

FX Novation and Cancellation Protocol

(Overview)

FX Implementation Group

FAQ

Why did ISDA develop a separate protocol for foreign exchange (“FX”)? Why didn’t the FX market simply incorporate the 2005 Novation Protocol that is used for credit and interest rate derivatives?

- The FX market considered leveraging the 2005 Novation Protocol but realized that, in practice, there were various forms of novations performed in the FX market and that the 2005 Novation Protocol did not effectively capture all of those forms. The FXNP covers all foreign exchange products confirmed under the 1998 FX and Currency Option Definitions published by ISDA, the FXC and EMTA, Inc., and captures the three main types of novations executed in the FX market.

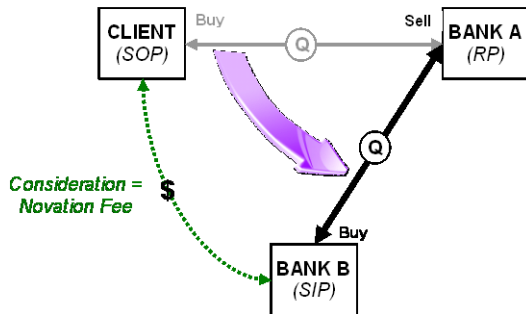
Protocol Layout

- Sections 1 – 5: Protocol Legalities
 - Adherence, Effectiveness, Amendments, Representations, Governing Law, etc.
- Section 6 – Terminology
 - Relevant terms which apply specifically to the proposed Novation Process described in the Annex
- Annex 1 – Novation Process
- Exhibits
 - Adherence Letter (relates to Protocol Legalities)
 - Novation Consent Form (Key to Novation Process)
 - Notice of Affirmative Consent

Novation Process

- The FX Novation Protocol
 - Captures 3 main types of novation common to FX
 - Classic (with fee)
 - Classic (with offsetting/replacement trade)
 - Collapse
 - KEY:
 - Remaining Party must accept novation prior to execution
 - Step-In Party needs to know exactly what they are getting into before accepting the position and the novation of it
 - Trade economics
 - Calculation Agent
 - Any other trade-related legal points (i.e., special early termination provisions, etc.)
 - Doing so will minimize post-novation disputes
 - Compared to the Rates/CDS version, this Protocol is “Affirmative” for (i.e., requires consent by) all parties

Novation Process (3 Types Explained)

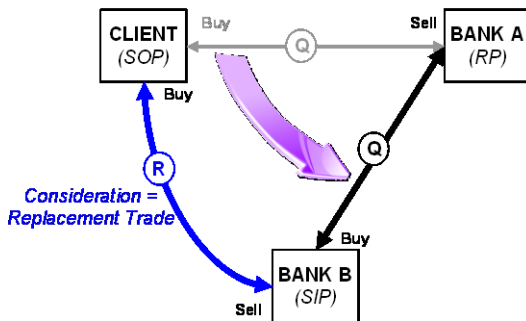


Classic Novation (with fee):

Client (Step-out Party or “SOP”)⁶ is looking to get out of Trade Q where it faces Bank A; it gets best price by transferring Trade Q to Bank B (versus terminating Trade Q with Bank A); Bank B (Step-in Party or “SIP”)⁷ steps in to face Bank A (Remaining Party or “RP”); NPV of trade is accounted for between SOP and SIP by way of a Novation Fee

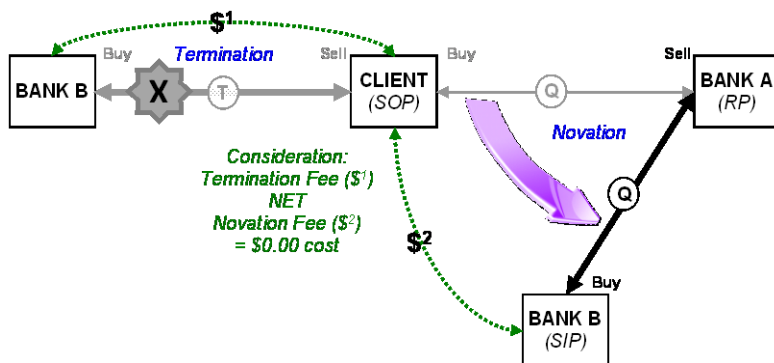
6. SOP is contractually defined as “Transferor”
7. SIP is contractually defined as “Transferee”

AKA - Ad Hoc GIVE-UP (No G/U Agmt in place)



Classic Novation (with offsetting/replacement trade):

Client does not have a formal Give-up Agreement or has an older trade (Trade Q) for which it is seeking Credit Intermediation; Client (SOP) asks it's PB or another Bank (Bank B; SIP) to intermediate by [1st] stepping in to face the original Execution Bank (Bank A, the “RP”) on the original trade (Trade Q) and [2nd] by entering into an Offsetting/Replacement Trade (Trade R) with Client/SOP; Value of trade is then passed through the intermediary who is net flat the position.



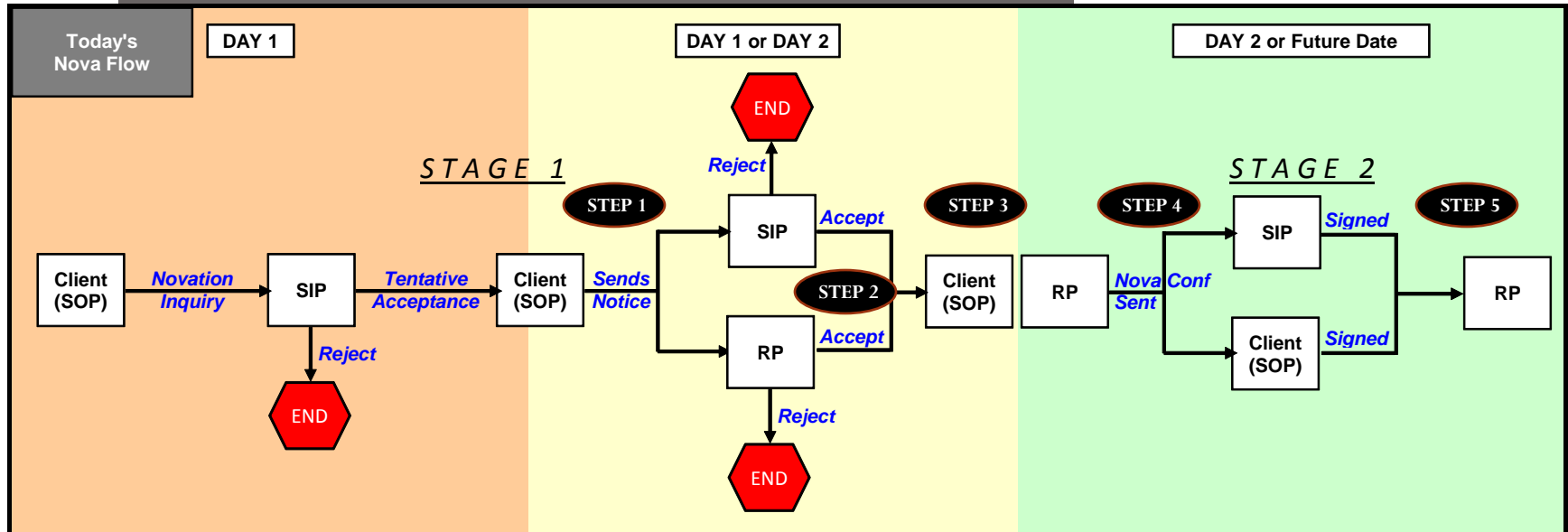
Collapse:

