

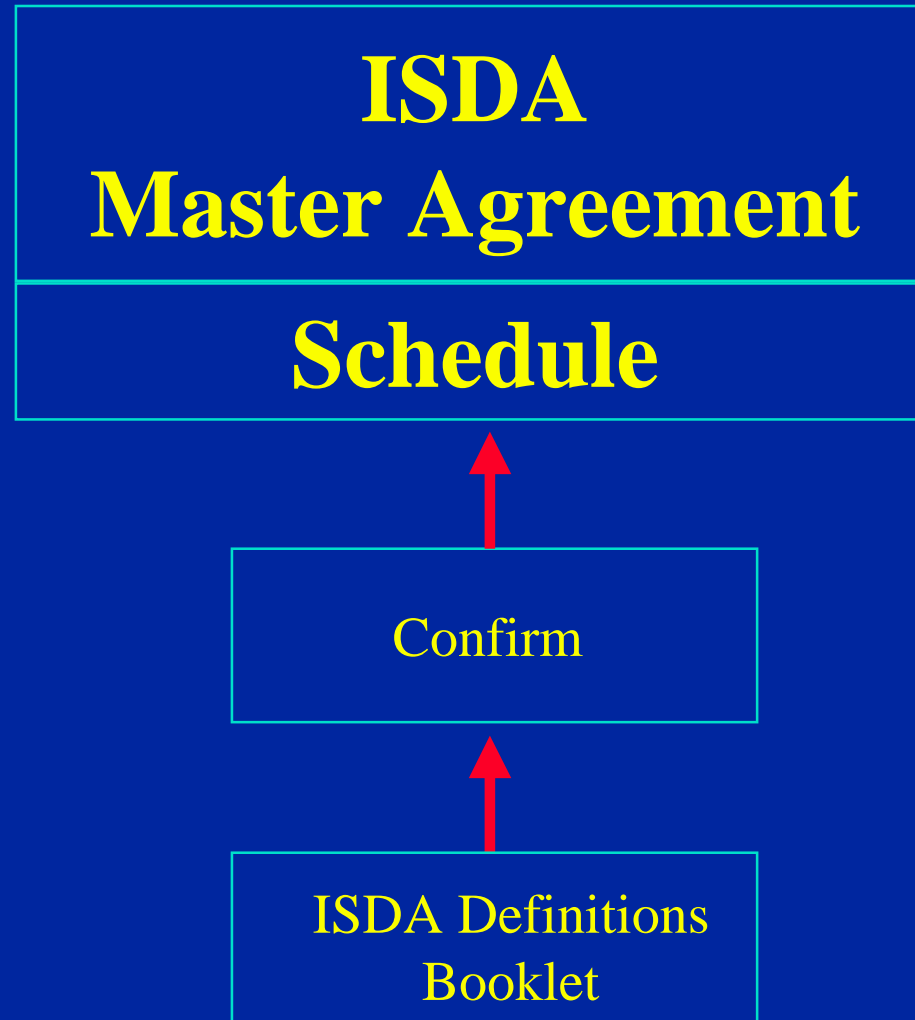
The World Bank
Sovereign Debt Management Forum

**Master Derivatives Agreements and
Other Issues in Swap Execution**

November 2, 1999

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New York

Basic Master Agreement Structure



1984

1985

1986

1987

ISDA
Formed

Code of
SWAPS

1986 Code
of SWAPS

- Interest Rate and Currency Exchange Agreement
- Interest Rate and Currency Exchange Definitions
- Interest Rate Swap Agreement
- User's Guide to ISDA Agreements

1989

1990

1991

1992

Cap, Collar
and Floor
Addendum

Option
Addendum

Revised
Definitions

- Master Agreement (Multicurrency-Cross Border)
- Master Agreement (Local Currency-Single Jurisdiction)
- U.S. Municipal Counterparty Definitions and Confirmations
- FX and Currency Option Definitions and Confirmations
- OTC Equity Index Option Confirmation (Long Form)

1993

- User's Guide to the 1992 ISDA Master Agreements
- OTC Bond Option Confirmation (Long Form)
- Commodity Derivatives Definitions and Confirmations

1994

- Credit Support Annex (New York Law)
- OTC Single Share Option (Physical Settlement) Confirmation (Long Form)

1995

- User's Guide to the ISDA Credit Support Annex (New York law)
- Equity Option Definitions and Confirmations
- Credit Support Annex (Transfer - English law)
- Credit Support Deed (Security Interest- English law)

