



ISDA[®] create

Unlocking Efficiencies
and Savings: Digitized
Legal Documentation
Negotiation

INTRODUCTION

The derivatives industry increasingly recognizes the need for greater standardization, automation and digitization across the trade lifecycle, from the creation and negotiation of legal documents to post-trade processing.

Increased document standardization and the electronic creation and negotiation of legal documentation bring significant benefits to market participants, making the negotiation process more efficient, less complex and less time consuming.

This paper compares a paper-based legal document negotiation process to the workflow of ISDA Create, built on the CreateiQ platform. It includes a number of case studies that demonstrate the benefits of ISDA Create for drafting and negotiating legal agreements and negotiating account control agreements (ACAs) and initial margin (IM) documentation. The paper also explains how ISDA Create introduces greater document standardization and helps firms better manage their legal data.

CONTENTS

Executive Summary	04
Current Paper-based Agreement Negotiation Process	05
ISDA Create's Workflow.....	07
Case Study 1: Drafting Legal Agreements on ISDA Create.....	08
Negotiation of Custody Agreements on ISDA Create.....	11
Case Study 2: Using ISDA Create for Negotiation of Custody Agreements	11
Case Study 3: Estimating Savings from Negotiation of ACAs for Phase-six Firms on ISDA Create	12
Negotiation of IM Documentation on ISDA Create	13
Case Study 4: Using ISDA Create for IM Documentation Negotiation	13
Case Study 5: Negotiation Process On and Off Platform: A Lawyer's Perspective.....	13
Negotiation of Benchmark Reform Amendment Agreements on ISDA Create	15
Case Study 6: Bulk Upload for Amendments in VM CSAs	15
ISDA Clause Library on ISDA Create	16
Data Management on ISDA Create.....	17
Conclusion.....	18

EXECUTIVE SUMMARY

The derivatives industry increasingly acknowledges the need for greater standardization, automation and digitization across the trade lifecycle, from the creation and negotiation of legal documents to post-trade processing.

Firms have historically relied on a paper-based agreement negotiation process involving back and forth between different teams in the firm and between counterparties. It usually entails multiple manual revisions, comments and approvals, reconciliation of various versions and manual input into relevant systems – a process that is inefficient, time consuming and error prone.

Many derivatives documents, such as the ISDA Master Agreement and credit support annexes (CSAs), are still heavily negotiated between transacting parties. While a degree of customization is necessary to reflect the variety of market participant needs, this variation creates a layer of complexity and introduces operational and technology challenges.

Greater document standardization and the use of technology to electronically create and negotiate legal documents removes much of this complexity, making the negotiation process more efficient and less time consuming.

ISDA Create allows firms to generate, negotiate and execute documentation completely online and capture, process and store data from these documents and their negotiations. Originally launched in January 2019 to help firms negotiate documentation to comply with regulatory IM requirements, the platform has been extended to cover other documents, including the ISDA Master Agreement.

Since launch, more than 300 buy- and sell-side firms have joined the platform. Over the course of 2022, the number of negotiations on the platform increased by over 500%, with ACAs and ISDA IM documents the most common.

As entities in scope of phase six¹ of the margin requirements for non-cleared derivatives prepared for implementation during 2022, 2,519 ACAs were fully negotiated on CreateiQ² and an additional 1,345 ACAs were uploaded onto the platform. Estimating a 30-minute saving for each ACA fully negotiated on the platform, this resulted in an overall saving of 1,259.5 hours, the equivalent of 157 business days.

But while there has been progress towards online negotiation and execution of derivatives documentation via ISDA Create, broad industry adoption of digitized agreements remains in the nascent stages. As more market participants recognize the benefits of a digitized negotiation process and adopt ISDA Create, the benefits and cost savings will increase exponentially for both existing and new users.

This paper compares a paper-based legal documentation negotiation process to the ISDA Create workflow. It includes a selection of case studies that demonstrate the benefits of ISDA Create for drafting and negotiating legal agreements and negotiating IM documentation and ACAs for phase-six firms. The paper also explains how ISDA Create can introduce greater document standardization and help firms manage their legal data.

¹ Phase six firms became subject to initial margin (IM) rules for non-cleared over-the-counter derivatives on September 1, 2022

² ISDA Create sits on the broader CreateiQ platform, which hosts document forms that do not represent ISDA intellectual property. ISDA documents sit on ISDA Create, while documents from Bank of New York Mellon (BNY Mellon) and other non-ISDA entities are on CreateiQ

CURRENT PAPER-BASED AGREEMENT NEGOTIATION PROCESS

Market participants have typically used a paper-based agreement negotiation process. This involves multiple teams across a company, including those in credit and market risk, compliance, operations, collateral management and legal. It requires significant back and forth within the firm and between counterparties, numerous manual revisions, comments and approvals, reconciliation of various versions, and manual input of the final document and its provisions into internal systems. This makes the negotiation process time consuming, inefficient and prone to error.

The workflow regularly comes to a stop as requests are made between the two negotiating parties, while internal stakeholders often need to opine on, review and/or approve the documents and their relevant provisions, creating delays and additional costs. The process is further inhibited by operational limitations from beginning to end.

