

SEMINAR ON EMIR - DACSI



LEGAL DOCUMENTATION

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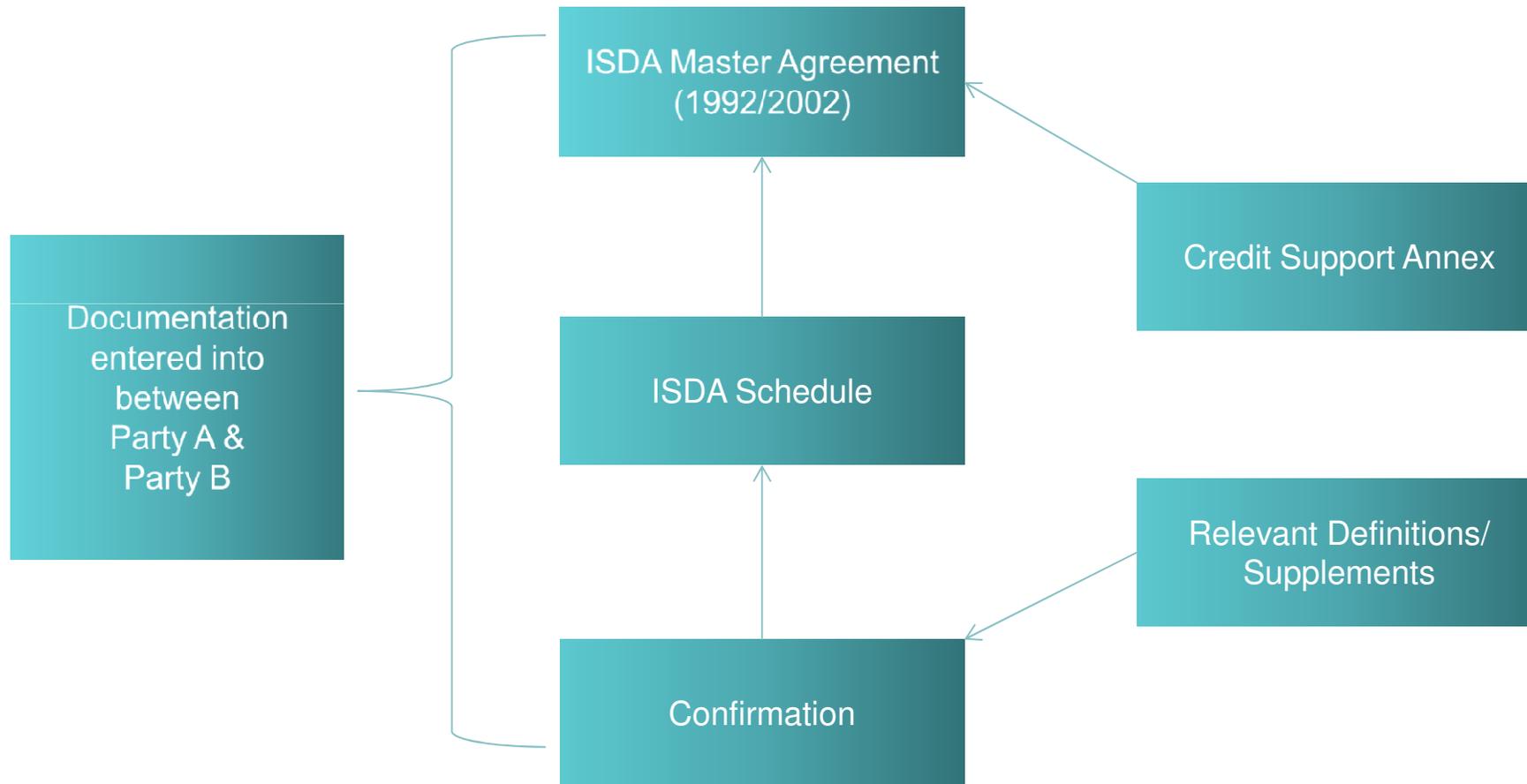
LEGAL DOCUMENTATION

IMPACT OF EMIR ON CUSTOMERS IN GENERAL:

