

course director
Ann O'Hara, Esq.

OTC Energy Derivatives & the ISDA Documentation

02 - 04 December 2009

Euromoney Legal Training and this course are neither endorsed by, nor affiliated with, ISDA®.

This expert three-day course will cover:

- Introduction to energy hedging
- Overview of basic OTC energy transactions
- Review of OTC-related bills before US congress
- Synopsis of important changes in US laws
- Complete review of ISDA documentation from the end-user's perspective
 - 1992 ISDA master agreement – New York law
 - 2002 ISDA master agreement – New York law
 - 1994 ISDA credit support annex – New York law
 - 2005 ISDA commodity definitions
- Importance of credit-related clauses
- Why each participant should develop its own schedule to the master agreement and paragraph 13 to the credit support annex – and how to accomplish that goal
- How collateral arrangements are typically viewed under New York law
- Importance of credit support documents and limitations of using each
 - Guarantees
 - ISDA credit support annex
 - Standby letters of credit
- Hints for successful negotiations of all ISDA documents under New York law
- Numerous illustrations of specific issues encountered by ISDA

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Derivatives Association

London



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Agenda

course overview

This new course is designed for non-dealer energy participants and for dealers who want smoother negotiations with ISDA end-users. Following the collapse of several major US energy trading companies in the early years of the last decade, most OTC participants in the US energy industry began viewing standard ISDA clauses from a much more defensive posture. This course explores the variety of differences in viewpoint between dealers and end-users and why negotiations may come to a standstill because of some quite typical misunderstandings between ISDA counterparties. Every section of the 1992 and 2002 ISDA Master Agreements and every paragraph of the 1994 New York law Credit Support Annex will be reviewed in detail, as will the 2002 Schedule and Paragraph 13 to the Credit Support Annex. Additionally, this course will provide some basic examples of OTC swaps and options typically used by energy participants. Finally, the course will examine the 2005 ISDA Commodity Definitions, now being used by a majority of energy participants. Lawyers, accountants, credit personnel, treasury, risk management professionals and anyone else working with the ISDA documentation will benefit from this course. Firms sending more than one employee will undoubtedly benefit the most from this timely review and examination.

how this course will help you

- Become familiar with OTC transactions in the natural gas industry
- Understand the issues relating to affiliates of each party
- Know the limitations of and potential problems related to “default under specified transaction”
- Understand the importance of and risks associated with “cross – default”
- Recognize the vagaries of US bankruptcy law
- Prepare for decline in creditworthiness
- Appreciate the many issues that may occur during performance
- Understand the 1994 ISDA Credit Support Annex – New York law
- Anticipate negotiation pitfalls

Day 1

Wednesday 2nd December

09.00 - 09.20 Registration and coffee

Hand out case study involving an energy company and a bank. This will be used throughout the seminar to explain and illustrate problem areas in the ISDA master agreements.

- Introduction to the US ISDA energy perspective
 - Hedging versus speculation
 - Examples of OTC energy commodity transactions
 - Regulation of derivatives
 - US bankruptcy issues
 - ISDA facts
- 1992 and 2002 ISDA master agreements
 - Differences between 1992 and 2002 master agreements
 - Reasons for the 2002 master agreement
 - Section-by-section review: 1992 and 2002 master agreements
 - Differences and similarities
 - Emphasis on most troublesome sections for foreign counterparties
 - Events of default: failure to pay or deliver; credit support default; default under specified transaction;
 - Cross – default; bankruptcy

- Termination events: illegality; force majeure; tax event; credit event upon merger; additional termination event
- Close-out calculations
 - Market quotation/loss
 - Close-out amount
- Issues relating to international counterparties

Day 2

Thursday 3rd December

- Schedule to the ISDA master agreement – now we’re negotiating
 - 1992 and 2002 schedule: all from the vantage of energy participants
 - Part 1: termination provisions
 - Part 2: tax representations
 - Part 3: agreement to deliver documents – those always provided; those sometimes provided
 - Part 4: miscellaneous
 - Part 5: other provisions – the most common clauses added by energy participants
 - Part 6: provisions relating to commodity derivatives: 1993/2000 ISDA commodity derivative definitions
 - Part 7-2002: physical energy annexes

Discussion of each part will include examples and typical contract language used by energy participants.

Biography

Course Director
Ann O’Hara, Esq.

The instructor believes that ISDA negotiations should reflect positions previously studied and adopted by each firm. Any view expressed during negotiations should be supported by pre-determined lines of reasoning and

should include persuasive arguments for each position. Additionally, ISDA documentation choices made by energy end-users of derivatives should be a product of a collaborative effort involving legal, credit, risk management, treasury, accounting and contract personnel, all subject to policies implemented by senior

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London

■ **2005 Commodity definitions**

– 526 pages in length

Review will include all provisions of interest to energy users.

- Definitions: why these are so helpful
- Market disruption events and disruption fallbacks: what happens if counterparties don't make specific choices in the schedule
- Physical energy annexes

Definitions are typically incorporated into the ISDA schedule; yet many users have never seen or studied the definitions that ultimately become part of each party's rights and duties under the ISDA master agreement. Understanding the definitions is vital to successful transaction performance.

The ISDA definitions, which most counterparties also incorporate, will be discussed in general terms.

Day 3

Friday 4th December

■ **1994 ISDA credit support annex – New York law**

Discussion of each paragraph will include examples and typical contract language used by energy participants.

- Credit support documents: advantages and disadvantages of each – why energy participants typically use only 2 types

- Guarantees
 - The 3 items that must always be included
 - Why some participants require opinions of counsel for the guaranty provider
- ISDA Credit Support Annex (CSA)
 - Paragraph-by-paragraph review of all 13 items in the CSA
 - Areas where the dealer-drafted annex may be difficult to employ by energy participants
 - Particular difficulties with paragraph 5: dispute resolution
 - How bank counterparties are viewed by today's energy participant
 - Complete review of paragraph 13: elections and variables
 - Rounding and minimum transfer amount
 - Clauses that must be added by parties identifying letters of credit as other eligible support

Any remaining time will be used to examine the key issues involved with the case study handed out at the beginning of the course and for additional questions.

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who should attend?

- **Lawyers**
- **Negotiators**
- **Credit personnel**
- **Risk managers**
- **Treasury managers**
- **Accounting personnel**

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18 CPD Hours

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management. After many years representing U.S. energy clients in ISDA matters, this instructor has learned that most energy companies consider a variety of options before determining appropriate language for the ISDA Master Agreement Schedule and for Paragraph 13 of the Credit Support Annex. In most energy

companies, the Legal advisor makes certain decisions, Credit personnel make other decisions, Risk Management and Treasury each are typically involved in making other decisions. The instructor will share recommendations that result from her nearly 20 years experience representing energy clients in ISDA matters.



3 day course

OTC Energy Derivatives & the ISDA Documentation

02 - 04 December 2009
London, UK

venue

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Registration form

- Yes, please register me for **OTC Energy Derivatives & the ISDA Documentation - London, UK** on 02 - 04 December 2009

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recommend this course to a colleague and ensure they too are up-to-date with the latest techniques.