Client is positionally flat between two Banks and wants to extricate itself so the two Banks face each other; [1st] Client and Bank B must terminate the off-setting trade (Trade T); [2nd] Client (SOP) must novate its position in original trade (Trade Q) to Bank B (SIP) who then faces Bank A (RP); these steps occur more or less simultaneously; cost of Termination and cost of Novation are equally off-setting, so Collapse is done at net zero cost

PLEASE NOTE:

Termination could also be effected between Bank B and Client by entering into a new equal-but-offsetting, off-market trade for a Fee; the off-market trade Fee and Novation Fee would also net to zero cost

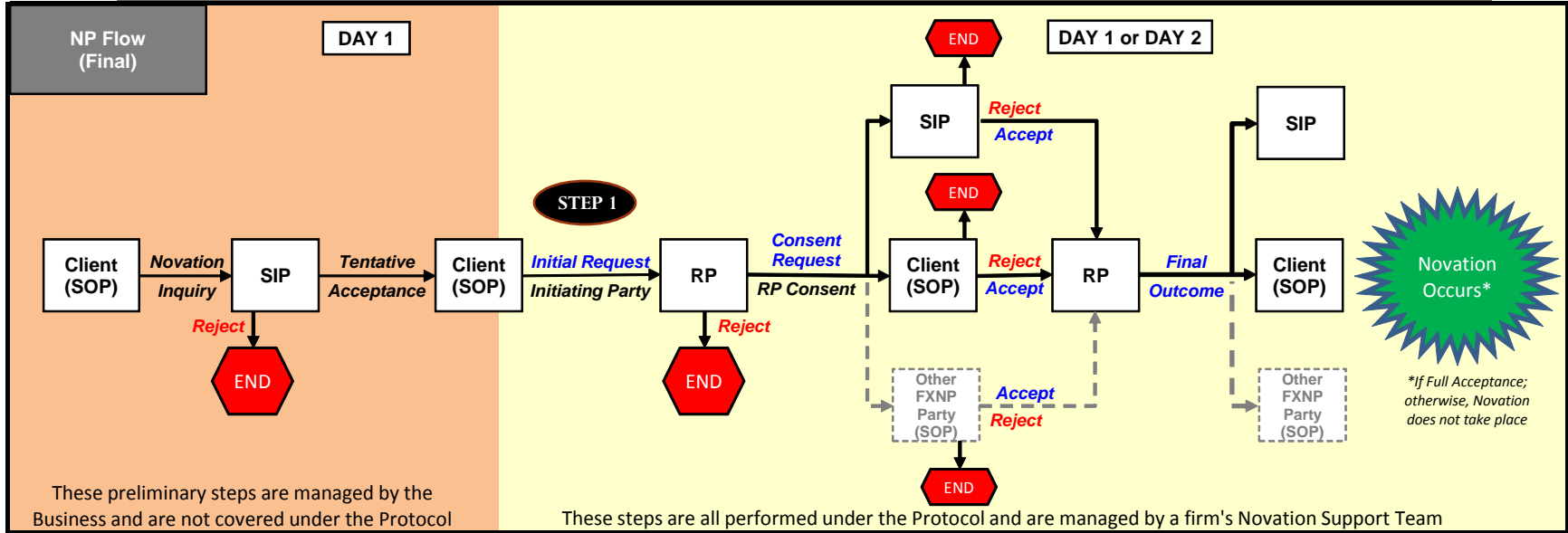
Novation Process (Today)



Today, an “informal” Novation Protocol is loosely observed in the FX Market (based on Rates/ Credit Novation Protocol)

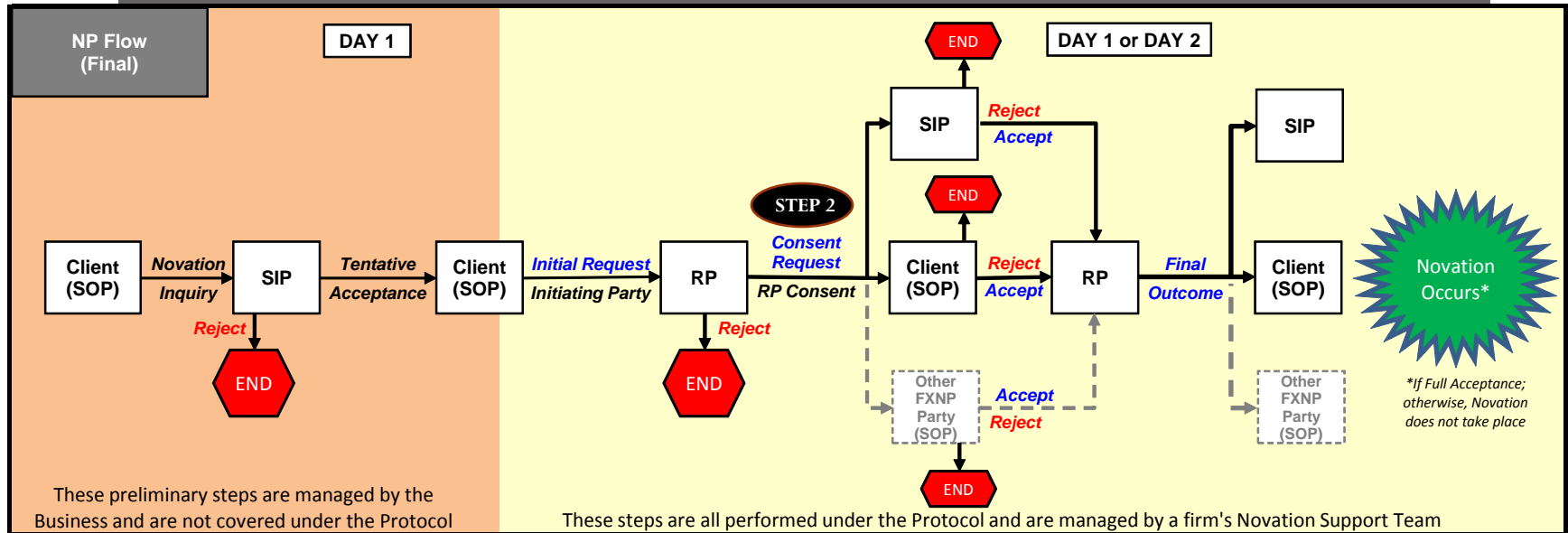
- **STEP 1:** Step-out Party (SOP) sends novation request to Step-In Party (SIP) and Remaining Party (RP);
 - NOTE - trade details are sufficient to “ID” the trade but may not be sufficient to “Confirm” the trade as a legal matter
- **STEP 2:** SIP & RP obtain internal approvals, then accept (or reject) SOP’s request
- **STEP 3:** If accepted by all, novation is “recognized” and RP dispatches the Novation Agreement/ Confirmation
 - NOTE - trade details in Novation Agreement/ Confirmation are sufficient to “Confirm” the trade and its novation
- **STEP 4:** Novation Agreement/ Confirmation is dispatched (manual process; can take some time)
- **STEP 5:** Novation Agreement/ Confirmation is chased and signed (takes additional time)
 - Electronic Confirmation platforms (if applicable) are bypassed
 - Again, this is a 100% manual/ paper process
- **KEY:** No binding Novation until docs are signed (Legal Certainty)

