

# Welcome! We're **LIVE!**

ISDA<sup>®</sup> Safe,  
Efficient  
Markets  
Celebrating 40 Years

The conference will begin shortly

Negotiating Core ISDA Documentation: Schedule to the ISDA  
Master Agreement

*Including the ISDA Clause Library*

Wednesday, March 12, 2025

9:00 AM – 11:45 AM EDT

ISDA<sup>®</sup> **VIRTUAL**  
conferences



Wednesday, March 12, 2025

 #isdaVC

## Introduction and Welcoming Remarks

9:00 AM – 9:05 AM EDT



**Heather Smith**  
Senior Counsel, Commercial Product Development  
ISDA

# Agenda

<b>9:05 AM – 10:35 AM</b>	<b>Negotiating the Schedule to the 2002 ISDA Master Agreement</b> <i>Jason Brooks, Partner, Paul Hastings LLP</i> <i>Ilene K. Froom, Partner, Faegre Drinker Biddle &amp; Reath LLP</i> <i>Kyara Mathias, Counsel, Linklaters LLP</i> <i>Heather Smith, Senior Counsel, Commercial Product Development, ISDA</i>
<b>10:35 AM – 10:45 AM</b>	<b>Break</b>
<b>10:45 AM – 11:45 AM</b>	<b>Negotiating the Schedule to the 2002 ISDA Master Agreement (Cont.)</b>

