

Navigating Initial Margin Documentation: Where Do I Begin?

Has your organization determined it will be brought in scope to exchange initial margin (IM) under the margin rules for non-cleared derivatives? If so, you may be tasked with ensuring documentation is in place to meet your IM obligations. But where do you begin?

This overview will help you understand the documentation effort ahead by first explaining how IM documentation fits into the larger set of relationship documentation between you and your derivatives trading counterparties, then exploring key questions to help you determine which IM documentation and accompanying custodian relationship documentation may be most appropriate based on your trading relationships.

Initial Margin Documents within the ISDA Agreement Structure

ISDA has published a series of bilateral documents that enable counterparties to enter into agreements to exchange IM. These documents are just one piece of the larger set of derivatives relationship documents that may be applicable to transactions between you and your counterparties (see the diagram on the next page).

The 1994 Credit Support Annex (Security Interest – New York Law) (“1994 CSA”), the 1995 Credit Support Annex (Title Transfer – English Law) (“1995 CSA”, together with the 1994 CSA, the “1994 and 1995 CSAs”), and the 1995 Credit Support Deed (Security Interest – English Law) (“1995 CSD”), have long enabled parties to agree to voluntary credit support arrangements to reduce credit risk. Credit support documents published by ISDA beginning in 2016 are based on the 1994 and 1995 CSAs or 1995 CSD, adapted to also allow counterparties to meet variation margin or IM regulatory requirements (namely, with respect to the IM regulatory requirements, to post collateral to a third party custodian in a segregated account).¹

ISDA has published a summary table of the available forms of IM documents including an overview of the purpose of each document.² Certain recommended amendment provisions are also available for use in specific situations, for example, where posted collateral includes certain types of Japanese law governed securities or where a French law ISDA Master Agreement is being used.

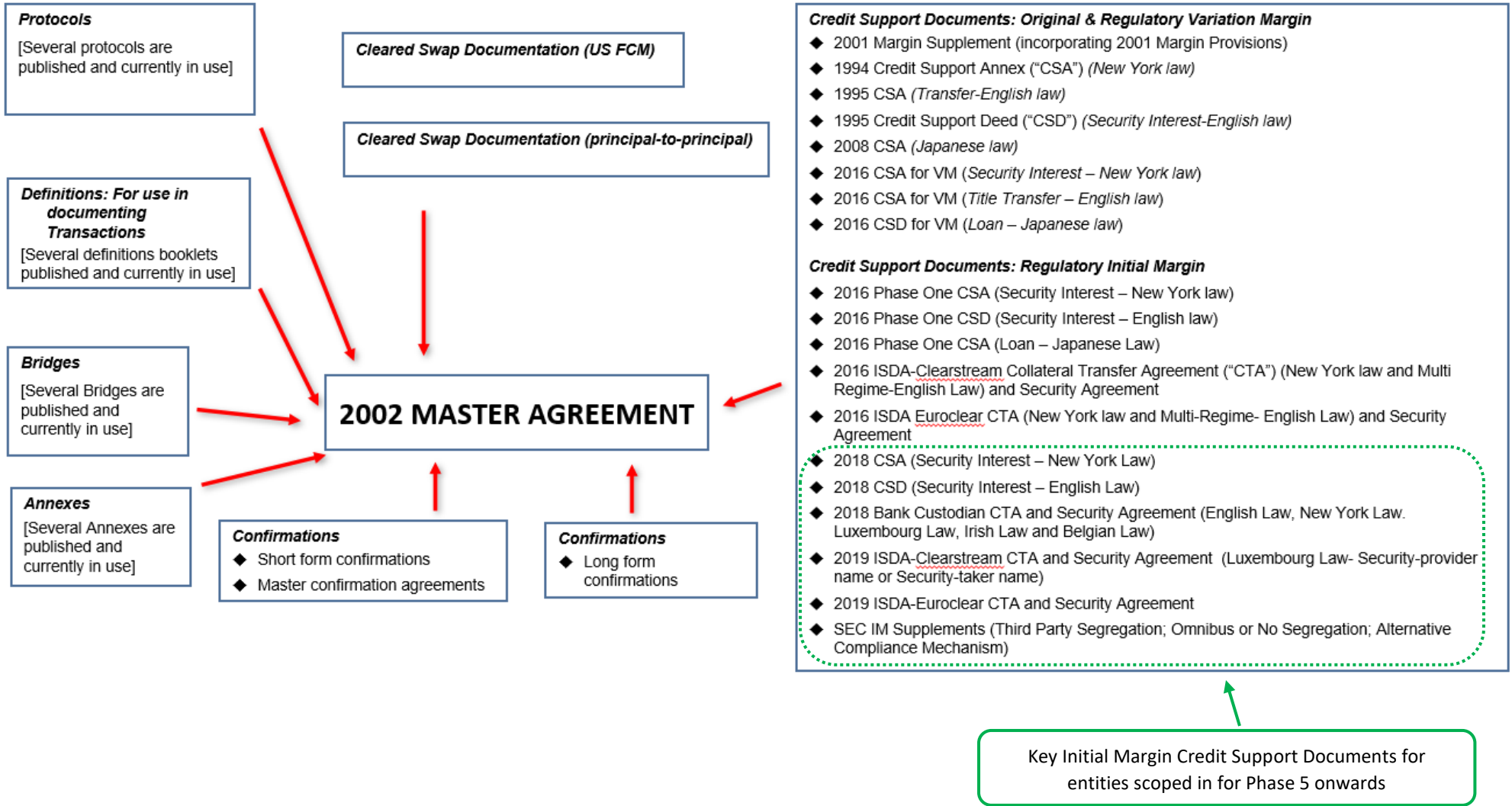
¹ In 2016, ISDA published and co-published “Phase One” versions of IM documents, developed for use by firms, specifically large derivative dealer firms, coming into scope to comply with the IM requirements in 2016, and also used in 2017 and 2018 in phases two and three (see further detail regarding the phase in timelines [here](#)). Since that time, ISDA has published and co-published new “next-generation” IM documents, focused on application to a broader range of entities, including significantly more buy-side entities, which are coming into scope in the later phases of the IM regulatory scheme, and supplements that facilitate compliance with the U.S. Securities and Exchange Commission’s (SEC) IM requirements for uncleared security-based swaps. These ‘next generation’ documents & supplements are the primary subject of this overview.

