

JONES DAY

PARTNERSHIP CONSTITUEE SELON LE DROIT DE L'OHIO, USA
AVOCATS AU BARREAU DE PARIS
2, RUE SAINT-FLORENTIN • 75001 PARIS
TELEPHONE: (0)1.56.59.39.39 • FACSIMILE: (0)1.56.59.39.38 • TOQUE J 001
JONESDAY.COM

Alban Caillemer du Ferrage
Partner
acf@jonesday.com

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International Swaps and Derivatives Association
10 East 53rd Street, 9th Floor
New York, NY 10022
United States of America

Ladies and Gentlemen:

Re: Effectiveness under French law of Adherence to the ISDA Notices Hub Protocol

1. INTRODUCTION, FACTS, BACKGROUND AND SCOPE

On behalf of the INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC. ("ISDA"®), you have requested our opinion on the enforceability of an amendment to the 2002 ISDA Master Agreement (French law) as published by ISDA in 2018 (the "**Covered Master Agreement**") by way of parties' adherence to the Notices Hub Protocol (the "**Notices Hub Protocol**").

1.1. Facts and Background

The Notices Hub

The Notices Hub (the "**Notices Hub**") is an online platform developed jointly by ISDA and S&P Global Inc. to provide market participants with an electronic method to (a) deliver and receive notices under Sections 5 and 6 of the ISDA Master Agreements and (b) to update their notice address details for use in delivering notices by other permitted means. We understand that subsequent releases may provide similar functionality on the Notices Hub for other agreement types.

Based upon the information provided to us, a relevant party must adhere to the Notices Hub Protocol (such party, an "**Adhering Party**") and then 'match' with their counterparties who have also adhered to the Notices Hub Protocol in respect of one of two levels of functionality within Notices Hub: (1) "Address Only", which is limited to the update of notice contact details contained in a Covered Master Agreement and (2) "Full Functionality", which permits an Adhering Party to update such notice contact details as well as amend the relevant Covered Master Agreement to specify notices through Notice Hub as an effective means of providing notices under Section 5 and Section 6 of such Covered Master Agreement. If both parties to a Covered Master Agreement are Adhering Parties and have matched with each other on the

Notices Hub Platform in respect of the functionality election and neither Adhering Party has expressly excluded the particular Covered Master Agreement, the relevant Covered Master Agreement(s) between such Adhering Parties will be considered matched (each, a "**Matched Covered Agreement**").

Notices sent via the Notices Hub are deemed to be effective once they are "made available" to the recipient in its account on the platform (subject to any provisions in the relevant Covered Master Agreement concerning delayed effectiveness for delivery on certain days or at certain hours). While the Notices Hub sends an alert via email that the notice has been received in the recipients Notices Hub account (and may also send the alert via SMS to recipients), the Adhering Parties agree that notice will be effective irrespective of whether the recipient actually assesses the notice or receives these alerts to defend against parties unwilling or unable to act.

Adherence to the Notices Hub Protocol

In order to adhere to the Notices Hub Protocol, an entity is required to access the "Protocols" section of the ISDA website to enter information required for generating its form of Adherence Letter. Each entity will sign and upload the signed Adherence Letter as a PDF attachment into the protocol system. The Adherence Letter must be substantially in the form published in the Notices Hub Protocol and generated by the Notices Hub Protocol webpage. An Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise. ISDA, as agent, may determine in good faith that a purported adherence that is not in compliance with the Notices Hub Protocol is void. Once ISDA has approved and accepted the signed Adherence Letter, it will provide e-mail confirmation to the party of its adherence to the Notices Hub Protocol. ISDA intends to display on its website a record of each Adherence Letter it accepts. Under paragraph 1(a) of the Notices Hub Protocol, ISDA will have the right, in its sole and absolute discretion, to designate an adherence Cut-off Date as the closing date of adherence to the Notices Hub Protocol.

