P.R.I.M.E. Finance
Panel of Recognized International Market Experts in Finance

New Trends in Financial Disputes: Document Digitisation

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Institutions have historically negotiated ISDA Master agreements adopting their “house style”. Accordingly, language has diverged and yet in many cases the intended business outcome is the same. This programme is evaluating variants by reference to their business outcome.
This process should enable you to derive the component parts of the ISDA Master Agreements:

- V1 Termination Currency + V4 Automatic Early Termination + V3 Payment Netting, etc.
Firms need to accept that a rationalised contract framework with more harmonised data and finite variants, is a launchpad to more efficient and safe markets – hanging on to the “house view” will perpetuate historical challenges.

- 300 Legal Tech WG Members
- 40+ Working Groups
- 36 Member entities attending
- >3000 Agreements Reviewed
- 126 Member samples provided
- > 50,000 Clauses Analysed

Key insights from initial phase and Strategy Paper:
- Members have recognised the value and potential benefits of structured data
- Recognition that the benefits of a reduced list of variants could outweigh the benefits of optionality that banks have historically prioritised “the house view”
- Opportunity to connect with ISDA Create, risk and operational toolkits

- Oct 2018 to Jan 2019
  Initial 5 clauses analysed
  Strategy Paper and Taxonomy completed

- Q1/Q2 2019
  Productionisation of clause analysis

- 2019
  Material completion of ISDA Master Agreement Clause Taxonomy and Library

- 2020
  Phase 2 CSAs
Documentation certainty provided by Clause Taxonomy

- For a netting determination, a combination of clauses such as Branches, Automatic Early Termination and Bankruptcy need to be evaluated
- Provided that key components of the agreement are in a predetermined format, then this aspect of netting analysis can be streamlined

Simplifying netting analysis

- Netting analysis relies on a number of relevant components.
- The Clause Taxonomy will help to provide documentation certainty
- In future, it is reasonable to assume that a local legal opinion could provide an opinion based on ISDA 92 that has Variant 1/2 etc. language

Why bother?

- Organizations are often inefficient in their netting analysis
- This approach can avoid analysis of each contract
- Reduces operational risk
- If variables change, you can potentially analyse implications more effectively
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Thank you