To initiate a new negotiation, a firm would first need to identify the correct document to use as a starting point. It could use a blank template (eg, from the ISDA bookstore), the last signed contract with that counterparty and/or a precedent from another negotiation. Firms therefore need to maintain their own derivatives document template database, requiring regular updates and review.

When creating or updating the document, a wide range of amendments to standard terms might be required and changes may need to be reviewed and approved by the appropriate internal stakeholder(s). On average, it can take several hours to create a first draft.

Before a draft can be sent to a counterparty, it may require additional review and/or approval from internal stakeholders, which is often conducted via email or phone and recorded manually in a file or email folder. Once approved, the document is sent to the counterparty, typically by email. The negotiation process then gets underway, with progress manually tracked on an individual basis.

Each negotiated draft usually involves multiple email interactions between the counterparties and other external entities (eg, legal advisers). Trading, risk and operational teams may also use other channels (eg, phone calls or instant messages) to get status updates or obtain approvals for new provisions. This process is inefficient and time consuming and makes a robust audit trail difficult to achieve.

Initial drafts might be rejected by the other party, which may send its own version of the document. This will involve marking up differences, reviewing whether changes are substantive and conducting legal analysis of new clauses, often drilling down to the meaning of specific words.

As this process is manual, each negotiated draft requires multiple rounds of version reconciliation to ensure team members are working from the most current draft. It might take weeks – sometimes months – for counterparties to negotiate and reach agreement.

Before executing an agreement, parties have to manually verify that the final version is correct and all required approvals have been obtained. The initiating party must create execution versions of an agreement for each party, including signature pages, and send those via email or, on some occasions, by courier.

Firms sign the agreement and file and archive each individually in paper or PDF form. To extract legal data, firms would need to manually input the information into their documentation, risk and operations systems.

On average, it can take 60 days or more to execute umbrella agreements, while amendments may take several days to months to execute, depending on the complexity. Based on Aite-Novarica Group's estimate, the operations cost for negotiating one agreement for 60 days could range from \$5,800 to \$11,600³ (excluding legal fees).

³ Are You Invested in Agreement Digitization? An Industry View of the Cost and Value of Connecting Documents with Data <https://www.acadia.inc/insight/market-study>

ISDA CREATE'S WORKFLOW

ISDA Create enables market participants to automate the creation, negotiation, execution and delivery of documentation with multiple counterparties simultaneously. Document negotiation is performed online, but the system provides flexibility to take one or more of the steps offline if required.

ISDA Create

ISDA Create is an online solution, built on the CreateiQ platform, that allows buy- and sell-side market participants to electronically negotiate their documentation, making the negotiation process far more efficient and less time consuming⁴.

First launched in January 2019, ISDA Create is a collaboration between ISDA and Linklaters.

The platform enables market participants to generate, negotiate and execute documentation online, as well as capture, process and store data from these documents. Originally launched to help firms negotiate documentation to comply with regulatory initial margin requirements, the platform has been extended to cover other

documents, including the ISDA Master Agreement, standard amendment agreements, Bank of New York Mellon account control agreements, and interest rate benchmark reform amendment agreements.

In June 2022, ISDA and Linklaters announced the launch of a new variation margin (VM) module that embeds the ISDA Clause Library for credit support documentation within the relevant VM documents on the platform.

ISDA Create offers a rich set of user-friendly features, a full audit trail of the negotiation history, risk management tools and real-time transparency on progress with every counterparty.

To start the negotiation process, users need to generate/draft a document⁵, and they have the option to use a preset (a template) or a bespoke (blank) version. A preset includes preselected populated elections, although changes can be made by editing elections, incorporating bespoke language or adding any approval requirements or comments.

The platform allows firms to make standard elections, as well as customize any election on a party-by-party basis. There are no restrictions on what parties can agree on a bilateral basis on the platform. The system automatically reconciles both standard elections and bespoke provisions exchanged and flags the differences in an efficient and easy-to-read way.

The first draft of a preset document can be produced within minutes. A user can create an unlimited number of presets with different negotiation parameters at the click of a button. As well as produce drafts, a preset can be used to respond to another draft.

When a draft is completed, a user can send the document to as many as 1,000 different counterparties, either by manually entering each counterparty name with an active email or by loading a list of counterparties and emails in bulk from a spreadsheet.

Counterparty names are tied to the global legal entity identifier database, and all invitations to counterparties to negotiate are automatically stored in the system. Even when sending a large number of drafts, each email/counterparty name is a unique negotiation, which is immediately tracked on the platform and can be located on the dashboard for status and time spent.

⁴ ISDA Create InfoHub www.isda.org/2020/09/10/isda-create-infohub

⁵ ISDA Create allows external advisers to draft and negotiate agreements on behalf of users

Case Study 1: Drafting Legal Agreements on ISDA Create

The drafting process has become significantly simpler since using ISDA Create. Presets have been created based on ISDA published documents that have been digitized on the platform. This means all a negotiator needs to do when drafting a legal agreement is to select the relevant document, choose a preset and then populate the client's name and any relevant details.

Elections and fallback positions are also included on the platform, so if the draft needs to be changed from the original template position, then this can easily be achieved by clicking on the relevant clause and choosing one of the possible elections or drafting choices within the election.