² See ISDA’s [Summary of Initial Margin Documentation](#).

This document is intended as an information resource only; it does not contain legal advice and should not be considered a guide to or explanation of all relevant issues or considerations in connection with the impact of margin rules on derivative transactions. You should consult your legal advisors and any other advisor you deem appropriate in considering the issues discussed herein. ISDA assumes no responsibility for any use to which any of these materials may be put.

*This document was first published in April 2020 and was updated in May 2021 and November 2021

ISDA Agreement Structure: Representative Key Documentation & Focus on Credit Support Documents (2021)



How do I decide which IM documents I should enter into with my counterparties and custodians?

You may be aware that, as a general matter, IM must be exchanged on a two-way basis, as no netting of collateral being posted between counterparties is permitted, and that IM must be segregated by being posted to a custodian that is unaffiliated with the trading counterparties. Note that in situations involving margin for security-based swaps under SEC rules, the general rules do not always apply (see [Annex A](#) to this document for further detail on security-based swaps documentation considerations).

With the above caveats in mind, the regulatory IM documentation choices will therefore depend both on **your** custodian(s) (for IM you post) and your **counterparties'** custodians (for IM your counterparties post), as well as the ISDA Master Agreement relationships between you and your counterparties. Specifically, you should think about four key factors:

- 1) *WHO are the custodians (your custodian(s) and your counterparties' custodians)?*
- 2) *WHAT segregation offering will you be using, triparty, third party, or both (e.g. receiving via triparty and pledging via third party)?*
- 3) *WHERE are those custodians located?*
- 4) *WHAT is the governing law of the ISDA Master Agreements between you and your counterparties?*

Some IM documentation is standardized and published by ISDA, while other documentation is specific to the custodial or platform relationship with each counterparty and must be negotiated separately between you and/or your counterparties and the relevant custodians. With respect to the segregation offering factor described above, we note that Euroclear and Clearstream are exclusively triparty platforms, while other custodians may have both third party and triparty offerings. The triparty-third party distinction generally does not impact the regulatory IM documentation discussed herein except with respect to the eligible collateral schedule, discussed below.³

The table on the next page illustrates some of the documents that may be required depending on the custodial relationships of each of the counterparties. ISDA published or co-published documents are indicated in **bold text**.

