

Memorandum

Confidential Privileged Legal Advice

FROM

McCann FitzGerald LLP

TO

International Swaps and Derivatives Association, Inc.

DATE

15 July 2025

SUBJECT

**Effectiveness of the ISDA Notices Hub Protocol Module #1
to amend the ISDA 2002 Master Agreement (Irish Law)**

1. Introduction

- 1.1 This memorandum of law considers certain issues arising under Irish law in relation to the 2025 Notices Hub Protocol (the “**Protocol**”) published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) in connection with the Notices Hub Platform (the “**Notices Hub**”).
- 1.2 Capitalised terms used in this letter without definition have the meanings given to them in the Protocol. In addition, in this memorandum:
- (a) “**Agent Covered Master Agreement**” means an Agent Protocol Covered Document that is a Covered Master Agreement;
 - (b) “**Covered Master Agreement**” means a Protocol Covered Master Agreement that is an ISDA Master Agreement;
 - (c) “**ISDA Master Agreement**” means an ISDA 2002 Master Agreement (Irish Law);
 - (d) “**Matched Covered Master Agreement**” is a Matched Protocol Covered Document that is a Covered Master Agreement; and
 - (e) “**Non-Agent Executed Covered Master Agreement**” means a Non-Agent Executed Protocol Covered Document that is a Covered Master Agreement.

2. Facts and Background

The Notices Hub

- 2.1 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 Agreement and (b) 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.

- 2.2 Based upon the information provided to us, a relevant party must first adhere to the Protocol (such party, an “**Adhering Party**”) and then ‘match’ with their counterparties who have also adhered to the 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 Notices 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 a “Matched Protocol Covered Document”.
- 2.3 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. References in this memorandum to the “made available standard” should be construed accordingly.

Adherence to the Protocol

- 2.4 In order to adhere to the 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 Protocol and generated by the 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 Protocol is void. Once ISDA has approved and accepted the signed Adherence Letter, it will provide e-mail confirmation to the party of the party’s adherence to the Protocol. ISDA intends to display on its website a record of each Adherence Letter it accepts. Under paragraph 1(a) of the 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 Protocol.

Communications through the Agency Adherence Module by Agents to Identify Clients

- 2.5 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.

3. **Analysis**

Mechanism for amendments

- 3.1 The purpose of the Protocol is to enable Adhering Parties to agree that the terms of their Covered Master Agreements shall be amended in accordance with the terms of a Notices Hub

Module by each Adhering Party “matching” with the other in respect of such Notices Hub Module on the Notices Hub.

- 3.2 Notices Hub Module #1 provides that the terms of each Covered Master Agreement shall be amended by insertion of the amendments set out in Notices Hub Module #1. Such amendment allows Adhering Parties to update their notice contact details on the Notices Hub and, if “Full Functionality” is selected, to specify notices through Notices Hub as an effective means of providing notices under Section 5 and Section 6 of such Covered Master Agreement.
- 3.3 A party to a Covered Master Agreement becomes an “Adhering Party” with respect to that Covered Master Agreement:
- (a) if it submits an Adherence Letter executed by it on its own behalf, when that Adherence Letter is accepted by ISDA; and
 - (b) if it is a Client (with respect to the Covered Master Agreement) of an Agent that adheres to the Protocol using any of the approaches set out in paragraph 2(a) of the Protocol, on that Client’s “Letter Acceptance Date” specified as such in paragraphs 2(a), 2(b), 2(c), 2(d) or 2(g), as applicable.

Recognition of governing law

- 3.4 Council Regulation (EC) No. 593/2008 of 17 June 2008 on the law applicable to contractual obligations, as amended by Corrigendum to Council Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) has, in respect of agreements entered into on or after 17 December 2009, force of law in Ireland.
- 3.5 The incorporation of the laws of the State of New York as the governing law of the Protocol, each Notices Hub Module and each Adherence Letter is, in respect of contractual obligations arising thereunder which are within the scope of Rome I, valid in accordance with Article 3(1) of Rome I and accordingly, subject to and in accordance with Rome I, the laws of the State of New York will, upon proof of the relevant provisions of the relevant laws, be applied by the Irish courts if any claim to enforce such contractual obligations against an Adhering Party comes under their jurisdiction.
- 3.6 We have assumed, for the purposes of this memorandum, that the provisions of the Protocol, each Notices Hub Module and the Adherence Letters with respect to a Covered Master Agreement, once issued and matched, are enforceable in accordance with their terms as a matter of the laws of the State of New York and will be effective under the laws of the State of New York to create a legally valid, binding and enforceable agreement between the relevant Adhering Parties (whether principals or Clients of Agents) to effect the amendments to each relevant Matched Covered Master Agreement set out in the relevant Notices Hub Module.