Novation Process (Under the Protocol)



- STEP 1:** The Initiating Party may, on any Business Day, initiate a request for a proposed transfer by novation of all or a designated portion of its rights, liabilities, duties and obligations with respect to a Covered Transaction and, if applicable, an accompanying Cancellation of all or a designated portion of one or more Linked Covered Transactions by delivering an Initial Request to the Remaining Party. SUCH INITIAL REQUEST SHALL BE IN THE FORM OF EXHIBIT A (see Appendix 2).

Novation Process (Under the Protocol)

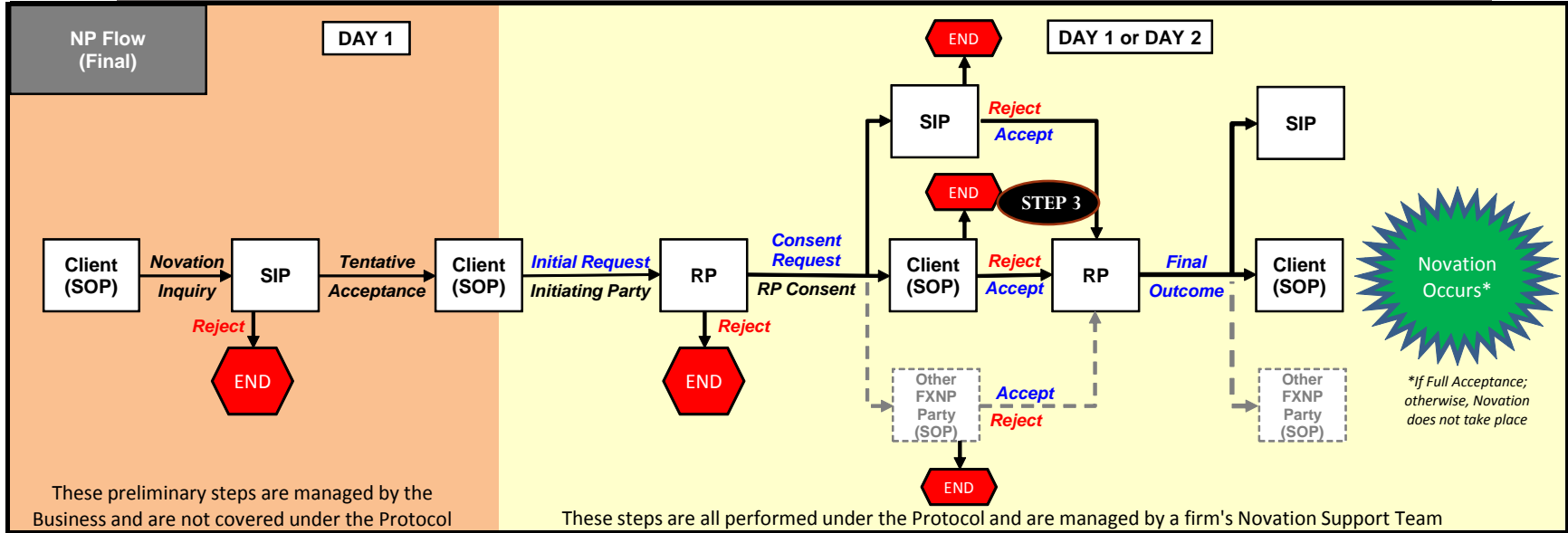


- STEP 2:** The Remaining Party shall, within a commercially reasonable time after receipt of the Initial Request and based on the information specified therein, either notify the Initiating Party that it declines the Initial Request or, if the Initial Request is acceptable to the Remaining Party, prepare a Consent Request and deliver such Consent Request to each of the other parties to the Covered Transaction and, if applicable, Linked Covered Transactions (including the Initiating Party and, in the case of a Linked Covered Transaction, each Cancellation Party). SUCH CONSENT REQUEST SHALL BE IN THE FORM OF EXHIBIT A (see Appendix 2).

The Remaining Party shall be deemed to have consented to any Consent Request delivered by it to which its consent would otherwise be required as a party to the relevant Covered Transaction or Linked Covered Transaction, as applicable. Any Consent Request shall be deemed to be in respect of the entire FX Transaction or Currency Option Transaction unless otherwise explicitly designated in the applicable Consent Request.

