



# 1994 ISDA Credit Support Annex (Security Interest - New York Law) and the 2016 Credit Support Annex for Variation Margin (Security Interest - New York Law)

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## Introduction

Parties to the [International Swaps and Derivatives Association \(“ISDA”\) Master Agreement](#) (“Master Agreement”) typically collateralize their obligations pursuant to credit support documentation published by ISDA. If parties are subject to the variation margin rules and are not subject to posting initial margin and choose to enter into a New York law governed credit support annex, they will choose between the 1994 ISDA Credit Support Annex (Security Interest - New York Law) (the “1994 NY CSA”) and the 2016 Credit Support Annex for Variation Margin (Security Interest - New York Law) (the “2016 NY VM CSA” and the “1994 NY CSA” each a “CSA”).

The 2016 NY VM CSA is in widespread use between parties subject to the uncleared margin rules (“UMR”); however, some counterparties still prefer to use the 1994 NY CSA and amend the annex to make it UMR compliant. The standard form 1994 NY CSA and the standard form 2016 NY VM CSA are very similar except for the terms that were added to the 2016 NY VM CSA to make it UMR compliant. Both standard forms have a Paragraph 13 in which parties make any modifications and additions they wish to make to the pre-printed credit support annex. Below is a comparison of the 1994 NY CSA and the 2016 NY VM CSA. The 2016 NY VM CSA defined terms include “VM” in their definitions. For purposes of this comparison chart we do not include the “VM” in the definitions.

Defined Terms	Definitions
<b>Distributions</b>	All principal, interest and other payments and distributions of cash or other property with respect to Posted Collateral other than cash, e.g., securities.
<b>Eligible Collateral</b>	Collateral agreed to between the parties in <i>Paragraph 13</i> and in which the Secured Party acquires a security interest.
<b>Eligible Credit Support</b>	Eligible Collateral and Other Eligible Support.
<b>Other Eligible Support</b>	Collateral agreed to between the parties in <i>Paragraph 13</i> and in which the Secured Party cannot acquire a security interest, e.g., a letter of credit.
<b>Other Posted Support</b>	Other Eligible Support held by the Secured Party.
<b>Posted Collateral</b>	Eligible Collateral, other property, Distributions, positive Interest Payments and all proceeds thereof held by the Secured Party.
<b>Posted Credit Support</b>	Posted Collateral and Other Posted Support.

## Comparison

Provision	1994 NY CSA	2016 NY VM CSA
<b>Definitions, ¶1(a)</b>	Definitions are as provided in Paragraph 12 and may be modified in <i>Paragraph 13</i> .	The provision is the same.
<b>Inconsistencies, ¶1(a)</b>	In the event of any inconsistency, the CSA prevails over the Schedule to the Master Agreement, and Paragraph 13 prevails over the CSA.	The provision is the same.
<b>Secured Party/Pledgor, ¶1(b)</b>	Each of the parties has the dual role of Secured Party and Pledgor under the CSA, however with respect to Other Posted Support, reference to Secured Party is a reference to such party as a beneficiary of the asset.	The provision is the same.
<b>Scope, ¶1(c)</b>	<p>This provision does not appear in the 1994 CSA.</p> <p>Generally, all transactions under the Master Agreement are covered under the CSA unless specifically carved out.</p> <p>The CSA covers both the Independent Amount and Exposure.</p> <p>All trades under the Master Agreement constitute a “netting set” for the purposes of determining net exposure.</p>	<p>Adds the term “Covered Transactions” which are the transactions that are covered by the 2016 NY VM CSA and which include only transactions subject to mandatory margining or agreed to between the parties. For instance, as FX Forward transactions and equity options, are not subject to the UMR, they may be excluded from the definition of Covered Transactions.</p> <p>Covered Transactions constitute a “netting set” for the purposes of determining net Exposure.</p>
<b>Security Interest, ¶2</b>	<p>Security Interest in Posted Collateral</p> <p>The CSA provides for the grant of a first priority continuing security interest in, lien and right of set-off against all Posted Collateral under the CSA as security for the Pledgor's obligations under the Master Agreement (the “Obligations”).</p> <p>When the Posted Collateral is returned to the Pledgor, the security interest and lien will be immediately released.</p> <p>Scope of “Obligations” can be extended beyond transactions under Master Agreement in Paragraph 13.</p>	The provision is the same.

