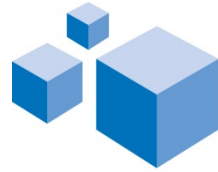


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How to negotiate an ISDA

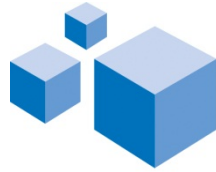
March 2016



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Single Agreement

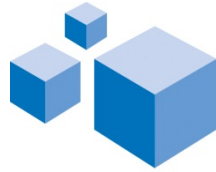
- Master agreement
- Schedule
- Credit support document
- Confirmation



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What does single agreement mean?

- All transactions entered into on the basis of a single agreement between the parties
- In a close-out situation, the value of all transactions are netted off
- Single figure payable
- Prevents cherrypicking



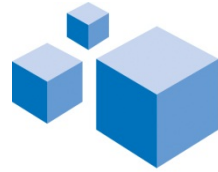
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Main differences between 1992 and 2002 ISDA Master Agreement

- Grace periods
- Expanded definition of ‘Specified Transaction’
- Force majeure and impossibility as new termination event
- Bankruptcy
- Close-out Amount
- Set off clause

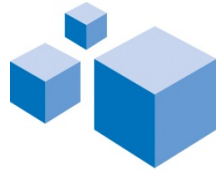
Close out amount and replacement of Market Quotation and Loss

- Market Quotation – based on a number of quotations by major dealers for replacement cost of terminated Transactions
- Loss – non-defaulting party makes own good faith calculation
- If fewer than 3 market quotations, Loss will apply
- Close-out Amount – broader and more flexible with a requirement to act in good faith and in a commercially reasonable manner
- Lengthy definition but generally covers the procedures to be followed in determining Close-out Amount and the type of information that can be taken into account



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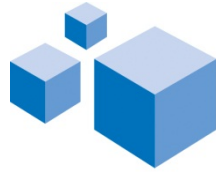
Common provisions negotiated in an ISDA Schedule



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Part 1 of the ISDA Schedule

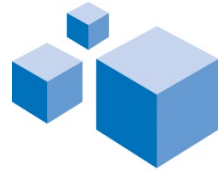
- Specified Entity
- Specified Transaction
- Cross Default
 - (i) administrative error carve out
 - (ii) cross acceleration downgrade
 - (iii) specified Indebtedness
 - (iv) threshold Amount
- Additional Termination Events



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Additional Termination Events

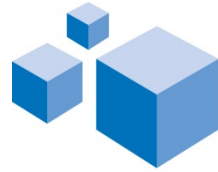
- NAV triggers
- NAV floor
- Change in management and control
- Key man events
- Non-renewal or suspension of authorisation
- Breach of investment objective, strategy or restrictions
- Failure to deliver NAV statement
- Breach of representation or warranty
- Material adverse change
- ERISA



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Part 2 of the ISDA Schedule

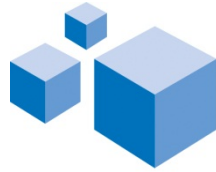
- Tax representations



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Part 3 of the ISDA Schedule

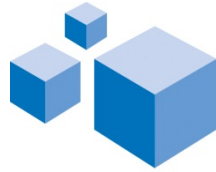
- Agreement to deliver documents



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Documents to be delivered

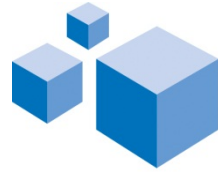
- Constitutional documents
- Offering documents
- Investment Management Agreement
- Audited accounts – ‘true and fair view’ only
- NAV statement (prepared by investment manager)
- Monthly NAV statement (prepared by Administrator)
- Legal opinion (as to party’s capacity to enter into Transactions)
- Process agent letter
- Investment manager side letter



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Part 4 of the ISDA Schedule

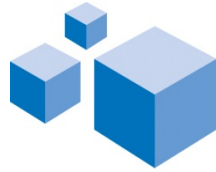
- **Miscellaneous**
 - (i) notices
 - (ii) process agent
 - (iii) calculation agent – must act in good faith and in a commercially reasonable manner
 - (iv) netting – single or multiple



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Part 5 of the ISDA Schedule

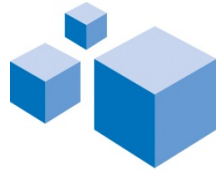
- Other Provisions
- Bespoke i.e. no particular order or required terms
- Customised to protect against specific counterparty



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Other provisions

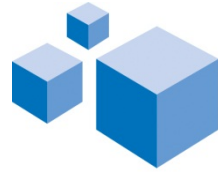
- Transfer to affiliate (no consent required)
- Set off
- Non-reliance provisions (tripartite)
- Additional representations and warranties
- Investment manager representations and warranties
- Scope of agreement (sweep-in clause)
- Material adverse change
- US representations (ECP, ERISA)
- Adequate assurance
- Escrow
- Bankruptcy (1992 agreement)



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IM side letter

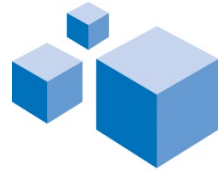
- To be resisted
- Representation and warranties generally reflect those already provided by fund
- Requirement to provide indemnity to be avoided



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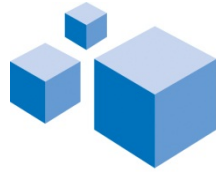
Credit Support Annex

- Regulates collateral
- Not mandatory
- Sets out terms under which collateral is transferred and types of collateral accepted
- Bilateral or unilateral
- English law CSA – transfers title to collateral (right to return of equivalent assets)



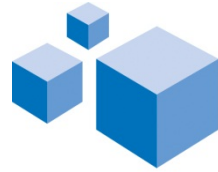
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Common provisions negotiated in a CSA



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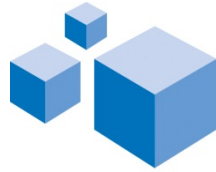
- Eligible collateral and haircuts
- Independent Amount
- Thresholds
- Minimum Transfer Amounts
- Transfer – same or next LBD
- Interest rates
- Other provisions



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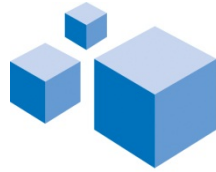
Unilateral agreement indicators

- Threshold – Infinity
- For the purpose of this Annex Party A is the Transferee and Party B the Transferor
- Express provision ‘Agreement as to Single Transferee and Transferor’



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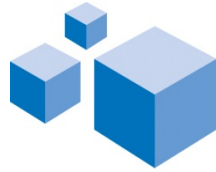
- Independent Amount – an initial amount deposited by less creditworthy party before trading takes place (excluded from Exposure calculations)
- Threshold – the level of unsecured exposure a party will allow the other before making a call for collateral
- Minimum Transfer Amount – prevents nuisance calls for low amount of collateral (calculated in addition to Threshold amount)



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Other agreements governed by the ISDA Master Agreement

- Automated Transaction Supplement (ATS)
- Portfolio Swaps Annex (PSA)
- Synthetic Prime Brokerage Master Confirmation (SPBMC)
- Master Confirmation for Dynamic Portfolio Swaps



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Cummings Law Ltd
42 Brook Street
London W1K 5DB

+44 20 7585 1406

www.cummingslaw.com

<http://vimeo.com/cummingslaw>