Communications through the Agency Adherence Module by Agents to Identify Clients

The Protocol contemplates adherence by an entity on its own behalf as principal, as well as adherence by an Agent on behalf of its Clients. An Agent, in its Adherence Letter, may elect among several approaches for specifying the Clients within the scope of the Agent's adherence, some of which contemplate that the Agent will communicate the identities of Clients to other Adhering Parties through the Agency Adherence Module.

Capitalized terms used but not defined herein have the meanings given to them in the Covered Master Agreement or the Notices Hub Protocol, as the case may be.

1.2. Scope

We understand that your fundamental requirement is for the effectiveness under French law of the adherence to the Notices Hub Protocol by each of the two parties to a Matched Covered Agreement together with the completion of the matching process described in the Notices Hub Protocol as a mean to amend such Matched Covered Agreement to be confirmed.

For the purposes of this opinion, we have only examined and relied upon the following documents:

- (1) the Covered Master Agreement; and
- (2) the Notices Hub Protocol, together with the form of Adherence Letter and the Notices Hub Module #1 attached therein, each published on June 12, 2025.

This opinion is therefore limited to the relevant provisions of the Notices Hub Protocol and does not extend to other provisions of the Covered Master Agreement or of the Notices Hub Protocol. No opinion may therefore be inferred or implied beyond that expressly set forth herein.

This opinion relates solely to matters of French law as in force at the date hereof as interpreted by the French Constitutional Council (*Conseil constitutionnel*), French Civil Supreme Court (*Cour de cassation*) and the French Public Supreme Court (*Conseil d'Etat*) in their decisions published at least one month before the date hereof. This opinion does not consider the impact of any not yet implemented European Directives, nor the impact of any laws other than French law, even in the case where, under French law, any foreign law would be designated as applicable in respect of the relevant issues.

For the purposes of this opinion, the words "France" or "French" are referring, or relating, to:

- (i) the metropolitan territory of the French Republic; and
- (ii) all overseas departments (*départements d'outre-mer* or *DOM*) and all overseas provinces (*régions d'outre-mer* or *ROM*) (to the exclusion of Mayotte), *i.e.* together: French Guyana, Guadeloupe, Martinique and La Réunion,

to the exclusion of:

- (a) the overseas collectivities (*collectivités d'outre-mer*, or *COM*), *i.e.* Wallis and Futuna, Saint-Barthelemy, Saint-Martin, Saint-Pierre-et-Miquelon and French Polynesia; and
- (b) New Caledonia, Austral and Antarctic territories and Clipperton Island.

This opinion does not address any French tax, prudential or accounting issues generally or in respect of any arrangements contemplated hereby.

We express no opinion, express or implied, with respect to any matters of fact, including the circumstances or intention around the entering into of the Notices Hub Protocol, a Covered Master Agreement and any transactions thereunder, the sending of notices under a Covered Master Agreement or the reasonableness of any statements of opinion or representation contained in the Notices Hub Protocol or a Covered Master Agreement.

This opinion supersedes and replaces all previous opinions, legal memoranda, updates and advice issued by our Firm to ISDA and its members in relation to the issues addressed herein.

2. ASSUMPTIONS

We have assumed that:

- (a) the description in paragraph 1.1 above is accurate and not misleading in any material respect;
- (b) each of the Covered Master Agreements expressly provides that it is governed by, and construed in accordance with, French law;