Provision	1994 NY CSA	2016 NY VM CSA
<p><b>Credit Support Obligations, ¶13</b></p>	<p>This provision requires the transfer (i.e. delivery or return) of Eligible Credit Support.</p> <p>The obligation to deliver credit support arises if the Secured Party is entitled to a transfer and makes a demand on or promptly after a Valuation Date.</p> <p>The obligation to return credit support arises if the Pledgor is entitled to a transfer and makes a demand on or promptly after a Valuation Date.</p> <p>The Valuation Date will be as agreed in <i>paragraph 13</i>.</p>	<p>The provision is similar, see differences in the definitions of Delivery Amount and Return Amount.</p>
<p><b>Credit Support Amount, ¶13</b></p>	<p><b>Credit Support Amount = for any Valuation Date</b></p> <p>(i) the Secured Party's Exposure for that Valuation Date <b>plus</b></p> <p>(ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, <b>minus</b></p> <p>(iii) all Independent Amounts applicable to the Secured Party, if any, <b>minus</b></p> <p>(iv) the Pledgor's Threshold;</p> <p><i>provided, however, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.</i></p>	<p><b><i>This provision does not appear in the 2016 NY VM CSA.</i></b></p> <p>There is no definition of Credit Support Amount as neither Independent Amounts nor Thresholds are contemplated in the 2016 NY VM CSA. Only the Secured Party's Exposure is relevant for determining credit support obligations.</p>
<p><b>Delivery Amount, ¶13(a)</b></p>	<p><b>Delivery Amount:</b> the amount by which (i) the Credit Support Amount exceeds (ii) the Value as of that Valuation Date of Posted Credit Support held by the Secured Party.</p>	<p><b>Delivery Amount:</b> the amount by which (i) the Secured Party's Exposure exceeds (ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.</p>
<p><b>Return Amount, ¶13(b)</b></p>	<p><b>Return Amount:</b> the amount by which (i) the Value as of the Valuation Date of all Posted Credit Support held by the Secured Party exceeds (ii) the Credit Support Amount.</p>	<p><b>Return Amount:</b> the amount by which (i) the Value as of the Valuation Date of all Posted Credit Support held by the Secured Party exceeds (ii) the Secured Party's Exposure.</p>

Provision	1994 NY CSA	2016 NY VM CSA
<p><b>Conditions Precedent, Substitutions, ¶4(a)</b></p>	<p><b>Conditions Precedent:</b> Each transfer obligation of Pledgor and Secured Party is subject to the following conditions:</p> <p>no event of default, potential event of default or Specified Condition has occurred and is continuing with respect to the other party; and</p> <p>no unsatisfied payment obligations exist arising from the occurrence or designation of a date to terminate the transactions under the Master Agreement (an “Early Termination Date”), as a result of an event of default or Specified Condition with respect to the other party.</p> <p>Specified Conditions are as agreed between the parties in paragraph 13.</p> <p>Events of default are found in both the Master Agreement and in the CSA. The Master Agreement events of default include amongst others, failure to pay or deliver, misrepresentation and bankruptcy.</p> <p>A potential event of default is an event which with the giving of notice or the passage of time or both, will become an event of default.</p>	<p>The provision is the same.</p>
<p><b>Transfer Timing, ¶4(b)</b></p>	<p>If a party receives a collateral call before the Notification Time, they must meet it by close of business <i>on the next business day</i>.</p> <p>If a party receives a collateral call after the Notification Time, they must meet it by close of business <i>on the second business day</i>.</p> <p>Default Notification Time: 1:00PM NY. Parties can amend the Notification Time in <b>paragraph 13</b>.</p>	<p>If a party receives a collateral call before the Notification Time, they must meet it by close of business on the same business day.</p> <p>If a party receives a collateral call after the Notification Time, they must meet it by close of business on the next business day.</p> <p>Default Notification Time: 10:00AM NY. (this is to allow for same day transfers) Parties can amend the Notification Time in paragraph 13.</p>
<p><b>Calculations, ¶4(c)</b></p>	<p>All calculations of Value and Exposure will be made by the Valuation Agent as of the Valuation Time.</p> <p>Notice is given to each party of the calculations for the collateral calls by the Notification Time on the business day following the Valuation Date</p> <p>Valuation Agent will be specified in <b>Paragraph 13</b>.</p> <p>Valuation Time will be specified in <b>Paragraph 13</b>.</p>	<p>The provision is the same, however the 2016 NY VM CSA provides that for calculation of Value and Exposure, the Valuation Agent can use the most recent reasonably available value/information or data for the close of business in the relevant market.</p>

