

Arbitration

ACI Rules for Over-the-Counter Financial  
Instruments Disputes Resolution



# ACI EXPERT DETERMINATION SERVICE

The Committee for Professionalism

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ACI – The Financial Markets Association

## **EXPERT DETERMINATION SERVICE**

Where the counterparties of a transaction are unable to resolve a dispute which has arisen between them, the ACI Committee for Professionalism provides an Expert Determination Service in order to facilitate its resolution. Market participants are encouraged to avail themselves of this service in accordance with ACI Rules for Over-the-Counter Financial Instruments Disputes Resolution. The terms and conditions of this service are set out in this document.

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## **ACI RULES FOR OVER THE COUNTER FINANCIAL INSTRUMENTS DISPUTE RESOLUTION**

### Contents

1.	Expert Determination Service .....	3
2.	Request .....	4
3.	Answer.....	5
4.	Supplements.....	6
5.	Acknowledgements and rejections.....	7
6.	Committee for Professionalism (CFP) Procedure.....	8
7.	Decision.....	9
8.	Deposit and publication of the decision .....	9
9.	Costs of the service .....	10
10.	General .....	10
11.	Amendment of the Rules.....	10
12.	Disclaimer .....	11
13.	Request Form .....	12
	APPENDIX I - Markets and Instruments covered by the Model Code .....	14

## 1. Expert Determination Service

- 1.1. These Rules concern a service (“Expert Determination Service”) which is made available by ACI - The Financial Markets Association (‘ACI’) in connection with any dispute:
  - 1.1.1. related to over-the-counter financial instruments as detailed in Appendix I.
  - 1.1.2. between market participants (both natural and legal persons) which shall include, disputes between a member and another member of ACI, a member of ACI and a non-member or a non-member and another non-member.
  - 1.1.3. related to market practice or conduct as set out in [The Model Code](#), but excluding legal disputes.
  - 1.1.4. related to intra-border or cross-border transactions.
- 1.2. The objective of the Rules is to provide an independent, impartial and prompt expert decision on how the dispute should be resolved.
- 1.3. The Committee for Professionalism (CFP) of ACI makes the Expert Determination Service available.
- 1.4. When a dispute is submitted to ACI in accordance with these Rules, ACI shall refer the dispute to the CFP. The CFP shall make a decision, which shall be rendered by ACI as a decision in accordance with these Rules. The decision is not intended to conform with any legal requirements of an arbitration award but shall refer to what is considered as good market practice.
- 1.5. Unless otherwise agreed, a decision shall not be binding upon the parties. In this procedure the communication with ACI shall be conducted exclusively in writing i.e.

by communication received in a form that provides a complete verifiable record thereof, via teletransmission or other expeditious means.

- 1.6. ACI may however at its discretion allow communication through other media, provided it is complete and verifiable and is not in conflict with *The Model Code* or these rules.

## 2. Request

- 2.1. The initiator shall apply for a decision by submission of a request ('Request') to ACI. The initiator may be one of the parties to the dispute applying individually or more or all parties to the dispute submitting jointly a single Request. The Request, including all documents annexed thereto, shall be supplied to ACI in Paris, France, and a full set of copies to ACI's Managing Director.
- 2.2. A Request shall be concise but shall contain all necessary information clearly presented, in particular the following:
  - 2.2.1. full name and address of the initiator, clearly stating such initiator's function(s) in connection with the transaction; and
  - 2.2.2. full name and address of any other party to the dispute ('Respondent'), clearly stating such Respondent's function(s) in connection with the transaction, where the Request is not submitted jointly by all parties to the dispute; and
  - 2.2.3. a statement of the initiator formally requesting a decision in accordance with the Rules; and
  - 2.2.4. a summary of the dispute and of the initiator's claims, clearly identifying all issues

related to the transaction to be determined; and

- 2.2.5. copies of the transaction documents in dispute, all amendments thereto, and all documents deemed necessary to establish the relevant circumstances; and a statement by the initiator that a copy of such Request, including all documents annexed thereto has been sent to each Respondent named in the Request.

