ISDA Master Agreement and other standard market agreements

P.R.I.M.E. Finance – Young ICCA – 23 January 2018

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Topics

- Overview of standard market agreements
- Concept of a master agreement
- ISDA Master Agreement and Credit Support Documents
### Overview of standard market agreements

<table>
<thead>
<tr>
<th>Derivatives</th>
<th>Repo’s</th>
<th>Sec. lending</th>
<th>Loans</th>
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Examples of ‘local’ documentation: the European Master Agreement, *Deutscher Rahmenvertrag für Finanztermingeschäfte* (D), *Convention-cadre FBF* (F) and *Raamovereenkomst Niet-beursgenoteerde Derivaten* (NL).

Prime brokerage agreements? Often institution-specific
Concept of a master agreement

One agreement to govern all transactions

Sets out (standardized) general terms and conditions

Master agreement with transactions forms a ‘single agreement’

Key benefit: reducing gross exposures to a single net exposure
ISDA (i) – Key Provisions (sections)

Interpretation (s1)

Obligations (s2)

Events of Default and Termination Events (s5)

Early Termination; Close-out Netting (s6)

Governing Law and Jurisdiction (s13)
ISDA (ii) – Interpretation (s1)

1992/2002 ISDA Master Agreement

Schedule

Confirmations (re Transactions)

ISDA Protocols

ISDA Credit Support Documents

ISDA Definitions

‘Single agreement’
ISDA (iii) – Obligations (s2)

Payment and delivery obligation

Payment Netting

Conditions precedent
ISDA (iv) – Events of Default and Termination Events (s5)

Events of Default
- Failure to Pay or Deliver
- Breach/Repudiation of Agreement
- Credit Support Default
- Misrepresentation
- Default Under Specified Transaction
- Cross-Default
- Bankruptcy
- Merger Without Assumption

Termination Events
- Illegality
- Force Majeure Event (only 2002 ISDA)
- Tax Event
- Tax Event Upon Merger
- Credit Event Upon Merger
- (Optional) Additional Termination Event(s)
### ISDA (v) – Early Termination; Close-out Netting (s6)

<table>
<thead>
<tr>
<th>Step 1: Early Termination</th>
<th>Events of Default</th>
<th>All Transactions</th>
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<tbody>
<tr>
<td></td>
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<td>Automatic Early Termination?</td>
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<tr>
<td></td>
<td>Termination Events</td>
<td>Affected Party/ies</td>
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<td></td>
<td></td>
<td>Affected Transactions</td>
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</tbody>
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<tbody>
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<td>Unpaid Amounts</td>
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| Step 3: Set-off | Set-off of (i) Early Termination Amount and (ii) Other Amounts | Not standard in 1992 ISDA |
ISDA (vi) – Example close-out netting

*set-off?
ISDA (vii) – Governing Law and Jurisdiction (s13)

Governing law and jurisdiction

• Choice of law:
  • English law
  • New York Law

• Submission to jurisdiction (follows choice of law):
  • English courts
  • New York courts
  • Arbitration

• 2013 ISDA Arbitration Guide

• P.R.I.M.E.
ISDA (viii) – Schedule

*Made-to-Measure* Master Agreement, including:

- Automatic Early Termination (at Bankruptcy) on/off
- Additional Termination Events
- Documents to be delivered
- Additional Representations
- Choice of law / submission to jurisdiction (arbitration?)
- Credit Support Documents / Credit Support Providers
- Regulatory compliance: EMIR/Dodd-Frank
ISDA (ix) – Confirmations

- Confirms agreement to a certain Transaction
- Sets out the economic terms (such as the underlying value, currency, interest rate, notional amount, timing, and maturity)
- May deviate from Master Agreement and Schedule
- ISDA Definitions

![CONFIRMED stamp]
ISDA (x) – Credit Support Documents

Key benefit of ISDA Master Agreement: reducing *gross* exposures to a single *net* exposure

The *net* exposure of a party may be collateralized through credit support (margin/collateral) provided by the other party, e.g. cash or securities

ISDA Credit Support Documents regulates the provision, return and (upon default) enforcement of credit support. Main versions of ISDA Credit Support Documents:

- 1994 Credit Support Annex under New York law – *security interest*
- 1995 Credit Support Deed under English law – *security interest*
- 1995 Credit Support Annex under English law – *title transfer*
- 2016: new versions for regulatory-driven ‘variation margin’ (VM) and ‘initial margin’ (IM)
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