Provision	1994 NY CSA	2016 NY VM CSA
<b>Substitutions, ¶4(d)</b>	<p>Substitutions:</p> <p>Unless parties specify otherwise in <b>Paragraph 13</b>, Pledgor may transfer substitute Eligible Credit Support ("<b>Substitute Credit Support</b>") to the Secured Party on any business day by providing notice.</p> <p>The Secured Party then transfers back to the Pledgor the Posted Credit Support being replaced no later than the business day following the date it receives the Substitute Credit Support (the "<b>Substitution Date</b>").</p>	The provision is the same.
<b>Dispute Resolution, ¶5</b>	<p>This provision addresses disputes of Valuations Agent's calculation of Delivery/Return Amount by the other party, the "Disputing Party"</p> <p>The dispute may be over:</p> <p>the amount of collateral a party is required to deliver or return</p> <p>the Value of any transfer of Eligible Credit Support or Posted Credit Support, which may arise when dealing with fluctuating collateral, e.g. securities.</p>	The provision is the same.
<b>Dispute Resolution, ¶5(i)-(iii)</b>	<p>The Disputing Party gives notice by close of business on the business day <i>following the date of the demand or transfer</i> (as applicable);</p> <p>The appropriate party will transfer the undisputed amount no later than the <i>close of business on the business day following the date of the demand or transfer</i> (as applicable); and</p> <p>The parties will attempt to resolve the dispute informally.</p>	<p>The Disputing Party gives notice by close of business on the date that the transfer is due or the business day following the date of transfer</p> <p>The appropriate party will transfer the undisputed amount no later than the <i>close of business on the date that the transfer is due or the business day following the date of the transfer</i> (as applicable); and</p> <p>The parties will attempt to resolve the dispute informally.</p>

Provision	1994 NY CSA	2016 NY VM CSA
<b>Dispute Resolution, ¶15(iv)</b>	<p>For disputes on Delivery/Return Amount:</p> <p>The Valuation Agent will recalculate the amount using undisputed calculations or by seeking four actual quotations at mid-market from reference market-makers or third parties to calculate the termination amount in accordance with the valuation method agreed to by the parties under the Master Agreement, and taking the arithmetic average of those quotes. If fewer than four quotes are obtained those quotes will be used. If no quotes are obtained the Valuation Agent's calculation will be used. Parties can amend these procedures in <b>Paragraph 13</b>.</p> <p>For disputes on the Value of collateral: The Valuation Agent will recalculate the Value as of the date of the transfer by following the procedures agreed to in <b>Paragraph 13</b> for calculating Value.</p>	The provision is the same.
<b>Care of Posted Collateral, ¶16(a)</b>	<p>The Secured Party will use reasonable care to assure safe custody of Posted Collateral.</p> <p>The Secured Party has no duty to collect any Distributions or enforce or preserve any rights pertaining to Posted Collateral.</p>	The provision is the same.
<b>Eligibility to Hold Posted Collateral; Custodians, ¶16(b)</b>	<p>Subject to meeting the conditions specified in <b>Paragraph 13</b>, a party will be entitled to hold Posted Collateral directly or through a Custodian. If either the Secured Party or the Custodian fails to meet the conditions, Posted Collateral must be transferred from the Secured Party to the Custodian (or vice-versa) within five business days of request by the Pledgor, if the Custodian or the Secured Party, as applicable, satisfies the agreed upon conditions.</p> <p>The Secured Party is liable for the acts and omissions of its Custodian in the same way that it is liable for its own acts under the CSA.</p>	The provision is the same.

Provision	1994 NY CSA	2016 NY VM CSA
<p><b>Use of Posted Collateral, ¶16(c)</b></p>	<p>If the Secured Party is not subject to an event of default or subject to a Termination Event and no Early Termination Date has occurred or been designated, then the Secured Party has the right to sell, pledge rehypothecate, assign, invest, use, commingle or otherwise dispose of or use in its business any Posted Collateral.</p> <p>However, the Secured Party will be deemed to be holding such Posted Collateral for purposes of calculating Delivery/Return Amounts and for purposes of Disputes.</p> <p>Parties can specify in <b>Paragraph 13</b> whether a party is entitled to use Posted Collateral.</p>	<p>The provision is the same.</p>
<p><b>Distributions and Interest Amount, ¶16(d)(i)</b></p>	<p>The Secured Party will transfer to the Pledgor Distributions that it receives (or is deemed to receive) with respect to Posted Collateral no later than the following business day, so long as a Delivery Amount would not be created or increased by such transfer.</p>	<p>The provision is the same.</p>
<p><b>Interest Amounts, ¶16(d)(ii)</b></p>	<p>The Secured Party will transfer to the Pledgor the Interest Amount with respect to Posted Collateral in the form of Cash, at the time designated in <b>Paragraph 13</b>, so long as a Delivery Amount would not be created or increased by such transfer.</p> <p>Any Interest Amount not transferred will be considered Posted Collateral.</p>	<p>The 2016 NY VM CSA contemplates negative or positive interest (if in a negative interest rate environment, the Pledgor pays interest on the Cash it has posted and if in a positive interest rate environment, the Secured Party pays interest on the Cash posted to it). There are two methods for the transfer of interest:</p> <p><b>Interest Transfer:</b> Interest Payer will transfer the interest due, but parties may elect in <b>Paragraph 13</b> to net against any Delivery Amount or Return Amount due to the Interest Payer.</p> <p>Interest Adjustment: Parties may elect in <b>Paragraph 13</b> to allow the amount of Posted Collateral held by the Secured Party to be adjusted -</p> <p>Upward, if the Interest Amount is a positive number, or</p> <p>Downward, if the Interest Amount is a negative number.</p>

