to **not** net their exposures for regulatory capital purposes, the "exposure" under the English law CSA cannot be netted against the other exposures under the ISDA Master Agreement. Without associated regulatory capital savings, entry into margining arrangements will involve banks incurring costs in implementing and maintaining such arrangements and in funding the cost of collateral to be posted and the risk reducing activity of taking and posting collateral will not be incentivized.

(b) Given RBI's position that exposures cannot be netted for regulatory capital purposes, there is concern that RBI will require margining of gross and not net exposures. Assuming bilateral margining and that close-out netting is not enforceable, margining on a gross exposure basis leaves a party worse off than margining on a net exposure basis. We refer you to Annex I for examples. Thus, parties that enter into margining arrangements would wish to margin exposures on a net basis.

(c) Even if RBI permits bilateral margining on the basis of net exposures, and parties enter into bilateral margining based on net exposures, parties are required by RBI's Prudential Guidelines Master Circular to monitor exposures on a gross basis and set aside regulatory capital against their gross exposures. This leads to an anomalous situation where a party's gross exposures and regulatory capital requirements increases when it posts collateral with the counterparty (and the party may be required to post collateral where it is out-of-the-money on the transactions or as initial margin). If close-out netting is recognized as enforceable, exposures and regulatory capital requirements will be reduced when a margining arrangement is put in place. Contrary to this, implementation of margining arrangements in India in the current framework as it stands makes the party face the cost of funding collateral that it is required to post to its counterparty and a higher regulatory capital charge due to its increased gross exposures when it posts collateral with the counterparty.

(d) Given that banks in India cannot net exposures for regulatory capital purposes, banks are currently monitoring their exposures on a gross exposure basis. This means that banks that wish to put in place margining arrangements will have to implement parallel exposure monitoring systems - on a gross basis (for regulatory capital purposes) and a net basis (for margining purposes) which for the banks, and therefore the system as a whole, is inefficient and costly.

10. **Impact on India's CDS market**: RBI's Guidelines on Introduction of CDS for Corporate Bonds dated May 24, 2011 requires margining of CDS transactions and allows margining to be done on a net basis. We believe that permitting bilateral netting of exposures for regulatory capital purposes under RBI's Prudential Guidelines Master Circular and resolution of the other aspects as described elsewhere in this letter including paragraph 9 will help incrementally in the development of the CDS market as banks will perceive a real benefit in exchanging collateral in an efficient way.

11. **Impact on central clearing**: RBI's Prudential Guidelines Master Circular prohibiting netting of exposures for regulatory capital purposes currently applies to exposures to the Clearing Corporation of India Limited ("**CCIL**"). However, CCIL's forex forward segment is margined based on net exposure calculations. Currently, this inconsistent approach to netting is not particularly problematic because RBI's Prudential Guidelines Master Circular provides for a zero risk weight for trade exposures to CCPs including CCIL. It also provides for a risk weight for collateral posted with the CCP that varies depending on the credit rating of the CCP – the risk weight is 20% for collateral posted with CCIL. However, given that the RBI has committed to implementing Basel III when finalized[7], once exposures to CCIL are no longer given a zero risk weight (we refer you to paragraph 12 below), the fact that exposures to CCIL cannot be netted under RBI's Prudential Guidelines Master Circular will be a significant issue for all bank members of CCIL and may have a material impact on the performance and growth of the portion of India's derivatives market that is required to be cleared through CCIL.