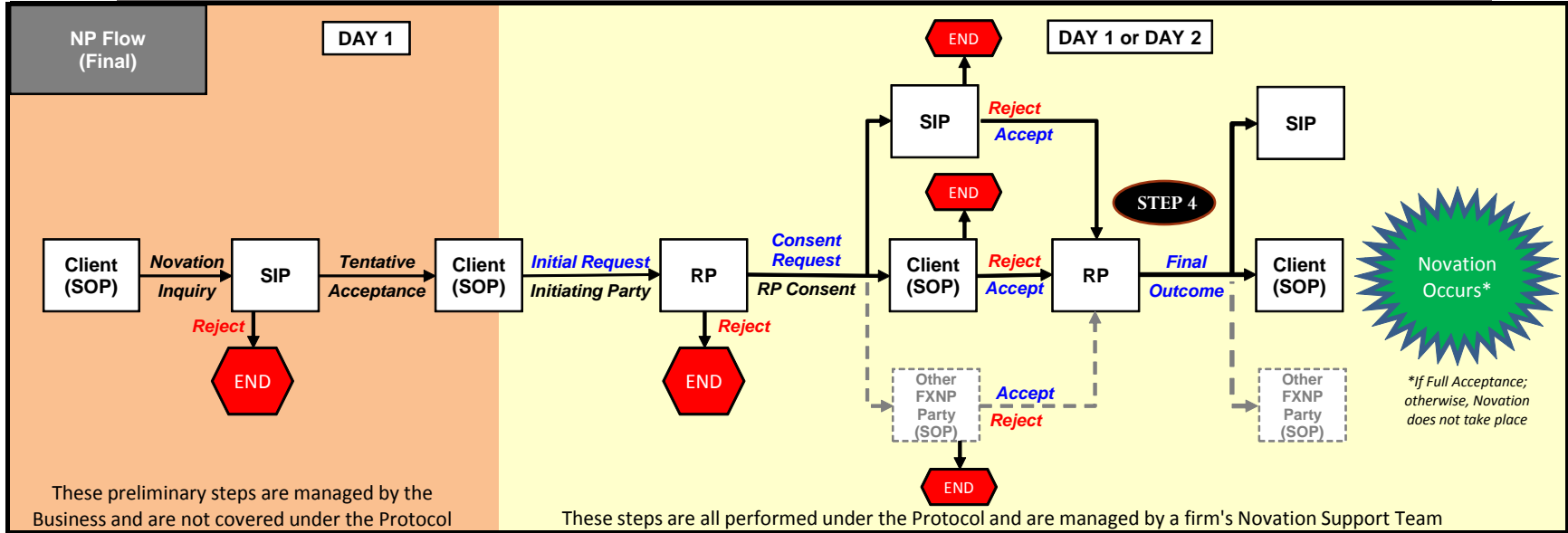
For the avoidance of doubt, a Cancellation that is not part of a Collapse Novation shall not be subject to this Protocol.

Novation Process (Under the Protocol)



- STEP 3:** Each party that receives from the Remaining Party a Consent Request specifying a proposed transfer by novation of a Covered Transaction and, if applicable, a Cancellation of any Linked Covered Transaction, in accordance with a Standard Novation agrees to respond promptly to such Consent Request by either giving a Notice of Affirmative Consent or indicating its unwillingness to consent to the Remaining Party, with such notice copied to any other addressee of such Consent Request, in either case; provided that a responding party shall, under no circumstances, be liable for any failure to so respond. Prior to responding to a Consent Request and to the extent it has not been enclosed therewith, each recipient of such Consent Request may, in turn, request from the Remaining Party a copy of the confirmation evidencing such Covered Transaction or Linked Covered Transaction, as applicable (such request, a "Confirmation Request"). Upon receipt of a Confirmation Request, the Remaining Party will comply with such Confirmation Request within a commercially reasonable time. Only a Notice of Affirmative Consent shall constitute a consent to a Consent Request hereunder. Any response that is not a Notice of Affirmative Consent or that rejects, modifies, supplements or otherwise varies any part of a Consent Request (including, without limitation, the proposed Calculation Agent specified therein and, if applicable, any Method of Compensation specified therein) shall be deemed to be a rejection of such Consent Request. The failure of any party to a Covered Transaction or Linked Covered Transaction, as applicable, to provide to a Remaining Party a Notice of Affirmative Consent to a Consent Request by the Consent Cut-off Time on the Business Day immediately following the Consent Request Date, shall constitute a rejection of such Consent Request.

Novation Process (Under the Protocol)



- Any rejection of a Consent Request by any party to a Covered Transaction or Linked Covered Transaction, as applicable, that is a subject of any Consent Request shall negate any consent by any other party to such Covered Transaction or Linked Covered Transaction, as applicable.
- STEP 4:** The Remaining Party shall, promptly after the receipt of all the requisite Notices of Affirmative Consent to a Consent Request and, in any event, no later than 6 p.m. (New York time) on the Consent Request Date or, if impracticable, 6 p.m. (New York time) on the Business Day immediately following the Consent Request Date, notify each other party to each such Covered Transaction, and, if applicable, Linked Covered Transaction identified in the Consent Request that the Remaining Party has received Notices of Affirmative Consent from all the relevant parties, and, therefore, the Standard Novation described in such Consent Request will enter into effect and any Linked Covered Transaction will be cancelled, as applicable, as proposed as of the relevant Novation Date (such notice, together with copies of all the parties' Notices of Affirmative Consent, the "Standard Novation Effectiveness Notice"). As a consequence thereof, each of the transfer by novation of all or a designated portion of a Covered Transaction and any Cancellation of all or a designated portion of a Linked Covered Transaction, if applicable, proposed in such Consent Request shall constitute a Transaction and become effective as of the relevant Novation Date. For the avoidance of doubt, each party hereto agrees that: (i) each party to any such Covered Transaction (other than the Remaining Party) or Linked Covered Transaction, as applicable, is entitled to rely on the Standard Novation Effectiveness Notice and (ii) if the Remaining Party fails for any reason to deliver the Standard Novation Effectiveness Notice by 6 p.m. (New York time) on the Business Day immediately following the Consent Request Date (whether or not the required Notices of Affirmative Consent shall have been received), such Standard Novation will not become effective, and none of the parties (including the Remaining Party) shall have any liability with respect to such failure.

Appendix 1 - Partial Definitions

"**Initial Request**" means a written notice that is substantially in the form of the Form Consent Request...

"**Initiating Party**" means any party to a Covered Transaction that initiates a request for a proposed transfer by novation...and, if applicable, an accompanying Cancellation...of one or more Linked Covered Transactions by delivering an Initial Request to the Remaining Party.

"**Consent Request**" means a written notice which consists of...a fully completed Form Consent Request (see Appendix 2)...

"**Covered Transaction**" means all or a designated portion of an FX Transaction or a Currency Option Transaction (as specified in a Consent Request).

"**Linked Covered Transaction**" means a transaction relating to a Covered Transaction in respect of which Cancellation is requested in accordance with a Collapse Novation...

"**Standard Novation**" means a Classic Novation or a Collapse Novation...

"**Notice of Affirmative Consent**" means notice [of consent provided by parties to the Novation other than the Remaining Party which effectively states] in the form of the "Notice of Affirmative Consent" to Consent Request, attached as Exhibit B to Annex 1 [of the Protocol] ...whether such notice is set forth in a communication or is attached, as a stand-alone document, thereto...[which effectively states] "Pursuant to the...FX Novation and Cancellation Protocol...and in response to the attached Consent Request...the undersigned hereby consents to the transfer by novation ...[and to the Cancellation]... specified in the Subject Consent Request..." (see Exhibits A & B of the Protocol for full details)

"**Standard Novation Effectiveness Notice**" [means the fully completed Form Consent Request]...together with copies of all the parties' Notices of Affirmative Consent...