Wednesday, March 12, 2025

X #isdaVC

## Negotiating the Schedule to the 2002 ISDA Master Agreement

9:05 AM – 10:35 AM EDT



**Jason Brooks**  
Partner  
Paul Hastings LLP



**Ilene K. Froom**  
Partner  
Faegre Drinker Biddle &  
Reath LLP

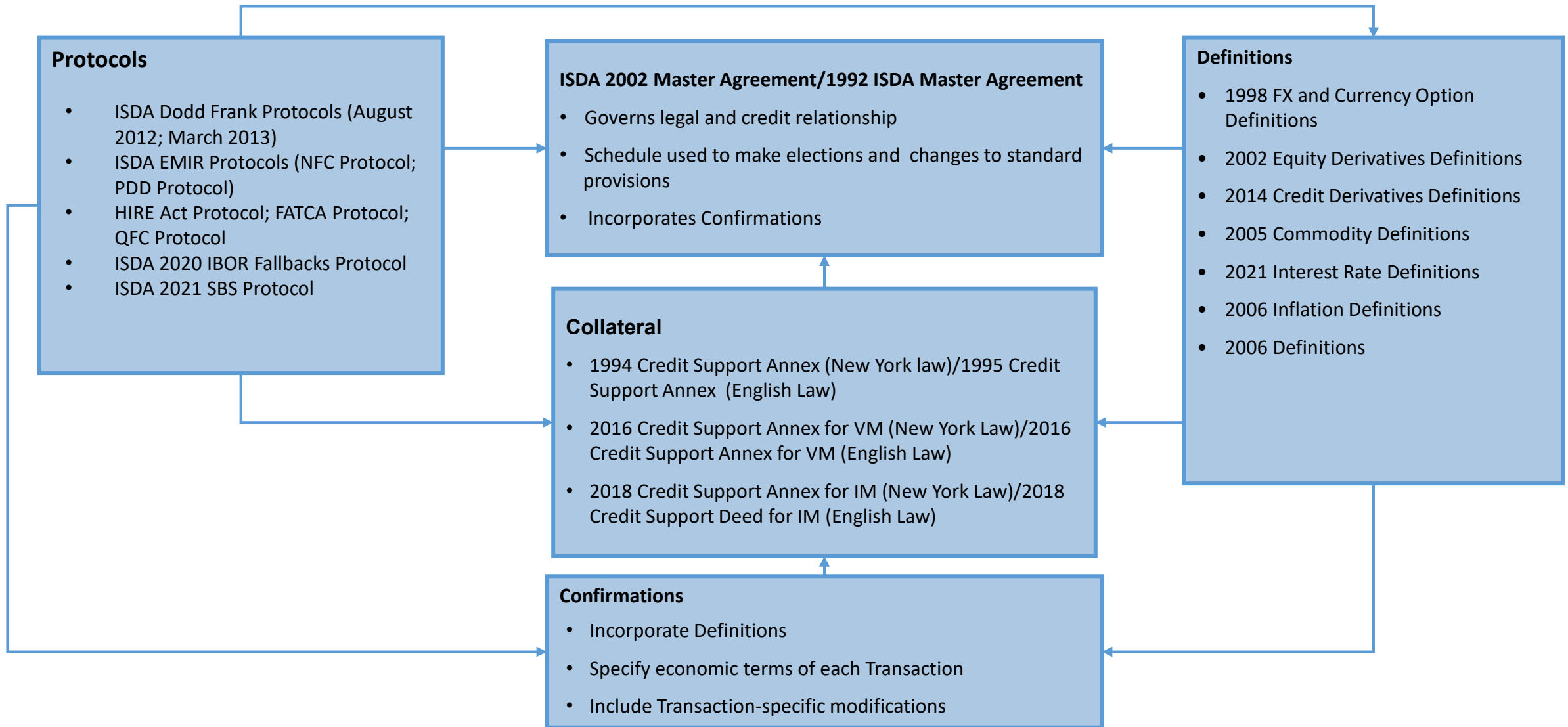


**Kyara Mathias**  
Counsel  
Linklaters LLP



**Heather Smith**  
Senior Counsel, Commercial  
Product Development  
ISDA

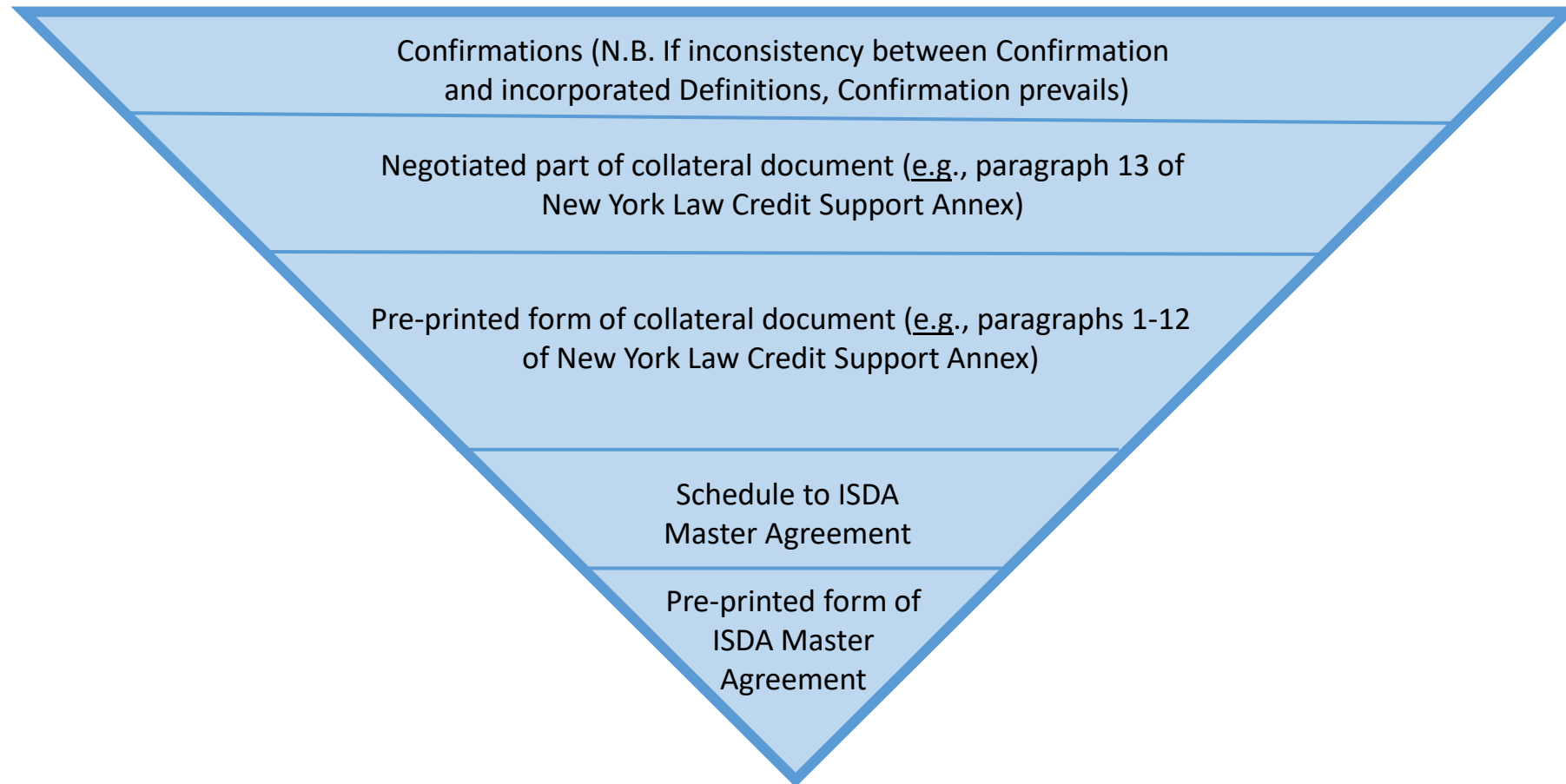
# The ISDA Documentation Architecture



## Certain Key Concepts of ISDA Documentation

<b><u>Single Agreement Concept:</u></b>	<ul style="list-style-type: none"><li>• All Confirmations, Credit Support Annexes and the Schedule form part of a single agreement.</li></ul>
<b><u>Close-out Netting:</u></b>	<ul style="list-style-type: none"><li>• A single net sum is due on a default.</li></ul>
<b><u>Pre-printed forms:</u></b>	<ul style="list-style-type: none"><li>• The core ISDA documents (the ISDA Master Agreement and Credit Support Documentation) are pre-printed industry standard forms that counterparties may bilaterally supplement and amend with other industry standard forms (<i>e.g.</i>, the Schedule to the ISDA Master Agreement).</li></ul>
<b><u>Inconsistencies and Hierarchy:</u></b>	<ul style="list-style-type: none"><li>• See the following slide. All of the different ISDA documents that form part of the “single” agreement interact on the basis of a set of supremacy clauses that exist across the documents.</li></ul>

# The ISDA Hierarchy



## Introduction to The ISDA Clause Library





# The ISDA Clause Library

The ISDA Clause Library is a tool that allows firms to negotiate and construct hundreds of the most commonly negotiated clauses within the ISDA Master Agreement and Credit Support Documentation.

## Building the Clause Library

> 50,000  
Clause Samples  
Analysed

> 3,000  
Agreements  
reviewed

> 100  
Member  
samples  
submitted

## Clause Library Coverage

1992 & 2002  
ISDA Master  
Agreement

3 Non-  
regulatory  
CSAs

2  
Regulatory  
VM CSAs

## The ISDA Master Agreement Clause Library

~250  
Unique  
data  
points

42  
Distinct  
Clauses

>130  
Clause  
Variants

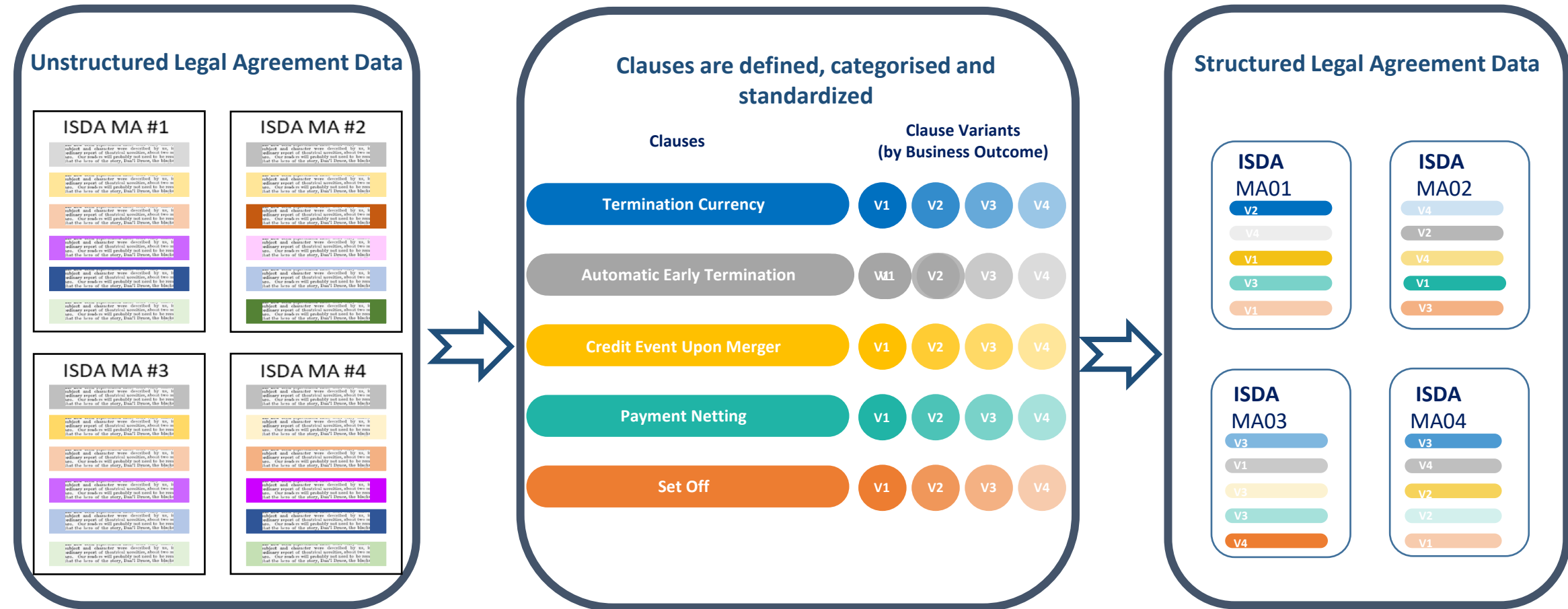
## The CSA Clause Library

5  
CSA  
Versions

>35  
Distinct  
Clauses  
per CSA

>210  
Clause  
Variants

# The ISDA Clause Library



## The Schedule – Part by Part



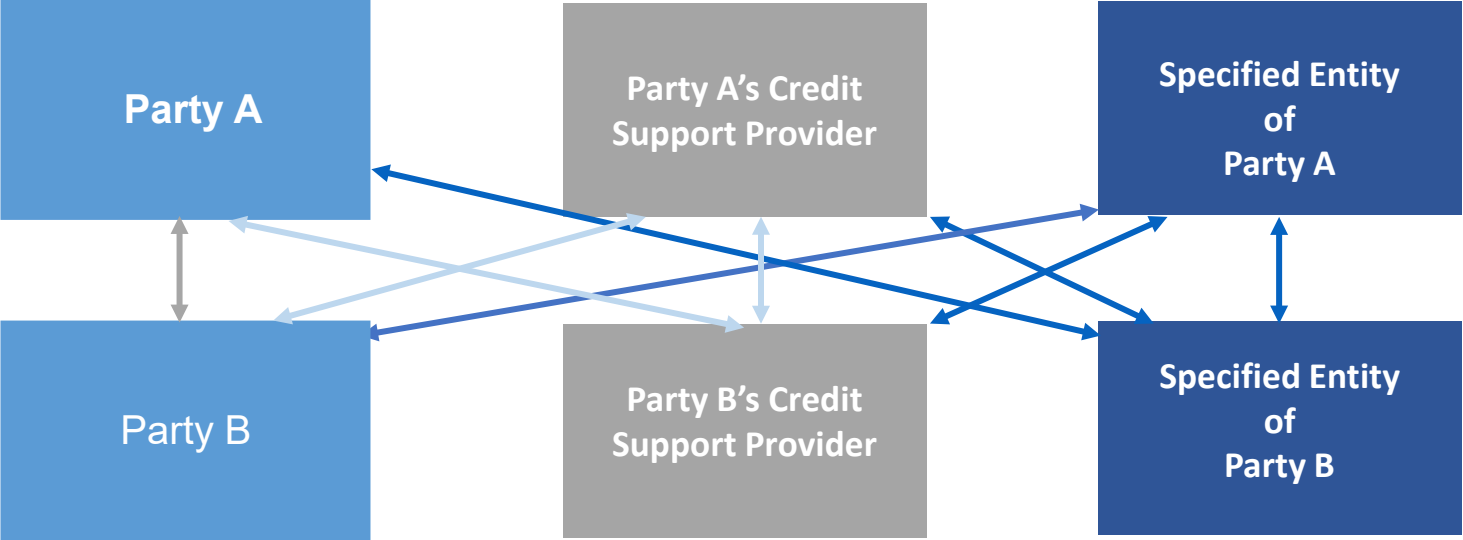
## Part 1 – Specified Entity

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Serves to apply certain Events of Default and Termination Event to Specified Entities with respect to a party</li><li>• May be specified for the following:<ul style="list-style-type: none"><li>○ <i>Events of Default</i>: Section 5(a)(v) (Default Under Specified Transaction); 5(a)(vi) (Cross-Default); and 5(a)(vii) (Bankruptcy).</li><li>○ <i>Termination Event</i>: Section 5(b)(v) (Credit Event Upon Merger).</li></ul></li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• The occurrence of the relevant Event of Default/Termination Event in respect of a related entity may signal an impending default of the relevant party allowing the other party to terminate without waiting for such event to occur with respect to the party.</li></ul>
<b><u>Examples:</u></b>	<ul style="list-style-type: none"><li>• If a specified entity of a party files for bankruptcy ahead of the party filing for bankruptcy, the other party would be able terminate the ISDA upon the bankruptcy of the specified entity.</li><li>• If a specified entity of a party defaults on debt in excess of the Threshold Amount for Cross Default for such party, the other party would be able to terminate the ISDA.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides standard provisions that allow each party to specify its Specified Entities for certain Events of Default, Termination Event and/or for the Absence of Litigation representation.</li></ul>