- (c) the Notices Hub Protocol, each Notices Hub Module and each Adherence Letter are governed by the laws of the State of New York (provided that the amendments to each Matched Covered Agreement contemplated under the Notices Hub Protocol shall be governed by and construed in accordance with French law), and their provisions are legal, valid, binding and enforceable under their governing law;
- (d) the individual(s) (and, as the case may be, Agents) completing the matching process described herein on behalf of an Adhering Party have the capacity and authority to sign agreements for and validly and legally bind such Adhering Party;
- (e) the parties have entered into a Covered Master Agreement, which is legal, valid and binding on each party and enforceable under French law on its stated terms;
- (f) Adhering Parties have the power to enter into and perform each Covered Master Agreement and the documents referred to in paragraph (h)(i) or, as the case may be, (h)(ii) (and, as the case may be, the relevant Agents have the power to enter into and perform such documents on behalf of the relevant Adhering Party), and to consummate the transactions contemplated thereby and such documents have been duly authorized, executed and delivered by, and constitute legal, valid and binding obligations of, such parties;
- (g) each Adhering Party intends to be bound by the terms of the amendments to the Covered Master Agreements provided for in the Notices Hub Protocol, and the process of matching and adherence described herein evidences the intent of the parties to be bound by such terms;
- (h) each party to the relevant Covered Master Agreement has entered into (either directly or through an Agent):
 - (i) the Notices Hub Protocol and so is an Adhering Party (as defined in the Notices Hub Protocol), the Notices Hub Protocol is legal, valid and binding on each such party under any governing law (other than as a result of the means of adherence that is the subject of this opinion) and the relevant Covered Master Agreement is a Matched Protocol Covered Document (as defined in the Notices Hub Protocol); or
 - (ii) bilaterally agreed terms identical to those that would have applied between them if they had adhered to the Notices Hub Protocol as contemplated by paragraph (i) above,

so that its terms have been amended and supplemented in the manner set out in Notices Hub Module #1, published on June 12, 2025 by ISDA;
- (i) the Notices Hub will be operational at all relevant times and will operate in the manner summarised in paragraph 1.1 above;
- (j) each party uses the Notices Hub in accordance with its terms and any other requirements specified by the operator of the Notices Hub;
- (k) no provision of the Matched Covered Agreement that is necessary for the giving of this opinion has been varied, altered or waived in any material respect (other than the amendments referred to in paragraph (h) above);

- (l) under the laws of the State of New York, adherence to the Notices Hub Protocol by each of the two parties and a "match" between the same in accordance with Section 1(c) of the Notices Hub Protocol with respect to a Matched Covered Agreement would be sufficient to form an amendment to an agreement; and
- (m) no opinion is hereby provided with respect to the enforceability of the terms of any amendment made pursuant to the Notices Hub Protocol.

3. **LEGAL BASIS**

Amendments to a French law governed agreement. As far as French law is concerned, the way Notices Hub Protocol operates could be analysed as an offer to amend an existing agreement and the acceptance of such offer by the other party. Pursuant to Article 1113 of the French Civil Code (*Code civil*), an agreement is formed by the meeting of an offer (*offre*) and an acceptance (*acceptation*) by which the parties demonstrate their will to be bound, and such demonstration of will can notably result from an unequivocal behaviour. We believe that such provision could equally apply to an amendment of a contract and that the sending of a Match Invitation and the acceptance of such Match Invitation could respectively be considered as an offer and an acceptance in respect of the amendment of a Covered Master Agreement.

Split of governing laws. We understand that (i) the Notices Hub Protocol and each Adherence Letter are governed by and construed in accordance with the laws of the State of New York and (ii) the amendments made to any relevant Matched Covered Agreement pursuant to the terms of Notices Hub Module #1 shall be governed by and construed in accordance with the law specified to govern such Matched Covered Agreement, i.e. French law.

Governing law. As a general rule and subject to the absence of any fraudulent intention, French law permits the parties to a contract to freely elect the law which shall govern their agreement¹, provided that such agreement is entered into in a situation involving a conflict of laws². However, where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, mandatory provisions of the law of that other country shall apply notwithstanding the parties' choice of law³.

As the Notices Hub Protocol enables parties to benefit from certain services provided by ISDA and S&P Global Inc., non-French entities, there should exist in our view sufficient grounds to consider that the Adherence Letters are entered into in a situation involving a conflict of laws and may accordingly be governed by non-French law, even in the situation where both parties to a Covered Master Agreement would be located or incorporated in France.

¹ Article 3(1) of Regulation (EC) No. 593/2008 of the European Parliament and of the Council of June 17, 2008 on the law applicable to contractual obligations (the "**Rome I Regulation**").