Provision	1994 NY CSA	2016 NY VM CSA
<p><b>Events of Default, ¶17</b></p>	<p>An Event of Default occurs under the CSA if:</p> <p>(i) A party (or its Custodian) fails to make any transfer of Eligible Collateral, Posted Collateral or Interest Amount when required if not cured within <b>two (2) business days</b> after notice.</p> <p>(ii) A party fails to comply with the conditions for use of Posted Collateral, if not cured within <b>five (5) business days</b> after receiving notice of same.</p> <p>(iii) A party fails to comply with any other obligation under the CSA (that is not otherwise a separate Event of Default) if not cured within <b>thirty (30) days</b> after receiving notice of such failure.</p> <p>Any default under Paragraph 7 of the CSA is an event of default under the Master Agreement. An event of default provides the other party with the following rights:</p> <p>(i) Right to suspend payments and performance under the Master Agreement.</p> <p>(ii) Right to suspend transfers of Eligible Credit Support under the CSA.</p> <p>(iii) Right to designate an Early Termination Date and liquidate all transactions under the Master Agreement.</p>	<p>The provision is the same.</p>
<p><b>Secured Party's Rights and Remedies, ¶18(a)</b></p>	<p>Secured Party's rights arise when there is:</p> <p>(i) an event of default with respect to the Pledgor,</p> <p>(ii) a Specified Condition with respect to the Pledgor, or</p> <p>(iii) the occurrence or designation of an Early Termination Date with respect to the Pledgor.</p> <p>Unless the Pledgor has paid all obligations then due, the Secured Party may exercise any of the following remedies:</p> <p>(i) All remedies available under applicable law;</p> <p>(ii) Any rights and remedies under the terms of Other Posted Support <i>E.g.</i>, Drawing on outstanding Letters of Credit</p> <p>(iii) Setoff of amounts payable by Pledgor against Posted Collateral held by Secured Party; or</p> <p>(iv) Liquidate Posted Collateral and apply proceeds to any Obligations owed by Pledgor.</p>	<p>The provision is the same, except that:</p> <ul style="list-style-type: none"> <li>• The 2016 NY VM CSA is revised to permit set-off against credit support posted under Other CSAs (other than regulatory Initial Margin, and provided such Other CSA does not prohibit such set-off).</li> <li>• The 2016 NY VM CSA is revised to permit application of proceeds of any liquidation against credit support posted under Other CSAs (other than regulatory Initial Margin).</li> </ul>

Provision	1994 NY CSA	2016 NY VM CSA
<b>Pledgor's Rights and Remedies, ¶8 (b)</b>	<p>Pledgor's rights arise upon the occurrence or designation of an Early Termination Date arising from:</p> <ul style="list-style-type: none"> <li>(i) an event of default with respect to the Secured Party or</li> <li>(ii) a Specified Condition with respect to the Secured Party.</li> </ul> <p>Unless the Secured Party has paid all Obligations then due, the following will apply:</p> <ul style="list-style-type: none"> <li>(i) All remedies available under applicable law.</li> <li>(ii) Any rights and remedies under Other Posted Support. <i>E.g.</i>, Drawing on outstanding Letters of Credit</li> </ul> <p>The Secured Party is obligated to immediately transfer all Posted Collateral back to the Pledgor.</p>	<p>The provision is the same, except that the 2016 NY VM CSA is revised to permit set-off against credit support posted under Other CSAs (other than regulatory Initial Margin, and provided such Other CSA does not prohibit such set-off).</p>
<b>Deficiencies and Proceeds, ¶8(c)</b>	<p>The Secured Party must transfer to Pledgor any proceeds and Posted Credit Support remaining after liquidation, set-off and/or application of funds after all amounts payable are satisfied in full.</p> <p>Pledgor remains liable for any unpaid amounts.</p>	<p>The provision is the same.</p>
<b>Final Returns, ¶8(d)</b>	<p>When no amounts may become payable by the Pledgor with respect to Obligations under the Master Agreement, the Secured Party will transfer all Posted Credit Support and Interest Amounts back to the Pledgor.</p>	<p>The provision is the same, but explicitly references interest payments.</p>