Appendix 2

• Consent Request (Main)

From: [REMAINING PARTY]
To: [OTHER PARTIES TO PROPOSED NOVATION [AND CANCELLATION]]
To: [PROPOSED TRANSFEREE]
[Cc: [CLIENT]]

Pursuant to the ISDA Master FX Novation and Cancellation Protocol (the "Protocol"), and further to an Initial Request of [INITIATING PARTY], dated as of [_____] [___], [____], [REMAINING PARTY] hereby requests your consent to the [transfer by novation of the Covered Transaction] [and Cancellation of a Linked Covered Transaction] specified below. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Protocol.

Transferor (name and/or BIC Code): []
Transferor Trade ID: []
Proposed Transferee (name and/or BIC Code): []
Remaining Party (name and/or BIC Code): []
Remaining Party Trade ID: []
[Master Agreement to which the New Transaction is Subject: []
[Cancellation Party] []
Consent Request Date: [Date]
[Consent Cut-Off Time:] [Time]
Novated Notional Amount: []
Type of Novation: [Classic][Collapse]
Method of Compensation: [Fee][Offsetting Transaction(s)][Cancellation of Linked Transaction][Cancellation of Linked Transaction plus additional payment][Other]
[Cancellation of Linked Covered Transaction(s):] [Yes][No]
[Cancellation Notional Amount:] []
Post-Novation Calculation Agent: []
[Post-Novation Barrier Determination Agent: []
Type of Covered Transaction(s): [Forward][Option][NDF][NDO][Other(specify): _____]
Pre-Novation Stand-Alone Confirmation: [Yes][No]
Post-Novation Stand-Alone Confirmation: [Yes][No]
Covered Transaction(s) Details:

Appendix 2

- Consent Request (Transaction Details)

Forward:

Original Trade Date: [date]
Currency and Amount
payable by Remaining Party: []
Forward Rate: []
Settlement Date: [date]
Multiple Transactions: [Yes, spread sheet attached][No]

Option:

Original Trade Date: [date]
Buyer: []
Seller: []
Option Style: []
Option Type: []
[Call][Put] Currency and Amount: []
Strike: []
Expiration Date: [date]
Settlement Date: [date]
Multiple Transactions: [Yes, spread sheet attached][No]

Appendix 2

• Consent Request (Transaction Details)

NDE:

Original Trade Date:	[date]
Reference Currency Buyer:	[]
Reference Currency Seller:	[]
Notional Amount:	[]
Forward Rate:	[]
Valuation Date:	[date]
Settlement Date:	[date]
Settlement Rate Option:	[]
Settlement Currency:	[]
Non-EMTA Currency Pair:	[Yes, confirm attached][No]
Multiple Transactions:	[Yes, spread sheet attached][No]
Other Terms:	[As Specified in the Relevant EMTA Template][Specify Terms]

NDO:

Original Trade Date:	[date]
Buyer:	[]
Seller:	[]
Option Style:	[]
Option Type:	[]
Notional Amount:	[]
Strike:	[]
Expiration Date:	[date]
Settlement Date:	[date]
Settlement Currency:	[]
Non-EMTA Currency Pair:	[Yes, confirm attached][No]
Multiple Transactions:	[Yes, spread sheet attached][No]
Other Terms:	[As Specified in the Relevant EMTA Template][Specify Terms]

More FAQs

Will ISDA and the FXC provide guidance on how to implement and manage the FXNP?

- Yes. ISDA and the FXC will publish a Novation Protocol Guide and Best Practices document to facilitate implementation. Presentations and learning sessions will also be scheduled.

The Remaining Party plays a significant role in the FXNP, acting as the distributor and retriever of the Consent Request and then the final distributor of the Effectiveness Notice. Why is this the case and why is the FXNP so different in this way from the 2005 Novation Protocol?

- The FXNP is designed as such for two reasons:
 1. To provide a formalized Consent structure to executing novations that conform with the consent requirements under the ISDA Master Agreement, other master agreements used in the FX market, such as IFEMA, ICOM, FEOMA and IFXCO, and in the absence of a master agreement, general contract principles under New York and English law.
 2. It advances the 2005 Novation Protocol by also incorporating the "Consent = Confirmation" concept, so that parties who adhere to the FXNP may also benefit (if they so desire) by eliminating the need to separately confirm trades that are executed as part of the novation process. This being the case, it is imperative that the consent process be robust enough to firmly establish legal certainty. The final step (a Standard Novation Effectiveness Notice) is crucial to establishing that certainty.
- With respect to the Remaining Party's role, it was the consensus of the working group that the Remaining Party has both an interest in facilitating novations from a client service perspective and in ensuring that its books and records with respect to a novated trade remain unchanged even though its counterparty to that trade has changed.

More FAQs

The Consent Form seems to require many details. Is this necessary and, if so, can it be simplified?

- As already mentioned, one of the main reasons for the Protocol's design was to incorporate "Consent = Confirmation", so that parties who adhere to the Protocol may also benefit (if they so desire) from the fact that the Protocol eliminates the need to separately confirm trades that are executed as part of the novation process. The Consent Form was designed this way in order to achieve the criterion for legal certainty upon conclusion of the consent process. Anything less would not accomplish that goal. That said, the details required are not much more than that which is required currently (pre-Protocol) and, over time, the additional terms (which were designed to be intuitive) will become second nature as familiarity with the process increases.

Whether by internal policy, accounting practices or certain jurisdictional law, "Consent = Confirmation" may not be sufficient for some parties. Can trades still be confirmed in another manner?

- While the FXNP was designed under New York or English law to enable parties to effectuate novations without the need to enter into written tri-party novation agreements or confirmations, it does not prohibit current market practices for separately confirming trades. Parties can always agree to separately confirm transactions after the novation has taken place (as is the current practice for interbanks to use SWIFT electronic messaging to do so). Doing so could serve as an additional risk mitigant, especially for an MTN.

More FAQs

Similar to the 2005 Novation Protocol, the FXNP has a 6:00 pm, New York time, cut-off in order for the Novation to become effective on that date. Requesting consent, obtaining consent and announcing effectiveness by that time is tight but feasible for novating one trade. How would this work for significant-volume multiple-trade novations?

- As will be covered in the Novation Protocol Guide and Best Practices document, Multiple-Trade Novations (MTNs) may require some “pre-planning”. Under the Protocol, before the Form Consent Request is sent by the Remaining Party, parties would need to undertake some level of diligence with respect to the novation in order to ensure that, once the novation is initiated formally, the consents can be obtained by 6 p.m., New York time, on that Proposed Standard Novation Effective Date.
 - This means that the novation support teams within each participating institution would make preparations, perform reconciliations and get resources aligned for that Proposed Standard Novation Effective Date, and
 - Once this diligence has been undertaken, execution of that MTN would then be formally launched via the Protocol on the Proposed Standard Novation Effective Date.