## Part 1 – Default Under Specified Transaction (Section 5(a)(v))

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• An Event of Default which serves to import defaults involving Specified Transactions between the parties (and any Credit Support Provider or Specified Entity).</li><li>• There is no Threshold Amount.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• If a party or its related entities fail to perform under other agreements (regardless of the amount), such party may be more likely to have performance issues under the Agreement.</li></ul>
<b><u>Examples:</u></b>	<ul style="list-style-type: none"><li>• Party A fails to deliver securities under a repo with an affiliate of Party B resulting in an acceleration of the repo and all repos under the master repo agreement.</li><li>• Guarantor of Party A defaults on a final payment on a swap with Party B.</li></ul>

# Part 1 – Default Under Specified Transaction (Section 5(a)(v))



## Part 1 – Default Under Specified Transaction (Section 5(a)(v)) contd.

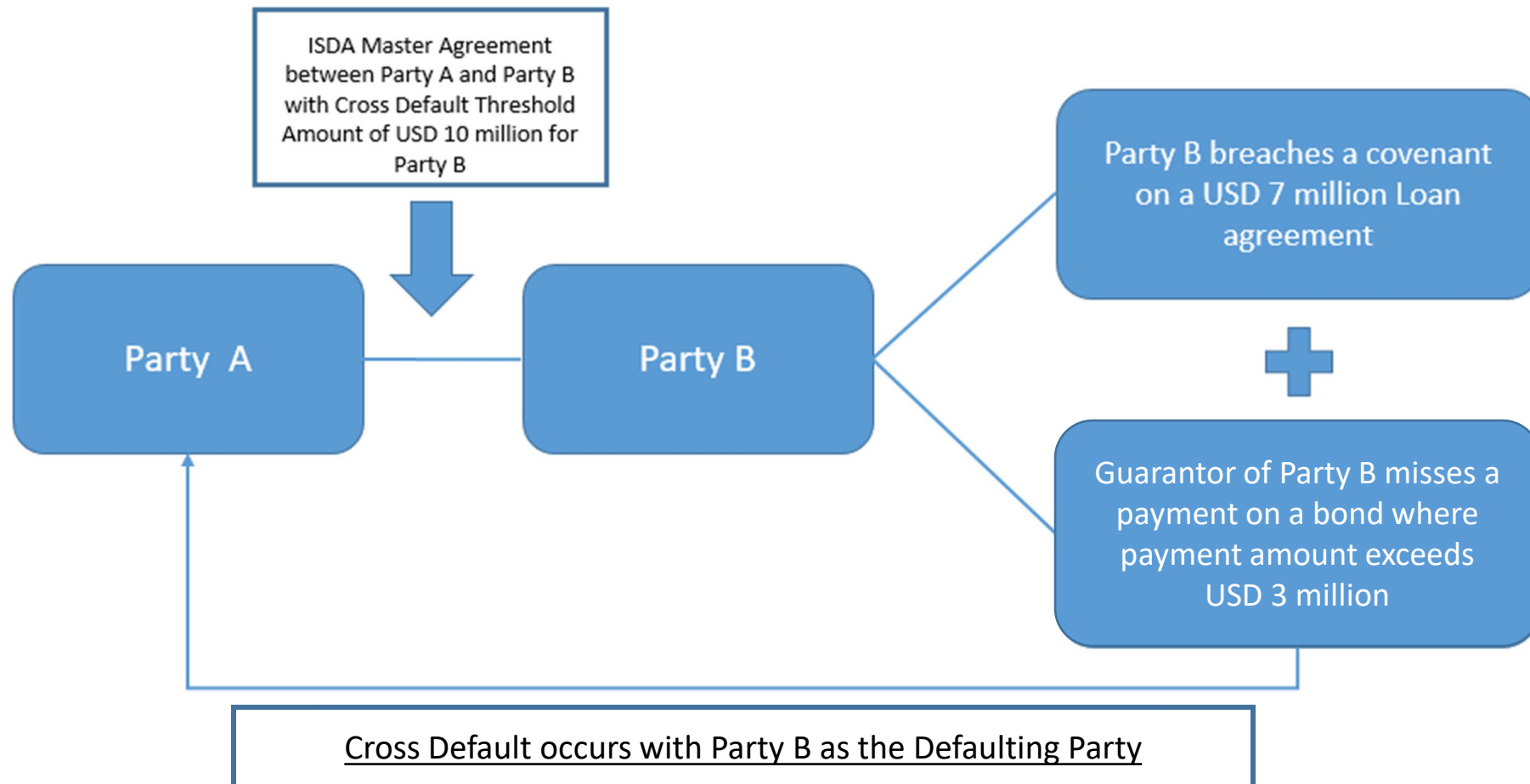
<b><u>Definitions:</u></b>	<ul style="list-style-type: none"><li>• “Specified Transaction”: includes transactions under other agreements between:<ul style="list-style-type: none"><li>○ the parties;</li><li>○ a party and the other party’s Credit Support Provider or Specified Entity; and</li><li>○ one party’s Credit Support Provider or Specified Entity and the other party’s Credit Support Provider or Specified Entity.</li></ul></li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• “Specified Transaction” can be defined as per Section 14 or may be defined otherwise.<ul style="list-style-type: none"><li>○ Scope of “Specified Transaction”: Should this be narrowed or broadened?</li></ul></li><li>• Cure Period.</li><li>• Administrative/Operational carve-outs.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides:<ul style="list-style-type: none"><li>○ a standard clause for “Specified Transaction” to be defined as per Section 14; and</li><li>○ drafting options to expand the definition of “Specified Transaction” to include prime brokerage transactions, margin lending transactions and/or other negotiated transactions.</li></ul></li></ul>

## Part 1 – Cross Default (Section 5(a)(vi))

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Elective Event of Default that imports defaults by a party, Credit Support Provider or Specified Entity involving Specified Indebtedness owed to any person (including third parties) over a Threshold Amount.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• If a party or its related entities fail to perform under debt owed to any person (in excess of a threshold), such party may be more likely to have performance issues under the ISDA Master Agreement.</li></ul>
<b><u>Examples:</u></b>	<ul style="list-style-type: none"><li>• Party A breaches a covenant under a loan where the relevant amount exceeds the threshold.</li><li>• Guarantor of Party A misses a payment on a bond where the relevant amount exceeds the threshold.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Cross Default applicability: neither party, one party or both parties?</li><li>• Cross-Default v Cross-Acceleration.</li><li>• Administrative failure exceptions.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides:<ul style="list-style-type: none"><li>○ a standard clause to specify whether “Cross Default” is applicable to either party;</li><li>○ drafting options to convert the provision to a cross acceleration provision; and</li><li>○ drafting options to add an administrative error carve-out, with further drafting options for when the grace period commences.</li></ul></li></ul>



## Part 1 – Cross-Default (Section 5(a)(vi))



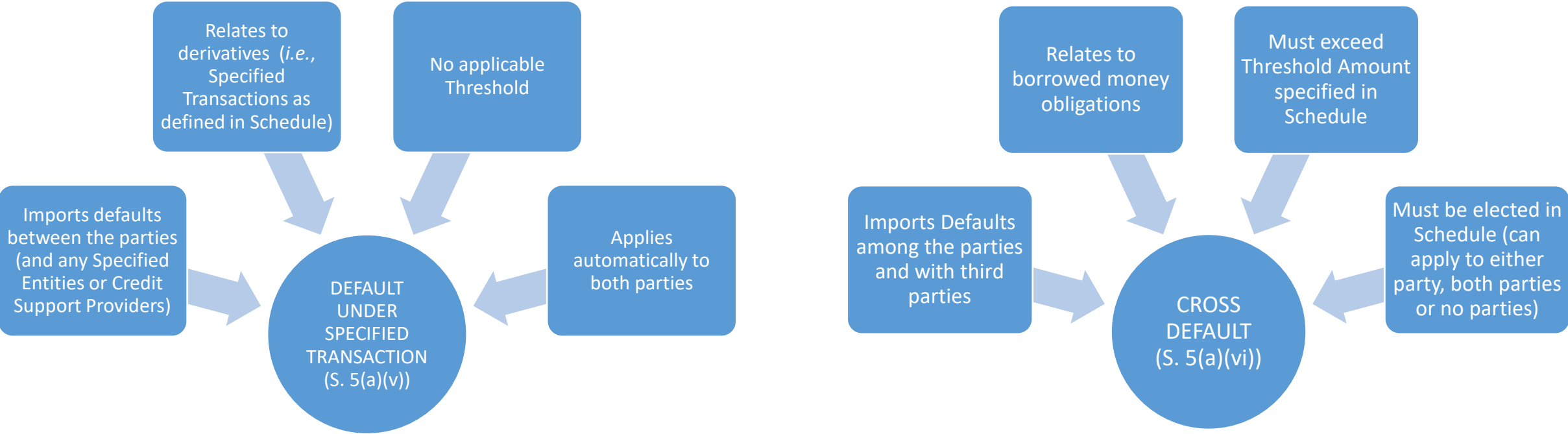
## Part 1 – Cross Default (Section 5(a)(vi)) contd.