- ▶ Operational
- ▶ Risk
- ▶ ICT
- ▶ Costs
- ▶ Legal Documentation

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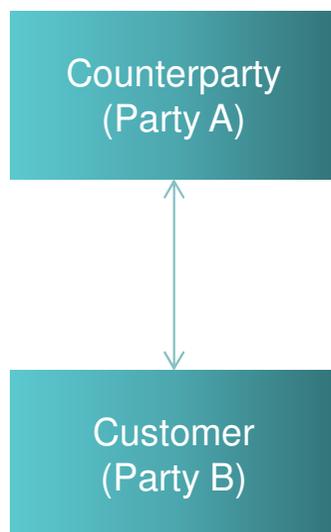
TYPICAL OTC DERIVATIVES DOCUMENTATION



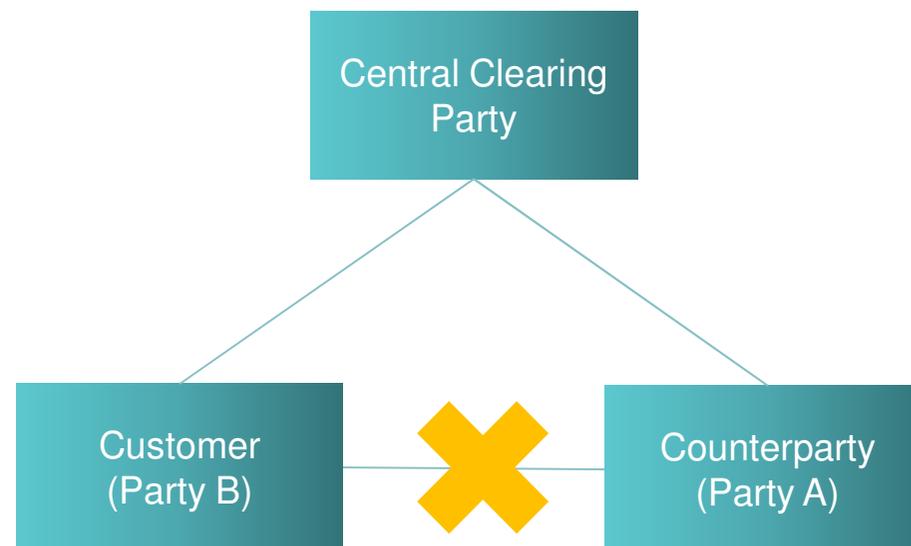
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HOW WILL CLEARING CHANGE OTC DERIVATIVES TRADING?