Note that there will be multiple documents for each trading relationship: bilateral with the counterparty, and trilateral with your custodian and the counterparty, and with the counterparty's custodian and the counterparty. You may also need to enter into bilateral documentation with your custodian(s), but they may apply to multiple counterparty relationships.

³ For more detail on the triparty and third party segregation approaches, see the [ISDA Margin InfoHub](#).

Initial Margin Relationship Documentation

		Who is Party A's custodian?		
		<i>Bank Custodian (agnostic)</i>	<i>Euroclear</i>	<i>Clearstream</i>
Who is Party B's custodian?	<i>Bank custodian (agnostic)</i>	<p>Between Party A and Party B: EITHER (a) 2018 IM CSA, (b) 2018 IM CSD or (c) 2019 IM Bank Custodian CTA with Security Agreement</p> <p>Between Party A, Party B and Party A's custodian: Account Control Agreement</p> <p>Between Party A, Party B and Party B's custodian: Account Control Agreement</p> <p>Between Party A and Party A's custodian: Master Custody Agreement</p> <p>Between Party B and Party B's custodian: Master Custody Agreement</p>	<p>Between Party A and Party B: (1) EITHER (a) 2018 IM CSA, (b) 2018 IM CSD or (c) 2019 IM Bank Custodian CTA with Security Agreement AND (2) 2019 IM ISDA-Euroclear CTA with Security Agreement⁴</p> <p>Between Party A, Party B and Euroclear: Euroclear Membership Documents*</p> <p>Between Party A, Party B and Party B's custodian: Account Control Agreement</p> <p>Between Party B and Party B's custodian: Master Custody Agreement</p>	<p>Between Party A and Party B: (1) EITHER (a) 2018 IM CSA, (b) 2018 IM CSD or (c) 2019 IM Bank Custodian CTA with Security Agreement AND (2) 2019 IM ISDA-Clearstream CTA with Security Agreement</p> <p>Between Party A, Party B and Clearstream: Clearstream Membership Documents*</p> <p>Between Party A, Party B and Party B's custodian: Account Control Agreement</p> <p>Between Party B and Party B's custodian: Master Custody Agreement</p>
	<i>Euroclear</i>	<p>Between Party A and Party B: (1) EITHER (a) 2018 IM CSA, (b) 2018 IM CSD or (c) 2019 IM Bank Custodian CTA with Security Agreement AND (2) 2019 IM ISDA-Euroclear CTA with Security Agreement</p> <p>Between Party A, Party B and Euroclear: Euroclear Membership Documents*</p> <p>Between Party A, Party B and Party A's custodian: Account Control Agreement</p> <p>Between Party A and Party A's custodian: Master Custody Agreement</p>	<p>Between Party A and Party B: 2019 IM ISDA-Euroclear CTA with two Security Agreements</p> <p>Between Party A, Party B and Euroclear: Euroclear Membership Documents*</p>	<p>Between Party A and Party B: 2019 IM ISDA-Euroclear CTA with Security Agreement and 2019 IM ISDA-Clearstream CTA with Security Agreement</p> <p>Between Party A, Party B and Clearstream: Clearstream Membership Documents*</p> <p>Between Party A, Party B and Euroclear: Euroclear Membership Documents*</p>
	<i>Clearstream</i>	<p>Between Party A and Party B: (1) EITHER (a) 2018 IM CSA, (b) 2018 IM CSD or (c) 2019 IM Bank Custodian CTA with Security Agreement AND (2) 2019 IM ISDA-Clearstream CTA with Security Agreement</p> <p>Between Party A, Party B and Clearstream: Clearstream Membership Documents*</p> <p>Between Party A, Party B and Party A's custodian: Account Control Agreement</p> <p>Between Party A and Party A's custodian: Master Custody Agreement</p>	<p>Between Party A and Party B: 2019 IM ISDA-Euroclear CTA with Security Agreement and 2019 IM ISDA-Clearstream CTA with Security Agreement</p> <p>Between Party A, Party B and Clearstream: Clearstream Membership Documents*</p> <p>Between Party A, Party B and Euroclear: Euroclear Membership Documents*</p>	<p>Between Party A and Party B: 2019 IM ISDA-Clearstream CTA with two Security Agreements</p> <p>Between Party A, Party B and Clearstream: Clearstream Membership Documents*</p>

* In the case of Euroclear and Clearstream, membership documents need only be entered into once when the relevant party uses the applicable service for the first time.