1996

- 1996 Equity Derivative Definitions
- Credit Support Annex (Japanese Law)
- User's Guide to the Credit Support Annex (Japanese Law)
- Chinese Character Translations of the 1993 User's Guide to the 1992 ISDA Master Agreements
- 1996 ISDA Representation Regarding Relationship between Parties
- ISDA / BBAIRS Bridge
- ISDA / FRABBA Bridge

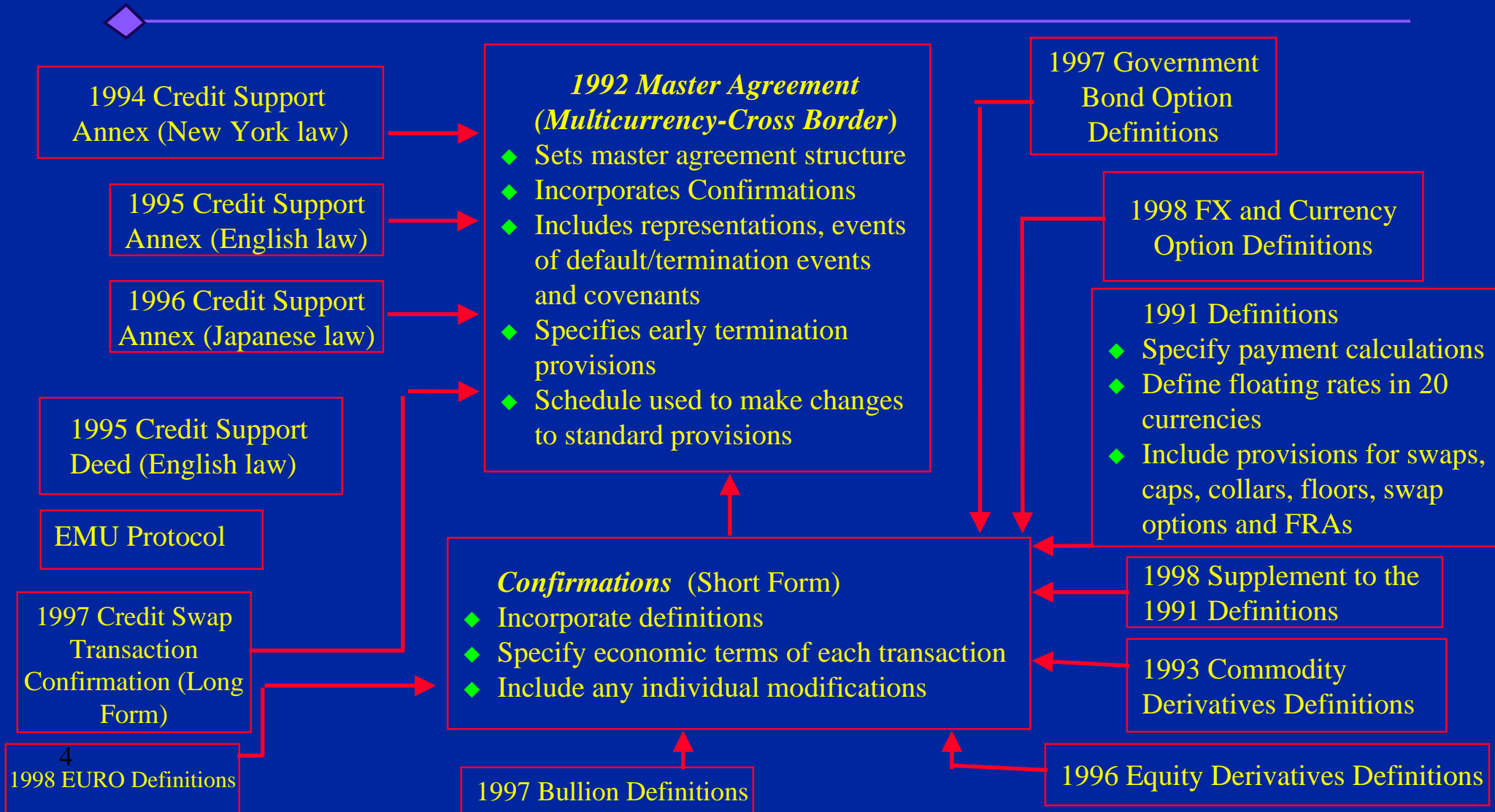
1997

- 1997 Bullion Definitions
- 1997 Credit Swap Confirmation
- 1997 Government Bond Option Definitions