12. **Impact of Basel III on CCPs**: Basel III proposes a risk weight of 2% for trade exposures to a CCP where the CCP is a qualifying CCP ("**QCCP**"), viz., a licensed CCP that is compliant with CPSS-IOSCO's Principles for Financial Market Infrastructures ("**FMI Principles**")[8]. For QCCPs, Basel III also proposes a risk weight of 0% for collateral posted by a clearing member with the QCCP, provided the collateral has been segregated and is bankruptcy-remote. If the qualifying proviso is not met, collateral posted with the QCCP will bear a risk weight of 2% or 4%, depending on the degree of segregation and bankruptcy-remoteness. For a non-qualifying CCP ("**non-QCCP**"), risk weights for both trade exposures and collateral posted with the non-QCCP will range from 20% to 150%. We understand that market participants are concerned that CCIL currently does not meet all the FMI Principles and will thus have to be treated as a non-QCCP. Under Basel III, banks will be at a disadvantage when clearing their trades through CCIL if it is a non-QCCP as trade exposures will not qualify for the risk weight of 2% for QCCPs.

13. **Concerns stemming from absence of close-out netting rights upon default or insolvency of CCIL**: Another major problem with the netting of exposures to CCIL is that CCIL's rules currently do not contemplate the possibility of a default by, or the insolvency of, CCIL and thus do not include a mechanism that will allow clearing members to terminate their transactions with CCIL in the event of a CCIL default or insolvency and to crystallize a net sum payable by or to CCIL as a result of such termination. This is out of line with international developments on the key features of OTC derivatives CCPs given that all major CCPs including LCH, ICE, CME and SGX now have express rules granting

[7] RBI has stated on May 2, 2012 in regard to its Guidelines on Implementation of Basel III Capital Regulations in India that: *"'Capitalisation of Bank Exposures to Central Counterparties' etc., are also engaging the attention of the Basel Committee at present. Therefore, the final proposals of the Basel Committee on these aspects will be considered for implementation, to the extent applicable, in future."*

[8] http://www.bis.org/publ/cpss101a.pdf.

their members close-out netting rights in the event of the CCP's default or insolvency. Regardless of any changes made to the RBI's Prudential Guidelines Master Circular, if CCIL's rules remain in their current form, under the Basel framework, banks may need to treat their exposures to CCIL as gross because it would not be clear that members would have enforceable close-out netting rights upon the default or insolvency of CCIL. Again, this may have a material impact on the performance and growth of the portion of India's derivatives market that is required to be cleared through CCIL.

14. **Central clearing and exposure norms**: In addition, RBI's Master Circulars on Exposure Norms also prohibits the netting of exposures for exposure norms purposes. There is no carve-out for CCIL exposures from the application of the exposure norms. Thus, when clearing of INR/USD FX forwards through CCIL becomes mandatory from early next year and with mandatory clearing of INR interest rate derivatives also expected in due course, banks will hit the single borrower exposure limit of 15% of capital funds for CCIL sooner rather than later given that exposures cannot be netted. Thus, while mandating clearing through CCIL fulfills India's G20 commitments to promote central clearing of OTC derivatives, the RBI's current approach to exposure norms creates an issue for bank clearing members of CCIL that needs to be addressed. Given that banks are required under the rules of the Foreign Exchange Dealers' Association of India to clear INR/USD FX forwards through CCIL, the RBI's current approach to exposure norms can lead to only one outcome – banks will have to stop entering into transactions that must be cleared once they hit the single borrower limit for CCIL. As the RBI's current approach does not recognize the fact that the transactions already cleared with CCIL carry very little counterparty risk due to CCIL's margining and loss mutualization mechanisms, this threshold will be reached far more quickly than is necessary. In our view, this limitation will affect the continued performance and growth of India's FX and interest rate derivatives markets, which are together crucial sources of business risk management for real economy companies.

15. **Need for netting legislation**: RBI has noted[9]:

