

JONES DAY

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International Swaps and Derivatives Association, Inc.
10 E. 53rd Street,
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New York, New York 10022
United States of America

15 July 2025

Ladies and Gentlemen:

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

You have requested our opinion on the enforceability of an amendment to the 1992 and 2002 ISDA Master Agreements (the “**Covered Master Agreements**”) by way of a party’s adherence to the Notices Hub Protocol (the “**Notices Hub Protocol**”) under New York law. For the reasons set forth below, and subject to the discussion, analysis, qualifications, assumptions, exclusions and legal authorities described below, we believe that the execution of an otherwise enforceable amendment to a Matched Covered Agreement pursuant to the Notices Hub Protocol will be enforced by a court applying New York law.

Facts and Background

The Notices Hub (the “**Notices Hub**”) is an online platform developed jointly by the International Swaps and Derivatives Association, Inc. (“**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 first 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 b, the relevant Covered Master Agreement(s) between such Adhering Parties will be considered a “Matched Protocol Covered Document” and at that point amended to incorporate the provisions set out in Notices Hub Module #1.

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 accesses the notice or receives these alerts to defend against parties unwilling or unable to act.

Capitalized terms used but not defined herein have the meanings given to them in the Covered Master Agreements. This opinion assumes familiarity with and shall be considered in tandem with the Covered Master Agreements to the extent we expressly opine on the analysis and conclusions contained therein.

This opinion relates only to matters governed by New York law, in force and published as at the date hereof, and is confined to such matters. 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.

Analysis

Under New York General Obligations Law (“NYGOL”) § 15-301(1), a written agreement that includes a provision prohibiting oral modifications – like the Covered Master Agreements – cannot be amended except through an agreement that is in writing and signed. Under New York law, the requirement that an agreement be in “writing” is construed broadly and may be satisfied by digital records of the agreement. *Moton v. Maplebear Inc.*, No. 15 CIV. 8879 (CM), 2016 WL 616343, at *1 (S.D.N.Y. Feb. 9, 2016). For example, in *Moton v. Maplebear Inc.*, the court held that an online agreement accepted by clicking a box constituted a signed writing enforceable under New York law. The court noted that a clickwrap agreement—where a user assents by affirmatively clicking a box indicating acceptance—can meet the requirements of a signed writing, especially where the user is aware of the agreement’s contents and is given an opportunity to review them. Similarly, in *Stevens v. Publicis, S.A.*, 50 A.D.3d 253, 255 (App. Div. 1st Dept. 2008), the Appellate Division held that an email exchange could constitute a “writing” and that typing a name at the end of an email could constitute a signature, satisfying the statute of frauds; *see also Rosenfeld v. Zerneck*, 776 N.Y.S.2d 458 (2004) (holding that an email with the plaintiff’s name satisfied the requirements of a signed writing for the purpose of the NYGOL). Here, the Notices Hub Protocol requires parties to affirmatively submit the name of an authorized signatory and click to indicate agreement to adhere to the Notices Hub Protocol that effects the relevant amendments to the Covered Master Agreements.

Section 9(b) of each of the Covered Master Agreements provides that “no amendment will be effective unless in writing and executed by each of the parties.” New York courts have not interpreted “executed” to require a wet-ink signature. *Forcelli v. Gelco Corp.*, 109 A.D.3d 244 (2d Dep’t 2013). In *Forcelli v. Gelco Corp.*, the court upheld the validity of a settlement agreement transmitted via an email exchange. It reasoned that the typed signature at the end of each email demonstrated the parties’ intent to be bound, and disregarded the form of the execution. The requirement that an amendment through adherence to the Notices Hub Protocol be “executed” should not be interpreted more restrictively than the requirements of NY GOL § 15-301.