⁴ Where a party's custodian is Euroclear (Party A in this example) and its counterparty is using the Euroclear pledgee representative structure (Party B in this example), the parties will add additional riders that have been published by ISDA and Euroclear. See "Rider for the ISDA 2019 Euroclear CTA with respect to the use of a Pledgee Representative" and "Rider for the ISDA 2019 Euroclear Security Agreement with respect to the use of a Pledgee Representative", available on the [ISDA bookstore](#), search "Euroclear".

You will notice that in the “Bank Custodian (agnostic)” category above, you can agree either via a Credit Support Agreement (“2018 IM CSA”), Credit Support Deed (“2018 IM CSD”) or Bank Custodian Credit Transfer Annex (“2019 IM Bank Custodian CTA”) with a Security Agreement. For Euroclear, a “2019 IM ISDA-Euroclear CTA with Security Agreement” is indicated, and with Clearstream, a “2019 IM ISDA-Clearstream CTA with Security Agreement” is indicated.

How do you determine which of these options might be the best choice for you and your counterparties? On the following pages, there are possible combinations of counterparties, custodians, and ISDA Master Agreement governing law to help assess what documents might be most appropriate, using the four questions posed above. Keep in mind, these are just some possible scenarios; different documentation choices may be appropriate for you, your counterparties and your custodians depending on your relationships and current agreements.

