ISDA® Safe, Efficient Markets

ISDA Annual Legal Forum
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Welcoming Remarks
Katherine Tew Darras, General Counsel, ISDA

Good morning and welcome to the Annual Legal Forum. Thank you for being with us today, and special thanks to all of our speakers and sponsors.

Discussions at this event in recent years have been dominated by a succession of major industry transitions. These include the roll-out of initial margin (IM) regulations, the retirement of LIBOR and the upgrade of ISDA's interest rate derivatives definitions. In each case, a huge amount of industry work was required to navigate the transition and ensure the necessary legal framework was in place.

Over the past year, we've made enormous progress on all three fronts. In September 2022, the sixth phase of IM requirements was implemented, bringing into scope the largest number of counterparties yet. At the end of June this year, we closed the book on LIBOR after the last five US dollar settings ceased publication on a representative basis. And we've built on the success of the 2021 ISDA Interest Rate Derivatives Definitions, releasing seven subsequent versions and moving more of our flagship documentation to a digital format.

When you look at the agenda for today's event, you'll see that we've moved on. Benchmarks and margin no longer take center stage. We're looking ahead to new challenges and fresh opportunities. We'll talk today about upcoming regulatory developments, forthcoming changes to documentation and key market structure issues.

Underpinning all of these topics is ISDA's unwavering commitment to creating greater efficiencies and cost savings for derivatives market participants through the development of mutualized digital solutions. I'll bring you up to date with our ambitious digital transformation agenda, and I'll also share the steps we're taking to update our foreign exchange (FX) documentation.

I'll start with digitization.

The digital age has transformed almost every aspect of our lives, from the way we communicate to the way we consume news and entertainment. But some business practices have not advanced at the same pace. In the derivatives market, there is still widespread reliance on paper documents and manual processing, which leads to increased costs, risks and inefficiencies.

ISDA has responded to this challenge by developing a set of mutualized digital solutions that bring greater standardization, automation and efficiency to vital processes. They include MyLibrary, our digital documentation platform, and ISDA Create, our document negotiation platform. We also developed the Common Domain Model (CDM), a free-to-use data standard for financial products, trades and lifecycle events. The CDM has been the foundation of our work to digitize regulatory reporting and key collateral management processes.

We're now bringing together our digital solutions and the teams that look after them under a single umbrella within ISDA. This is an organizational change that is designed to align our services, encourage innovation and drive more widespread adoption. The creation of a digital transformation function also means we can prioritize those issues the industry wants solved.

I'll briefly touch on two important developments that fall within our digital transformation framework.

First, as we announced last month, ISDA Create is now available through S&P Global Market Intelligence's Counterparty Manager service. This is a big step forward that opens the door to the development of an end-to-end data picture, covering both the onboarding of counterparties and the negotiation of key derivatives contracts on a single platform.

Counterparty Manager includes Request for Amendment, an online tool that enables market participants to make certain adjustments to their ISDA documents, such as adding, removing and/or editing counterparties to an umbrella Master Agreement. By linking Counterparty Manager with ISDA Create, users will be able to make more complex amendments to their agreements from a unified platform. ISDA Create will eventually be integrated with other Counterparty Manager modules, enabling users to easily access a complete digital record of all relationship and contractual data entered on either platform.

ISDA Create has come a very long way since it first launched nearly five years ago. It is now used by more than 375 firms, with 400 more in testing, as market participants look to realize greater efficiencies through digital document negotiation. Earlier this year, we published a paper that quantified those efficiencies for the first time. For example, one bank was able to slash the time it took to amend variation margin credit support annexes with 900 counterparties from 60 hours to around six hours.

We're really excited about the integration with Counterparty Manager as the next step on this platform's journey, moving us closer to having a single golden source for all contractual information. Having all of that data and information in digital form will allow client onboarding teams to pass it directly through to risk, collateral and other systems, further increasing efficiency and reducing the potential for error.

The second digital initiative is at a much earlier stage of development, but like all of our solutions, it responds to industry feedback on the need to address a common issue. That is the practical challenge of physically delivering critical notices to counterparties.

If a firm fails to pay an amount due on a trade, the ISDA Master Agreement allows the other party to deliver a notice of that non-payment, which triggers the start of a grace period. If the payment is not made during the grace period, a second notice can be delivered to specify a date for the early termination of the trade. As it stands, both notices must be delivered to the company address listed in the agreement.

The problem is that the company may move offices, and the ISDA Master Agreement is not always kept up to date with the correct details. Delivering notices also became problematic during the pandemic, when lockdown restrictions were imposed, and following Russia's invasion of Ukraine. While workaround solutions have been considered, both parties need certainty on the time a notice is delivered, as this determines the start and end of the grace period and the earliest point at which trades can be valued and terminated. Uncertainty over the timing of the delivery of notices can have economic consequences.

In response to this issue, we've been exploring the concept of an industry notices hub. This would act as a central platform for firms to load notices, with automatic alerts sent to the receiving entity. Parties would agree through a protocol that uploading a notice would constitute effective delivery, and multiple designated people at each firm would be able to access the hub from anywhere in the world.

This initiative is still in its early stages, and there are certain legal and technological issues that need to be carefully considered. But the development of a notices hub would be an elegant solution to a common industry problem. It could also be extended to cover other types of notice, agreement and functionality. We've seen a strong show of support from our members, as well as indications of interest from some resolution authorities. We'll continue to work on this project, and ISDA's new digital transformation team will be responsible for making sure it meets the demands of the market.

Before finishing, I'll provide a brief update on our work to review the 1998 FX and Currency Option Definitions.

Earlier this year, we carried out a survey to determine how the FX definitions and related documentation might be improved to reflect the evolution of the FX market over the past 25 years. We received feedback from many market participants and have conducted follow-up outreach with additional buy-side firms and trade associations.

In general, we found strong support to update the FX definitions, consolidating the existing supplements and other components and improving clarity on the terms that apply to transactions referencing the definitions. Respondents also expressed support to update the provisions relating to disruption events and fallbacks. These issues have become topical in light of recent geopolitical events, including Russia's invasion of Ukraine and the resulting sanctions.

We are now engaging with our membership on the changes that may be required to the provisions on disruption events and fallbacks, as well as the broader review of the FX definitions. Our documentation panel later this morning will address this topic in more detail.

I've talked in these remarks about three specific initiatives, all of which provide examples of how ISDA is working to keep market practices up to date and deliver lasting efficiencies. Whether we're further developing our digital platforms, addressing new challenges or updating our documentation, we'll remain focused on our core mission to make the global derivatives market safer and more efficient.

Thank you.