New FAQs

Step-In Party (SIP), Step-Out Party (SIP), Remaining Party (RP)

All three types of novations (give-ups included) are reasonably common place in the Rates market. Why does the FX market need to address these other types of "novations" separately while the Rates market does not?

- The FX market felt that the 2005 Novation Protocol did not effectively capture all three forms of novations.
 - Classic with Fee: This form of novation is that on which the entire 2005 Novation Protocol is based. The FXNP neither improves upon it nor detracts from it. In practice, however, this type is very rarely executed in FX.
 - Classic with Replacement Trade: This form is that of a Give-up. However, in FX (like Rates), the market utilizes Give-Up Agreements for the regular practice involving a Prime Broker. Those “Give-up” trades done under that agreement occur on Trade Date, so the underlying novation is immediate and covered - there is no need to send additional novation agreement/confirmations afterward. It was not the intention of the FXNP to cover those types of give-ups. However, FX does see a greater number of “Ad Hoc Give-ups” not covered under any existing Give-up Agreement between parties (particularly those done post-Trade Date of the original transaction). Given their frequency in FX (certainly more often than Classic with Fee), these needed to be captured. The 2005 Protocol does not clearly capture the use of a replacement trade in lieu of a fee – the FXNP does.
 - Collapse: This form is the most dominant in the FX market. In the Rates market, closing an existing position is more commonly done by early terminating that original trade. In FX, closing a position is more commonly done by entering into a 2nd transaction which is equal and off-setting (a.k.a., flattening the position). The 2005 NP does not clearly address novation under this scenario. In fact, the only time an equal and off-setting scenario exists under that protocol is when the 6:00 p.m. cut-off time is missed. As the practice of flattening positions is a regular occurrence in the FX market, a clear procedure for novating trades under those circumstances was necessary. The FXNP has been designed to do so.

New FAQs

Step-In Party (SIP), Step-Out Party (SIP), Remaining Party (RP)

Does the FXNP apply to exotic instruments or just simple vanilla? If it applies to exotics, how do you insure that there isn't any doubt on the trade details (especially since the 1998 ISDA FX Defs may not define terms for a number of these instruments)?

- FXNP applies to all FX & Currency Option Transactions, regardless if terms used for a Transaction are defined by ISDA or not.
- KEY: The latest version of the Confirmation is attached by the RP (or the SOP had attached it) to the Form Consent Request. This will insure all parties have a meeting-of-the-minds on the details of exact transaction which is being novated.

What is the need for the new term Novation Effective Date? Why does the term “Novation Date” (as defined under the 2004 Novation Definitions) not work?

- The working group recognizes this inconsistency and will work to address it and any others found between the FXNP and existing ISDA publications.

Annex 1, Section 1(a) reads “...and deliver such Consent Request to ‘each of the other parties’ to the Covered Transaction...” Isn’t the Initiating Party the only other party to the Covered Transaction?

- In the case where a Prime Broker is involved, both the IP (which may not be the SOP) and the FXPB (which, in this case, would be the SOP) are both parties to the Covered Transaction(s). In other words, the IP is the FXPB’s client.

New FAQs

Step-In Party (SIP), Step-Out Party (SIP), Remaining Party (RP)

Would the Consent Request supersede the original confirm and become the new Confirm for the New Transaction (that is, unless parties decide to prepare a new confirm)? Or will a combination of the Stand-Alone Confirmation and the Consent Request become the new Confirm?

- The “New Confirmation” would be the Consent Request plus anything attached to it.
- For vanilla transactions, if only the Consent Request is necessary to capture all trade details, then it alone would be the New Confirmation.
- For vanilla or non-vanilla transactions, if the original confirmation is attached or supplied afterward by request, then the combination of the CR plus the original confirm is the New Confirmation.
- Bottom Line: The SIP and the RP must have a meeting-of-the-minds on the details to the novated trade. It is best for those parties to agree those details prior to consent being provided. However, certain details (i.e., margin terms) could also be confirmed post-novation bilaterally between those parties via a separate confirmation. For purposes of novation, what ever is used for parties to provide consent (CR or CR+) becomes the New Confirmation. If parties then agree to execute a post-novation bilateral confirm, then that will become the New Confirmation between them.

Stand-Alone Confirmations that are within the "plain-vanilla" definition are not required to be produced as supporting evidence. How will the SIP become aware of any non-standard terms (like margin)?

- The Form Consent Request of the FXNP has a place where Other Terms could be specified (i.e., “Margin Terms apply”).
- Alternatively, certain details like margin terms could also be confirmed post-novation bilaterally between those parties via a separate confirmation.

New FAQs

Step-In Party (SIP), Step-Out Party (SIP), Remaining Party (RP)

When trades are intermediated by a Prime Broker, some current practices provide that the Consent Request process is managed by the Initiating Party (and not the Remaining Party). Recognizing the interests of the RP as previously described, the IP in these cases seem to have even more of an interest in driving a Novation to execution. That being the case, wouldn't it also make sense for the FXNP to allow for the IP to manage the Consent Request process in this scenario?

- As the FXNP is designed to accommodate all types of Novation scenarios, a consistent Consent process-flow is key to its success. Recognizing that the FX market currently utilizes a few different flows to novates trades, coming up with one Consent Request flow would ultimately be better insofar as providing stronger over-all-market-wide processing control (as well as make the design of a future electronic flow less complicated).
- One of the most challenging flows in our market is a Collapse when it involves a Prime Broker. In this scenario, the IP may feel that its request could get improperly prioritized by the RP thus potentially delaying the novation and frustrating the IP. Furthermore, undue responsibility could be placed on the PB to resource the entire process.
- KEY 1: Under the FXNP, the Initiating Party does not have to be the SOP. The FXNP recognizes that a 4th party may actually be requesting the Novation on behalf of the SOP.
- In the case of a Collapse involving a PB, the PB is the SOP and the 4th party (PB's client) is the IP. To further this scenario, the RP is one of the Banks that face the PB in the 4th party's pass-thru trade and the SIP is the other Bank which faces the PB in the equal and off-setting pass-thru trade (which gets terminated). At the end of this Novation the same concern is addressed - it is still the RP that wants to make sure its books and records are maintained (as does the SIP) while both the SOP and the 4th party no longer have the position at all.
- KEY 2: Add to this that the FXNP will eliminate the need for a paper Novation Confirmation, this process flow assures that obtaining "legal certainty" is in the control of the RP (who continues to hold the position). The G14 Banks which support this flow are committed to its timely execution.

New FAQs

Step-In Party (SIP), Step-Out Party (SIP), Remaining Party (RP)

Long-Form Confirmations (LFCs) are often subject to a 'deemed ISDA' and may include credit terms (e.g., upfront margin). Would LFCs fall outside of the category of "Stand-Alone Confirmation" since technically they are subject to an ISDA Master (albeit a deemed ISDA and without an ISDA Schedule)?