Effectiveness under Irish law

- 3.7 We have therefore considered whether such an agreement (which, as noted above is governed by the laws of the State of New York) to amend an ISDA Master Agreement (which is governed by Irish law) in accordance with the terms of the Protocol and Notices Hub Module

#1 would be effective under Irish law to implement the amendments in question and we set out below our analysis and conclusions in this regard.

- 3.8 We note that the ISDA Master Agreement expressly contemplates that it may be amended and modified from time to time, and stipulates the manner in which it may be amended. Section 9(b) of the ISDA Master Agreement provides that an amendment to, or modification of, the agreement will be effective only if it is in writing and executed by each of the parties or confirmed by an exchange of telexes or electronic messages, and Section 9(e) contemplates amendments and modifications that are executed and delivered in counterparts. We note also the stipulation of facsimile transmission as an acceptable means of evidencing an amendment or modification in writing under Section 9(b) of the ISDA Master Agreement.
- 3.9 In our view, the writing and execution requirements of Section 9(b) of the ISDA Master Agreement would be satisfied, as to an Adhering Party, if an authorised person of the Adhering Party affixes his or her signature to the signature line in the visible written text of the Adherence Letter and uploads the signed Adherence Letter as a PDF attachment into the Protocol management system. We believe this follows from the ordinary meaning of Section 9(b) - a populated Adherence Letter that has been downloaded or received by email is in writing, whether printed or viewed on screen, and affixing the signature in the indicated signature line constitutes execution. Furthermore, as is evident from the language of Section 9(b) of the ISDA Master Agreement, the agreement was drafted to allow parties the flexibility to amend them by means beyond a traditional paper writing, including by an exchange of telexes and facsimile and electronic messages.
- 3.10 With regard to the execution requirements of Section 9(b) of the ISDA Master Agreement, unless statute or the relevant contractual arrangements provide otherwise, electronic signatures (including a person electronically pasting their signature into an electronic version of a contract or the use of an online electronic signature platform) can be used under Irish law to sign documents (including contracts). Under the Electronic Commerce Act 2000 (as amended, the “**E-Commerce Act**”), the term “electronic signature” is defined as data in electronic form attached to, incorporated in or logically associated with other electronic data and which serves as a method of authenticating the purported originator, and includes an advanced electronic signature. It does not otherwise have to be in a particular form.
- 3.11 Under Section 13(1) of the E-Commerce Act, if a signature of a person or a public body is required or permitted by law or otherwise, they may use an electronic signature to meet that requirement subject to the conditions set out in Section 13(2). Section 13(2) provides, amongst other matters, that the person or public body to whom the signature is required or permitted to be given must consent to the use of an electronic signature, and in the case of a public body, the electronic signature must be in accordance with any relevant requirements specified by the public body. We assume that each Adhering Party will have consented in all relevant cases to the use of an electronic signature on the Adherence Letter by the other Adhering Party and that, where relevant, any additional requirements imposed by a public body will have been met.
- 3.12 With regard to the writing requirement of Section 9(b) of the ISDA Master Agreement, unless statute or the relevant contractual arrangements provide otherwise, such requirements can be satisfied by an electronic record. This view is supported by the following legislative provisions:¹

¹ While directly applicable to statutory interpretation (rather than contractual interpretation), the following would also be supportive of an argument that a contractual requirement for “writing” should be interpreted as including an electronic form: (i) section 2(2) of the E-Commerce Act, which provides that “writing” shall be construed as including electronic

- (a) Section 9 of the E-Commerce Act, which provides that information (which is defined broadly and includes information incorporated by reference) shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form, whether as an electronic communication or otherwise; and
 - (b) Article 25 of the EU “eIDAS Regulation” (Regulation (EU) No 910/2014, as amended), which provides that an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.
- 3.13 With regard to the electronic delivery of notices or other information (such as an Agency Adherence Module Communication), unless statute or the relevant contractual arrangements provide otherwise, such requirements can be satisfied electronically. Section 12(1) of the E-Commerce Act provides that if by law or otherwise a person or public body is required or permitted to give information in writing then, subject to conditions set out in Section 12(2) (and without prejudice to any other relevant law), that person or public body may give the information in electronic form, whether as an electronic communication or otherwise. Section 12(5) of the E-Commerce Act confirms that the phrase “give information” includes (but is not limited to) giving, sending or serving a notification.
- 3.14 The conditions set out in Section 12(2) of the E-Commerce Act are:
- (a) at the time the information was given it was reasonable to expect that it would be readily accessible to the person or public body to whom it was directed, for subsequent reference; and
 - (b) that public body or person consents to the giving of the information in electronic form and, in the case of the public body, the information has been given in accordance with any relevant requirements specified by the public body (if any).