Once the agreement is drafted, it can be sent to the counterparty (or multiple counterparties) via an email invitation containing a link directly to the platform or by extracting the draft document, attaching it to an email and sending it directly to the counterparty.

Prior to using ISDA Create, all templates were housed in an online repository system. Negotiators had to go into the system, download the relevant template and populate it manually.

If any changes had to be made to elections or fallbacks, negotiators had to manually go into other templates, documents or industry sources, seek the specific language to cut and paste into the document and then check the referencing and formatting.

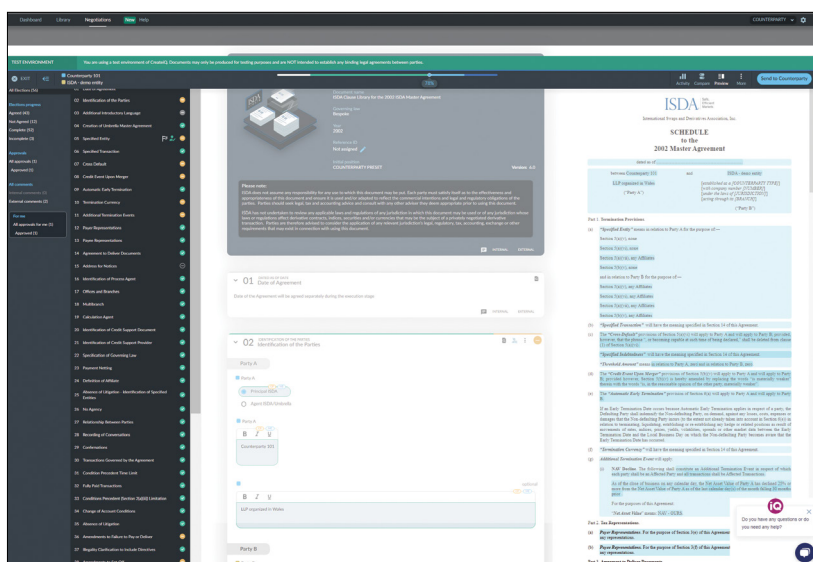
The main benefits of using ISDA Create are speed, accuracy, simplicity and efficiency. Having all drafts on the platform creates an audit trail, which is not possible when using email, and prevents the risk of human error in the drafting and negotiation process.

Currently, the most common documents that are drafted on ISDA Create are account control agreements and ISDA initial margin documents.

HSBC

Once an invitation to negotiate is received, a counterparty can apply any presets to the document. These presets can be the same as those used to draft a document. The review process, which historically has involved marking up, reviewing and analyzing changes, is therefore much simpler. ISDA Create automatically highlights elections that match between the parties and can apply the counterparty position across all elections.

Election-level approval can be set at any point during a negotiation. Once selected, any changes to an election choice will need to be approved by the chosen person or several approvers, but the approvals process is automated. When a user makes a change to the original election, an approver (or several approvers) would receive an automated request to review the relevant provision.

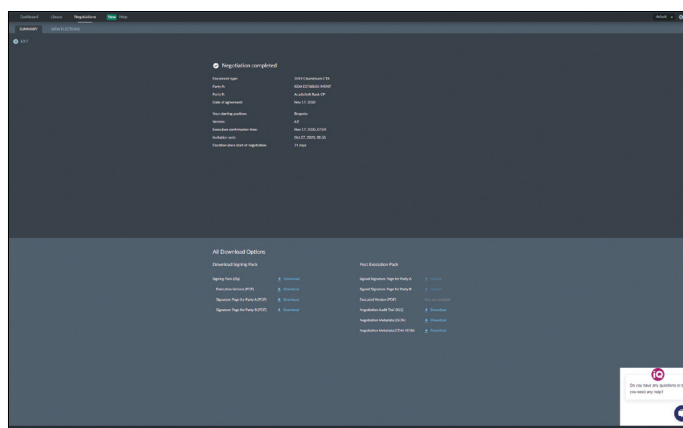


The legal negotiator (and others permitted in the platform settings) can track and monitor the approvals directly on the approval dashboard, which reduces the time spent by the negotiator on part of the negotiation process. A record of the approvals and any comments are recorded as a part of the negotiation (just like the document provisions themselves) and can be used as a reference point for future audits or questions about the document.

◀ Negotiation with Comment List, Approval and Agreed/Not Agreed Information

Other comments made throughout the negotiation are also embedded in the document and can be sent to the counterparty. Like approvals, these discussions (internal and external) become a piece of the digital data footprint for the negotiation. As the document progresses through the negotiation process, it is easy to identify what is not agreed through various sort features or by viewing the status.

These features enable collaboration among various teams within a firm. Users outside of the legal department can view negotiation progress via the dashboard, creating transparency and avoiding the need to phone or email colleagues for updates. Counterparties can also see the timing and evolution of negotiations on the dashboard.

