Understanding and Negotiating ISDA Master Agreement OTC Documentation

Course Content

Day 1

Topic One: Introduction
- The Derivatives Markets and Their Uses,
- OTC Derivatives
- Definitions
- Description and Uses of Basic Derivative Structures
- Swaps, Fully-paid transactions, Hybrid securities,
- The deal and the documentation process

Topic Two:
- How ISDA documentation has evolved
- Regulatory Requirements and overview
- US - Dodd-Frank
- EU – EMIR (The European Market Infrastructure Regulation),
- Basel III,
- MiFID II

Topic Three:
The 1992 ISDA Master Agreement
- Glossary
- Section by section analysis
- Representations, Default events, Termination Events, Netting, Settlement, Novation, Close-out, Market Quotation and Loss.
- Grounds and procedures for termination, close-out values
- Termination Default Checklist, Steps to take on counterparty’s default

Topic Four:
- The 2002 ISDA Master Agreement
- Glossary
- Section by section analysis
- Analysis of Schedule
- Default events, Termination Events, Netting, Settlement, Novation, Close-out, Valuation mechanics, Market Quotation, Loss Valuation, Close-out Amount
- Material Adverse Change clauses,
- Section 2(a)(iii) Set off,
- Implementation of the 2002 Agreement

Topic Five:
Legal Issues of the ISDA Master Agreement
- US Issues:
  - Choice of New York Law
o US bankruptcy and insolvency law
o Gaming and bucket shop laws
o The Commodity Exchange Act and the Commodity Futures Modernization Act

• EU Issues:
  o Capacity
  o Wagering and Gaming
  o Credit derivatives
  o Authority and suitability
  o Enforcement of close-out netting and set-off
  o Cross-border netting on insolvency
  o Automatic early termination
  o Credit support and Third party rights

• ISDA legal opinions

Topic Six: - Workshop 1: ISDA Master Agreement Documentation and its Meaning

Day 2

Topic Seven: ISDA Master Agreement Credit Issues

• Cross default and cross acceleration
• Credit event upon merger
• Threshold amount
• Specific indebtedness
• Set off and transfer
• Political Risk and other Categories of Risk
• Pre-signing trade policies
• The Vanilla ISDA

Topic Eight: Operational Issues

• Confirmations
• Payments
• Deliveries
• Close-out
• Administrative matters
• CCPs, SEFs, DCM, DCO, SDR, CDR
• Clearing and reporting obligations
• Lack of flexibility, Oligopoly, Concentration of risk, Liquidity

Topic Nine: Negotiating an ISDA Master Agreement Schedule

• Oral trades, confirmations and confirmation process
• The Schedule and its parts
• Implications and variants of each provision
• Common Provisions and their implications
• Foreign exchange transactions and currency options

**Topic Ten: Special provisions for Special Entities**
• Investment funds
• Hedge funds
• Sovereign entities
• Building societies
• SPVs
• US schedule provisions

**Topic Eleven: Protocols**
• Negotiated terminations,
• Credit Enhancement, Guarantees
• Collateral Re-Hypothecation,
• CSA, Novation, Disputes
• ISDA® EMIR Documentation Initiative, i.e. EMIR Protocols
• ISDA® Dodd-Frank Documentation Initiative

**Topic Twelve: Conclusion**
• The OTC documentation for the New Century
• 2012 ISDA a missed opportunity

**Topic Thirteen - Workshop 2: Negotiating the ISDA Master Agreement Documentation**