Provision	1994 NY CSA	2016 NY VM CSA
<b>Representations, ¶9</b>	<p>Each Party represents the following on the date the CSA is executed and each date the Pledgor transfers Eligible Collateral:</p> <ul style="list-style-type: none"> <li>(i) It has the power to grant a security interest and lien on the Eligible Collateral and has taken all necessary actions to effect same;</li> <li>(ii) It is the sole owner of the Eligible Collateral it transfers, and it transfers such Eligible Collateral free and clear of liens or other encumbrances.</li> <li>(iii) Upon a transfer, the Secured Party will have a valid and perfected first priority security interest and lien on the Eligible Collateral; and</li> <li>(iv) The performance of its obligations under the CSA will not result in any other security interest, lien or encumbrance other than that provided to the Secured Party.</li> </ul> <p>The parties may in <i>Paragraph 13</i> incorporate any additional representations into the CSA in addition to those in Paragraph 9.</p>	The provision is the same.
<b>Expenses, General, ¶10(a):</b>	Each Party generally pays for its own expenses in performing its obligations under the CSA.	The provision is the same.
<b>Posted Credit Support, ¶10(b)</b>	The Pledgor will pay all taxes or charges imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of such charges or taxes (except taxes with respect to the Secured Party's use of Posted Collateral).	The provision is the same.
<b>Liquidation/Application of Posted Credit Support, ¶10(c)</b>	All reasonable costs and expenses incurred in connection with the liquidation and/or application of Posted Credit Support are payable either by the party in default, or if neither party is in default, equally shared by the parties.	The provision is the same.

Provision	1994 NY CSA	2016 NY VM CSA
<b>Default Interest, ¶11 (a)</b>	If the Secured Party fails to make any transfer of Posted Collateral or Interest Amount, such amount will accrue interest at the Default Rate (as defined in the Master Agreement) from the date such amount was required to be transferred until the date actually paid.	If the Secured Party fails to make any transfer of Posted Collateral, such amount will accrue interest at the Default Rate (as defined in the Master Agreement) from the date such amount was required to be transferred until the date actually paid.  The interest is subject to daily compounding and the actual number of days elapsed.  Failure by either party to transfer Interest will be subject to Default Interest.
<b>Further Assurances, ¶11(b)</b>	Upon demand by a party, the other party will execute or deliver any financing statement, specific assignment or other document that may be necessary or desirable with respect to creating, perfecting, enforcing and/or releasing any security interest or lien granted under the CSA.	The provision is the same.
<b>Further Protection, ¶11(c)</b>	Pledgor will give notice to the Secured Party of, and defend against, any suits, actions or proceedings relating to Posted Credit Support transferred by the Pledgor or that could adversely affect the security interest and lien granted under the CSA (unless such suit or action results from the Secured Party's exercising its rights to use Posted Collateral).	The provision is the same.

Provision	1994 NY CSA	2016 NY VM CSA
<b>Legally Ineligible Credit Support (VM), ¶111(g)</b>	This provision does not appear in the 1994 CSA.	<p>If Eligible Credit Support is no longer regulatory compliant and a notice of that fact is provided by the Secured Party, Eligible Credit Support will cease to be Eligible Credit Support:</p> <ul style="list-style-type: none"> <li>(i) with respect to the Secured Party as of the Transfer Ineligibility Date;</li> <li>(ii) with respect to the Pledgor as of the Total Ineligibility Date; and</li> <li>(iii) in each case, will have a value of zero by the Total Ineligibility Date.</li> </ul> <p>Transfer Ineligibility Date and Total Ineligibility Date:</p> <ul style="list-style-type: none"> <li>(i) the date the Eligible Credit Support is no longer compliant or</li> <li>(ii) if such date is earlier than the 5th business day after the notice has been delivered, the 5th business day after notice is delivered.</li> </ul>
<b>Credit Support Offsets, ¶111(j)</b>	This provision does not appear in the 1994 CSA.	If elected under <i>Paragraph 13</i> , allows the parties to offset credit support required to be posted under Other CSAs provided that such credit support is not required to be segregated, not prohibited from offset and fully fungible.