- Both LFCs and SFCs (Short-Form Confirmations) can be considered Stand-Alone Confirmations (?).
- From the Consent Request
 - Pre-Novation Stand-Alone Confirmation: [Yes][No]
 - Post-Novation Stand-Alone Confirmation: [Yes][No] ⁷
 - ⁷ If the Transferee and the Remaining Party are not party to a Master Agreement, the New Transaction shall be a Stand-Alone Confirmation.

The Date of Consent Request is what triggers the countdown to the deadline? Who decides when to date the Consent Request (RP, SOP, SIP)?

- Date of Consent Request would be set at the point when the RP sends out the CR.

As between the SOP and the RP, who controls determination of post-novation Calculation Agent?

- Post-novation Calc Agent should be a term agreed up-front. Some parties may have pre-agreed arrangement, others may not but it is a term which must be specified in the Consent Request. The Initiating Party would therefore include it in the Initiation Request where the RP could reject it or accept it and forward it on in the CR where the SIP could reject it or accept it. If at any point a party disagrees with party designated as Calc Agent in the CR, the novation would be rejected and not go forward.

New FAQs

Step-In Party (SIP), Step-Out Party (SIP), Remaining Party (RP)

It's unclear that the FXNP allows for changes to trade terms upon novation. In a Collapse where there are two exactly offsetting transactions (one which has to be terminated and the other novated), Calculation Agent in the novated trade may need to be changed to Joint Calculation Agent or other terms could change as well (NDF fixings, for example). How does the FXNP address this?

- KEY: Because “legal certainty” is imperative for “Consent to equal Confirmation” (in order to eliminate paper Novation Confirmations), parties to the FXNP must all have a meeting-of-the-minds on the details of the trade being novated up-front.
- The Initial/Form Consent Request has a specific field for Calc Agent. If there is a pre-agreed understanding between the Initiating Party and the others to a Novation on Joint CA, then that should be clearly specified by the IP in the Initial Request. The RP would clearly have the same understanding when it accepts the Initial Request and Joint CA would remain unchanged when it dispatches the Form Consent Request. Likewise, the SIP (and PB, if applicable) would share that understanding and would consent to the Novation, accepting Joint CA post-novation.
- Furthermore, under the FXNP, the SIP can request that the RP provide the latest version of the novated trade's Confirmation or, alternatively, provide any additional details to the Form Consent Request of which it is unclear. If the SIP fails to do so and provides its consent, the Novation is executed on the terms specified in the Form Consent Request, like it or not.

New FAQs

Step-In Party (SIP), Step-Out Party (SOP), Remaining Party (RP)

All three types of novations (give-ups included) are reasonably commonplace in the Rates market. Why does the FX market need to address these other types of "novations" separately while the Rates market does not?

- The 2005 ISDA Novation Protocol did not effectively capture all three forms of novations used in the FX market.
 - Classic with Fee: This form of novation is that on which the entire 2005 Novation Protocol is based. In practice, however, this type is very rarely executed in FX.
 - Classic with Replacement Trade:
 - This type of novation is in the form of a “Give-up”. Most give-up novations are normally covered under Master Give-Up Agreements in which a Prime Broker authorizes its clients to trade with other dealers for give-up back to that Prime Broker. Those give-ups occur on Trade Date resulting in a trade between the Prime Broker and the dealer and a mirror trade between the Prime Broker and the client - there is no need to send additional novation agreement/confirmations afterward. It is not the intention of the FXNP to cover these types of give-ups.
 - However, there have been an increasing number of “Ad Hoc” give-ups not covered under any existing Give-Up Agreement between parties (particularly those done post-Trade Date of the original transaction). Given their frequency in FX (certainly more often than Classic with Fee), this type of novation needed to be captured as the 2005 Protocol does not clearly address the use of a replacement trade in lieu of a fee.
 - Collapse: This form is the most dominant in the FX market. In the Rates market, closing an existing position is more commonly done by an early termination of the original trade. In FX, closing a position is more commonly done by entering into a 2nd transaction which is equal and off-setting (a.k.a., flattening the position). The 2005 NP does not clearly address novation under this scenario. In fact, the only time an equal and off-setting scenario exists under that protocol is when the 6:00 p.m. cut-off time is missed. As the practice of flattening positions is a regular occurrence in the FX market, a clear procedure for novating trades under those circumstances was necessary. The FXNP has been designed to do so.

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Does the FXNP apply to exotic instruments or just simple vanilla? If it applies to exotics, how do you insure that there isn't any doubt on the trade details (especially since the 1998 ISDA FX Defs may not define terms for a number of these instruments)?

- FXNP applies to all FX & Currency Option Transactions and the terms used are consistent with those used in the 1998 ISDA FX Definitions.
- KEY: The latest version of the Confirmation must be attached by the RP to the Consent Request for all trades that are not plain vanilla forwards or options. This will insure all parties have a meeting-of-the-minds on the details of exact transaction which is being novated.

What is the need for the new term Novation Effective Date? Why does the term “Novation Date” (as defined under the 2004 Novation Definitions) not work?

- The working group recognizes this inconsistency and will work to address it and any others found between the FXNP and the existing ISDA 2004 Novation Definitions.

Annex 1, Section 1(a) reads “...and deliver such Consent Request to ‘each of the other parties’ to the Covered Transaction...” Isn’t the Initiating Party the only other party to the Covered Transaction?

- In the case where a Prime Broker is involved, both the IP (which may not be the SOP) and the FXPB (which, in this case, would be the SOP) are both parties to the Covered Transaction(s). In other words, the IP is the FXPB’s client.

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Would the Consent Request supersede the original confirm and become the new Confirm for the New Transaction (that is, unless parties decide to prepare a new confirm)? Or will a combination of the Stand-Alone Confirmation and the Consent Request become the new Confirm?

- The “New Confirmation” would be the Consent Request plus anything attached to it.
- For vanilla transactions, if only the Consent Request is necessary to capture all trade details, then it alone would be the New Confirmation.
- For vanilla or non-vanilla transactions, if the original confirmation is attached or supplied afterward by request, then the combination of the CR plus the original confirm is the New Confirmation.
- Bottom Line: The SIP and the RP must have a meeting-of-the-minds on the details to the novated trade. It is best for those parties to agree those details prior to consent being provided. However, certain details (i.e., margin terms) could also be confirmed post-novation bilaterally between those parties via a separate confirmation. For purposes of novation, what ever is used for parties to provide consent (CR or CR+) becomes the New Confirmation. If parties then agree to execute a post-novation bilateral confirm, then that will become the New Confirmation between them.