We assume that, to the extent applicable to the Notices Hub or the Protocol, each of those conditions will be satisfied as a matter of fact.

- 3.15 In addition to the matters discussed above, the following provisions of the E-Commerce Act also support the effectiveness of the operation of the Notices Hub as a primarily electronic system:
- (a) Section 22 of the E-Commerce Act provides that, in any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility in evidence of an electronic communication, electronic form of document, electronic contract or electronic signature -
 - (i) on the sole ground that it is in electronic form (and in the case of electronic signature on the sole ground that it is not an advanced electronic signature, or is not based on a qualified certificate, or is not based on a qualified certificate issued by an accredited certification provider, or is not created by a secure signature creation device), or

modes of representing or reproducing words in visible form; and (ii) the Interpretation Act 2005 which provides that “writing” includes other modes of representing or reproducing words in visible form and any information kept in a non-legible form, whether stored electronically or otherwise, which is capable by any means of being reproduced in a legible form.

- (ii) if it is the best evidence that the person or public body adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.
 - (b) Section 19 of the E-Commerce Act permits the formation and conclusion of contracts in electronic form, and states that an electronic contract shall not be denied legal effect, validity or enforceability solely on the grounds that it is wholly or partly in electronic form, or has been concluded wholly or partly by way of an electronic communication.
- 3.16 As the Irish law requirements in respect of electronic signatures, writing and delivery of notices or other information would be satisfied on our assumptions, this provides another basis for our conclusion that Section 9(b) of the ISDA Master Agreement should not preclude adherence to the Protocol by an authorised person of an Adhering Party taking the actions described above.
- 3.17 If the signatory to an Adherence Letter is an Agent, acting within the scope of its authority and executing the Adherence Letter on behalf of a principal known to the Agent as a potential Adhering Party, then the analysis and conclusion reached above as to the satisfaction of the execution and writing requirements of Section 9(b) of the ISDA Master Agreement (and as to the electronic delivery of information) apply equally.

4. Assumptions

The conclusions expressed in this memorandum are based on the following assumptions:

- (a) under all relevant laws, excluding the laws of Ireland, but including in particular the laws of the State of New York, being the expressed governing law of the Protocol, the obligations of the Adhering Parties under the Protocol constitute legal, valid and binding obligations and are enforceable in accordance with their terms, and the Protocol is effective to amend a Covered Master Agreement made between two Adhering Parties in the manner set forth in the Notices Hub Module #1;
- (b) under each applicable law, each Adhering Party is and was at all relevant times able lawfully to adhere to the Protocol (and send and receive any Agency Adherence Module communications contemplated thereby) on the terms set out in the Protocol; its adherence to the Protocol (and any such actions contemplated thereby) are duly authorised; and each Adherence Letter has been properly completed, executed and delivered to ISDA in accordance with the terms of the Protocol, substantially in the form attached as an exhibit to the Protocol, and the signed uploaded Adherence Letter is capable of being accurately reproduced as a visible text image or in tangible paper form;
- (c) under each applicable law, each Adhering Party is and was at all relevant times able lawfully to access the Notices Hub and make any selections and input any relevant information within the Notices Hub;
- (d) the provisions regarding amendments and modifications of each relevant Covered Master Agreement have not been modified, nor their operation altered by other provisions, from those set out in the versions of the ISDA Master Agreement published by ISDA in any manner that is material to the conclusions expressed in this memorandum;