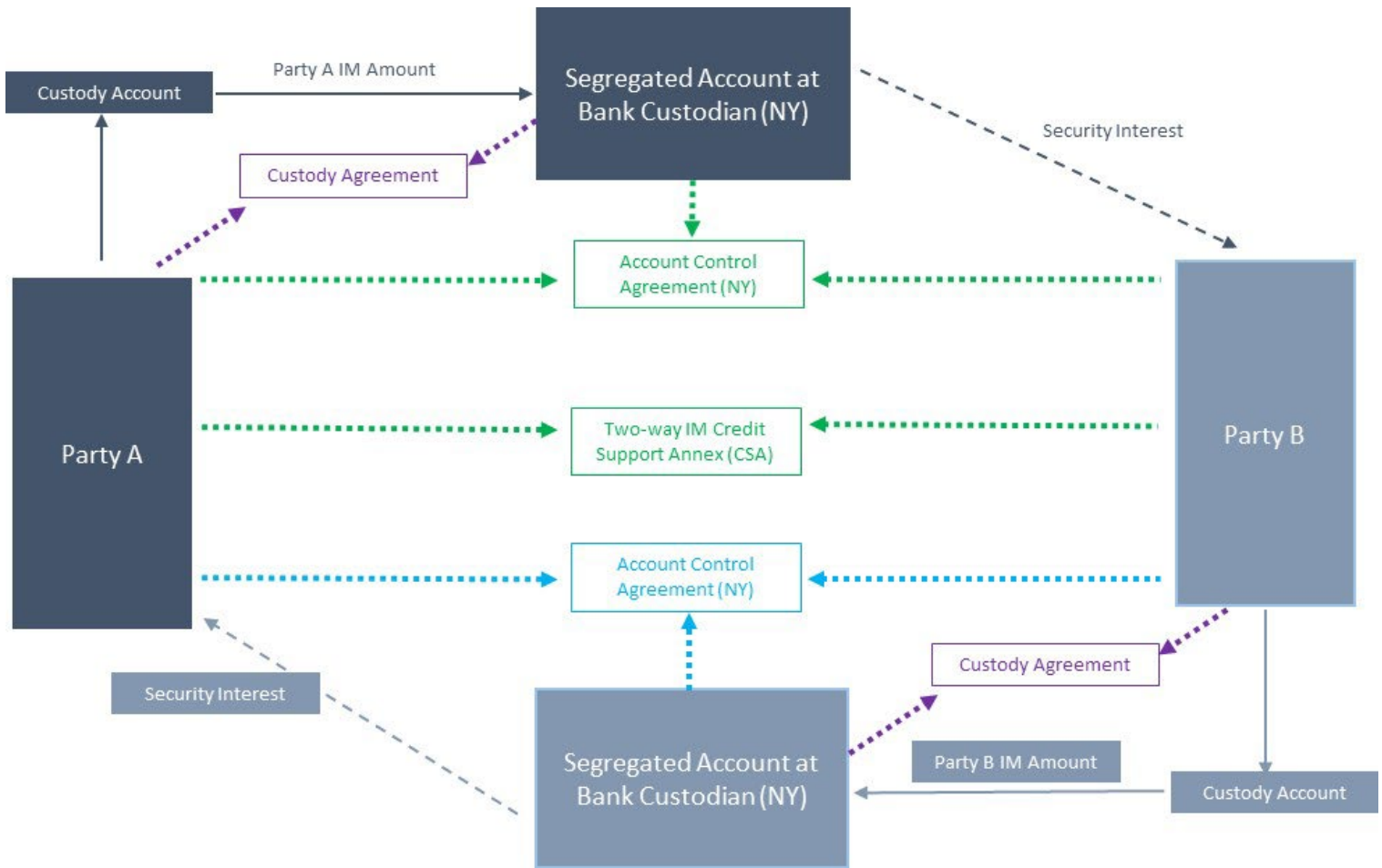
Example 1

You have selected a bank custodian located in New York and your counterparty has also chosen a bank custodian located in New York; the ISDA Master Agreement currently in place between you and your counterparty is subject to New York law.

In this first example, you may choose to enter into a 2018 IM CSA, which creates a New York law security interest over collateral, since your custodians are both in New York and your ISDA Master Agreement is also subject to New York law. On the next page is a view of what that documentation relationship would look like. You will see that you should also expect to enter into documents beyond just the 2018 IM CSA—these are discussed further in the next section.

You could also enter into a 2019 IM Bank Custodian CTA with a New York law Security Agreement. The 2019 IM Bank Custodian CTA is based on the 2018 IM CSA, but splits the terms into two separate documents. Specifically, the 2019 IM Bank Custodian CTA addresses the mechanical aspects of the collateral relationship, and is governed by the same governing law as the underlying ISDA Master Agreement (so in this case, New York law). The parties can then select Security Agreements to match the location of the custodian accounts, so the governing law of the grant and enforcement of the security interest matches the locations of the segregated accounts. In this case, the custodian accounts are both in New York, so the 2018 IM CSA may be preferable as there are no differences in the relevant governing law, however, your current documentation relationships and preferences may lead you to choose one form or another.

You will also note that in the graphic below, the 2018 IM CSA in this case is designated as a “two way” CSA. The 2018 IM CSA, the 2018 IM CSD, the 2019 IM Bank Custodian CTA, the 2019 IM ISDA-Euroclear CTA and the 2019 IM ISDA-Clearstream CTA (the 2019 IM Bank Custodian CTA, the 2019 IM ISDA-Euroclear CTA and the 2019 IM ISDA-Clearstream CTA, together the “CTAs” and each a “CTA”) are designed with the default concept that both parties will act as collateral provider and as collateral taker, since both parties will have posting obligations under the single agreement. Parties can instead elect to have “One Way” provisions specified as applicable in the relevant 2018 IM CSA, 2018 IM CSD or CTA. If this is selected, only one party will be designated in the agreement as the collateral provider (the “Pledgor” under the 2018 IM CSA) and the other party will be designated as the collateral taker (the “Secured Party” in the 2018 IM CSA). This is discussed further in Example 2 below.



Example 2

You have selected a bank custodian located in New York and your counterparty has chosen to use a segregated account at Euroclear or Clearstream; the ISDA Master Agreement currently in place between you and your counterparty is subject to New York law.

