

## **ISDA Master Agreement and Credit Support Annex: Negotiation Strategies**

**7 CLE Credit Hours Available (New York)  
Transitional and Nontransitional**

**7 CPE Credit Hours Available**

**Wednesday, May 22, 2019  
ISDA Conference Center  
New York**

### **PROGRAM AGENDA**

**8:30 AM Registration and Continental Breakfast**

**9:00 AM Introduction and Welcoming Remarks**  
*Frederick O. Quenzer, Assistant General Counsel, ISDA*

**9:05 AM Negotiating the Schedule to the 2002 ISDA Master Agreement**  
This session will focus on key issues that firms typically negotiate in their Schedule to the 2002 Agreement. Frequently negotiated Schedule provisions will be discussed:

- Elections (e.g., Governing Law, Termination Currency)
- Automatic Early Termination – pros and cons
- Specified Entities for 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(iv)
- Credit Support Documents and Credit Support Providers
- Expansions and contractions of defined terms (e.g., Specified Transactions, Specified Indebtedness)
- Cross Default vs cross-acceleration and Threshold Amounts
- Netting of Payments
- Agreement to Deliver Documents
  - What types of documents do parties request?
  - The timing of delivery
- Payer and Payee Tax Representations
- Credit Event Upon Merger
- Process Agent – When should one be appointed?

*Fabien Carruzzo, Partner, Kramer Levin Naftalis & Frankel LLP*

*Ian Cuillerier, Partner, White & Case LLP*

*Matthew Klein, Senior Counsel, The Vanguard Group, Inc.*

*Steve Milankov, Assistant General Counsel and Senior Trading Counsel, Pershing Square Capital Management, L.P.*

**10:30 AM Morning Break**



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## PROGRAM AGENDA

- 10:45 AM**      **Negotiating the Schedule to the 2002 ISDA Master Agreement (continued)**
- Additional Termination Events – what are these events and why do parties include these? (e.g., Ratings Downgrades, Net Asset Value Triggers, Keyman Clauses, Credit Agreement events)
  - Multibranch Party; Offices
  - Transfer – Considerations for modifying Section 7
  - Calculation Agent - Possible inclusion of dispute rights and references to ISDA Determinations Committees
  - Scope of Agreement
  - FATCA and 871(m) provisions
  - Local law considerations
  - Limitations on rights to designate an Early Termination Date or suspend payments
  - Additional Representations
  - Other Provisions (e.g., Waiver of Jury Trial, Recording of Conversations, ERISA provisions)
  - Amending Master Agreements by an ISDA Protocol
- Fabien Carruzzo, Partner, Kramer Levin Naftalis & Frankel LLP*  
*Ian Cuillerier, Partner, White & Case LLP*  
*Matthew Klein, Senior Counsel, The Vanguard Group, Inc.*  
*Steve Milankov, Assistant General Counsel and Senior Trading Counsel, Pershing Square Capital Management, L.P.*
- 12:30 PM**      **Luncheon**
- 1:30 PM**      **Negotiating Paragraph 13 to the ISDA 2016 Credit Support Annex for Variation Margin (VM) (Security Interest – New York Law)**
- This session will examine terms specified and added to Paragraph 13, including:
- A basic overview of how uncleared margin rules will impact CSAs
  - Covered Transactions
  - Eligible Collateral and Valuation Percentages
  - Minimum Transfer Amounts
  - Ratings Ladders
  - Valuation Time and Valuation Date
  - Valuation Agent
  - Specified Conditions
  - Notification Time
  - Transfer Timing – What changes can market participants make?
  - Resolution Time
- Ilene K. Froom, Partner, Reed Smith LLP*  
*Miki Navazio, Partner, Seward & Kissel LLP*  
*Tess Weil, Partner, Purrington Moody Weil LLP*
- 3:00 PM**      **Afternoon Break**



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**3:15 PM      Negotiating Paragraph 13 to the ISDA 2016 Credit Support Annex for Variation Margin (VM)  
(Security Interest – New York Law) (continued)**

- Value of Collateral
- Using Posted Collateral
- Custodians
- The Interest Rate and timing of Interest Payments
- Interest Adjustment
- Negative Interest
- Distributions
- Credit Support Offsets
- Rights and Remedies of the Secured Party
- Rights and Remedies of the Pledgor
- Other Provisions
- Variation Margin Segregation
- Terms for non-netting counterparties
- Independent Amount, using the Independent Amount (IA) Provisions
- Independent Amount Segregation
- The ISDA 2013 Account Control Agreement

***Ilene K. Froom, Partner, Reed Smith LLP***

***Miki Navazio, Partner, Seward & Kissel LLP***

**4:30 PM      Conference Concludes**