² The report on the Convention on the law applicable to contractual obligations by Mario Giuliano and Paul Lagarde (Official Journal C 282, October 31, 1980 P. 0001 – 0050) describes these situations as those " which involve one or more elements foreign to the internal social system of a country (for example, the fact that one or all of the parties to the contract are foreign nationals or persons habitually resident abroad, the fact that the contract was made abroad, the fact that one or more of the obligations of the parties are to be performed in a foreign country, etc.), thereby giving the legal systems of several countries claims to apply." Prior to the entry into force of the Rome I Regulation, the French Civil Supreme Court (*Cour de Cassation*) ruled that the parties to a purely domestic contract are not free to elect a foreign law to govern their agreement (*Cour de Cassation, (Soc.)* July 8, 1985 - Allard - *Revue Critique de Droit International Privé*, 1986, 113). Such choice is exclusively reserved for parties to an international contract. The concept of international contract has been defined by case law by using both business and legal criteria. From a business perspective, the contract should involve cross-border flows of money or goods. From a legal perspective, the contract should be linked to different jurisdictions. Basically, French courts consider that an international contract is a contract not restricted to the sole boundaries of the internal French territory.

³ Article 3(3) of the Rome I Regulation.

Dépeçage. Article 3(1) of Regulation (EC) No. 593/2008 of the European Parliament and of the Council of June 17, 2008 on the law applicable to contractual obligations (the "**Rome I Regulation**") provides that "*parties can select the law applicable to the whole or to part only of the contract*". Authoritative doctrine consider that parties have a right to elect at least two different governing laws (*dépeçage*) as long as (i) the respective parts and aspects (such as the rules relating to the conclusion or interpretation) of their contract governed by such different governing laws can clearly be separated and identified, (ii) there is no risk for one single particular provision of their agreement to be governed by two or more different governing laws, and (iii) enforcement of their obligations under such an arrangement is not rendered impossible in practice as a result of such *dépeçage* (for example, where two provisions, for functional reasons, have to be governed by the same law to ensure consistency in their implementation).

We believe that the Adherence Letter and the Notices Hub Protocol, on the one hand, and the amendments to the Covered Master Agreement, on the other hand, should be considered as dealing with sufficiently separate and identified parts of the parties' agreement, and that such split of governing laws should be upheld by French courts.

We therefore believe that French courts would uphold the choice made by the parties of the law of the State of New York as the governing law of the Notices Hub Protocol and the Adherence Letters and the choice of French law to govern the amendments made to any relevant Matched Covered Agreement pursuant to the terms of Notices Hub Module #1. This is however subject to the general assumption that such a *dépeçage* is legal, valid and fully enforceable under the laws of the State of New York, something which we have not verified ourselves and assume for the purpose of this opinion.

As a consequence, we believe that the effectiveness of the Adherence Letter and the Notices Hub Protocol as a mean to amend an existing Covered Master Agreement should be assessed in accordance with their governing law, i.e. the laws of the State of New York.

4. **OPINION**

Subject to the legal basis, assumptions, and qualifications set forth herein, we are of the opinion that under French law:

- (a) the delivery to ISDA (and acceptance by it) of an Adherence Letter by or on behalf of each two Adhering Parties as principals (and where contemplated, the sending of an Agency Adherence Module communication by an Agent of one of the Adhering Parties as principals and receipt of that communication by the other Adhering Party as principal, and, in the case of a Covered Master Agreement which is a "Non-Agent Executed Protocol Covered Document", satisfaction of the conditions in the Notices Hub Protocol as to evidence of the Agents authority), in each case before the Cut-off Date and on the terms set out in the Notices Hub Protocol, and
- (b) the acceptance by the "Receiving Adhering Party" of a "Match Invitation" on the Notices Hub and the recording by the Notices Hub of a "Match Date" in respect of the "Submitting Adhering Party" and the "Receiving Adhering Party" in accordance with the Notices Hub Protocol and the Notices Hub,

should be sufficient to effect an amendment of such Matched Covered Agreement entered into between those Adhering Principals as from the relevant Matching Date.