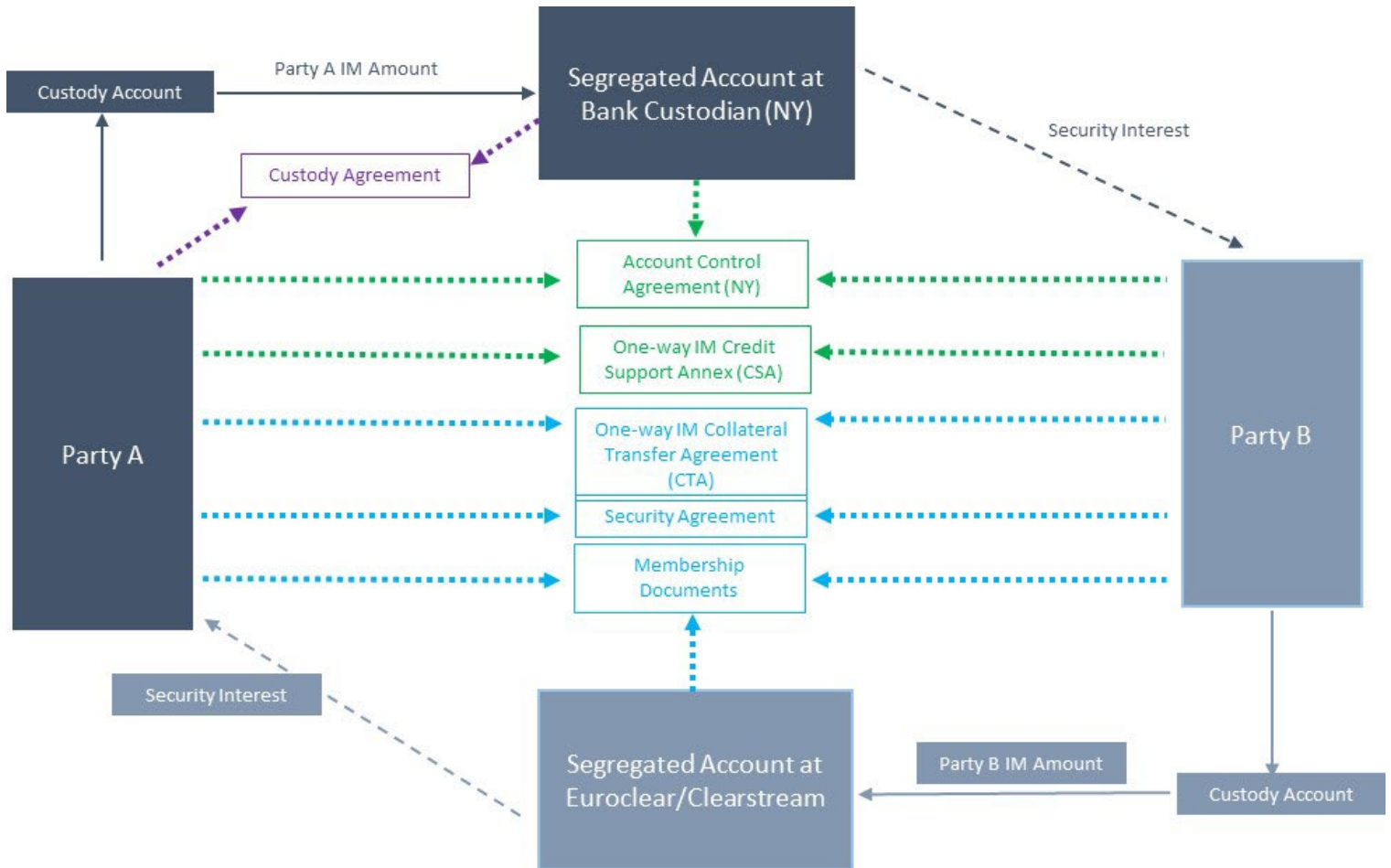
In this case, you may choose to enter into a 2018 IM CSA, which creates a New York law security interest over collateral, since the ISDA Master Agreement is subject to New York law (a 2019 IM Bank Custodian CTA with a Security Agreement would also be an option here). However, you should also expect to enter into a Euroclear or Clearstream-specific CTA and Security Agreement.

For Clearstream, there is a specific form of CTA (the 2019 IM ISDA-Clearstream CTA), which is governed by the governing law of the ISDA Master Agreement (so in this case, New York law). The related Clearstream Security Agreement is governed by Luxembourg law. For Euroclear, there is also a specific form of CTA (the 2019 IM ISDA-Euroclear CTA), which is governed by the governing law of the ISDA Master Agreement (so in this case, New York law). The related Euroclear Security Agreement is governed by Belgian law.