"There is a strong case for reviewing these legislations and recasting them for a number of reasons. First, prudential regulations are ownership neutral. However, the fact that different banks are governed by different laws has resulted in an uneven playing field which needs to be addressed. For example, while amendments were carried out to enable SBI, SBI subsidiary banks and nationalised banks to issue preference shares, though at different points of time, banks in private sector cannot issue preference shares as the amendments to the BR Act is still to be carried out. Similarly, while bilateral netting in the event of liquidation is admissible for private sector banks governed by the Companies Act and the normal bankruptcy laws, the position in this regard for public sector banks, SBI and its subsidiaries, is not clear in law, as liquidation, if at all, of such banks would be as per the Notification to be issued by the Government in this regard. Second, a single, harmonized and uniform legislation applicable to all banks will provide transparency, comprehensiveness and clarity and provide ease of regulation and supervision to the Reserve Bank. Third, there is also a need to sort out the conflicts and overlaps between the primary laws governing the banking sector and other applicable laws. For example, the Competition Act, 2002 (as amended by the Competition (Amendment) Act, 2007) is in conflict with the provisions of the Banking Regulation Act, SBI Act and other statutes dealing with the amalgamation of banks. Consolidation of banking sector laws and laying down of common regulatory framework for commercial banks are issues requiring serious consideration."

16. ISDA and its members believe that introduction of netting legislation offers the most effective holistic solution to the current issues facing the markets and would enthusiastically offer up any support that would help assist this process. ISDA has published a Model Netting Act together with a

[9] Legislative Reforms- Strengthening Banking Sector (Address by Shri Anand Sinha, Deputy Governor, Reserve Bank of India at Financial Planning Congress '11 organized by Financial Planning Standards Board of India at Mumbai on December 18, 2011).

memorandum on its implementation[10] and would be pleased to discuss this further. UNIDROIT's project to develop a set of draft principles regarding the enforceability of close-out netting provisions is also fairly well-advanced[11]. ISDA could also provide an analysis of netting legislation in other relevant jurisdictions.

17. **Interim measures**: ISDA and its members recognize that the introduction of netting legislation is not something that "can be done overnight". Thus, ISDA requests the taking of certain interim measures that could be of assistance to the regulators and market participants. ISDA understands that the Prudential Norms Circulars resulted from RBI's desire to maintain a level playing field between public sector banks and private sector banks. Thus, we presume that RBI may consider allowing the netting of exposures both for regulatory capital and exposure norms purposes if the enforceability of bilateral netting of exposures with government banks is made clearer. As the doubt in regard to government banks stems, in our assessment, from the position that they can only be liquidated by order of, and in such manner as, the Indian Government directs, we believe that significant comfort would be provided if the Ministry of Finance (or other appropriate ministries of the Government of India) were to issue a written statement to the effect that in the liquidation of any government bank, the right to close-out transactions under the ISDA Master Agreement would be recognized and enforced. In addition and in the interim, we believe that a statement from RBI as regards the enforceability of close-out netting in the case of private sector banks, branches of foreign banks in India and corporates would be of tremendous assistance.

18. We would also request RBI to permit banks to net their exposures against corporates for regulatory capital purposes as the enforceability of close-out netting against corporates is not in doubt.

We would be most pleased to assist in any way. Please contact Jacqueline Low (jlow@isda.org, +65 6538 3879) or Keith Noyes (knoyes@isda.org, +852 2200 5909) at your convenience.

Yours faithfully,
For the International Swaps and Derivatives Association, Inc.

Keith Noyes
Regional Director, Asia Pacific

Jacqueline ML Low
Senior Counsel Asia

[10] http://www2.isda.org/functional-areas/legal-and-documentation/opinions/.
[11] http://www.unidroit.org/english/studies/study78c/main.htm.

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ANNEX I

Impact on margined transactions if close-out netting is not enforceable

Assumes no change in replacement cost or collateral value at different points in time.