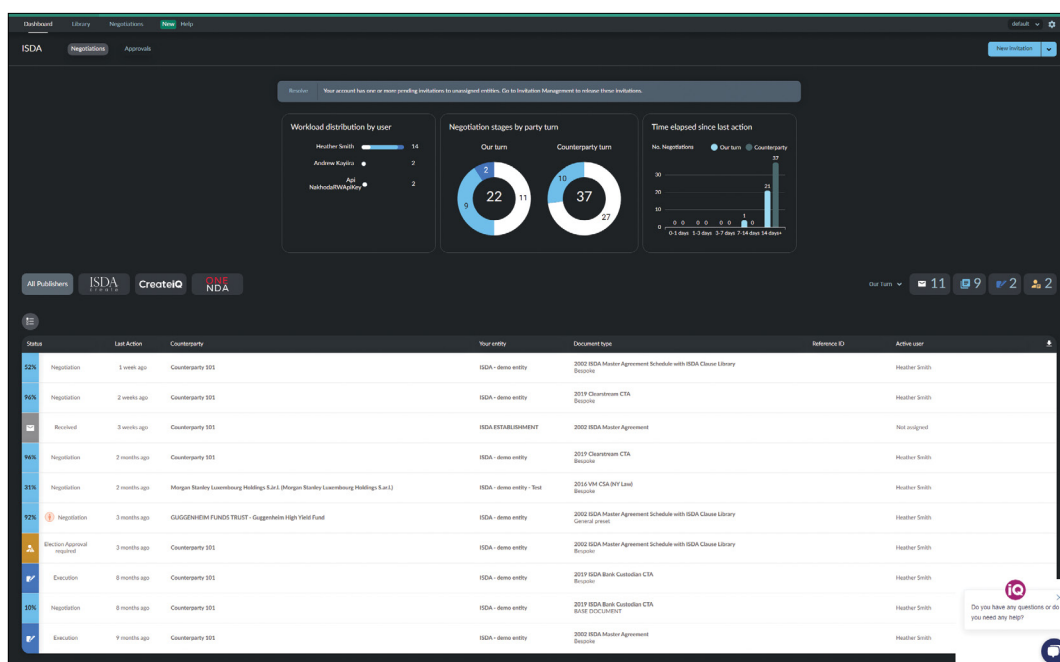


▲ A Completed Negotiation with Download Options

Once changes and comments are made and elections are confirmed, the document can be sent back. If approvals are set up within the platform, approvers are sent an automatic email to review various provisions when the document is returned. This process continues until both parties have agreed to the same elections. Progress is easily visible due to a percentage of completion tracker at the top of the screen.

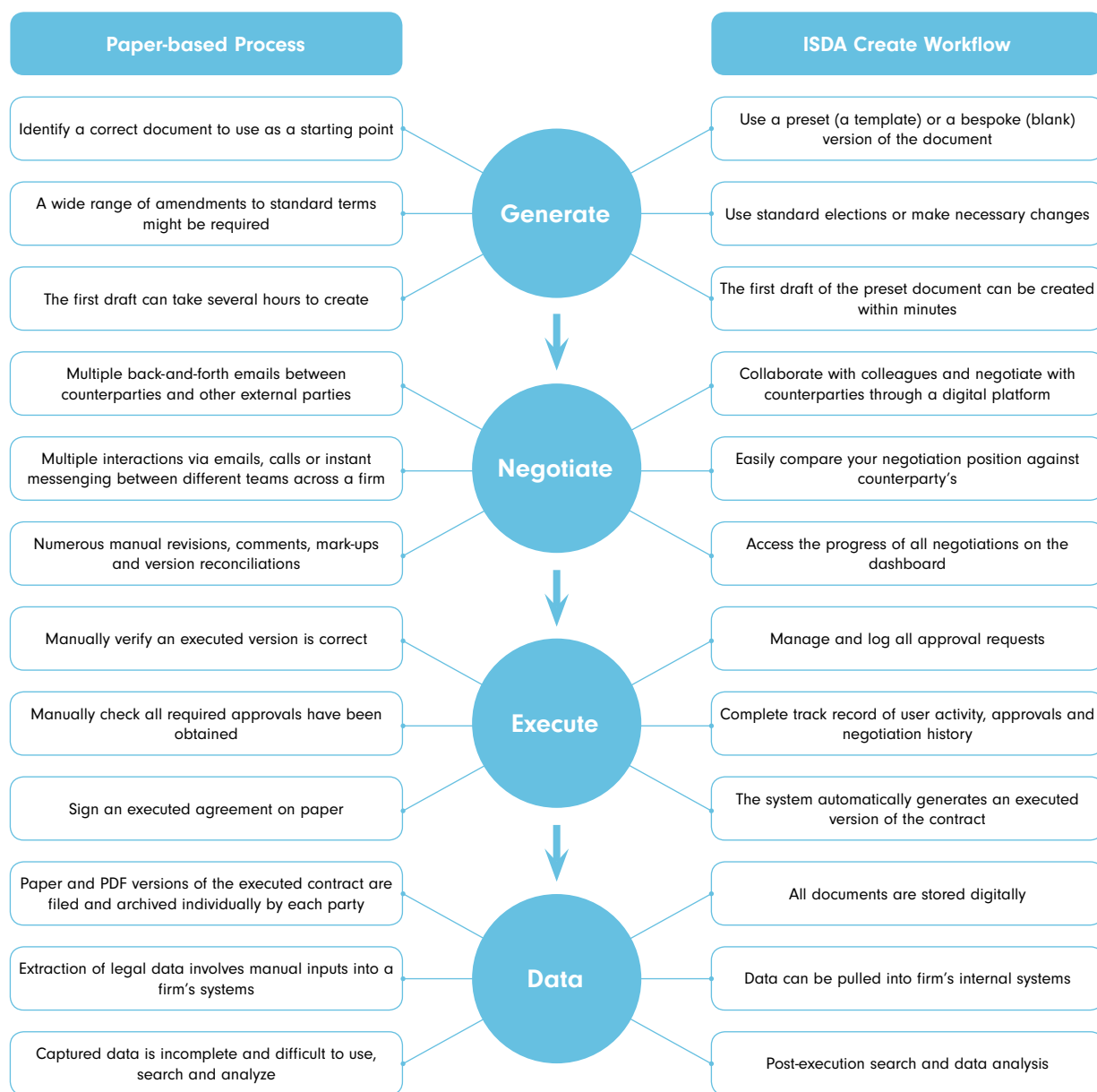
When the document and all corresponding elections are finalized, the parties must agree on a date and choose whether to execute the document directly on the platform via an e-signature or download the signature pages, execute off-platform and mark the document as complete.