<b><u>Definitions:</u></b>	<ul style="list-style-type: none"><li>• “Specified Indebtedness” includes any obligation in respect of borrowed money between:<ul style="list-style-type: none"><li>○ the parties, their Credit Support Providers or Specified Entities; and</li><li>○ such entities or any third party.</li></ul></li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Expand definition of “Specified Indebtedness” to include derivatives, trading and lease obligations etc.</li><li>• Narrow “Specified Indebtedness” definition to exclude bank deposits in the ordinary course.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides:<ul style="list-style-type: none"><li>○ a standard clause to define “Specified Indebtedness” as having the meaning specified in Section 14;</li><li>○ drafting options to expand the definition of “Specified Indebtedness” to include derivatives transactions or to define “Specified Indebtedness” as any obligation with respect to the payment of money; and</li><li>○ drafting options to exclude from “Specified Indebtedness” bank deposits in the ordinary course and/or indebtedness in respect of which the acceleration/ability to accelerate is being contested in good faith.</li></ul></li></ul>

## Part 1 – Cross Default (Section 5(a)(vi)) contd.

<b><u>Definition:</u></b>	<ul style="list-style-type: none"><li>• “Threshold Amount” means the amount, if any, specified in the Schedule.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• “Threshold Amount”. How should the Threshold Amount be expressed? (may be different Threshold Amounts for each party)<ul style="list-style-type: none"><li>○ A fixed dollar amount?</li><li>○ A percentage of a party’s shareholders’ equity?</li><li>○ A percentage of a party’s Net Asset Value (“NAV”)?</li><li>○ the lesser of any of the foregoing (<i>e.g.</i>, the lesser of a fixed dollar amount and a party’s NAV as of the prior calendar month)?</li><li>○ Other?</li></ul></li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides drafting options for parties to specify as the Threshold Amount for one or both parties: a fixed dollar amount, a percentage of a party’s or third party’s shareholders’ equity, a percentage of a party’s NAV or the lesser of any of the foregoing.</li></ul>

# Part 1 –Default under Specified Transaction vs. Cross-Default



## Part 1 – Credit Event Upon Merger (Section 5(a)(vi))

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• An elective Termination Event which occurs when the creditworthiness of the resulting party after a merger or takeover is materially weaker than the original party (or Credit Support Provider or Specified Entity, if any) before such event.</li><li>• ISDA 2002 Master Agreement has an expanded provision.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• Creditworthiness is an important factor in determining the terms of the ISDA Master Agreement between the parties. A party may not have entered into the ISDA Master Agreement or agreed to the terms if its counterparty was a worse credit risk.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• CEUM applicability - neither party, one party or both parties?</li><li>• Negotiations around what constitutes “materially weaker” (e.g., a credit rating trigger in lieu of an undefined materially weaker standard).</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides:<ul style="list-style-type: none"><li>○ a standard clause to specify whether “Credit Event Upon Merger” is applicable to either party;</li><li>○ drafting options for the determination of whether creditworthiness is materially weaker to be made (1) in the “reasonable opinion” of the other party or (2) based on a credit rating test; and</li><li>○ drafting options for the ISDA 2002 Master Agreement, to make various modifications to the definition of a “Designated Event”.</li></ul></li></ul>

## Part 1 – Automatic Early Termination

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• If elected with respect to a party, then upon the occurrence of certain insolvency events, all transactions are terminated automatically on or immediately prior to the relevant insolvency event without the designation of an Early Termination Date by the other party.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• In jurisdictions where close-out netting may not be enforceable under local insolvency rules, terminating prior to insolvency <b><u>may</u></b> allow for close-out netting to be upheld.</li></ul>
<b><u>Additional Considerations:</u></b>	<ul style="list-style-type: none"><li>• Possible lack of awareness of termination may result in exposed hedge transactions.</li><li>• ISDA netting opinions - check opinions for relevant jurisdictions in which an insolvency proceeding of the counterparty could occur.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides:<ul style="list-style-type: none"><li>○ a standard clause to specify whether Automatic Early Termination is applicable to each party; and</li><li>○ drafting options to:<ul style="list-style-type: none"><li>▪ disapply Automatic Early Termination with respect to the relevant party except if required to ensure enforceability under such party's relevant jurisdiction; and/or</li><li>▪ include an indemnity for losses incurred by the other party between the Early Termination Date and the date of becoming aware that the Early Termination Date has occurred.</li></ul></li></ul></li></ul>

## Part 1 – Additional Termination Events (ATEs)

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Expands the list of standard “pre-printed” events which can trigger a close-out.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• Add any required tailored trigger events for the counterparty, based on different factors, including:<ul style="list-style-type: none"><li>○ Entity type (<i>e.g.</i>, resignation of trustee for a trust, NAV trigger for a fund, ratings downgrade for a public company).</li><li>○ Perceived Stability and Financial Condition.</li><li>○ Relationship between the parties.</li></ul></li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Specified in Schedule or Confirmation. Also specify “Affected Party” and “Affected Transactions”</li><li>• Or include as an “Additional Event of Default”.</li><li>• Some of the differences between Events of Default and Termination Events include:<ul style="list-style-type: none"><li>○ Notice.</li><li>○ Section 2(a)(iii) applicability.</li><li>○ Ability to apply to some but not all Transactions.</li><li>○ Close-out Payment Due Date and Close-out Interest Rate.</li></ul></li></ul>

## Part 1 – ATEs – Credit Rating Downgrade and Credit Spread Widening

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• An Additional Termination Event which is triggered upon a drop in a party's credit rating or a widening of a party's credit spread below a certain level allowing the other party to terminate Transactions under the ISDA Master Agreement or seek other specified remedies.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• A rating downgrade or spread widening suggests a party may have problems performing under the ISDA Master Agreement and therefore serves as an early trigger for the other party to take action to protect its interests under the ISDA Master Agreement.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• A cascade of remedies may apply depending on the severity of the event:<ul style="list-style-type: none"><li>○ assign transactions;</li><li>○ get guarantor to provide credit support;</li><li>○ post collateral or additional collateral; and</li><li>○ terminate all transactions.</li></ul></li></ul>



## Part 1 – ATEs – Net Asset Value Decline and Net Asset Value Floor

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• An Additional Termination Event which is triggered upon a decline in a fund's Net Asset Value (NAV) compared to a prior period or below a floor allowing the other party to terminate Transactions under the ISDA.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• Poor performance by a fund may indicate the likelihood of an inability to perform under the ISDA Master Agreement.</li></ul>
<b><u>Examples:</u></b>	<ul style="list-style-type: none"><li>• A Fund's month-end performance (net of redemptions and subscriptions) declines by 25% or more from the previous month-end NAV.</li><li>• A Fund's NAV declined below a specified floor.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• <b>Net Asset Value Decline Additional Termination Event.</b> The Clause Library provides:<ul style="list-style-type: none"><li>○ a clause for a Net Asset Value Decline Additional Termination Event which is triggered upon a decline in a party's NAV over a specified period of time; and</li><li>○ different drafting options for: (i) the definition of NAV including for the exclusion of subscriptions, withdrawals and/or redemptions from the calculation; (ii) the date as of which the NAV is taken and the reference NAV is taken; and (iii) the duration over which the NAV decline is assessed, so as to achieve the parties' desired business outcome.</li></ul></li></ul>

## Part 1 – ATEs – Net Asset Value Decline and Net Asset Value Floor contd.

### Clause Library contd.:

- **Net Asset Value Floor Additional Termination Event.** The Clause Library provides:
  - a clause for a Net Asset Floor Additional Termination Event which is triggered upon a decline in a party's NAV below a certain floor; and
  - drafting options for: (i) the definition of NAV including for the exclusion of subscriptions, withdrawals and/or redemptions from the calculation; (ii) the date as of which the NAV is taken; and (iii) the manner of determining the floor value.