Party A"s Replacement Cost on Transaction 1	Party A's Replacement Cost on Transaction 2	Party A's Collateral Position (collateral received)	Party B's Collateral Position (collateral received)	Party A must pay to Party B's insolvency trustee	Party A claims in Party B's insolvency	Party A must pay to Party B's insolvency trustee	Party A claims in Party B's insolvency
		No margining		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10	0	0	3	0	13	10
+13	-10	0	0	0	3	10	13
		Margining on net MTM basis		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10		3	0	0	13	10 + 3
+13	-10	3		0	0	10 + 3	13
		Margining on gross MTM basis		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10	10	13	0	0	13 + 10	10 + 13
+13	-10	13	10	0	0	10 + 13	13 + 10
		Party A margining on net MTM basis, Party B on gross MTM basis		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10	10	3	10	0	13 + 10	10 + 3
+13	-10	13	0	10	0	10 + 13	13 + 0

Where Party A owes the net MTM:

- Margining on a net MTM basis compared with not margining leaves Party A worst off – write off 13 instead of 10.
- Margining on a gross MTM basis results in the worst off outcome –write off 23 instead of 10 (paying 23 instead of 13 could be viewed as neutral since Party A had received the extra 10 as collateral).
- Party A margining on a net MTM basis while Party B margins on a gross MTM basis leaves Party A in the same position as both margining on a net MTM basis – write off 13 instead of 10 (paying 23 instead of 13 could be viewed as neutral since Party A had received the extra 10 as collateral).

Where Party A is owed the net MTM:

- Margining on a net MTM basis compared with not margining could be viewed as neutral – write off 13 in each case (paying 13 instead of 10 could be viewed as neutral since Party A had received the extra 3 as collateral).
- Margining on a gross MTM basis results in a worst off outcome – write off 23 instead of 13 (paying 23 instead of 10 could be viewed as neutral since Party A had received the extra 13 as collateral).
- Party A margining on a net MTM basis while Party B margins on a gross MTM basis leaves Party A in the same position as not margining or both margining on a net MTM basis – write off 13 in each case (paying 23 instead of 10 could be viewed as neutral since Party A had received the extra 13 as collateral).

International Swaps and Derivatives Association, Inc.
50 Collyer Quay
#09-01 OUE Bayfront, Singapore 049321
P 65 6538 3879
www.isda.org

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LONDON BRUSSELS
HONG KONG SINGAPORE
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Impact on margined transactions if close-out netting is not enforceable

	Party A owes net MTM of 3	Party A is owed net MTM of 3
Both parties do not margin	1	2
Both parties margin on net MTM basis	2	2
Both parties margin on gross MTM basis	3	3
Party A margins on net MTM basis, Party B margins on gross MTM basis	2	2
Value scale: 1 is best, 3 is worst from Party A's perspective.		

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Counterparty Credit Exposure

Assumes no change in replacement cost or collateral value at different points in time.

Party A's Replacement Cost on Transaction 1	Party A's Replacement Cost on Transaction 2	Party A's Collateral Position (collateral received)	Party B's Collateral Position (collateral received)	Party A must pay to Party B's insolvency trustee	Party A claims in Party B's insolvency	Party A must pay to Party B's insolvency trustee	Party A claims in Party B's insolvency
		No margining		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10	0	0	3	0	13	10
+13	-10	0	0	0	3	10	13
		Margining on net MTM basis		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10		3	0	0	13	10 + 3
+13	-10	3		0	0	10 + 3	13
		Margining on gross MTM basis		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10	10	13	0	0	13 + 10	10 + 13
+13	-10	13	10	0	0	10 + 13	13 + 10
		Party A margining on net MTM basis, Party B on gross MTM basis		Party B insolvent, close-out netting enforceable		Party B insolvent, close-out netting not enforceable	
-13	+10	10	3	10	0	13 + 10	10 + 3
+13	-10	13	0	10	0	10 + 13	13 + 0

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Counterparty Credit Exposure

	Party A owes net MTM of 3		Party A is owed net MTM of 3	
	Close-out netting is		Close-out netting is:	
	Enforceable	Not enforceable	Enforceable	Not enforceable
Both parties do not margin	0	10	3	13
Both parties margin on net MTM basis	0	13	0	13
Both parties margin on gross MTM basis	0	23	0	23
Party A margins on net MTM basis, Party B margins on gross MTM basis	0	13	0	13
From Party A's perspective If close-out netting is not enforceable, better off not margining at all.				