The system automatically generates a final version of the contract and its elections. Following execution, the document can't be altered and all terms are automatically retained on the platform. ISDA Create also keeps the complete record of user activity, approvals and negotiation history.



▲ The User Dashboard

Chart 1: Comparison of Legal Documentation Negotiation Process via Paper-based Agreements and the ISDA Create Workflow



NEGOTIATION OF CUSTODY AGREEMENTS ON ISDA CREATE

In the run-up to the implementation of phase six of the regulatory IM requirements for non-cleared derivatives in September 2022, Bank of New York Mellon (BNY Mellon) published its triparty and third-party ACAs on ISDA Create, enabling users to negotiate terms and sign those documents online.

The threshold for compliance for phase six fell to \$8 billion in average aggregate notional amount, bringing hundreds of smaller entities into scope. Many of these firms lacked the resources to conduct lengthy bilateral negotiations of legal agreements with all their counterparties and custodians, so they turned to third parties for assistance.

Having both BNY Mellon's ACAs⁶ and ISDA's credit support documents available on ISDA Create brought significant efficiencies to the negotiation process and helped phase-six firms meet the September 2022 compliance deadline.

As more counterparties come into scope by breaching the threshold, ISDA Create continues to provide users with an efficient way to put their documentation in place. Online negotiation of triparty and third-party ACAs for regulatory IM on ISDA Create not only saves time and simplifies compliance efforts, but also gives market participants a complete digital repository of the resulting legal materials.

Case Study 2: Using ISDA Create for Negotiation of Custody Agreements

To complement Bank of New York Mellon's (BNY Mellon) RULE platform, which automates the creation of a client's eligible collateral schedules for a range of transactions including derivatives, the bank decided to deploy ISDA Create (CreateIQ)⁷ to help further standardize the processes for negotiating account control agreements (ACAs) for phase-six firms.

Prior to using ISDA Create (CreateIQ), BNY Mellon worked with DRS, a third-party legal team, to manually validate all incoming ACAs. This involved checking Word documents, running a blackline comparison and making sure that no significant changes were made.

While ACAs were non-negotiable in phase five and counterparties were only supposed to select a set of contractual terms, some clients attempted to make changes in the documents, significantly delaying the process.

CreateIQ allows clients to send and receive ACAs for regulatory initial margin. Drafting a template on the site requires a user to elect a set of contractual

terms and fill in a series of required fields.

Once an invitation is received, a pledgor must select either a bespoke or predetermined version of the document. The pledgor can review its elections using the navigation panel and send those elections and contractual terms to the custodian. The negotiation process continues until all parties reach a final agreement.

The custodian and the pledgor agree on the document and a template that can be sent to the secured party. Once the secured party receives the document, it can compare elections with the pledgor. They can confirm their elections and add approvers. The custodian can view all the updates the pledgor and secured party have made but cannot edit the document.

After the pledgor and secured party have confirmed their elections, the document is sent for final approval by the custodian. An execution date is agreed, all signature pages are uploaded and the negotiation is confirmed, completing the custodian workflow.

↓ Continues on next page

⁶ Account control agreements govern the terms of collateral segregation and management between a custodian and two trading counterparties

⁷ ISDA Create sits on the broader CreateIQ platform, which hosts document forms that do not represent ISDA intellectual property. ISDA documents sit on ISDA Create, while documents from BNY Mellon and other non-ISDA entities are on CreateIQ

Continued from previous page

When the client receives a document back from a counterparty, it can easily see all its elections and is able to focus only on the ones it disagrees with. This saves a significant amount of time and effort.

When clients use CreateiQ, only certain elections

and information can be entered into the system. Just a couple of clauses need to be checked and approved, which is much quicker than the previous method.

BNY Mellon and DRS

Case Study 3: Estimating Savings from Negotiation of ACAs for Phase-six Firms on ISDA Create

When comparing overall volumes in phase five versus phase six, DRS was able to successfully process 37% more account control agreements (ACAs) up to the September 1, 2022 deadline, while utilizing a broadly similar level of staff. As there were some process enhancements by Bank of New York Mellon/DRS, that efficiency gain cannot all be definitively attributed to CreateiQ, but it was a significant factor in the increase in productivity.