1998

- 1998 FX and Currency Option Definitions
- 1998 Supplement to the 1991 Definitions
- 1998 Euro Definitions
- EMU Protocol

ISDA Agreement Structure (1999)



ISDA User's Guides

- ◆ User's Guide to the 1992 ISDA Master Agreements
- ◆ User's Guide to the 1994 ISDA Credit Support Annex
- ◆ User's Guide to the 1995 ISDA Credit Support Annex (Security Interest - Japanese Law)
- ◆ User's Guide to the ISDA Credit Support Documents under English Law
- ◆ User's Guide to the 1998 FX and Currency Option Definitions

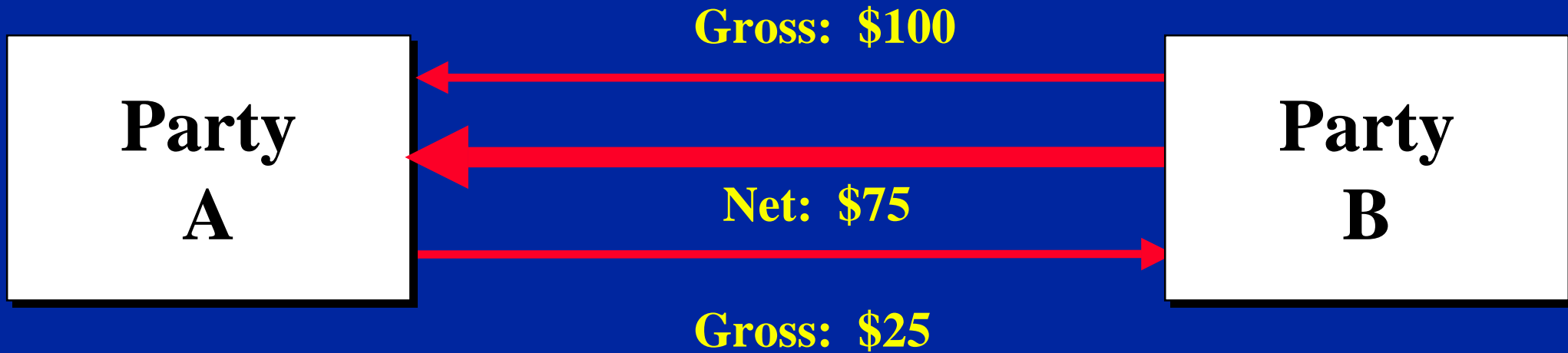
Section 1 - Interpretation

- ◆ Interpretive Priority: Agreement, Schedule, Confirmation
- ◆ Single Agreement

Section 2 - Payment and Delivery Obligations

- ◆ Conditions Precedent
- ◆ Change of Account
- ◆ Payment Netting
- ◆ Tax Withholding/Gross-Up
- ◆ Default Interest/Other Amounts

Payment Netting - Section 2(c) (Not Close-out Netting)



Section 3 - Representations

- ◆ **Basic Representations**
- ◆ **Absence of Certain Events**
- ◆ **Absence of Litigation**
- ◆ **Accuracy of Specified Information**
- ◆ **Tax Representations**
- ◆ **Additional Non-Standard Representations**

Section 4 - Agreements

- ◆ Purpose/Remedies
- ◆ Furnish Specified Information
- ◆ Maintain Authorizations
- ◆ Comply with Laws
- ◆ Tax Agreement
- ◆ Payment of Stamp Tax

Events of Default

Section 5(a)

- Section 5(a)(i) Failure to Pay or Deliver
- Section 5(a)(ii) Breach of Agreement
- Section 5(a)(iii) Credit Support Default
- Section 5(a)(iv) Misrepresentation
- Section 5(a)(v) *Default under Specified Transactions*
- Section 5(a)(vi) *Cross Default*
- Section 5(a)(vii) *Bankruptcy*
- Section 5(a)(viii) *Merger Without Assumption*

Default under Specified Transactions

Section 5(a)(v)

Specified Transactions (defined in Section 14)

- means derivatives transactions outside ISDA
- between

PARTY A
Credit Support Provider
Specified Entity

and

PARTY B
Credit Support Provider
Specified Entity

Cross Default

Section 5(a)(vi)

- ◆ **Default in respect of borrowed money**
- ◆ **Threshold Amount**

Bankruptcy

Section 5(a)(vii)