### 3. Answer

- 3.1. The Respondent may submit an answer to the initiator's Request. The Respondent may be one or more of the parties to the dispute named in the Request as Respondent, submitting each individual answer(s) or submitting jointly a single answer. The answer must be received by ACI at the latest within the period stipulated in the ACI's Acknowledgement of the Request (see Article 5 below). The answer, including all documents annexed thereto, shall be supplied to ACI in Paris, France and a full set of copies to ACI's Managing Director.
- 3.2. The answer shall be concise and contain all necessary information clearly presented, in particular the following:
  - 3.2.1. name and address of the initiator;
  - 3.2.2. date of the relevant Request;
  - 3.2.3. a statement of the Respondent formally requesting a decision in accordance with the Rules;
  - 3.2.4. a summary of the Respondent's claims clearly referring to all issues related to the transaction to be determined;

- 3.2.5. copies of all additional documents deemed necessary to establish the relevant circumstances; and
- 3.2.6. a statement of the Respondent that a copy of the answer, including all documents annexed thereto has been sent in writing to the initiator and to any other Respondent named in the Request.
- 3.3. If the Respondent does not provide a statement pursuant to Article 3.2.3, then the decision will not be made available to the said Respondent.

## 4. Supplements

- 4.1. Request, answers and Supplements shall be final as received.
- 4.2. ACI may ask the initiator and Respondent by way of an invitation to submit specific supplementary information, including copies of documents, relevant to the decision ('Supplement').
- 4.3. Supplements must be received by ACI within the period stipulated in the invitation. The Supplement shall be concise and contain all necessary information clearly presented and include copies of relevant documents. It shall also contain:
  - 4.3.1. date and reference as stated in the invitation;
  - 4.3.2. name and address of the issuer of such Supplement; and
  - 4.3.3. a statement of the issuer of such Supplement that a copy of the Supplement, including all documents annexed thereto has been sent to the initiator and Respondent.

- 4.4. Supplements shall only be submitted to ACI upon and in accordance with an invitation issued by ACI.

## 5. Acknowledgements and rejections

- 5.1. ACI shall confirm the receipt of Requests, answers and Supplements to the initiator and Respondent ('Acknowledgement').
- 5.2. ACI will stipulate a reasonable period of time within which each answer or Supplement must be received by ACI. The stipulated time should not exceed 30 days after the date of the Acknowledgement of the receipt of a Request or 14 days after the date of an invitation to submit a Supplement.
- 5.3. Any answer or Supplement received by ACI after expiry of the period of time specified in the relevant Acknowledgement or invitation, or any communication not solicited by ACI, may be disregarded by the CFP.
- 5.4. Under advice to the initiator and Respondent, ACI may reject at any time, before or after its Acknowledgement, any Request, answer or Supplement, in whole or part:
  - 5.4.1. where ACI deems any issue to be determined to be unrelated to a transaction; or
  - 5.4.2. which in other respects, in particular regarding form and/or substance, does not fulfil the requirements of these Rules.
- 5.5. Periods of time specified in these Rules or in any Acknowledgement or invitation referring to days shall be deemed to refer to consecutive calendar days and shall start to run on the day following the date of issuance stated in the relevant Acknowledgement or invitation. If the last day of the relevant period of time is, or any fixed day falls on, a non-business day in Paris, France, then the period of time shall



expire at the end of the first following business day in Paris.

## 6. Committee for Professionalism (CFP) Procedure

- 6.1. The chairman or acting chairman of the CFP shall chair the dispute resolution procedure in question and the CFP may co-opt any member of ACI or any officer, official or employee of ACI as an expert to assist the CFP in its decision-making process.
- 6.2. The members of the CFP and officers, officials and employees of ACI involved in provision of the Expert Determination Service shall at all times keep strictly confidential all information and documents related to any case.
- 6.3. The CFP shall render its decision impartially and exclusively on the basis of the Request, answer(s) and Supplement(s) thereto and the transaction. Any CFP members who may have conflicts of interest will disclose any conflict and disqualify themselves.
- 6.4. Where it is deemed necessary by the CFP, its chairman may ask ACI to invite the initiator and Respondent, pursuant to Article 4 of these Rules, to provide additional information and/or copies of documents.
- 6.5. Within 30 days after it has received all information and documents deemed by it to be necessary and appropriate to the issues to be determined, the CFP shall draft a decision and its chairman shall submit the decision to ACI.
- 6.6. Neither the initiator nor the Respondent shall:
  - 6.6.1. seek an oral hearing in front of the CFP;
  - 6.6.2. seek to have the CFP or any of its members, officers, officials or employees called as witness, expert or in any similar function to an arbitral tribunal or a Court of Law

