



**K&L GATES**

# **COVID-19: Key Issues for Swap and Repo Participants in a Difficult Market**

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Barry B. Cosgrave	-	London
Kenneth Holston	-	Boston
Robert T. Honeywell	-	New York
Brian D. Koosed	-	Washington DC
Anthony R.G. Nolan	-	New York

# INTRODUCTION

- COVID-19
  - Impacts financial products and assets
  - Implications for financial stability
  - Challenges basic assumptions of swaps and repos
- Key issues discussed today
  - Understanding the documentation
  - Understanding performance issues and defenses
  - Legal issues under New York, US and English law

## DOCUMENTATION

- Swaps:
  - 1992 vs. 2002 ISDA master agreement
  - Role of definitions, esp. disruption events
  - NY CSA vs. English CSA
  - Schedule contains negotiated terms and amendments
- Repos:
  - 2000 or 2011 GMRA (English law) v 1996 MRA (NY law)
  - Annex contains negotiated terms and amendments

# THE MECHANICS OF MARGIN CALLS

## Swaps

- Margin calls preserve collateral securing net mark-to-market amount on all transactions (the “Exposure”)
- Minimum Transfer Amount
- “Valuation Agent”
- Margin calls subject to dispute resolution

## Repurchase Transactions

- Margin calls preserve the agreed margin ratio (or haircut) on repo'd assets: *i.e.*, a % margin of the value of the repo'd assets above the contractual repurchase price
- Market value determination
- No dispute resolution provision

## THE NEXT STEP: EVENTS OF DEFAULT OR TERMINATION EVENTS

- Overview of events of default and termination
- Solvency considerations:
  - Definitional differences in the master agreements
    - Older: 1992 ISDA, 1996 MRA, 2000 GMRA
    - Newer: 2002 ISDA, 2011 GMRA
  - But what is “insolvency” anyways?
- Force Majeure and COVID-19

# THE NEXT-TO-LAST STEP: CALCULATING NET AMOUNTS DUE

## Swaps

- Exposure is based on the early termination amount for the transaction in question.
- Depends on whether the transaction is documented under the 1992 ISDA master agreement (“loss” v. “market quotation”) or the 2002 ISDA master agreement (“close-out amount”).

## Repurchase Transactions

- Exposure is based on the repurchase price: a fixed dollar amount equal to the original purchase price funded up-front plus the agreed price differential (akin to interest).
- MRA: Final claim is based on market price then obtainable for the repo'd assets.
- GMRA: “Default market value” approach

## THE LAST STEP: LIQUIDATING COLLATERAL

- US law:
  - Commercial reasonableness under UCC Article 9
  - Impact of safe harbors
    - Bankruptcy Code
    - FDIC-insured financial institutions
    - broker-dealers
- English law:
  - Good faith
  - Close-out netting

## CONCLUSION

- How is market value determined in volatile or illiquid markets?
- How and when is NAV determined?
- How to determine a fund's solvency?
- Is liquidation commercially reasonable / in good faith?



The image features a central dark blue horizontal band with the word "QUESTIONS?" in white, bold, sans-serif capital letters. Above and below this band are two identical horizontal strips showing a microscopic view of several virus particles. The particles are spherical with numerous thin, hair-like projections (spikes) extending from their surfaces. They are set against a background of a fine, light-colored grid pattern, which is overlaid on a darker, reddish-orange textured surface. The overall color palette is dominated by warm tones of red, orange, and brown, with the central blue band providing a sharp contrast.

QUESTIONS?

RESPONDING TO COVID-19

**Barry B. Cosgrave**

44.20.7360.8265

[Barry.Cosgrave@klgates.com](mailto:Barry.Cosgrave@klgates.com)

**Kenneth Holston**

617.261.3154

[Kenneth.Holston@klgates.com](mailto:Kenneth.Holston@klgates.com)

**Robert T. Honeywell**

212.536.4863

[Robert.Honeywell@klgates.com](mailto:Robert.Honeywell@klgates.com)

**Brian D. Koosed**

202.778.9204

[Brian.Koosed@klgates.com](mailto:Brian.Koosed@klgates.com)

**Anthony R.G. Nolan**

212.536.4843

[anthony.nolan@klgates.com](mailto:anthony.nolan@klgates.com)