Bilateral

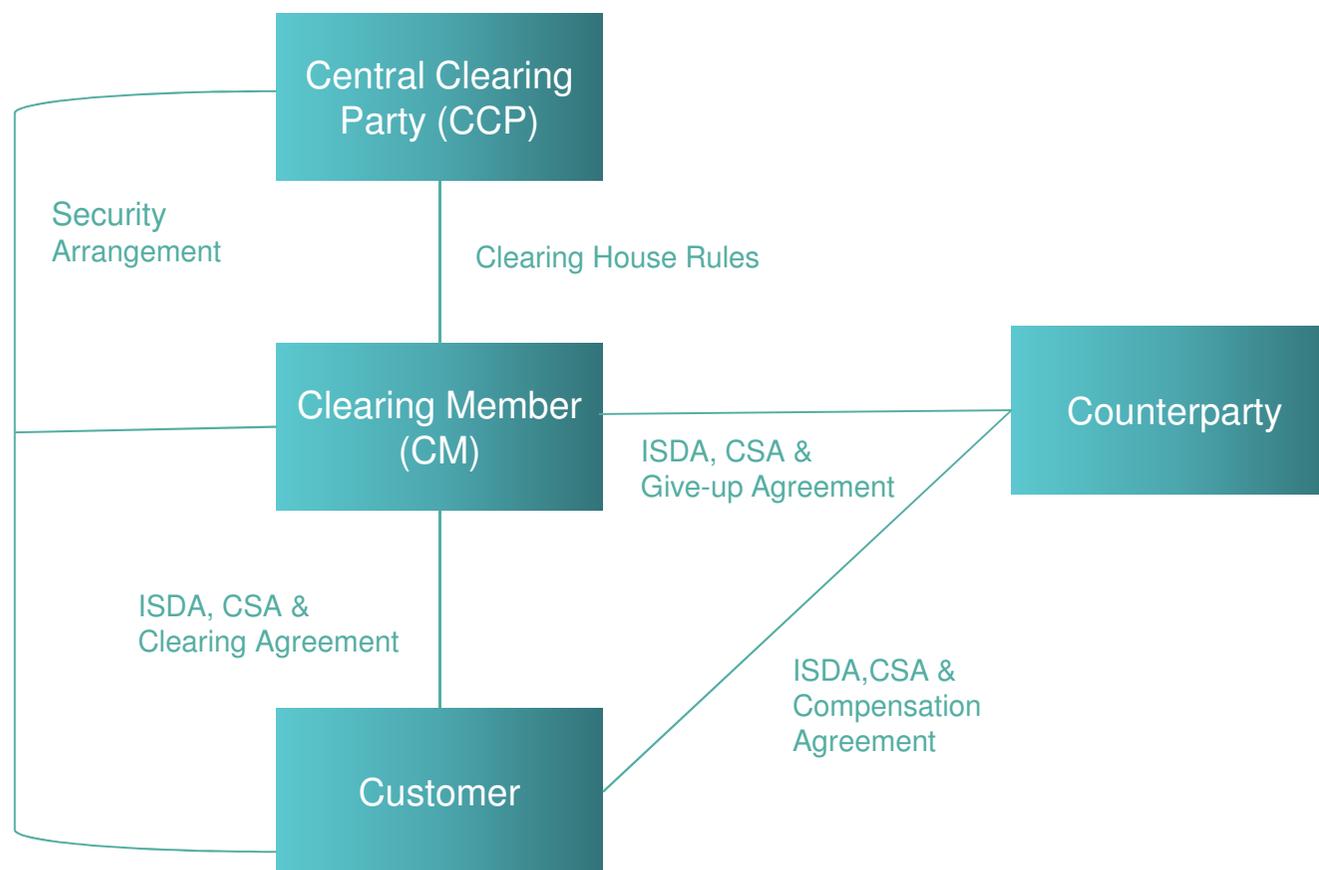


Centrally Cleared



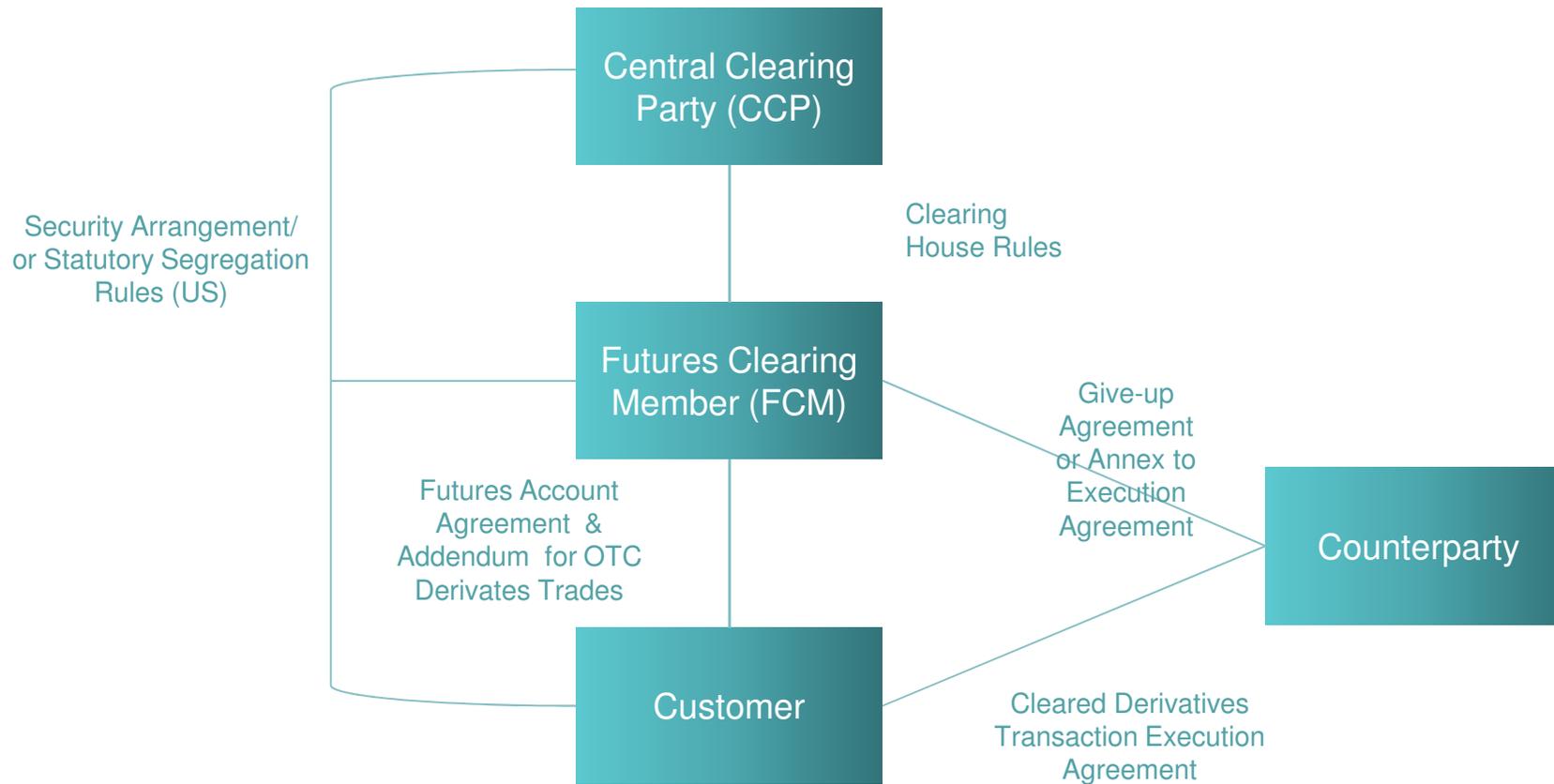
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PRINCIPAL MODEL



