

**ISDA Annual Legal Forum
January 30, 2024**

**Welcoming Remarks
Katherine Tew Darras, General Counsel, ISDA**

Good morning and welcome to the Annual Legal Forum in London. Thank you for being with us today and thank you to Linklaters for sponsoring and hosting the event.

With 2024 now well underway, it's probably a little late for me to offer any predictions for the year to come, but perhaps that's not a bad thing. Just think about some of the unexpected events we've experienced in recent years – shocks no one would have predicted at the outset of each year.

In March 2020, the outbreak of the pandemic triggered widespread market stress that tested industry resilience to the limit. In February 2022, Russia's invasion of Ukraine led to prolonged volatility in energy markets. And in March 2023, a series of unexpected bank failures sparked concern about the risk of contagion.

While no one can predict the next shock with any certainty, recent events have clearly shown that we need to be ready for disruption, wherever it might strike. From an unexpected policy shift to a geopolitical shock, market participants need to be able to manage the impact quickly and effectively.

In part, this requires the modernization of outdated manual processes, using technology to create greater efficiency when dealing with stress events. But we also need to make sure our standard documentation is kept fully up to date, with robust provisions for managing disruption.

At ISDA, preparing for disruption is a theme that runs through several of our key initiatives. In these remarks, I'll bring you up to date with two such projects – the review of the 1998 FX and Currency Option Definitions and the development of an industry notices hub. I'll finish by sharing some recent developments in our work on digital documentation.

I'll start with the FX definitions.

Last 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. In general, we found strong support to update the definitions, consolidating the existing supplements and other components and improving clarity on the terms that apply to transactions referencing the definitions.

Our dialogue with the industry also revealed widespread demand to review the provisions relating to disruption events and fallbacks. Recent geopolitical events have made this more urgent. For example, Russia's invasion of Ukraine and the resulting sanctions created uncertainty over outstanding deliverable ruble transactions. In particular, market participants

would like this review to examine the scope of what constitutes a disruption event and what fallbacks would apply when a disruption event occurs.

We're now engaging with our membership on the changes that may be required. We plan to tackle the substantive issues this year and complete the drafting in 2025. We'll work closely with EMTA, which co-publishes the FX definitions with ISDA, as well as SWIFT and other key infrastructure providers. Our expectation is that the updated definitions will be implemented in late 2027.

Reviewing and updating documentation is one way in which we can help firms better manage the risks arising from future shocks. But we also need to think about what might happen if a counterparty stops performing on a contract. Specifically, what can be done to help firms manage the resulting risks and minimize potential losses.

Just a small delay in the delivery of a termination notice – for example, from Friday afternoon to Monday morning – could result in a substantial risk of loss, running into the millions of dollars. In our discussions with market participants, it has become clear that this is neither a rare problem nor an insignificant one. Uncertainty and delays in delivering notices are far more common than they should be.

This uncertainty can arise if a company moves offices and the ISDA Master Agreement is not kept up to date with the correct contact details. ISDA has worked with administrators of the London-based broker-dealer of Lehman Brothers from PwC to analyze a random sample of 255 terminated derivatives relationships. The results suggest around 16% of termination notices were delivered to an office the bank had vacated four years prior to its bankruptcy. If that sample is assumed to be representative, as many as 550 termination notices could have been delivered to the old address following the bank's insolvency. For an entity serving a notice, this type of scenario can raise questions over whether the delivered notice is effective and, if so, when.

This matters because both parties to a trade need certainty on the time a termination-related notice is delivered, as this determines the start and end of any grace period and the earliest point at which trades can be valued and terminated. Uncertainty over the effectiveness and timing of the delivery of notices can have significant economic and legal consequences.

The pandemic created other challenges. With so many offices located in areas subject to lockdown requirements, it became difficult for firms to deliver notices, as well as to know if they had received any. Russia's invasion of Ukraine led to similar issues – it may be challenging to deliver notices to the listed address if it's in a hostile environment.

To tackle this, we've been exploring the concept of an industry notices hub that would allow the instantaneous delivery and receipt of these types of notices. This would reduce the risk and potential losses arising from a delay and provide certainty to all parties on the timing of notice delivery. Parties would agree through a protocol that uploading a notice would constitute effective delivery. Multiple designated people at each firm would then be alerted to the receipt of notices and would be able to access the hub from anywhere in the world.

An industry notices hub would be an elegant solution to a common industry problem. We've found strong support from our members and received indications of interest from several resolution authorities around the world. We've conducted a high-level survey of our e-

contracts counsels and have so far found that there are no obvious impediments to effective delivery using a notices hub in 35 jurisdictions. These include all four ISDA Master Agreement governing law jurisdictions, as well as countries identified as priorities by our members, such as Australia, Canada, China and India.

We will soon begin seeking commitments of support from dealers and large buy-side firms based on a written specification. We have a panel right after lunch that will explore this issue in greater depth.

Before finishing, I'll touch on our digital documentation work.

One of the most challenging aspects of managing a sudden market shock is the need to quickly access relevant documents and clauses to determine the impact on derivatives trades. The last thing anyone wants at a time of market stress is to have to wade through mountains of paper documents or PDFs to find the relevant information. It's a slow and cumbersome process that can lead to increased risk.

You're hopefully all aware of our ISDA Create online negotiation platform. Last year, we announced that ISDA Create is now available through S&P Global Market Intelligence's Counterparty Manager service. This opens the door to the development of an end-to-end data picture, from the onboarding of counterparties to the negotiation of key derivatives contracts. This will make it far quicker and more efficient to access documentation and associated data when needed.

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 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, which could include the ISDA Notices Hub, enabling users to easily access a complete digital record of all relationship and contractual data entered on either platform.

It's been five years since we launched ISDA Create, and the platform has come a long way since then. It's now used by more than 390 firms, with 150 more in testing. Last year, we launched the ISDA Create certified partnership program – an accreditation initiative that provides valuable training and product support to law firms and other third-party advisors to ease the transition to electronic negotiation for all market participants.

So far, 16 partners have joined the program, and I'm delighted to announce that DRS has now moved from gold to platinum – the highest level of accreditation. DRS has truly embraced the move to digital documentation and worked closely with financial institutions and individual market participants to leverage the full benefits of ISDA Create.

I'd like to congratulate DRS on this achievement. As we continue to develop the ISDA Create community in 2024, the certified partnership program allows firms to build the skills and knowledge they need to effectively draft, negotiate and execute documents on the platform.

I've talked in these remarks about three specific ways in which we're working with our members to deliver lasting improvements and efficiencies, which will increase preparedness

for future market shocks. Whether we're updating our documentation, exploring new digital initiatives or further developing our existing platforms, we remain focused on our core mission to make the global derivatives market safer and more efficient.

Thank you.