Also, in this case, for the 2018 IM CSA, you and your counterparty would elect “One-Way” provisions, where you are the “Pledgor” and your counterparty is the “Secured Party”. Similarly, in the 2019 IM ISDA-Clearstream CTA

or the 2019 IM ISDA-Euroclear CTA, as applicable, you and your counterparty would elect “One-Way” provisions, where your counterparty is the “Security-provider” and you are the “Security-taker”.

Here is a view of what that documentation relationship would look like.



Example 3

You have selected a bank custodian located in Belgium and your counterparty has chosen a bank custodian located in London; the ISDA Master Agreement currently in place between you and your counterparty is subject to English law.

Here, you may choose to enter into a 2019 IM Bank Custodian CTA and Security Agreements with your counterparty. The CTA addresses the mechanical aspects of the collateral relationship, and is governed by the same governing law as the underlying ISDA Master Agreement (so in this case, English law). You and your counterparty would then enter into Security Agreements related to that CTA, based on the location of the custody accounts. Here, then, a Security Agreement subject to Belgian law (in which you are the “Security Provider” and your counterparty is the “Security Taker”) and a Security Agreement related to English law (in which your counterparty is the “Security Provider” and you are the “Security Taker”) would likely be appropriate to execute. This enables you and your counterparty to ensure that the governing law of the grant and

enforcement of the security interest over your respective collateral matches the locations of your segregated accounts.

Example 4

You have selected a bank custodian located in London and your counterparty has chosen a bank custodian located in London; the ISDA Master Agreement currently in place between you and your counterparty is subject to English law.

Here, with respect to the custodians, you could choose to enter into a 2018 IM CSD with your counterparty, which creates an English law security interest over collateral, or a 2019 IM Bank Custodian CTA with an English law Security Agreement.

Beyond the 2018 IM CSA, 2018 IM CSD and CTAs with Security Agreements, what other documentation should I be aware of?

You will notice in the relationship documentation table and diagrams related to Example 1 and Example 2 above, there are more documents needed to set up the regulatory IM arrangement beyond the 2018 IM CSA, 2018 IM CSD, CTAs and Security Agreements. Early consideration should be given to your selection of custodian and internal operational capabilities to ensure appropriate regulatory documentation can be timely executed.

If you are using a bank custodian, you should also expect to enter into a master custody agreement with your custodian related to your custody account as well as an account control agreement for each trading relationship between you, your counterparty and your custodian. If your counterparties are also using bank custodians, you should also expect to enter into an account control agreement for each trading relationship between you, your counterparty and your counterparties' custodians. You can also expect to need to negotiate eligible collateral schedules with your custodian (when using a triparty custodian), Clearstream or Euroclear (if a party is posting to an account at Clearstream or Euroclear), in addition to your counterparties. For further detail on onboarding, account opening and know-your-counterparty requirements, see the ISDA-SIFMA third party and triparty provider checklists.⁵

If either of you or your counterparties are using the Clearstream or Euroclear platforms, instead of master custody agreements or account control agreements, you should expect to enter into membership documents related to that platform. As noted above, once you enter into those membership documents, they can then be applied to multiple counterparty relationships.

You could also expect to go through "Know Your Counterparty" procedures related to both your custodian or platform and your counterparties' custodians or platforms, if either is new to you. This may require you to produce additional documentation.

⁵ See ISDA Margin Infohub's [Third Party and Triparty Checklists](#).

Where can I learn more about Initial Margin documentation?

To assist you and your counterparties in navigating IM documentation and margin requirements for non-cleared derivatives, ISDA has a number of tools and resources, including the following:

ISDA Initial Margin Documentation Published Documents: All ISDA published and co-published documents are available through the [ISDA Bookstore and Online Library](#).

ISDA Initial Margin Documentation Webinar Series: ISDA has published a series of webinars, available [here](#), designed to introduce the new IM documentation and provide an introduction to key provisions in the new documents. They provide a basic introduction to the following topics (more webinars may be added):

- Overview of New Initial Margin Documentation
- Documentation Structure
- Custodian Risk & Relationship with Account Control Agreement
- Regime Table & “Strictest of” Rules
- Regulatory Initial Margin & Non-Regulatory Initial Amount
- Rights & Remedies
- New forms of Collateral Transfer Agreement and Security Agreement
- Overview of Euroclear & Clearstream Documentation
- Overview of Bank Custodian Collateral Transfer Agreement & Security Agreement

