

# Technology and Vendor Agreements

## NTCA 2010 Legal Seminar

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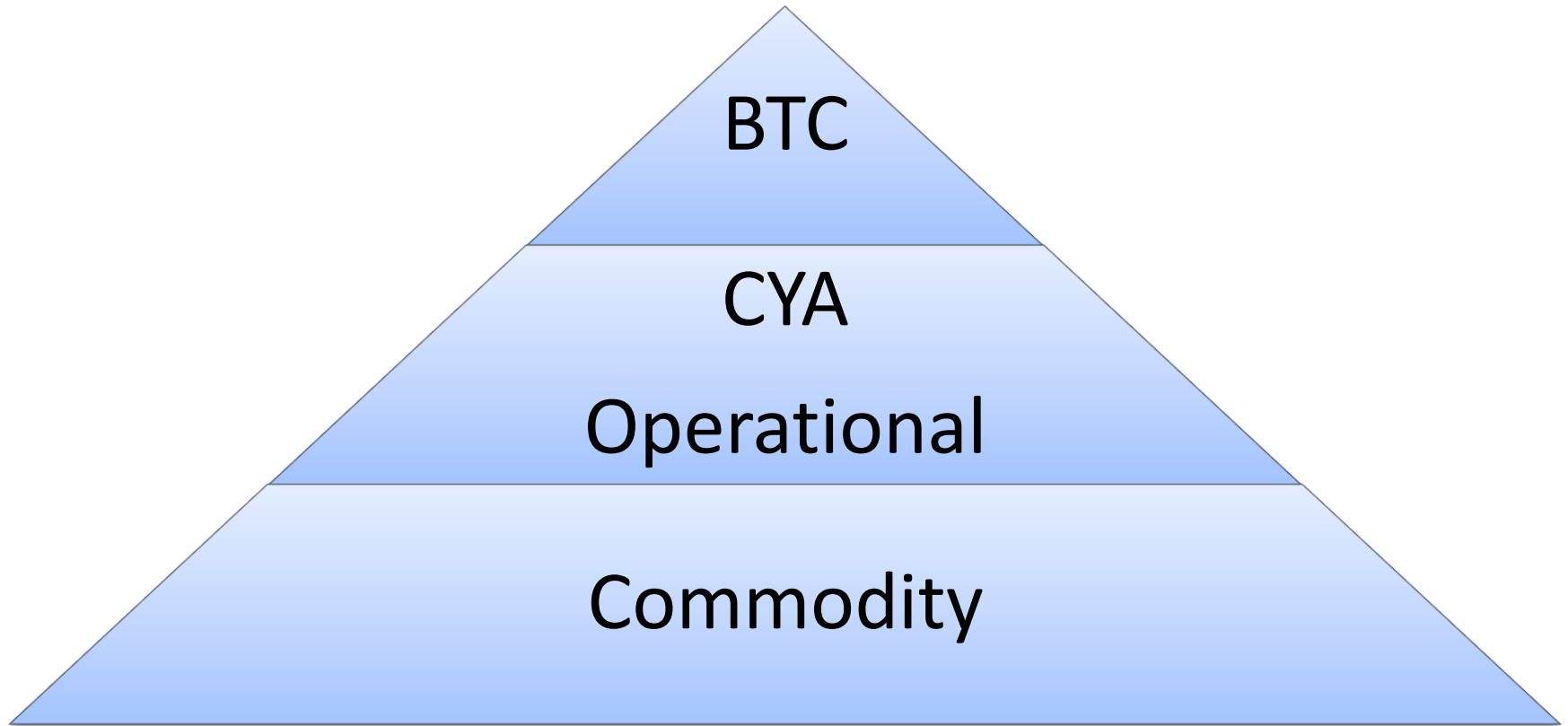
# Why do we review vendor contracts?

- Protect the client
- Contracts create legal risks
- Contracts create legal remedies

# Client/vendor relationships

- Higher degree of perceived risk
- Declining degree of trust
- Earlier involvement at higher value to client

# Thinking about value



# Keys to effective representation

- Communicate effectively and efficiently
- Understand the fundamental deal points
- Focus on delivering highest practical benefit



# Challenges

- Timelines
- Communication styles and habits
- Reliance on standard agreements
- Unrealistic expectations
- Time is money

# Basic elements of the contract

- What product or service do we want (or need)?
- When do we want (or need) it?
- Where will it be delivered/provided?
- Who have we selected to deliver/provide it?
- How are we paying for it?

# Fundamental deal points

- Business requirements (enterprise context)
- Technical requirements
- Management requirements
- Vendor qualifications
- Legal documents/requirements
- Business relationship vs. business deal



# Contract summary/signoff sheet

- Explains the deal (and technology) in plain English
- Fosters personal accountability
- Prevents selective memory
- May be used for internal review and approval
- Corporate knowledge vs. individual knowledge

# Getting it in writing

- The parties
  - Affiliates/subsidiaries
  - Agents/subcontractors

Who is obligated?

Who gets the benefit?

# Getting it in writing

- Defined terms
- Boilerplate
  - Governing law
  - Jurisdiction and venue
  - Amendments
  - Assignment
  - Integration

# Getting it in writing

- Confidentiality

- CPNI and other regulatory requirements

- Trade secrets

- Retention vs. destruction

- Super high risk: breach is a rapid cost/loss multiplier

# Getting it in writing

- Indemnification

Protection or security against loss or damage arising from claims made by a third party against one of the parties to the vendor contract

Push risk/responsibility to the party with control

Is the vendor solvent? Should we monitor?

# Getting it in writing

- Limitation of liability

Establishes the maximum dollar amount of damages for which one party to the vendor contract is responsible

Value of the contract vs. degree of risk

Enterprise wide (client) vs. Deal basis (vendor)

May be a multiple of deal value

Insurance?



# Getting it in writing

- Term and termination

  - Notice and Timing

  - Rights “for cause” or “for no cause”

  - Break up issues

    - Continuity of services

    - Transition assistance/technology transfer

    - Confidential information

# Tips and Techniques

- Manage expectations
- Communicate inclusively and effectively
- Be fairly suspicious of standard forms
- Illustrate risk / facilitate decision making
- Bad deal vs. bad contract



Thank you

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