- ◆ **Insolvency-related events**
- ◆ **Actual liquidation**
- ◆ **Actions by a secured party**
- ◆ **Relevance for sovereign issuer**

Termination Events

Section 5(b)

Section 5(b)(i)	Illegality
Section 5(b)(ii)	Tax Event
Section 5(b)(iii)	Tax Event Upon Merger
Section 5(b)(iv)	Credit Event Upon Merger
Section 5(b)(v)	Additional Termination Event

Early Termination

TERMINATION MECHANICS: *Effect of Termination*

Event of Default

Credit Event Upon Merger

Additional Termination Event

Other Termination Events

- ◆ all Transactions terminated
- ◆ all Transactions terminated
- ◆ all Transactions terminated (presumption)
- ◆ only Affected Transactions

Early Termination Payment

Components

SETTLEMENT AMOUNT: net value of amounts (based on Market Quotation or Loss) which would have been payable under each Terminated Transaction after the Early Termination Date (“ETD”) had there not been an ETD (this may be owed by or to the determining party)

Plus UNPAID AMOUNTS owed to the determining party on or before the ETD

Less UNPAID AMOUNTS owed by the determining party on or before the ETD.

Early Termination Payment

Result

if First Method is chosen:

No payment is due from
Non-Defaulting Party

if Second Method is chosen:

Payment due from party
who owes Settlement
Amount

Early Termination Payment

Possible Combinations

Events of Default

- ◆ First Method/Market Quotation
- ◆ First Method/Loss
- ◆ Second Method/Market Quotation
- ◆ Second Method/Loss

Termination Events

- ◆ Market Quotation (One Affected Party)
- ◆ Loss (One Affected Party)
- ◆ Market Quotation (Two Affected Parties)
- ◆ Loss (Two Affected Parties)

Netting Legislation as of October 1999

Adopted:

1. Australia
2. Austria
3. Belgium
4. Canada
5. Cayman Islands
6. Denmark
7. Finland
8. France
9. Germany
10. Ireland
11. Italy
12. Japan

Adopted (cont'd)


13. Luxembourg
14. New Zealand
15. Norway
16. Portugal
17. South Africa
18. Spain
19. Sweden
20. Switzerland
21. United States

Netting Legislation as of October 1999

Under Consideration:

1. Argentina
2. The Czech Republic
3. Hungary
4. Mexico
5. Poland
6. U.S. Improvements

ISDA Netting Opinions - (1999)

- 
- | | | |
|-------------------|--------------------------|-----------------------------|
| 1. Australia | 15. Italy | 29. Sweden |
| 2. Austria | 16. Japan | 30. Switzerland |
| 3. Belgium | 17. Luxembourg | 31. Taiwan |
| 4. Bermuda | 18. Malaysia | 32. Thailand |
| 5. Canada | 19. Netherlands Antilles | 33. The Netherlands |
| 6. Cayman Islands | 20. New Zealand | 34. United States |
| 7. Denmark | 21. Norway | |
| 8. England | 22. Philippines | <u>Under Consideration:</u> |
| 9. Finland | 23. Portugal | 1. The Bahamas |
| 10. France | 24. Scotland | 2. British Virgin Islands |
| 11. Germany | 25. Singapore | 3. Greece |
| 12. Hong Kong | 26. South Africa | 4. Israel |
| 13. Indonesia | 27. South Korea | 5. Turkey |
| 14. Ireland | 28. Spain | |

...And last but not (necessarily) least:

Section 7	-	Transfer
Section 8	-	
Contractual Currency		
Section 9	-	
Miscellaneous		
Section 10	-	
Multibranch		
Section 11	-	Expenses
Section 12	-	Notices
Section 13	-	
Governing Law		

Waiver of Immunity (Section 13(d))

Waiver of Immunities. Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

ISDA Schedule

Part 5 - Other Provisions to Consider

- ◆ set-off
- ◆ credit downgrading
- ◆ escrow arrangements
- ◆ payment deferral
- ◆ no occurrence of Events of Default/Termination
- ◆ Events in specified circumstances
- ◆ *impossibility*
- ◆ “no agency” representation
- ◆ “no reliance” representation
- ◆ recording of conversations

Note: This list is not exhaustive! But consider which are really needed and whether additional length and complexity of Schedule is worth possibly prolonged negotiation time and therefore increased documentation risk while Master Agreement remains unsigned.

Non-Reliance Representation

◆

(a) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction;

(ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction; and

(iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.