ISDA European Annual Legal Forum
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Opening Remarks
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Good morning, and welcome to ISDA's European Annual Legal Forum.

Each year, this event provides legal professionals with a valuable opportunity to discuss the most important issues and challenges facing the derivatives market, and to look ahead to upcoming developments. While we are still in the throes of the pandemic, which means we can only meet virtually this year, there remains a great deal to explore today – from the launch of new fallbacks for derivatives linked to key interbank offered rates (IBORs) to the forthcoming publication of ISDA's first natively digital definitional booklet.

We have always known this would be the crunch year for benchmark reform, because the UK Financial Conduct Authority (FCA) made clear back in 2017 that it would no longer compel or persuade banks to submit to LIBOR after the end of 2021. Last Friday, the FCA confirmed that all euro, sterling, Swiss franc and yen LIBOR settings will either cease to exist or become non-representative after December 31, 2021. One-week and two-month US dollar LIBOR will also cease at that time. The remaining US dollar tenors will either cease or become non-representative immediately after June 30, 2023.

The FCA announcement gives market participants a very clear timetable to transition to alternative reference rates. It also gives firms clarity on exactly when the new fallbacks for outstanding LIBOR exposures will take effect, and the spread adjustments that will be added to the adjusted risk-free rates in the fallback methodology.

The new IBOR fallbacks mitigate the market disruption that would occur if an IBOR permanently ceases to exist or, in the case of LIBOR, is deemed to be non-representative before firms have transitioned to alternative reference rates. The fallbacks create a critical safety net that allows market participants to proceed with benchmark transition, safe in the knowledge that a viable back-up rate based on a transparent and consistent methodology will automatically take effect if a cessation event occurs.

Uptake of the fallbacks has been very strong so far, with more than 13,500 entities from around 85 countries adhering to the IBOR Fallbacks Protocol, which allows firms to incorporate the fallbacks into existing derivatives contracts with counterparties that have also adhered to the protocol. Meanwhile, the IBOR Fallbacks Supplement incorporates the fallbacks into new covered IBOR derivatives referencing the 2006 ISDA Definitions.

Of course, this is not the end of the road and there's still plenty of work to do. But the fallbacks represent a major step forward in mitigating the systemic risk associated with an IBOR cessation event.

Let’s pause here and consider another important dimension to the IBOR Fallbacks Supplement. This is, in fact, the 70th supplement to the 2006 ISDA Definitions. That number reflects the multitude of developments that have taken place in derivatives markets since 2006, but it has meant the definitions have become increasingly complex and difficult to manage.

The good news is that this will be one of the last supplements to be added to the 2006 ISDA Definitions, because we will soon be launching the 2021 ISDA Interest Rate Derivatives Definitions.

As well as updating the definitions to take account of the many changes in regulation and market practice over the past 15 years, the 2021 Definitions will be published in purely electronic form via a web-based user interface.

This represents a major step change for derivatives documentation. In the future, rather than issuing new supplements in paper or PDF form, ISDA will amend and restate the definitions in full via the user platform every time they are updated. This means that rather than having to parse through the definitional booklet and numerous supplements to determine the complete set of contractual terms relevant to a particular trade, market participants will be able to easily access and compare different versions of the definitions, as well as take advantage of other features like hyperlinked terms and enhanced search functionality.

Alongside other vital changes to cash settlement provisions, the role of calculation agents, descriptions of floating rate options and the treatment of market closures, the upgrade will modernize and future proof this flagship definitional booklet for the challenges that lie ahead.

This is an important step in a broader initiative to digitize documentation to increase efficiency and reduce costs for market participants. This has been a key objective for ISDA for several years now, but the coronavirus pandemic has strengthened the case for digitization.

Two years ago, ISDA and Linklaters launched ISDA Create, an online platform that allows firms to produce, negotiate and execute documentation entirely online, as well as capture, process and store digital data from those documents.

The first module on ISDA Create allowed users to electronically negotiate and execute initial margin (IM) documentation, which remains a key priority for many firms as they prepare for phases five and six of the implementation of IM requirements.

We have now expanded the platform with the addition of new documents, including the ISDA Master Agreement and the ISDA Clause Library, a drafting tool that that promotes greater standardization of language within ISDA documentation.

This represents a major step forward for the derivatives market. Having the ISDA Master Agreement and ISDA Clause Library available on ISDA Create in digital form means firms can efficiently negotiate the provisions of the agreement and electronically capture key relationship and other legal data for risk management and other purposes. As with all of our digital initiatives, the effect will be to increase transparency and efficiency, while reducing cost, time and risk.

These are exciting times for the derivatives industry. As we enter a critical phase of the benchmark reform process, we are moving at pace with the digitization of documentation and have much to look forward to as those initiatives bring substantial efficiencies and savings. While it is unfortunate that we cannot discuss in person this year, I am nonetheless delighted to welcome you to the European Annual Legal Forum and I hope you find the sessions interesting and engaging.