

ISDA's Credit Derivatives Determination Committees

Membership

The Credit Derivatives Determination Committees (each, a “DC”) are established to make determinations in connection with credit default swaps that incorporate the 2014 Definitions or the updated 2003 Definitions. Each CD comprises ten “sell-side” and five “buy-side” voting members, as well as three consultative firms and CCP observer members.

The Role of DCs

The DCs are market-wide interpretive bodies that make factual determinations of issues such as whether (i) a Credit Event has occurred, (ii) an auction should be held, and (iii) which obligations are deliverable into such auction. The decision-making process is designed to ensure robust consideration of trading conventions and commercial expectation, while mitigating conflicts of interest.

Rules

The working of the DCs is governed by the Credit Derivatives Determination Committees Rules (the latest version can be found here: http://dc.isda.org/wp-content/files_mf/1453298092DC_Rules_Jan_2016_Update.pdf)

Convening a Committee

Any eligible market participant may notify the DC Secretary of a potential DC issue. The DC Secretary then determines the transaction type and convenes the relevant members in the relevant region (the Americas, Asia Ex-Japan, Australia-New Zealand, EMEA or Japan). The vast majority of DC determinations are made by a unanimous decision. In rare instances, the decision gets referred to an outside panel.

External Review

Any DC Question that has to be resolved by a Supermajority (at least 80% of those participating) gets formulated as possible “presented positions” and referred to an external review. External reviewers (usually QCs, academics or independent legal experts) are selected from a panel. The process involves arbitration-style arguments, with written argument made public.

If – originally - more than 60% of the DC voting members but less than a Supermajority voted for a specific outcome, the question is decided in accordance with the DC Vote *unless* the external reviewers unanimously conclude that another presented position is “the better answer” - in which case the question is decided by the external reviewers.

If – originally - less than or equal to 60% of the DC voting members participating voted for a specific outcome, the question is decided in accordance with the DC Vote *unless* at least two out of the three external reviewers conclude that another presented position is “the better answer” -in which case the question is decided in accordance by the majority of the external reviewers.

The decision deadline is five business days after submission of the question for external review. As with all DC decisions, the results of the external review process are published promptly and bind market participants.