The process employed during phase five involved the manual checking and processing of draft ACAs in Word, the production of execution copies in PDF form, and distribution to the client via email of the PDF execution copy and blacklined drafts. This process took approximately 45-50 minutes on average per ACA.

Using CreateiQ during phase six, the equivalent process involved checking the ACA terms and the approval of the ACA on the platform. This took on average 10-15 minutes per ACA, representing a time saving efficiency of around 70% for a critical part of the end-to-end process.

Overall, 2,519 ACAs were fully negotiated on CreateiQ and an additional 1,345 ACAs were loaded onto the platform using the bulk-upload function. Conservatively estimating a 30-minute reduction per ACA fully negotiated on the platform, this resulted in an overall saving of 1,259.5 hours, the equivalent of 157 business days.

DRS

NEGOTIATION OF IM DOCUMENTATION ON ISDA CREATE

ISDA Create allows users to deliver IM documentation to multiple counterparties simultaneously and then negotiate and execute those documents completely online. The platform also enables firms to digitally capture, process and store the resulting data, which can be used for commercial, risk management and resource management purposes.

There are currently 23 IM-related documents on ISDA Create, covering multiple jurisdictions. These include the 2018 Credit Support Annex For Initial Margin (IM) (Security Interest – New York Law), the 2018 Credit Support Deed For Initial Margin (IM) (Security Interest – English Law) and collateral documents for use with a bank custodian, Euroclear and Clearstream.

In addition to bilateral negotiation of regulatory IM agreements, ISDA Create's IM module supports the negotiation of custody agreements and ACAs by custodians that publish their forms on the platform.

Case Study 4: Using ISDA Create for IM Documentation Negotiation

HSBC started using ISDA Create during phase four of the regulatory initial margin (IM) implementation. Comparing the resource requirements with phase three, HSBC was able to redeploy IM resources to other projects during phase four, even though the number of IM relationships had increased.

Efficiency increased significantly for a variety of reasons, but about 20% of that efficiency could be attributed to the use of ISDA Create. In both cases, HSBC met the regulatory deadlines for 100% of

designated relationships.

From January 2022, all phase-six Bank of New York Mellon (BNY Mellon) account control agreements (ACAs) (where HSBC posts) and schedules to the ISDA Master Agreement for corporate clients were drafted on the platform. The time it takes to draft a phase-six BNY Mellon ACA was reduced by 50% compared to phase five when BNY Mellon ACAs were drafted manually.

HSBC

Case Study 5: Negotiation Process On and Off Platform: A Lawyer's Perspective

I have prepared and negotiated many documents for the exchange of regulatory initial margin (IM) for both my dealer and buy-side clients. Initially, all of these negotiations were done on paper with parties working with Word files and PDFs. Then, some parties started using ISDA Create during phases five and six of the IM rules for non-cleared derivatives, as well as post-phase-six implementation. This gave me a new perspective on how the documentation process can really benefit from this digital platform.

Some counterparties initially offered to negotiate the Bank of New York Mellon (BNY Mellon) account control agreement (ACA) using CreateIQ⁸. The terms parties need

to agree before the BNY Mellon ACA can be finalized and executed are listed online on the platform. If I am reviewing a BNY Mellon ACA for one of my clients, I can see the elections the counterparty proposed and indicate whether I agree or have a different position.

For example, under the partial transfer of collateral provision, the platform shows 'applicable' and 'not applicable' for this field, with a circle that can be clicked and filled in. If the counterparty proposes that this not be applicable, I will see 'not applicable' checked with 'CP' (standing for counterparty) above that choice. If I agree on behalf of my client, I can click this and 'CP' and 'ME' will appear above that choice and a green checkmark will

↗ Continues on next page

⁸ ISDA Create sits on the broader CreateIQ platform, which hosts document forms that do not represent ISDA intellectual property. ISDA documents sit on ISDA Create, while documents from BNY Mellon and other non-ISDA entities are on CreateIQ

Continued from previous page

show that this term is agreed. If I disagree on behalf of my client, 'ME' will appear above my choice. If I, my client or its counterparty log onto ISDA Create, any of us can quickly see what is agreed, not agreed or to be decided (eg, notice information). That is much easier and quicker than looking for this information in a paper document.

Using ISDA Create, I can click on an election and see how that term is expressed in the paper document. I can also see the number of agreed terms, the percentage of agreed terms, which terms are optional, the date the document was first prepared and whether the document is with me or the other side for review and comment. As well as clicking my choice, I can also complete a comment box if I disagree with a choice the counterparty has made and add some notes with the reason for my differing position, which is another helpful feature. In my opinion, all of these aspects of the platform make document preparation, negotiation and execution more efficient than using paper.

In addition to BNY Mellon ACAs, some parties agree to negotiate regulatory IM credit support annexes (CSAs) on ISDA Create. As with the BNY Mellon ACA, the ease and efficiency of using the platform to negotiate regulatory IM CSAs is very helpful. As of now, my experience has been that more parties are amenable to negotiating a BNY Mellon ACA on CreateIQ than negotiating both the ACA and the IM CSA on the platform. I think this is a matter of the market getting more used to working with this document digitally. I have seen an uptick in parties that want to (or agree to after my request) negotiate one or both of these documents on ISDA Create, which is a good sign. It is also worth noting that I found ISDA Create to be very intuitive to use and easy to learn and navigate.