Stand-Alone Confirmations that are within the "plain-vanilla" definition are not required to be produced as supporting evidence. How will the SIP become aware of any non-standard terms (like margin)?

- The Form Consent Request of the FXNP has a place where Other Terms could be specified (i.e., “Margin Terms apply”).
- Alternatively, certain details like margin terms could also be confirmed post-novation bilaterally between those parties via a separate confirmation.

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When trades are intermediated by a Prime Broker, some current practices provide that the Consent Request process is managed by the Initiating Party (and not the Remaining Party). Recognizing the interests of the RP as previously described, the IP in these cases seem to have even more of an interest in driving a Novation to execution. That being the case, wouldn't it also make sense for the FXNP to allow for the IP to manage the Consent Request process in this scenario?

- As the FXNP is designed to accommodate all types of Novation scenarios, a consistent consent process-flow is key to its success. Recognizing that the FX market currently utilizes a few different flows to novates trades, having one Consent Request flow provides stronger over-all-market-wide processing control (as well as make the design of a future electronic flow less complicated).
- One of the most challenging flows in the FX market is a Collapse when it involves a Prime Broker (PB). In this scenario, the Initiating Party (IP) may feel that its request might be improperly prioritized by the RP thus potentially delaying the novation and frustrating the IP. Furthermore, undue responsibility could be placed on the PB to resource the entire process.
 - KEY 1: Under the FXNP, the IP does not have to be the SOP. The FXNP recognizes that a 4th party may actually be requesting the novation on behalf of the SOP.
- In the case of a Collapse involving a PB, the PB is the SOP and the 4th party (PB's client) is the IP. To further this scenario, the RP is one of the Banks that face the PB in the 4th party's pass-through trade and the SIP is the other Bank which faces the PB in the equal and off-setting pass-through trade (which gets terminated). At the end of this Novation the same concern is addressed - it is still the RP that wants to make sure its books and records are maintained (as does the SIP) while both the SOP and the 4th party no longer have the position at all.
 - KEY 2: As the FXNP will eliminate the need for a paper Novation Confirmation, this process flow assures that obtaining "legal certainty" is in the control of the RP (who continues to hold the position). The G14 Banks which support this flow are committed to its timely execution.

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Long-Form Confirmations (LFCs) are often subject to a ‘deemed ISDA’ and may include credit terms (e.g., upfront margin). Would LFCs fall outside of the category of "Stand-Alone Confirmation" since technically they are subject to an ISDA Master (albeit a deemed ISDA and without an ISDA Schedule)?

- Any confirmation that is subject to a deemed, rather than actual, ISDA is a Stand-Alone Confirmation.
- From the Form Consent Request
 - Pre-Novation Stand-Alone Confirmation: [Yes][No]
 - Post-Novation Stand-Alone Confirmation: [Yes][No]

The Date of Consent Request is what triggers the countdown to the deadline? Who decides when to date the Consent Request (RP, SOP, SIP)?

- The RP inserts the date of the Consent Request (CR) when it sends out the CR. The date of the CR must be the date it is sent.

As between the SOP and the RP, who controls determination of post-novation Calculation Agent?

- Post-novation Calc Agent is a term that is required to be agreed up-front and must be specified in the Consent Request. The Initiating Party would therefore include it in the Initiation Request where the RP could reject it or accept it and forward it on in the CR where the SIP could reject it or accept it. If at any point a party disagrees with party designated as Calc Agent in the CR, the novation would be rejected and not go forward.

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It's unclear that the FXNP allows for changes to trade terms upon novation. In a Collapse where there are two exactly offsetting transactions (one which has to be terminated and the other novated), Calculation Agent in the novated trade may need to be changed to Joint Calculation Agent or other terms could change as well (NDF fixings, for example). How does the FXNP address this?

- KEY: Because “legal certainty” is imperative for “Consent to equal Confirmation” (in order to eliminate paper Novation Confirmations), parties to the FXNP must all have a meeting-of-the-minds on the details of the trade being novated up-front and set forth in the Consent Request.
- The Initial/Form Consent Request has a specific field for Calc Agent. If there is a pre-agreed understanding between the Initiating Party and the other parties to a novation on Joint CA, then that should be clearly specified by the IP in the Initial Request. The RP would clearly have the same understanding when it accepts the Initial Request and Joint CA would remain unchanged when it dispatches the Consent Request. Likewise, the SIP (and PB, if applicable) would share that understanding and would consent to the novation, accepting Joint CA post-novation.
- Furthermore, under the FXNP, the SIP can request that the RP provide the latest version of the novated trade's Confirmation or, alternatively, provide any additional details to the Consent Request that are unclear. If the SIP fails to make such request and provides its consent, the Novation is executed on the terms specified in the Consent Request.

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Can the cut-off time for Consent Request and Novation Effectiveness be improved?

- Concerns were raised about the 6:00 pm NYT cut-off on a consent request date (i.e., the Proposed Novation Date) whereby the RP needs to dispatch the Effectiveness Notice (EN) by no later than that cut-off time in order to (i) conclude the consent process and (ii) for the novation to be deemed effective. Under the previous version of the Novation Protocol, if the EN was not dispatched by that time, the novation would be null/void and the process must begin the following day. A number of firms made the point that this might not work and, as a result of reviewing a number of timing scenarios, this concern was validated. To address this, it was recommended that a timing buffer be provided so that the entire process would not have to start over if the RP was simply in a time-zone that made it impractical to send out the EN by 6pm NYT. As a result, modifications to the FXNP have been made as follows:
 1. The term “Proposed Novation Date” has been replaced with the term “Consent Request Date”
 2. The “Consent Cut-Off Time” (applicable to parties that need to deliver the Notice of Affirmative Consent) has been changed to:
 - a. 5:30 p.m., New York time, on the Consent Request Date but, if it is impractical for a party to deliver the NAC by such time, then
 - b. by no later than 5:30 p.m., New York time, on the first Business Day immediately following the Consent Request Date
 - c. any later than that constitute a rejection of such Consent Request.
 3. The cut-off time by which the RP must send the Effectiveness Notice has been changed to:
 - a. 6:00 p.m., New York time, on the Consent Request Date but, if it is impractical for the RP to deliver the EN by such time, then
 - b. by no later than 6:00 p.m., New York time, on the first Business Day immediately following the Consent Request Date
 - c. any later than that, such Standard Novation will not become effective.
 4. The “Novation Date” will be:
 - a. if the Effectiveness Notice is delivered on or before 6:00 pm on the day the Consent Request is sent, that date
 - b. if the EN is delivered any time between (i) 6:00 pm on the day the Consent Request is sent and (ii) up to and including 6:00 pm on the next day, the next day
 - c. if the Effectiveness Notice is delivered any time after 6:00 pm on that next day, the Novation is void.