5. QUALIFICATIONS

Any opinion expressed herein is subject to the following qualifications:

- 5.1. ***French public order and policy rules.*** Under French law, the validity of any agreement is subject to the general rules of public order and policy rules.
- 5.2. ***Fraud and sham.*** The existence of fraud (*fraude*) or of a sham (*fictivité*) may affect the opinions expressed herein.
- 5.3. ***Recognition of French decisions outside of the EU.*** We express no opinion as to the recognition or enforceability outside the EU of any decision or judgment obtained before French courts.
- 5.4. ***Qualifications relating to the powers of a French court.***
 - (i) a French court may disclaim competence if an interested party has previously brought a proceeding with respect to the Covered Master Agreement in another competent jurisdiction if both proceedings are based upon identical or connected (*connexes*) claims (under Articles 100 *et seq.* of the French Civil Procedure Code (Code de Procédure Civile, the "Civil Procedure Code"));
 - (ii) the effectiveness of any claim brought by a party before a French court against the other party in relation to a Covered Master Agreement may be limited by the application of the statutory provisions relating to the limitation of action (*prescription*);
 - (iii) a French court may decline to give effect to a contractual provision stipulating that the invalidity of any provision of an agreement will not invalidate any other provision thereof, if a French court finds that the invalid provision in question is an essential provision of such agreement;
 - (iv) a French court will apply French procedural rules in any proceedings taken before it; and
 - (v) French courts are sovereign in all respects and are not bound by precedent.
- 5.5. ***Undetermined obligations (obligations à objet indéterminé ou indéterminable) and purely potestative conditions (conditions purement potestatives).*** We express no opinion as to the validity and enforceability under French law or before a French court of any provision relating to the Agreement according to which a party has undertaken obligations in an undetermined or unlimited manner. Any obligation undertaken under the Covered Master Agreement whose performance depends on a single party or in relation to any provision of the Agreement which entitles one of the parties to determine the object of the contractual obligations at its sole discretion (purely potestative conditions, or '*conditions purement potestatives*') may be challenged, notably on the grounds of Articles 1163, 1193 and 1304-2 of the Civil Code. However, although this question will ultimately rest with the competent courts, we have not identified any provision of the Covered Master Agreement or the Notices Hub Protocol that could be characterized as "purely potestative" or any provision of the Covered Master Agreement or the Notices Hub Protocol which would give rise to undetermined obligations.
- 5.6. ***French language.*** As to evidence that can be brought to a court in France, documents may be provided in English without being translated before the international chamber of the Commercial Court of Paris and the international chamber of the Paris Court of Appeal, when parties agreed to apply the terms of the protocols of such courts. Before other courts, the court may require documents in a foreign language to be translated into French by a certified translator in order to constitute admissible evidence before such court (although such translation needs not to be made before the relevant proceedings are initiated).

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This opinion is given to you for the sole benefit of you and your members. It may not be relied upon by any other person than you and your members, unless we otherwise specifically agree with that person in writing. This opinion may be made available, but for information purposes only, to professional advisors of you and your members and the appropriate bank regulatory authorities having jurisdiction on a member.

Except expressly requested so by ISDA, we shall have no liability to inform the addressees of this opinion, nor any other person, of any event, including any change in French law, occurring after the issue date of this opinion. Addressees of this opinion are strongly advised to consult with their usual French counsels to monitor the above developments.

The purpose of this opinion is to assist your members in understanding general issues relating to the amendments to Covered Master Agreements through the Notices Hub Protocol under French law. It is not designed to be used as the sole basis for entering into any Covered Master Agreement or any Transaction, making an investment or subscription decision or taking any financial or other undertaking.

As we have not reviewed any particular Covered Master Agreement or Matched Covered Agreement or Transaction thereunder, we do not assume any liability under this opinion with respect to the enforceability of any particular Transaction or Transactions, or the enforceability of any Covered Master Agreement or Matched Covered Agreement when applied to any particular Transaction or Transactions.

Any dispute relating to, without limitation, the interpretation of this opinion shall be subject to French law and the jurisdiction of the *Tribunal Judiciaire* of Paris, France.

Very truly yours,



JONES DAY