From a lawyer's perspective, exchanging documents and information over email can be time consuming for regulatory IM negotiations. This is especially relevant as the deadlines can be tight for parties when the exposure approaches the documentation threshold. As with other documentation negotiations, each side often sends mark-ups and/or comments back and forth by email. One email may have a mark-up of a BNY Mellon ACA and another email from a different date may have a mark-up of a regulatory IM CSA. Yet another email may not have an attachment but just a comment on a new proposal or agreement to an open term.

These negotiations can entail months of discussions and numerous emails, and counterparties have different ways of marking comments (eg, footnotes, comment boxes or emails). It's sometimes necessary to search through historical emails to pull old comments and drafts

and piece together the negotiation status. By having a digital record on ISDA Create, I merely have to log onto the platform to see the status of the negotiation, which items are open, any comments from the counterparty and any comments I provided.

When it is time to execute documents, I spend time reviewing execution copies to make sure the agreed terms are included and there are no inconsistencies. As an example, a counterparty emailed me the execution copy of a regulatory IM CSA that we negotiated, and I noticed that some terms in that version were not what we agreed. When I called to discuss this, the lawyer said they accidentally used an older version of the draft we were negotiating and quickly rectified this with an updated execution copy. When using the online platform, you are always working from the latest agreed version. Once everything is agreed, that is what is used for execution.

In addition to the benefits for individual negotiation, using ISDA Create allows me to access all my negotiations at the dashboard level. Invitations to negotiate regulatory IM documentation can be sent to one counterparty or a number of counterparties with a click. This is more effective than searching through and sending emails.

Parties are not exchanging drafts via email but commenting on a single document stored on the platform. That document can be reviewed and revised by the two sides to a negotiation and by multiple internal stakeholders on each side.

Term reconciliation immediately compares your position to the counterparty's position, provision by provision, without having to run blacklines. This makes the review process quicker and cleaner. Internal and external comments are easily viewed and stored, so the history of the rationale and issues are easily accessed in one place.

When the document is completely agreed, a single central execution copy can be created with a click of a button, avoiding the risk of inconsistencies. Using the adviser functionality, firms can have documents negotiated by their outside counsel but still have full access for review and approvals. All final executed documents are stored in one place.

I am pleased to see the market is using ISDA Create with more frequency to negotiate regulatory IM documentation. In my opinion, as the market embraces this technology and its benefits over time, it will become a standard method of negotiating derivatives documentation available on the platform.

Partner, Katten Muchin Rosenman LLP

NEGOTIATION OF BENCHMARK REFORM AMENDMENT AGREEMENTS ON ISDA CREATE

ISDA Create offers a suite of interest rate benchmark reform documents to assist market participants with the transition from interbank offered rates (IBORs) to alternative risk-free rates. For example, the EONIA Bilateral Amendment Agreement enabled parties to amend one or more of their existing confirmations, credit support documents and/or Master Agreements before the permanent cessation of EONIA on January 3, 2022.

The bilateral forms for IBOR fallbacks allow counterparties to negotiate certain modifications to the terms of the ISDA 2020 IBOR Fallbacks Supplement and the ISDA 2020 IBOR Fallbacks Protocol or agree to include the new fallbacks in transactions entered into before January 25, 2021, if one or both counterparties has not adhered to the protocol.

When a platform user needs to make sweeping changes to documents for a regulatory deadline like benchmark reform, many documents need to be amended at the same time.

Case Study 6: Bulk Upload for Amendments in VM CSAs

ISDA Create includes functionality that allows users to import spreadsheets to populate documents in the platform by choosing the bulk upload button. This function enables the platform to import elections from an Excel spreadsheet, map them to relevant elections and draft the document in minutes.

HSBC used ISDA Create for a bulk outreach on an interbank offered rate transition project. Multiple variation margin credit support annex amendment agreements were drafted simultaneously following the upload of a spreadsheet. It took approximately six hours in total using two people to reach about

900 counterparties. It's about 10 times faster than reaching out manually with counterparty-specific drafts, which may have taken approximately 60 hours.

A generic template amendment would have been sent via a mass outreach email without counterparty-specific details. This would require a degree of manual intervention from counterparties prior to execution.

The more firms that use ISDA Create, the greater the benefits would be for all market participants.

HSBC

ISDA CLAUSE LIBRARY ON ISDA CREATE

Many derivatives documents, such as the ISDA Master Agreement and CSAs, are still heavily negotiated between transacting parties. A degree of customization is undoubtedly necessary to reflect the variety of market participant needs, but this variation creates a layer of complexity and introduces operational and technology challenges.

Inconsistencies in the way legal agreements are negotiated create uncertainty. The lack of standardized language across agreements and counterparties may result in different representation of data from firm to firm.

The ISDA Clause Library is a tool that sets out standard drafting options for frequently negotiated provisions within the ISDA Master Agreement and variation margin (VM) CSAs, as well as the most common variants of these provisions. The aim is to cut down on instances of differently worded clauses that essentially achieve the same outcome, making contract negotiation more efficient and improving the consistency and accuracy of legal agreement data⁹.