## Part 1 – ATEs – Default under Credit Agreement

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Defaults under a Credit Agreement:<ul style="list-style-type: none"><li>○ Incorporate events of default from a credit agreement between the parties (or an affiliate of the dealer who made the loan) directly into the ISDA Master Agreement, or</li><li>○ Add a specific cross-default clause in the ISDA Master Agreement triggered by a default under the credit agreement.</li></ul></li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• May be incorporated in an ISDA Master Agreement used for hedging the borrower's exposure under a financing, so that the ISDA Master Agreement terminates at the same time as the related credit agreement.</li><li>• Covenants and defaults in credit agreements tend to be more detailed and conservative than those in swap agreements.</li><li>• Compare with Cross Default Event of Default in the pre-printed ISDA Master Agreement?</li></ul>
<b><u>Examples:</u></b>	<ul style="list-style-type: none"><li>• Party A has the right to terminate the swap if Party B defaults on the loan or breaches a covenant in the credit agreement (<i>e.g.</i>, failure to maintain the required financial ratios).</li></ul>

## Part 1 – ATEs – Examples of other ATEs

<b><u>Example 1:</u></b>	<ul style="list-style-type: none"><li>• <b>Material Adverse Change Clause (“MAC clause”):</b> <u>Example:</u> Party A has the right to terminate all transactions if Party B has a material adverse change in its financial condition.</li></ul>
<b><u>Example 2:</u></b>	<ul style="list-style-type: none"><li>• <b>Keyman Provision:</b> <u>Example:</u> Party A has the right to terminate all transactions if Mr./Ms. Midas ceases to be involved with Party B and/or its investment decisions.</li></ul>
<b><u>Example 3:</u></b>	<ul style="list-style-type: none"><li>• <b>Investment Advisor Provision:</b> <u>Example:</u> Party A may terminate all transactions if Party B’s investment advisor is terminated or unable to perform its advisory functions.</li></ul>
<b><u>Example 4 - Clause Library:</u></b>	<ul style="list-style-type: none"><li>• <b>Change of Control:</b> <u>Example:</u> The Clause Library provides a clause for a Change of Control Additional Termination Event which is triggered upon any other person acquiring beneficial ownership of equity securities or other ownership interest having the power to elect a majority of the board of directors of the relevant party.</li></ul>

## Part 1 – ATEs – Examples of other ATEs contd.

### **Example 5 - Clause Library:**

- **Failure to Maintain Ownership:**

Example: The Clause Library provides a clause for a Failure to Maintain Ownership Additional Termination Event which is triggered upon the failure of a specified third party to maintain ownership of the relevant party with drafting options for the ownership percentage and voting rights to be maintained.

## Part 1 – Other Provisions – Examples

<b><u>Example 1:</u></b>	<ul style="list-style-type: none"><li>• <b>Modification of grace period for Failure to Pay or Deliver:</b> Parties may modify the grace period for Failure to Pay or Deliver under the ISDA Master Agreement to make it more or less Local Business Days/ Local Delivery Days.</li></ul>
<b><u>Example 2:</u></b>	<ul style="list-style-type: none"><li>• <b>Modification of dismissal days for Bankruptcy:</b> Parties may modify the number of dismissal days in the definition of Bankruptcy.</li></ul>
<b><u>Example 3:</u></b>	<ul style="list-style-type: none"><li>• <b>Use of Close-out Amount on a 1992 ISDA Master Agreement :</b><ul style="list-style-type: none"><li>○ If negotiating a 1992 ISDA Master Schedule, parties may agree to use Close-out Amount as the payment measure.</li><li>○ Close-out Amount v Market Quotation or Loss.</li></ul></li></ul>

## Part 2 – Tax Representations

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• In Part 2, parties make their Payer and Payee Tax Representations.</li><li>• The standard Payer Tax Representation, if elected with respect to a party, is a representation that such party is not required by applicable law, as modified by applicable practice, to make any deduction or withholding on account of any Tax from a payment to the other party under the ISDA Master Agreement.</li><li>• For the payer to give the Payer Tax Representations, the other party as payee may need to provide a tax representation that it satisfies certain criteria (a “<b>Payee Tax Representation</b>”) and provide certain tax forms.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• The Payer and Payee Tax Representations are provided so as to ensure that no withholding of tax is required on a payment by a payer.</li><li>• Transactions are structured on the assumption that there is no withholding of tax required; if there is a withholding of tax, it will affect the economics of the transaction for the relevant party bearing the burden of the tax.</li><li>• If despite the payer tax representations, tax needs to be withheld, then the party that bears the burden of the tax and rights of the parties will depend upon whether the withholding was required from the outset, the payee fails deliver required tax forms or misrepresents a Payee Tax Representation, or the tax is imposed as a result of a change in law.</li></ul>

Wednesday, March 12, 2025

X #isdaVC

## Negotiating the Schedule to the 2002 ISDA Master Agreement

9:05 AM – 10:35 AM EDT



**Jason Brooks**  
Partner  
Paul Hastings LLP



**Ilene K. Froom**  
Partner  
Faegre Drinker Biddle &  
Reath LLP



**Kyara Mathias**  
Counsel  
Linklaters LLP



**Heather Smith**  
Senior Counsel, Commercial  
Product Development  
ISDA



**1st CLE Verification Code: VC031225\_1P2R**

# Upcoming Events

**LIVE!**

We're taking  
a quick break,  
the conference  
will resume  
shortly

Thu, Mar 13, 2025

Online

Understanding Core ISDA  
Documentation: VM CSD



Wed, Mar 19, 2025

Athens

ISDA Derivatives Forum Athens



Wed, Mar 19, 2025

New York

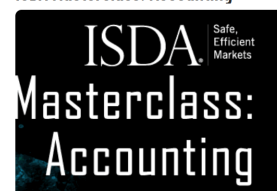
ISDA/SIFMA AMG Collateral and  
Liquidity Management



Mon, Mar 24 to Tue, Mar 25, 2025

London

ISDA Masterclass: Accounting



Tue, Mar 25, 2025

Brussels

Trading Book Capital • Policy  
Challenges



Tue, Mar 25, 2025

New York

ISDA Close-out Seminar - New York



Tue, Apr 1 to Wed, Apr 2, 2025

Chicago

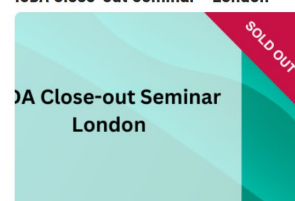
ISDA Masterclass: Collateral  
Management



Wed, Apr 2, 2025

London

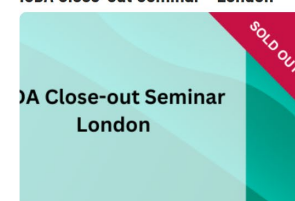
ISDA Close-out Seminar - London



Thu, Apr 3, 2025

London

ISDA Close-out Seminar - London



Mon, Apr 7 to Tue, Apr 8, 2025

Online

Fundamentals of Collateral  
Management



Tue, Apr 8, 2025

Singapore

ISDA Close-out Seminar - Singapore



Tue, Apr 8 to Wed, Apr 9, 2025

New York

ISDA Masterclass: Derivatives  
Documentation



Wed, Apr 9 to Thu, Apr 10, 2025

Singapore

ISDA Masterclass: Derivatives  
Documentation



Tue, May 13, 2025

Amsterdam

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Wednesday, March 12, 2025

X #isdaVC

## Negotiating the Schedule to the 2002 ISDA Master Agreement

10:45 AM – 11:45 AM EDT



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## Part 3 – Agreement to Deliver Documents

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• In Part 3, parties agree upon “Documents to be Delivered”.</li><li>• Any tax forms to be delivered are specified in Part 3(a) and other documents are specified in Part 3(b).</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• Tax forms may be required so as to allow the other party to be able to make the Payer Tax Representation that it is not required to withhold tax on its payments.</li><li>• Constitutional documents, board resolutions authorizing entry into of the ISDA Master Agreement and granting signing authority and incumbency certificates may be required to establish the capacity and authority of the relevant party and the authorization of its signatory to enter into the ISDA Master Agreement.</li><li>• Financial statements and periodic NAV statements (if applicable) may be required as an advance warning of performance issues or of any impending event of default or termination event.</li></ul>

## Part 3 – Agreement to Deliver Documents

Party required to deliver document	Form/Document /Certificate	Date by which to be delivered	Covered by Section 3(d) representation
<i>(i.e., Who has to deliver?)</i>	<i>(i.e., What has to be delivered?)</i>	<i>(i.e., When must it be delivered?)</i>	<i>(i.e., whether delivering party provides a section 3(d) rep with respect to the document)</i>  <i>(applies only to the Part 3(b) documents, not Part 3(a) documents)</i>

## Part 3 – Agreement to Deliver Documents

### **Documents to be delivered:**

Part 3 Documents may include:

- Certified board resolutions authorizing the business and granting signature / trading authority to certain people (resolutions may be general or specific).
- Tax Forms (such as W-9s, W-8BENs).
- Incumbency/signature certificate or “signature book”.
- Constituent documents such as certificate of incorporation, partnership agreements, etc.
- Financial Statements.
- Legal Opinions.

## Part 3 – Agreement to Deliver Documents

### **Financial Statements:**

Parties may be required to provide Financial Statements:

- May be required annually and/or quarterly.
- Annual financials are generally required to be audited and prepared in accordance with GAAP.
- Limit delivery requirement if financial statements are publicly available.
- Month-end NAV reports for funds.
- Section 3(d) representation should apply subject to any amendments (*e.g.*, the financial statements are, as of the date furnished, a fair presentation of the financial condition of the relevant person).

