

Colóquio sobre Derivados Financeiros

Ação de Formação Contínua Tipo B | Lisboa, 12 e 13 de março 2015 | Sala de Vídeo do Centro de Estudos Judiciários
3º Piso, Largo do Limoeiro
Destinatários: Juizes e Magistrados do Ministério Público

Judicial Education and Training Programme

Thursday 12 March

15:30 – 16:15

Session 1 – Agenda, Background and history – PRIME F and ISDA

This session presents the agenda of the full event and provides an introductory outline of the background to, and history of, derivatives markets and documentation.

- 1.1 Where, how and when did the derivatives market start
- 1.2 Derivatives as opposed to other financing techniques, such as loans
- 1.3 Formation and role of market sponsor entities – i.e., ISDA and the ISDA Master Agreement, and other market sponsor entities and their master agreements, such as ICMA/SLRC and their repurchase and stock lending master agreements
- 1.4 Prominence and leading role internationally of the London/New York financial and legal market axis, and hence English and New York law and English as the lingua franca of markets
- 1.5 Regional developments in derivatives markets and documentation
- 1.6 Regulation of derivatives in various jurisdictions, and role of market sponsor entities in regulatory developments and reform
- 1.7 Derivatives and financial markets jargon

16:15 – 16:45 Open slot for Q&A and discussion

16:45 – 17:15 Coffee-break

17:15 – 18:00 PRIME F and ISDA

Session 2 – Key types of derivatives and other complex financial transactions, their uses and

risks

This session provides a detailed outline of key types of derivatives and other complex financial transactions, their uses and risks.

- 2.1 Understanding the economics of derivatives
- 2.2 Basic building blocks - futures and options
- 2.3 Valuation methodologies
- 2.4 Interest rate swaps, currency derivatives, commodity derivatives, equity derivatives and credit derivatives
- 2.5 Rationale behind the use of derivatives

18:00 – 18:30 Open slot for Q&A and discussion

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Friday 13 March

9:00 – 10:00

Session 3 – Derivatives and complex financial transactions documentation PRIME F and ISDA

This session provides a detailed outline of certain derivatives master agreements and their key provisions, and of documentation for complex financial transactions generally.

- 3.1 Understanding the ISDA Master Agreement structure and its architecture [e.g., of specific purposes of Master Agreement, schedule, confirmation, incorporation of documents by reference (e.g., ISDA definitions), changes made to standard forms by parties, how different types of derivatives are documented, etc.]
- 3.2 Outline of development and purpose of ISDA Master Agreements (1987, 1992 and 2002), schedules, user guides, definitions, etc., and the key changes made from one form of agreement to the next (e.g., types of netting, set-off, walk-away clauses and the Second Method, Loss v. Market Quotation, etc.)
- 3.3 Outline of drafting history of ISDA Master Agreements, schedules, user guides, definitions, etc., and legal issues considered and opinions of leading counsel sought.
- 3.4 Outline of key provisions of ISDA Master Agreement and schedules (e.g., conditional payment, events of default, termination events, close-out netting, choice of law, etc.)
- 3.5 ISDA multi-jurisdictional netting, enforcement and collateral opinion projects
- 3.6 Conflict of laws, cross-border and insolvency issues and concerns
- 3.7 Measures of damages and close-out methodologies

10:00 – 10:30 Open slot for Q&A and discussion

10:30 – 11:00 Coffee-break

11:00 – 11:45

Session 4 – Derivative Litigation in Portugal – CARDIGOS (PRIME F Expert/ISDA Local Counsel)

- 4.1 Types of cases
 - 1. Counterparty types
 - 2. Derivative products involved
 - 3. Amounts
- 4.2 Legal issues raised and rationale sustained
 - 1. Jurisdiction and Applicable law
 - 2. Governing Law – Portuguese Mandatory provisions
 - a. Wages/Gambling and *ordre public* (“ordem pública”)
 - b. Change of Circumstances
 - c. Civil Liability: Duties of the Financial Intermediary
 - d. General Contractual Clause Regime
 - e. Others
- 4.3 List of Appellate and Supreme Court Decisions: Legal solutions applied by courts

11:45 – 12:30 Open slot for Q&A and discussion

12:30 – 14:00 Lunch-break

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14:00 – 14:45

Session 5 – Local Derivatives Market and its Need for Hedging provided by Derivative Instruments Structures

The financial risk taking and risk coverage perspectives - Presentation by the Portuguese Debt Agency (IGCP) – David Duarte

14:45 – 15:15 Open slot for Q&A and discussion

15:15 – 15:45 Coffee-break

15:45 – 16:30

Session 6 – What do judges need to know? PRIME F and ISDA

- 6.1 Brief indication and summary of leading derivative litigation cases.
- 6.2 What does the case law teach us (e.g., most cases raise contractual interpretation and/or valuation issues)?
- 6.3 How can judges do their job better?
- 6.4 Why do bankers, traders and counsel behave the way they do, and how do they behave (e.g., counsel gaming the court)?
- 6.5 Role of expert witnesses, and lessons to be learned from the giving of expert testimony
- 6.6 What are the key legal and contractual issues?
- 6.7 What are the key regulatory and policy issues?
- 6.8 What are the likely future issues that courts will face?
- 6.9 What are the key local and regional issues?

16:30 – 17:00 Open slot for Q&A and discussion

17:00 – 17:30 Final words and Closure

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