The ISDA Clause Library provides firms with access to hundreds of the most commonly negotiated clauses within the ISDA Master Agreement and VM CSAs, both on paper and via ISDA Create. Using these tools, firms can draft and negotiate clauses (approved by both buy- and sell-side firms) more efficiently and consistently.

The paper form of the ISDA Clause Library requires users to review, locate and draft various provisions for agreements, which can take time. In contrast, the digitized version on ISDA Create allows users to easily navigate and draft clauses using drop-down menus. As the clauses are digitized, differences are easily visible on the platform for all stakeholders throughout the negotiation process, helping the reconciliation process. Each contract and negotiation creates a unique data footprint, which provides users with data they can use across their firm.

The inclusion of the ISDA Clause Library on ISDA Create introduces greater standardization in how firms negotiate and agree on provisions when negotiating a Master Agreement and/or VM CSA, making contract negotiation more efficient and improving the consistency and accuracy of legal agreement data. The ISDA Clause Library will be updated over time to reflect changes to market and legal practices, and these changes will be added to ISDA Create.

⁹ ISDA Launches Clause Library www.isda.org/2020/06/23/isda-launches-clause-library

DATA MANAGEMENT ON ISDA CREATE

When new agreements are executed on paper, extracting legal data involves manually entering the relevant fields into a firm's documentation, risk and operations systems. This process of interpreting and capturing data is time consuming and error prone.

An error on a CSA could go unnoticed for an extended time and could result in a significant adjustment to profit and loss when corrected. Agreements and amendments may be missed altogether if someone forgets to send them via email, meaning they never get processed. There could be regulatory and/or enterprise implications for errors or missed documents, which could result in internal audit findings and, in some extreme cases, criminal or civil penalties.

Negotiators consistently review legacy PDF terms and provide stakeholders with information they need to perform the obligations specified within the agreements. The time it takes to review documents can pose high risk when market participants need to adjust or amend documents in response to regulatory changes or market events.

ISDA Create allows users to digitally catch, process and store legal data from negotiated documents. It removes the requirement for post-execution data transfer from negotiated documentation into internal systems, reducing the potential for errors. The platform allows users to generate reports and to pull data into internal systems if needed.

Using ISDA Create can make it easier for firms to quickly identify relationships affected by market events or regulatory changes and analyze the impact without needing to manually search through paper documents and PDFs.

By enabling firms to access a source of data in a digital format, ISDA Create supports automation, drives efficiency, and reduces costs and operational risk for market participants.

Using ISDA Create for Collateral Management

The ability to capture and store data via ISDA Create helps improve the efficiency of collateral management processes. Managing margin calls for each trading relationship requires legal information from a firm's credit support documents. Under a manual regime, market participants must reference paper/PDF versions for threshold information, minimum transfer amounts, event triggers and other information needed for calculating and sending margin calls.

This information must be manually typed into a margin calculation system and any amendments must be manually tracked and updated. This process is often performed by individuals with no legal background, making it prone to operational risk.

Using ISDA Create's application programming

interface export functionality, it is possible to reduce or eliminate this operational risk. By having the data from an executed IM CSA on ISDA Create flow systematically to a margin system, the margin call process benefits from more robust and accurate reference data.

Any changes or amendments to agreements would also be captured automatically and fed downstream, eliminating the need for a manual reconciliation process to ensure the paper agreements match what is in the system.

Similar efficiency gains are also likely to be found for other risk and operational functions that require information from an IM CSA or other documents negotiated on ISDA Create.

CONCLUSION

Greater document standardization and the use of technology to facilitate the electronic creation and negotiation of legal documents can provide significant benefits to market participants, making the document negotiation process more efficient, less complex and less time consuming.

This paper compared the traditional paper-based legal documentation negotiation process with the ISDA Create workflow. The case studies demonstrated the benefits of ISDA Create for drafting and negotiating legal agreements and negotiating ACAs and IM documentation. The paper also explained how ISDA Create can introduce greater document standardization and help firms better manage their legal data.

While progress has been made in negotiating and executing derivatives documentation online, broad industry adoption of digitized agreements remains in the nascent stages. As more market participants recognize the benefits of a digitized negotiation process and adopt ISDA Create, the benefits will increase exponentially for both existing and new users.

ISDA Create enables the global derivatives industry to realize the following benefits:

- The negotiating process becomes more efficient and less time consuming by automating the creation, negotiation and execution of documentation.
- Users can negotiate with multiple counterparties at the same time.
- Firms can opt for standard elections set out on the platform, increasing standardization.
- Transparency is enhanced by allowing users across an organization to track approvals and negotiation status.
- The potential for manual errors is reduced and the data validation process is simplified.
- Users can share data consistently and accurately across the organization.
- External advisers can draft and negotiate documents on behalf of a firm.
- Firms can easily access legal data because all documents are stored digitally, allowing for post-execution search and data analysis.

FOR QUESTIONS ON ISDA RESEARCH, PLEASE CONTACT:

Olga Roman

Head of Research

International Swaps and Derivatives Association, Inc. (ISDA)

oroman@isda.org

FOR QUESTIONS ON ISDA CREATE, PLEASE CONTACT:

Heather Smith

Senior Counsel

International Swaps and Derivatives Association, Inc. (ISDA)

hsmith@isda.org

ABOUT ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).