## Part 3 – Agreement to Deliver Documents

### Legal Opinions:

Parties may request a legal opinion:

- What should it cover?
- Who issues it? Is an internal counsel opinion sufficient? or is an external counsel opinion required?
- When is an opinion most helpful?
  - for certain jurisdictions;
  - on certain complex structured transactions; and
  - for highly regulated entities, such as insurance companies, utility companies and municipalities.



## Part 4 – Miscellaneous - Notice Provisions

<b><u>Relevant provision:</u></b>	<ul style="list-style-type: none"><li>• Section 12(a) of the ISDA Master Agreement.<ul style="list-style-type: none"><li>○ Notice delivery methods to be strictly complied with.</li><li>○ Sections 5 and 6 notices:<ul style="list-style-type: none"><li>▪ Not by electronic messaging system or e-mail under the ISDA 2002 Master Agreement.</li><li>▪ Not by electronic messaging system or fax under the 1992 ISDA Master Agreement.</li></ul></li></ul></li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Consider scenarios where physical delivery of notices is not possible (<i>e.g.</i>, COVID-19).</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides:<ul style="list-style-type: none"><li>○ a clause to amend the notice provisions in Section 12(a) to (i) modify the acceptable forms of notice and/or (ii) add additional conditions to the notice delivery requirements, including any requirement for notices to be copied to a third party; and</li><li>○ a clause for each party to insert its notice details with drafting options to add any additional notice requirements.</li></ul></li></ul>

## Part 4 – Miscellaneous – Other Provisions

<b><u>Other Provisions:</u></b>	<ul style="list-style-type: none"><li>• Process Agent.</li><li>• Offices – specify whether Section 10(a) is applicable.</li><li>• Multibranch Party – A party is a Multibranch Party if it has Offices. If it is, out of which offices can it enter into Transactions? (consider tax implications).</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• <b>Process Agent</b> - The Clause Library provides a clause for parties to specify their process agent with drafting options for parties to clarify when service of process is deemed effective and/or to add an indemnity for delays in serving process as a result of a failure to appoint a process agent.</li><li>• <b>Offices</b> - The Clause Library provides a clause for parties to specify if Section 10(a) is applicable.</li><li>• <b>Multibranch Party</b> - The Clause Library provides a clause for each party to specify if it is a Multibranch Party and, if so, to identify the Offices through which such party intends to enter into Transactions.</li></ul>

## Part 4 – Calculation Agent

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Included in the Schedule as a fallback in the event parties do not specify the Calculation Agent for a Transaction in the related Confirmation.</li><li>• The Calculation Agent undertakes all calculations and determinations under the Transactions unless otherwise expressed in the relevant Confirmation for a Transaction.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Can be specified as a single party or as both parties. Joint Calculation Agent provisions are often used if both parties are leading dealers.</li><li>• Parties sometimes negotiate that the other party or another leading dealer will act as the Calculation Agent if an Event of Default occurs in respect of the designated Calculation Agent.</li><li>• Parties may agree on dispute resolution provisions which lets the party that is not the Calculation Agent dispute a determination made by the Calculation Agent.</li><li>• Consider adding fallbacks if parties are unable to agree to the appointment of a substitute Calculation Agent or the resolution of a dispute (if applicable).</li></ul>

## Part 4 – Guarantees

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Guarantees are addressed in the ISDA Schedule as follows:<ul style="list-style-type: none"><li>○ Specify that the guarantee is a Credit Support Document; and</li><li>○ Specify that the guarantor is a Credit Support Provider.</li></ul></li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• Certain Events of Default/Termination Events apply to the Credit Support Provider/Credit Support Document.</li><li>• When credit support is provided in relation to the obligations of a party, the other party relies on such credit support/factors in the credit risk of the Credit Support Provider, accordingly, a default in relation to the Credit Support Provider/Credit Support Document should result in an Event of Default/Termination Event giving such other party a right to terminate.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Negotiation Issues on Guarantees:<ul style="list-style-type: none"><li>○ Is recourse under the guarantee subject to a limited dollar recovery?</li><li>○ Is the guarantee one of payment or of collection?</li><li>○ Are the guarantor's defenses to payment or discharge events limited or fully waived?</li></ul></li></ul>

## Part 4 – Governing Law

<b><u>Relevant provision:</u></b>	<ul style="list-style-type: none"><li>• The 2002 and 1992 ISDA Master Agreements provide for a choice between English law and the laws of the State of New York (without reference to choice of law doctrine) as the governing law.</li><li>• ISDA published an ISDA 2002 Master Agreement (Irish Law) and ISDA 2002 Master Agreement (French Law) in 2018.</li><li>• ISDA legal opinions cover the 2002 and 1992 ISDA Master Agreement governed by New York or English law and the ISDA 2002 Master Agreement (Irish Law) and ISDA 2002 Master Agreement (French Law).</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Most ISDAs are governed by New York law or English law. Parties wishing to use a European governing law, may use the ISDA 2002 Master Agreement (Irish Law) or the ISDA 2002 Master Agreement (French Law).</li><li>• Parties intending to specify any other governing law (other than New York, English, Irish or French law), should consider the ramifications and get legal advice if using another governing law.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• The Clause Library provides: (i) a clause for the parties to specify the governing law; and (ii) drafting options to provide that the governing law covers non-contractual obligations.</li></ul>

## Part 4 – Payment Netting – Multiple Transaction Payment Netting (MTPN)

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Payment Netting is set out in Section 2(c) of the ISDA Master Agreement.</li><li>• Section 2(c) applies to payments:<ul style="list-style-type: none"><li>○ on the <b>same date</b></li><li>○ in the <b>same currency</b></li><li>○ in respect of the <b>same transaction</b> UNLESS:<ul style="list-style-type: none"><li>▪ 2002 ISDA: “<b>Multiple Transaction Payment Netting</b>” is elected;</li><li>▪ 1992 ISDA: parties elect that Section 2(c)(ii) will NOT apply.</li></ul></li></ul></li><li>• Consider parties’ operational capability to turn on MTPN.</li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• Avoids “daylight exposure”<ul style="list-style-type: none"><li>○ risk which arises when payments are due on same day but parties are in different time zones so one party pays before the other;</li><li>○ if party A pays first and party B fails to pay, party A is exposed.</li></ul></li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Parties may only switch on MTPN with respect to certain types of transactions (<i>e.g.</i>, FX Transactions and Currency Options).</li><li>• Parties may only switch on MTPN when each party has the operational capability to undertake MTPN.</li></ul>

## Part 4 – Payment Netting – Multiple Transaction Payment Netting (MTPN) contd.

### **Clause Library:**

- The Clause Library provides a clause that allows parties to specify the applicability and scope of payment netting under Section 2(c).

## Part 4 – Miscellaneous – Other Provisions

<b><u>Other Provisions:</u></b>	<ul style="list-style-type: none"><li>• Affiliate.</li><li>• Absence of Litigation. Parties may designate Specified Entities for the purpose of Section 3(c).</li><li>• No Agency.</li><li>• Additional Representation – Parties specify whether the Relationship Between Parties representation (<i>i.e.</i>, the Non-Reliance, Assessment and Understanding, and Status of Parties representation) applies.</li><li>• Recording of Conversations.</li></ul>
<b><u>Clause Library:</u></b>	<ul style="list-style-type: none"><li>• <b>Affiliate</b> - The Clause Library provides a clause for “Affiliate” to be defined as per Section 14 but with drafting options for parties to exclude certain affiliates or all affiliates for certain purposes.</li><li>• <b>No Agency</b> – The Clause Library provides a clause for parties to specify if the No Agency representation in Section 3(g) is applicable.</li><li>• <b>Recording of Conversations</b> - The Clause Library provides for modifications to the Recording of Conversations clause in the pre-printed Schedule to the ISDA 2002 Master Agreement to (i) bring additional parties within scope of the provision, (ii) remove the agreement that recordings may be submitted into evidence and/or (iii) allow parties to agree to make recordings available to each other in the event of a dispute.</li></ul>



## Part 5 – Other Provisions

<b><u>Other Provisions:</u></b>	<ul style="list-style-type: none"><li>• Parties include other provisions in Part 5. These may include:<ul style="list-style-type: none"><li>○ Confidentiality / Disclosure.</li><li>○ ERISA.</li><li>○ Elective Termination.</li><li>○ A representation that a party is an “eligible contract participant” under the Commodity Exchange Act, as amended.</li><li>○ Escrow.</li><li>○ Arbitration.</li><li>○ Incorporation of ISDA Protocols.</li></ul></li></ul>
<b>Clause Library:</b>	<ul style="list-style-type: none"><li>• The Clause Library provides several other Part 5 optional clauses including relating to:<ul style="list-style-type: none"><li>○ Specified Transactions to be governed by the ISDA Master Agreement.</li><li>○ Amendments to Absence of Litigation representation.</li><li>○ Amendments to Failure to Pay or Deliver.</li><li>○ Amendments to Set-off.</li><li>○ Additional conditions to Change of Account.</li><li>○ Amendments to Section 7 Transfer provisions.</li></ul></li></ul>