In cases where New York law may be preempted or supplemented by federal law, the ESIGN Act provides that a signature “may not be denied legal effect...solely because it is in electronic form.” 15 U.S.C. § 7001(a)(1). An electronic signature is defined broadly to include “an electronic sound, symbol, or process...executed or adopted by a person with the intent to sign the record.” 15 U.S.C. § 7006(5). Federal courts have regularly upheld the enforceability of contracts accepted via electronic means under the ESIGN Act. Where the parties intend to be bound and the procedure ensures attribution and assent, the ESIGN Act deems the resulting agreement valid, enforceable, and legally equivalent to a wet-ink signature on a paper contract.

The formal steps to adhere to the Notices Hub Protocol requires a deliberate act of agreement and identification of the parties to be bound, which are hallmarks of a valid electronic agreement under the ESIGN Act.

Opinion

We are of the opinion that, subject to the analysis, assumptions, and qualifications set forth herein, that adherence to the ISDA Notices Hub Protocol by each of the two parties to a Matched Covered Agreement will be sufficient to form an amendment of such Matched Covered Agreement.

Assumptions and Qualifications

The opinions given in this opinion are subject to the assumptions, qualifications and discussion set out throughout this opinion, as well as the following:

- A. The description in the Facts and Background section is accurate and not misleading in any material respect.
- B. We have assumed that each of the Covered Master Agreements expressly provides that it is governed by, and construed in accordance with, the laws of the State of New York.
- C. Our opinion is not a guaranty of an outcome but does express our professional judgment as to what a New York court would do if faced with the question we address.
- D. In rendering the opinions set forth herein, we have examined and relied upon the following documents:
 - 1. The 1992 ISDA Master Agreement;
 - 2. The 2002 ISDA Master Agreement;
 - 3. The ISDA 2025 Notices Hub Protocol Working Group Draft, dated as of January 8, 2025;
 - 4. The Final Draft for Working Group Consideration on various Module #1 Amendments to the ISDA 2025 Notices Hub Protocol, dated as of February 18, 2025;
 - 5. The Final Draft for Working Group Consideration on Module #1 Amendments to Section 12 of the ISDA 2025 Notices Hub Protocol, dated as of February 18, 2025;
 - 6. The Working Draft of the Notices Hub Matching Logic Tree, dated October 30, 2024; and
 - 7. The ISDA Notices Hub Q&A handout, dated October 2023.
- E. Our opinions are based solely on the Covered Master Agreements as they exist on the date hereof, and we have not considered, and express no opinion with respect to, any amendments, modifications, supplements, or restatements of the Covered Agreements or any other documents or information that may come into existence or be provided to us after the date hereof.

- F. The individual(s) completing the matching process described herein on behalf of an Adhering Party has the capacity and authority to sign agreements for and validly and legally bind such Adhering Party.
- G. The parties have entered into a Covered Master Agreement, which is legal, valid and binding on each party and enforceable under New York Law on its stated terms (except as regards the matters discussed in this memorandum, if the Covered Master Agreement is governed by New York law).
- H. Adhering Parties have the power to enter into and perform such documents 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.
- I. Each Adhering Party intends to be bound by the terms of the amendments to the Covered Master Agreement 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.
- J. In the case of any Covered Master Agreement, each party to it has entered into:
 - 1. 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 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);
 - 2. the Notices Hub will be operational at all relevant times and will operate in the manner summarised in the first paragraph of the Facts and Background section;
 - 3. each party uses the Notices Hub in accordance with its terms and any other requirements specified by the operator of the Notices Hub; and
 - 4. 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, and no provision dealing with the conditions of effectiveness and/or evidence of notices has been included in the Matched Covered Agreement.
- K. There are no decisions of foreign courts or tribunals relating to the Documents which are inconsistent with the matters referred to in this Notices Hub Opinion.
- L. No opinion is hereby provided with respect to the enforceability of the terms of any amendment made pursuant to the Notices Hub Protocol.
- M. (i) This opinion speaks only as of the date hereof, (ii) we have no responsibility or obligation to update this opinion letter, to consider its applicability or correctness to any person or entity other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware and (iii) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the

time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time.

Yours faithfully,

A handwritten signature in cursive script that reads "Jones Day".

JONES DAY