hearing the dispute in connection with which the CFP or any of its members, officers, officials or employees participated in the rendering of a decision in terms hereof.

## 7. Decision

- 7.1. Subject to Article 9.2 of these Rules, ACI will issue and make available the decision without delay to the initiator and the Respondent who has requested, pursuant to Article 3.2.3, a decision in accordance with the Rules.
- 7.2. The decision shall be issued by the ACI in the English language, unless the CFP decide otherwise and shall contain, inter alia, the following:
  - 7.2.1. names of the initiator and Respondent; and
  - 7.2.2. summary of the representations relevant to the issues determined; and
  - 7.2.3. determination of the issues and the decisions taken with succinctly stated reasons, therefore; and
  - 7.2.4. date of issuance and signature for and on behalf of ACI.
- 7.3. The decision shall be deemed to be made in Paris, France and on the date of its issuance by ACI.

## 8. Deposit and publication of the decision

- 8.1. An original of each decision shall be deposited with ACI and shall be kept there for 10 years from date of the decision.

- 8.2. ACI may publish any decision, provided always that the identities of the parties to the dispute are not disclosed or cannot be easily identified.

## 9. Costs of the service

- 9.1. In principle the Expert Determination Service shall be rendered at a rate based on the complexity of the arbitration. Any fee payable shall be assessed by ACI at its discretion, taking into account the complexity of the issue and such other factors it may deem appropriate, provided that the fee shall consist of direct out of pocket expenses, details of which will be provided to the initiator on request and professional services fees as appropriate. Wherever possible, the CFP shall endeavour to provide the initiator with an indication of the fees and expenses already known or foreseen at the date of Acknowledgement of the Request. Such fee shall be invoiced to the initiator within a reasonable time, but at the latest, within 45 days after the date of the Acknowledgement of the Request.
- 9.2. Where a fee is payable the decision shall not be made available until ACI has received the fee.

## 10. General

- 10.1. In all matters not expressly provided for in these Rules, ACI, and CFP members, officers, officials and employees of ACI shall adhere to strict confidentiality and shall act in the spirit of these Rules.

## 11. Amendment of the Rules

- 11.1. These Rules may at any time be amended by ACI, and will be available on request made to ACI. Such amendments shall be applicable to all future and current, including partly-heard, dispute resolutions, save to the extent that the CFP may, in the interests of a just determination of the dispute, rule otherwise.

## 12. Disclaimer

The advice, resolutions, statements, views or determination (the “Determination”) by the Committee for Professionalism (“CFP”) do not necessarily reflect the views of any particular member of CFP or of the entity, organisation or group each member works for, belongs to or is otherwise associated with, or of ACI-The Financial Markets Association (“ACI”). The Determinations by CFP are made solely on the facts known to CFP from the information or materials presented to it and based on the practices which, at the time of making such Determination, are considered in good faith by the members of CFP to be standard and best practices in the relevant market. Therefore, a Determination may not apply where underlying facts and/or the time when the dispute is brought to CFP are different, and indeed CFP may arrive at a different conclusion or result on similar disputes if such differences exist. The Determinations may not be made with any specific laws, regulations, rules or other requirements in mind.

The CFP or any of its members does not purport to give legal, regulatory, tax, accounting or other general or specific advice. Parties to the dispute must seek advice of the appropriate professional as he/she deems necessary.