## Part 5 – Other Provisions – Section 2(a)(iii) Conditions Precedent

<b><u>Purpose:</u></b>	<ul style="list-style-type: none"><li>• Section 2(a)(iii): a party’s payment and delivery obligations under a Confirmation are subject to the conditions precedent that:<ul style="list-style-type: none"><li>○ No Event of Default or Potential Event of Default has occurred and is continuing with respect to the other party; and</li><li>○ No Early Termination Date with respect to the relevant Transaction has occurred or been designated.</li></ul></li></ul>
<b><u>Rationale:</u></b>	<ul style="list-style-type: none"><li>• The occurrence of the events implies that the defaulting party may not be able to perform its obligations when they are due, allowing the non-defaulting Party to withhold its payment/delivery obligations thereby avoiding further credit risk.</li><li>• It offers the non-defaulting party the option to assess its next steps rather than having to immediately terminate the parties’ trading relationship.</li></ul>
<b><u>Negotiation Issues:</u></b>	<ul style="list-style-type: none"><li>• Add a “fish or cut bait” clause in the ISDA Schedule?</li><li>• ISDA form Amendment to the ISDA Master Agreement for market participants who wish to amend their ISDA Master Agreements to insert a time limit on the operation of Section 2(a)(iii):<ul style="list-style-type: none"><li>○ Provides for defaulting party to be able to give notice to non-defaulting party preventing it from relying on Section 2(a)(iii) after a specified Condition End Date.</li><li>○ The Condition End Date is the date falling [30][60][90][other number] days after the notice is effective.</li></ul></li></ul>

## Part 5 – Other Provisions – Section 2(a)(iii) Conditions Precedent contd.

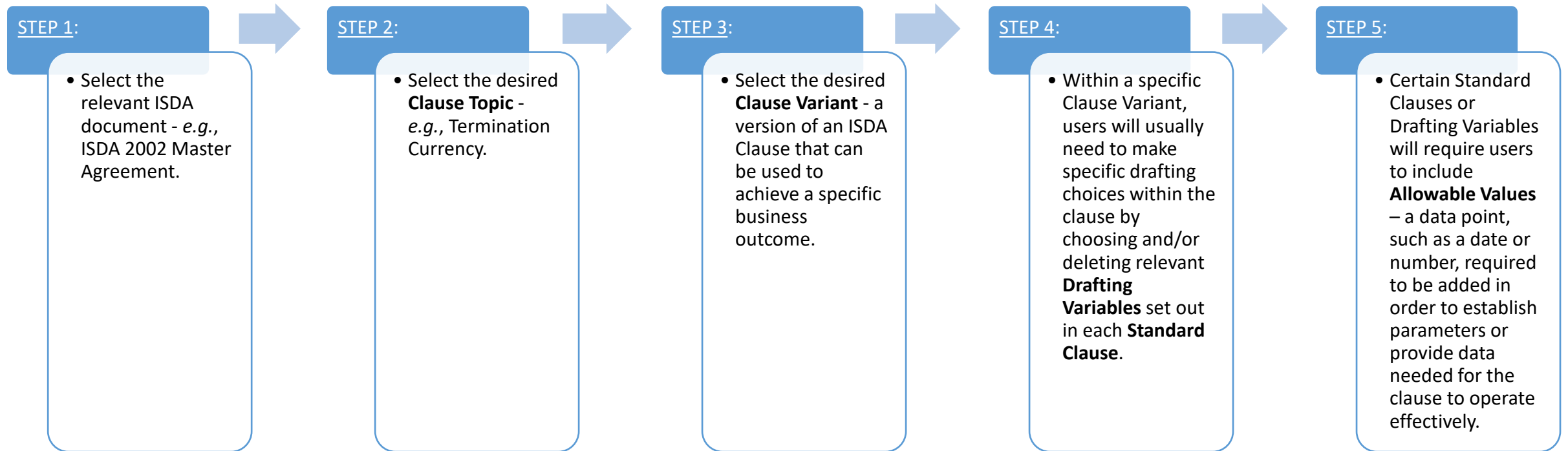
### **Clause Library:**

- The Clause Library provides:
  - a clause to impose a time limit on the Non-Defaulting Party's ability to withhold performance in reliance on Section 2(a)(iii);
  - a clause to suspend a party's ability to rely on Section 2(a)(iii) where the other party has fulfilled all of its current and future payment and delivery obligations; and
  - a clause to remove the non-occurrence of a "Potential Events of Default" as a condition precedent.

## The ISDA Clause Library – Construction of a Clause

# Construction of a Clause

For each ISDA Document in the ISDA Clause Library, users will combine the *elements* of the Clause Library to construct clauses to achieve a specific business outcome by making drafting decisions in the following order:



# How to Construct a Clause Using the Clause Library:

## Steps 1 and 2: Selecting the Relevant ISDA Document and Clause Topic

ISDA CLAUSE LIBRARY – MASTER AGREEMENTS

1 2002 ISDA MASTER AGREEMENT

2 1992 ISDA MASTER AGREEMENT

ISDA CLAUSE LIBRARY

1 2002 ISDA MASTER AGREEMENT

1.1 Dated as of Date

1.2 Identification of the Parties

1.3 Umbrella Agreements

1.4 Confirmations

1.5 Transactions Governed by the Agreement

1.6 Conditions Precedent

1.7 Change of Account

1.8 Netting of Payments

1.9 Representations

1.10 Recording of Conversations

1.11 Offices and Branches.

1.12 Multibranch

1.13 Specified Entities

1.14 Affiliates

1.15 Events of Default

1.16 Termination Events

1.17 Automatic Early Termination

1.18 Termination Currency

1.19 Set Off

1.20 Transfer

1.21 Notices

1.22 Address for Notice

1.23 Governing Law

1.24 Jurisdiction

1.25 Process Agent

1.26 Protocols

1.27 Credit Support Document

1.28 Credit Support Provider

1.29 FXTCO Terms (Part 6)

**In this example**, the parties select the ISDA 2002 Master Agreement, and then they select “Specified Entities” as the Clause Topic.

# How to Construct a Clause Using the Clause Library:

## Step 3: Selecting the Relevant Clause Variant

### 1 2002 ISDA MASTER AGREEMENT

- 1.1 Dated as of Date
- 1.2 Identification of the Parties
- 1.3 Umbrella Agreement
- 1.4 Confirmations
- 1.5 Transactions Governed by the Agreement
- 1.6 Conditions Precedent
- 1.7 Change of Account
- 1.8 Netting of Payments
- 1.9 Representations
- 1.10 Recording of Conversations
- 1.11 Offices and Branches
- 1.12 Multibranch
- 1.13 Specified Entities

#### 1.13.1 Specified Entities

Part 1 of the form of Schedule to the 2002 ISDA Master includes a provision that allows each party to specify its Specified Entities for certain Events of Default and Termination Events.

- (i) Unique Clause Identifier:
- (ii) Standard Clause:
- (iii) Drafting Variables:
- (iv) Allowable Values: None.

#### 1.13.2 Absence of Litigation - Identification of Specified Entities

Part 4 of the form of Schedule to the 2002 ISDA Master includes a provision that allows parties to identify one or more entities as Specified Entities for purposes of the Absence of Litigation representation in Section 3(c).

- (i) Unique Clause Identifier:
- (ii) Standard Clause:
- (iii) Drafting Variables:
- (iv) Allowable Values: None.

- 1.14 Affiliates
- 1.15 Events of Default
- 1.16 Termination Events
- 1.17 Automatic Early Termination
- 1.18 Termination Currency
- 1.19 Set-Off
- 1.20 Transfer
- 1.21 Notices
- 1.22 Address for Notice
- 1.23 Governing Law
- 1.24 Jurisdiction
- 1.25 Process Agent
- 1.26 Protocols

Under each topic, various Clause Variants are presented with a brief description outlining the business outcome when each is added to the agreement.

***NOTE:** ISDA Clauses have multiple choices of Clause Variants reflecting various business and drafting outcomes, and the parties will need to choose the Clause Variant(s) to achieve their desired outcome.*

*For example, the Clause Topic here “1.13 Specified Entities” contains two Clause Variants:*

***MA02\_SPEC\_ENT\_#1** “1.13.1 Specified Entities.”*

***MA02\_SPEC\_ENT\_#2** “1.13.2 Absence of Litigation - Identification of Specified Entities.”*

# How to Construct a Clause Using the Clause Library:

## Step 3: Selecting the Relevant Clause Variant (Contd.)

### 1.13 Specified Entities

#### 1.13.1 Specified Entities.

Part 1 of the form of Schedule to the 2002 ISDA Master includes a provision that allows each party to specify its Specified Entities for certain Events of Default and Termination Events.