LEGAL DOCUMENTATION

AGENCY MODEL



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POINTS TO CONSIDER IN DOCUMENTATION PROCESS:

- ▶ Is the CM/FCM a member of the relevant CCP;
- ▶ The Clearing Rules should be included in the contractual agreement between CM and Customer;
- ▶ Creditworthiness of the CM/FCM;
- ▶ Creditworthiness of Customers of the CM/FCM (if possible);
- ▶ Margin requirements/ excess margin requirements of the CM/FCM;
- ▶ Asset segregation of the CM/FCM (separate account/ omnibus account);
- ▶ Asset segregation of the CCP (separate account/ omnibus account);

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PRINCIPAL VS AGENCY DOCUMENTATION

PRINCIPAL

- ▶ Based on ISDA style documentation, whereby Dealer trades with Customer as principal;
- ▶ Contractually based relationship;
- ▶ Typically heavily negotiated;
- ▶ Initial Margin (Independent Amount) under CSA is determined by the parties with respect to form, amount and timing;
- ▶ Variation Margin (market-to-market value) to be determined by the parties;

AGENCY

- ▶ Based on brokerage style documentation, whereby the FCM acts as agent and guarantor;
- ▶ Arrangements based on and supported by legislation;
- ▶ Regarded as Services Agreement and therefore not typically negotiated;
- ▶ Initial Margin can be imposed and changed at any time unilaterally by FCM and should therefore be considered;
- ▶ Variation Margin to be determined by the FCM;

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PRINCIPAL VS AGENCY DOCUMENTATION

PRINCIPAL

- ▶ Transactions may only be terminated upon consent of both parties or otherwise terminated upon Termination Event;
- ▶ Events of defaults include typically breach of representations, failure to pay, bankruptcy/ insolvency following ISDA and parties may agree on Additional Termination Events;
- ▶ Dispute resolution issues subject to dispute and is a point that is to be negotiated by parties;

AGENCY

- ▶ Termination of transactions upon written notice or by either party, whereby Customer is obliged to close out all outstanding amounts/ Porting;
- ▶ Events of defaults are far less agreed and are for benefit of the FCM in documentation except that documentation contains additional provisions such as a general clause whenever the Clearing Member, in its sole opinion, deems it necessary or desirable for its protection;
- ▶ Dispute resolution issues only in event of margin exceeding level of CCP;

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PRINCIPAL VS AGENCY DOCUMENTATION

PRINCIPAL

- ▶ CCP may offer Customer's margin to be held through (i) individually segregated account (ii) client omnibus account or (iii) general omnibus account, but Customer should post margin with full title transfer to CM (risk of over-collateralisation);
- ▶ Transactions are not assignable by either party unless written consent of the other party.

AGENCY

- ▶ A FCM and CCP may co-mingle Customer funds (margin) in omnibus account which entails fellow – customer risk which is mitigated by the *legal segregation with operational comingling model* (US);
- ▶ Transactions are freely assignable without Customer's consent for the FCM/ not assignable for Customer.

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QUESTIONS?