ISDA Annual Legal Forum
October 4, 2022

Opening Remarks
Katherine Tew Darras, General Counsel, ISDA

Good morning, everyone. Welcome to ISDA's Annual Legal Forum. This is the first time we've been able to run this particular event in person since before the pandemic, so it's great to have you all here in the room. I certainly missed having the ability to interact and engage with fellow lawyers at events like these – being able to network, share ideas and collaborate with others is extremely valuable, so thank you all for coming.

Looking back at when we were last able to gather for an ALF event, in January 2020 in London, we were on the cusp of several big industry changes. LIBOR transition efforts were picking up pace ahead of the end-2021 deadline. Market participants were preparing to deal with large numbers of newly in-scope entities as part of the fifth phase of initial margin requirements. At ISDA, meanwhile, we were developing a new set of interest rate derivatives definitions to reflect changes in regulation and market practice – the first big update in 15 years. All of those topics were discussed in depth at the 2020 event.

Standing here now in 2022, it really is astonishing to think how much the industry has achieved since then – even with a global pandemic disrupting our lives.

On benchmarks, we successfully navigated the switch from 30 LIBOR settings at the end of last year. The development of robust contractual fallbacks played a critical part in that shift, ensuring viable alternatives based on risk-free rates automatically took effect for most non-cleared LIBOR derivatives affected by the end-2021 deadline, helping to ensure a smooth transition.

More than 15,300 entities across the globe have now adhered to ISDA's 2020 IBOR Fallbacks Protocol, which allows firms to incorporate the fallbacks into existing non-cleared derivatives. As we approach the phase-out of the remaining five US dollar LIBOR settings in June next year, we expect the fallbacks to play a similarly important role.

On margin, the industry has now implemented *both* phase five *and* phase six of the regulatory initial margin requirements without significant market disruption. In both cases, industry tools like the ISDA Standard Initial Margin Model and ISDA Create have helped firms with their compliance efforts.

ISDA Create continues to go from strength to strength through the changes in the industry, and we recently announced it will be available within S&P Global Market Intelligence's Counterparty Manager service, giving firms the ability to easily access full details of their contractual relationships in digital form from a single location. We'll be talking about this in more detail in our 11.30am panel.

On top of all this, we rolled out the 2021 ISDA Interest Rate Derivatives Definitions, which include a number of important modifications to reflect current market practices, conventions and regulatory requirements. The 2021 Definitions are also the first to be published in purely digital form via ISDA's MyLibrary platform, making it much easier and quicker for firms to establish the terms of their trades.

Since implementation at the end of last year, all cleared interest rate derivatives and most electronically confirmed trades in the non-cleared market now reference the new definitions – it has overwhelmingly become the new standard for interest rate derivatives.

Having navigated these various changes successfully, the industry is currently wrestling with several new challenges, including the safe and efficient trading of derivatives related to crypto assets and ESG. I'd like to spend the rest of my remarks briefly updating you on ISDA's efforts to develop standard documentation in these markets.

First, on crypto. The extreme volatility in this asset class in recent months has accentuated the importance of robust contractual standards – having a clear, consistent contractual framework that clearly spells out the rights and obligations of both counterparties following a default is incredibly important at any time, but particularly during a period of stress.

I'm pleased to say we're making very good progress here. ISDA's Digital Assets Legal Group is well-advanced in producing standard terms for cash-settled forwards and options that reference the most widely used crypto assets – specifically, Bitcoin and Ether.

Until now, institutions have largely traded crypto asset derivatives using amended versions of existing ISDA definitions and templates or using their own bespoke documentation. That not only leads to a lack of standardization – it may mean that certain unique events that occur in the crypto assets market, like forks and airdrops, are not directly covered by the documentation.

Working with participants from both crypto markets and traditional finance, our new standards will reflect the specific characteristics of the crypto market, with the initial set of definitions due to be published before the end of the year.

We'll then look at how else we can support this asset class and promote the adoption of these new contractual standards. For instance, we will prepare standardized risk disclosures for firms trading these products. We will develop guidance on the application of our new definitions to novel technological events, such as forks. And we will soon commence a global survey to establish the key issues that will need to be considered from a netting perspective, which will ultimately inform the expansion of our netting opinions to crypto assets.

Turning to ESG. Countries and companies around the world have made commitments to reduce their emissions of carbon dioxide and to meet sustainability objectives. There are a number of mechanisms and strategies in use or under consideration to achieve this, but voluntary carbon markets are seen by many as a vital tool to allow companies to act on emissions they can't otherwise reduce, and to channel financing to green infrastructure and technologies.

Just like other asset classes, robust legal foundations will be critical for the trading of carbon credits. ISDA has already published several papers exploring the key legal and regulatory issues that must be addressed in any contractual terms for the voluntary carbon market. We're now close to launching standard documentation for physically settled VCC spot, forward and options contracts. We expect to launch this documentation later this month, so keep a lookout for that.

This is on top of a variety of templates we've already published to support the trading of emissions and certain types of environmental derivatives, including US and EU emissions annexes and the ISDA US Renewable Energy Certificate Annex.

As with crypto assets, we'll continue to support this market as it develops, ensuring the industry has the legal standards and documentation it needs to trade safely and efficiently.

Thank you.