- (e) under each applicable law, each Adhering Party is and was at all relevant times able lawfully to enter into each relevant Covered Master Agreement, its entry into each relevant Covered Master Agreement was duly authorised and each relevant Covered Master Agreement constitutes the legal, valid and binding obligations of each relevant Adhering Party;
- (f) the “Submitting Adhering Party”, “Receiving Adhering Party” or “Matched Counterparty” (as applicable) in respect of a Covered Master Agreement is the relevant Adhering Party or Agent (as applicable) that adhered to the Protocol as required under sub-paragraph 1(e)(iii), and the individual(s) completing the matching process described herein on behalf of the Adhering Party has the capacity and authority to sign agreements for and validly and legally bind such Adhering Party;
- (g) the Notices Hub will be operational at all relevant times and will operate in the manner summarised in paragraph 1 above;
- (h) each party uses the Notices Hub and the Agency Adherence Module in accordance with its terms and any other requirements specified by the operator of the Notices Hub or Agency Adherence Module (as applicable);
- (i) no provision of the Matched Covered Agreement that is necessary to support the conclusions expressed in this memorandum 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;
- (j) each of the representations made by each Adhering Party pursuant to sub-paragraph 3(a) and, if applicable, sub-paragraphs 2(a)(iv) and 2(h)(iii) of the Protocol is accurate in all material respects except, as to matters of law, as set forth in our analysis in section 3 above;
- (k) the Protocol reflects correctly the commercial intentions of each Adhering Party and there is no fact or circumstance relating to any Adhering Party, or any document (including without limitation any Agent Covered Master Agreement) or relationship between or among any Agent, Client or Adhering Party, that would affect the conclusions set forth in this memorandum;
- (l) as between any two Adhering Parties, the later of them to attain such status does so (and any remaining conditions to the occurrence of an Implementation Date between them are satisfied) prior to the formal commencement of insolvency or reorganisation proceedings against either of them, and the conclusions set forth in this memorandum are not otherwise affected by the insolvency laws applicable to any Adhering Party (including any Agent acting on behalf of an Adhering Party);
- (m) insofar as the Protocol relates to a regulated activity in Ireland, any Adhering Party that is carrying on, or purporting to carry on, that regulated activity is an authorised person permitted to carry on that regulated activity or an exempt person in respect of that regulated activity under applicable law;
- (n) insofar as performance in any jurisdiction outside Ireland is contemplated, such performance will not be illegal or invalid by virtue of the laws of that jurisdiction;

- (o) the Protocol's mechanism for amending agreements does not conflict with requirements for contract formation under any laws (other than those of Ireland on which we advise) that govern the rights and duties of the parties under any such agreements, and any substantive or interpretive principles of non-Irish law that may be incorporated into, or affect the interpretation of, a Covered Master Agreement do not materially affect the conclusions set forth in this memorandum;
- (p) each Adhering Party that is contemplated to receive communications from an Agent through the Agency Adherence Module has access to the Agency Adherence Module; and each communication through the Agency Adherence Module that identifies a Client on whose behalf an Agent has adhered to the Protocol is in writing and signed by the Agent, and the communication unambiguously identifies its function for purposes of the Protocol; and
- (q) if an Agent has adhered to the Protocol and, after submitting its signed Adherence Letter to ISDA, the Agent enters into a Covered Master Agreement with an Adhering Party on behalf of a given Client for the first time, that Covered Master Agreement is in writing and signed by the Agent.

5. Reservations and Qualifications

- 5.1 We express no opinion as to the application of the Protocol to any Protocol Covered Document that is not a Covered Master Agreement.
- 5.2 We express no opinion as to the application of the Protocol to any Notices Hub Module other than Notices Hub Module #1.
- 5.3 We express no opinion as to the enforceability of the amendments effected by the Protocol or, except as set forth in our analysis in section 3 above, the enforceability of any provisions of the Protocol.
- 5.4 We call your attention to the arbitration clause of the Adherence Letter and to the existence of differences between arbitral and judicial processes. Our analysis and conclusions are based upon an assessment of legal authorities which would be applicable in judicial proceedings and should not be regarded as providing assurance as to how any of the matters discussed would be resolved in an arbitral process.

6. Reliance, Disclosure and Limitations of Advice

- 6.1 This memorandum is addressed to ISDA solely for the benefit and use of its members in relation to their analysis of the risks and benefits of the Protocol and may not be disclosed to, or relied upon by, any other body or any person, save as set out below. We consent to the disclosure by ISDA or any ISDA member of this memorandum, for information purposes only, to:
 - (a) any banking or other regulatory or supervisory authority in its capacity as regulator of an ISDA member; or
 - (b) any legal or other professional advisor of ISDA or any ISDA member, acting in its capacity as such,

on the basis that we assume no responsibility to any such authority or advisor as a result or otherwise and that no such authority or advisor may rely on this memorandum for its own

benefit or that of any other person and that such authority or advisor shall keep this memorandum confidential.

- 6.2 This memorandum speaks only as of its date. We assume no obligation to update this memorandum at any time in the future or to advise ISDA or any ISDA member of any change in law or change in the interpretation of law which may occur after the date of this memorandum.
- 6.3 This memorandum relates only to matters governed by the laws of Ireland. This memorandum is limited to the matters stated herein and does not extend, and is not to be read as extending by implication, to any other matters.

McCann Fitzgerald LLP

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