Without prejudice to the generality of 10.2 or 10.3, above, none of the members of CFP, ACI or any associated organisation warrants, whether expressly or impliedly, or shall be responsible for the accuracy, completeness, or fitness or appropriateness of the Determinations, in whole or in part. ACI, CFP and its members expressly disclaim any liability as to the consequences, direct or indirect, of any action or inaction taken pursuant to the Determination.

## 13. Request Form

[ ] (the “Requester”), a [ ] organised in [ ] [and licensed as [ ] under the laws of [ ]] hereby request the ACI-Financial Markets Association, Committee for Professionalism (hereinafter, “CFP”) to provide the Expert Determination Service (the “Service”) in accordance with and under the terms and conditions provided in the Appendix Two to the Model Code and upon terms and conditions herein contained.

1. The Requester represents and warrants on the date of this Request, that any acts contemplated hereunder will not violate or contravene any applicable laws or regulations and that it has taken all necessary steps to authorise this Request.
2. The Requester agrees to provide to CFP all information reasonably requested by CFP for the purpose of the Services and to provide reasonable access to employees and directors of the Requester as CFP requests. CFP shall be entitled to rely upon and assume, without any obligation of independent verification, the accuracy and completeness of all information that is publicly available and of all information that has been furnished to it by the Requester or any other person related to the Services or the dispute or otherwise reviewed by CFP, and CFP shall not assume any responsibility or have any liability therefore. CFP has no obligation to conduct any appraisal of any assets or liabilities or to evaluate or examine the genuineness or authenticity of any information or communication, written, oral or otherwise.
3. The Requester represents and warrants on each date when the information is provided to CFP by it or any of its directors, officers, employees, affiliates or any other person at its request (each a “Third Party Provider”) that it or the relevant Third Party Provider has obtained consents from all necessary person(s), natural or juridical, regarding the disclosure of such information to CFP. Where such consents have been obtained, the Requester represents and warrants to CFP that the provision or disclosure of such information will not violate any applicable laws, rules or regulations (the “Applicable Laws”) or breach any agreement binding on it, and, to the best of its knowledge, shall not cause CFP to violate the Applicable Laws.

4. The Requester agrees (i) to indemnify and hold harmless CFP and its members, past and present, agents, any person requested to assist CFP in rendering of the Services and ACI and its officers and employees (CFP and each such entity or person being referred to as an "Indemnified Person"), from and against any losses, claims, demands, damages or liabilities of any kind (collectively, "Liabilities") relating to or arising out of activities performed or services furnished in connection with the Services, or CFP's role in connection therewith, and (ii) to reimburse each Indemnified Person for all reasonable expenses (including reasonable fees and disbursements of counsel) incurred by such Indemnified Person in connection with investigating, preparing or defending any investigative, administrative, judicial or regulatory action or proceeding in any jurisdiction related to or arising out of such activities, services, or role, whether or not in connection with pending or threatened litigation to which any Indemnified Person is a party, in each case as such expenses are incurred or paid. The Requester will not, however, be responsible for any such Liabilities or expenses to the extent that they are finally judicially determined to have resulted primarily from CFP's bad faith, gross negligence or wilful misconduct. The Requester also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Requester or any of its security holders or creditors for or in connection with the Services, or CFP's role or services in connection therewith, except to the extent that any such Liabilities or expenses incurred by the Requester are finally judicially determined to have resulted primarily from CFP's bad faith, gross negligence or wilful misconduct. In no event shall any Indemnified Person be responsible for any special, indirect or consequential damages. This paragraph shall survive the revocation or termination of this Request and the conclusion of Services by CFP.
5. In the event of inconsistency between the provisions in this Request and in the Model Code, the provisions in this Request shall prevail.
6. This Request shall be governed by the laws of England and Wales.

## **APPENDIX I – MARKETS AND INSTRUMENTS COVERED BY THE MODEL CODE**

All over-the-counter (OTC) financial markets and instruments on or off balance sheet as follows:

- foreign exchange dealing (spot, forwards and forward foreign exchange swaps);
- foreign exchange options;
- money-market dealing;
- interest rate options;
- forward rate agreements;
- interest rate and currency swaps;
- bullion and precious metals.