(i) Unique Clause Identifier:

MA02\_SPEC\_ENT\_#1

(ii) Standard Clause:

"Specified Entity" means in relation to Party A for the purpose of:

Section 5(a)(v), [PA\_DUST]

Section 5(a)(vi), [PA\_CROSS\_DEF]

Section 5(a)(vii), [PA\_BANKRUPTCY]

Section 5(b)(v), [PA\_CEUM]

and in relation to Party B for the purpose of:

Section 5(a)(v), [PB\_DUST]

Section 5(a)(vi), [PB\_CROSS\_DEF]

Section 5(a)(vii), [PB\_BANKRUPTCY]

Section 5(b)(v), [PB\_CEUM]

(iii) Drafting Variables:

Each Clause Variant is identified using a Unique Clause Identifier in blue font.

e.g. MA02\_SPEC\_ENT\_#1

MA02 = 2002 Master Agreement;

SPEC\_ENT = Specified Entity;

#1 = Clause Variant number 1.

- **In our example**, under the Clause Topic, 1.13 – Specified Entities, the parties will choose one of the two Clause Variants: MA02\_SPEC\_ENT\_#1, "1.13.1 Specified Entities."
- When parties select their desired Clause Variant, they can expand the relevant section to view the components of that clause.
- Within a Clause Variant, parties will make drafting choices which determine the outcome or meaning of the clause by specifying relevant Drafting Variable(s) within the Standard Clause. A Drafting Variable independently, or used in combination with one or more other Drafting Variables, is determinative of a specific business outcome.



# How to Construct a Clause Using the Clause Library:

## Step 4: Choose/Delete the Drafting Variables Within the Clause Variant

### 1.13 Specified Entities

#### 1.13.1 Specified Entities

Part 1 of the form of Schedule to the 2002 ISDA Master includes a provision that allows each party to specify its Specified Entities for certain Events of Default and Termination Events.

(i) Unique Clause Identifier:

MA02\_SPEC\_ENT\_#1

(ii) Standard Clause:

"Specified Entity" means in relation to Party A for the purpose of:

Section 5(a)(v), [PA\_DUST]

Section 5(a)(vi), [PA\_CROSS\_DEF]

Section 5(a)(vii), [PA\_BANKRUPTCY]

Section 5(b)(v), [PA\_CEUM]

and in relation to Party B for the purpose of:

Section 5(a)(v), [PB\_DUST]

Section 5(a)(vi), [PB\_CROSS\_DEF]

Section 5(a)(vii), [PB\_BANKRUPTCY]

Section 5(b)(v), [PB\_CEUM]

(iii) Drafting Variables:

The Standard Clause set out in this Clause Variant "MA02\_SPEC\_ENT\_#1" contains eight Drafting Variables (each unique reference presented in red font). The parties must determine which Drafting Variable(s) is/are required to be included in order to achieve their desired drafting outcome (i.e., which Specified Entities they want to include for certain Events of Default / Termination Events).

In this case, parties will make elections for each drafting variable by selecting their choice from the drafting variable chart (see next slide).

# How to Construct a Clause Using the Clause Library:

## Step 4: Choose/Delete the Drafting Variables Within the Clause Variant (Cont'd)

(iii) Drafting Variables:

Reference	Drafting Variables
PA_DUST	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PA_CROSS_DEF	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PA_BANKRUPTCY	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PA_CEUM	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PB_DUST	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PB_CROSS_DEF	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PB_BANKRUPTCY	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
PB_CEUM	<ul style="list-style-type: none"> <li>SPEC_ENT_V1</li> <li>SPEC_ENT_V2</li> <li>SPEC_ENT_V3</li> <li>SPEC_ENT_V4</li> </ul>
SPEC_ENT_V1	<ul style="list-style-type: none"> <li>none</li> </ul>
SPEC_ENT_V2	<ul style="list-style-type: none"> <li>any Affiliates</li> </ul>
SPEC_ENT_V3	<ul style="list-style-type: none"> <li>{specify name(s) of Specified Entity(ies)/other}</li> </ul>
SPEC_ENT_V4	<ul style="list-style-type: none"> <li>any Material Subsidiary. For the purposes hereof, "Material Subsidiary" means {specify}.</li> </ul>

(iv) Allowable Values: None.

Furthermore, certain Drafting Variables will require parties to make additional drafting choices including choosing between Drafting Variable “versions”, specifying Drafting Variables within Drafting Variables and/or deleting a Drafting Variable entirely from a clause.

- In this example**, the parties will choose between four “versions” for each relevant Event of Default and Termination Event to achieve the parties’ business objective for this clause (i.e., ranging from “no Specified Entities” to any Material Subsidiary).
- In many clause variant scenarios, parties can choose a bespoke drafting option where parties can draft their own language (e.g., in this clause variant, by selecting **SPEC\_ENT\_V3** -- {specify name(s) of Specified Entity(ies)/other}). Similarly, other clause variants allow parties to delete a Drafting Variable version (i.e., {delete if not applicable}) in order to arrive at their desired business outcome.*

Finally, within a Drafting Variable or Clause Variant, parties may need to make additional drafting choices through Allowable Values to include certain wording or data, such as a date or number, required to be added in order to establish parameters or provide data needed for the clause to operate effectively.

*(Note: this Clause Variant has no Allowable Values; therefore, no need to follow Step 5: **Choose relevant Allowable Values within the Clause Variant.**)*

LINKLATERS LLP  
None selected

ELECTIONS

INTERNAL EXTERNAL

04 PART 1. TERMINATION PROVISIONS  
Specified Entity

Party A

Default Under Specified Transaction (Party A)

None

Any Affiliates

Other / specify

Any Material Subsidiary

Cross Default (Party A)

None

Any Affiliates

Other / specify

Any Material Subsidiary

Bankruptcy (Party A)

None

Any Affiliates

Other / specify

Any Material Subsidiary

Material Subsidiary Definition

Define here

Cross reference to prior definition

Credit Event Upon Merger (Party A)

None

Any Affiliates

Other / specify

Material Subsidiary Definition

Party A's Material Subsidiary Company

AMEND

Swap Parties Internal External Compare Preview More

Select parties

ISDA Safe,  
Efficient  
Markets

International Swaps and Derivatives Association, Inc.

SCHEDULE  
to the  
2002 Master Agreement

dated as of .....

between LINKLATERS LLP and .....

[established as a [COUNTERPARTY TYPE]] [with company number [NUMBER]] [under the laws of [JURISDICTION]] [acting through its [BRANCH]]

("Party A") ("Party B")

Part 1. Termination Provisions.

(a) "Specified Entity" means in relation to Party A for the purpose of:—

Section 5(a)(v), none

Section 5(a)(vi), any Affiliates

Section 5(a)(vii), any Material Subsidiary

Section 5(b)(v), 123, LLC

For the purposes hereof, "Material Subsidiary" in relation to Party A means Party A's Material Subsidiary Company.

and in relation to Party B for the purpose of:—

Section 5(a)(v), none

Section 5(a)(vi), none

Section 5(a)(vii), none

Section 5(b)(v), any Material Subsidiary

For the purposes hereof, "Material Subsidiary" in relation to Party B means Party B Material Subsidiary Company.

(b) "Specified Transaction" will have the meaning specified in Section 14 of this Agreement.

(c) The "Cross-Default" provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B; provided, however, that the phrase "or becoming capable at such time of being declared," shall be deleted from clause (1) of Section 5(a)(vi); provided further that an Event of Default shall not occur under either clause (1) or (2) of Section 5(a)(vi) if, (i) the default, or other similar event or condition referred to in clause (1) of Section 5(a)(vi) or the failure to pay referred to in clause (2) of Section 5(a)(vi) is caused by an error or omission of an administrative or operational nature, (ii) funds were available to such party to enable it to make the relevant payment when due and (iii) such payment is made within 4 Local Business Days from the date upon which the relevant party became aware of such error or omission.

"Specified Indebtedness" will have the meaning specified in Section 14 of this Agreement provided, however,

(i) Specified Indebtedness shall exclude obligations in respect of deposits received in the ordinary course of a party's banking business where repayment is prevented or constrained as a result of any law (other than bankruptcy, insolvency or similar laws), order or any other act or threat of any authority of general applicability to banks in the relevant jurisdiction; and

(ii) Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable, as applicable, shall exclude indebtedness in respect of which the acceleration thereof or the ability to accelerate, as applicable, is being contested in good faith by the relevant party through appropriate legal actions.

```
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Result mode:  
tree

Load Uri

Browse

Tree Viewer

O'Reilly  
Experimentation  
eBook  
Successfully experiment and  
integrate product features in  
your software applications  
Split Software

Open

2 Tab Space

Beautify

Minify

Validate

JSON to XML

JSON to CSV

Download

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Wednesday, March 12, 2025

X #isdaVC

## Negotiating the Schedule to the 2002 ISDA Master Agreement

10:45 AM – 11:45 AM EDT



**Jason Brooks**  
Partner  
Paul Hastings LLP



**Ilene K. Froom**  
Partner  
Faegre Drinker Biddle &  
Reath LLP



**Kyara Mathias**  
Counsel  
Linklaters LLP



**Heather Smith**  
Senior Counsel, Commercial  
Product Development  
ISDA

**2nd CLE Verification Code: VC031225\_1S2R**



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