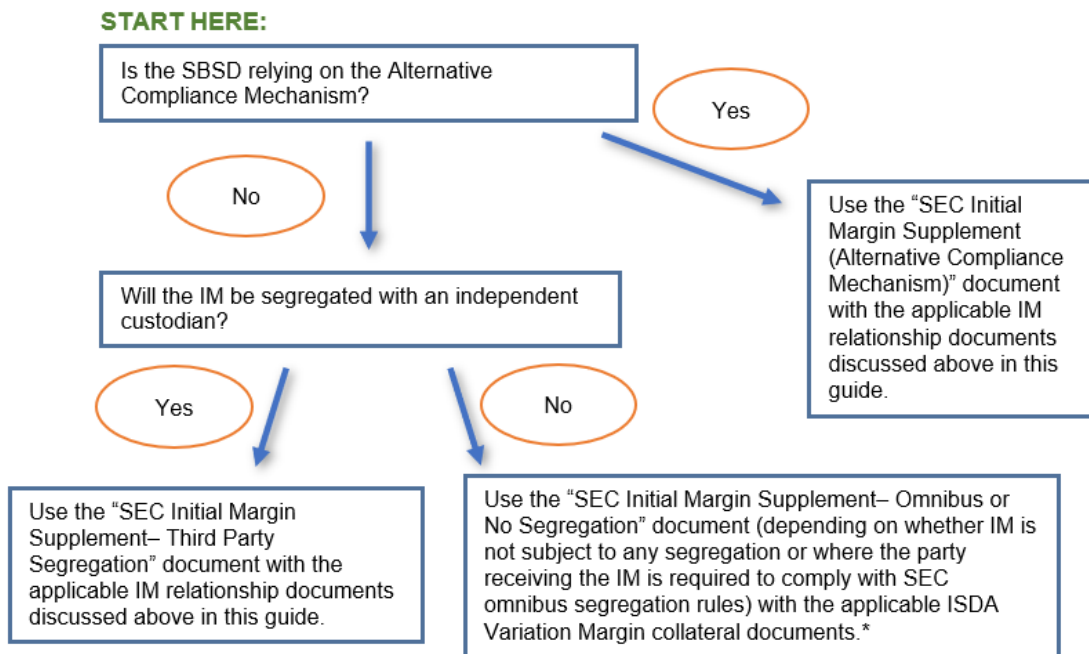
ISDA Events Related to Margin Documentation: ISDA periodically offers training and other events focused on aspects of initial margin. The latest calendar of ISDA Events can be found [here](#). Some previous events may be available for on-demand viewing as well.

ISDA Create: ISDA Create is an online solution that allows firms to produce, deliver, negotiate and execute derivatives documents completely online (find more information [here](#)). The system captures, processes and stores data from these documents, providing users with a complete digital record. ISDA Create – IM is ISDA’s first offering under ISDA Create, and allows firms to electronically negotiate and execute initial margin (IM) documentation. For more information, please contact ISDA at isdacreate@isda.org or visit the [ISDA Create website](#).

ISDA Non-cleared Margin Resources: For various tools, thought leadership articles and guides that may be helpful to parties working to establish initial margin arrangements meeting the requirements of applicable initial margin regulations for uncleared derivatives, please see the [ISDA Margin InfoHub](#).

Annex A:
Security-Based Swaps Documentation Considerations

With respect to situations involving margin for security-based swaps under SEC rules, the general rules related to exchange and segregation of IM do not always apply. Specifically, the SEC rules do not require IM to be exchanged on a two-way basis—rather, the rules only require collection of IM by the Security-Based Swap Dealer (“SBSD”)—and do not require IM to be segregated. In addition, the SEC rules allow certain SBSBs who are also Swap Dealers under the CFTC rules to use an alternative compliance mechanism where they have limited security-based swaps activity.⁶ Therefore, if the parties are applying the SEC regime to their trading relationship, the following documentation considerations apply.



* As these arrangements are more similar to the non-segregated terms typically used for variation margin, this supplement has been designed to work with the parties’ variation margin agreement. It can be used with any of the following ISDA collateral documents: 1994 New York Law CSA, 2016 New York Law VM CSA, 1995 English Law CSA, and 2016 English Law VM CSA.

⁶ See Section 240.18a-10 of the SEC Margin Rules.