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Amendments to ISDA MA's Notices Provision and Treatment of CSAs in the event of Illegality or Force Majeure

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The International Swaps and Derivatives Association, Inc. ("ISDA") has published a form of amendments to the Notices provision and the alignment of treatment of English law and New York law governed Credit Support Annexes ("CSAs") following the occurrence of an Illegality or Force Majeure Event under the ISDA Master Agreement. This document was published on 30 May 2023, and offers parties standard form drafting they can incorporate into an ISDA Master Agreement either at the time of negotiation, or through a bilateral amendment.

One of the key changes is the addition of email as a means of delivering notices under Section 5 or 6 (sections of the agreement dealing with termination/close-out), with clarification on the effective delivery time. This allows for more efficient delivery of close-out notices, which might be especially relevant where parties are based in different cities or when physical delivery might be impossible or impracticable (for example, due to COVID restrictions).

Another change is the amendment to the notice delivery cut-off time during a business day. While the ISDA Master Agreement previously referred to "close of business" as the cut-off for a notice to be effective on a given business day, the amendment provisions contemplate parties agreeing on a specific time for notice delivery cut-off, with a default of 5 pm in the recipient's location. This provides more clarity and certainty for parties, enabling them to better manage their obligations.

The proposed changes also align the treatment of English law CSAs with that of New York law CSAs in case of an Illegality or Force Majeure Event. This includes disapplying the Waiting Period of three or eight business days for an Illegality or Force Majeure Event, respectively, before a party could close out. It also specifies that the party unable to deliver collateral due to the Illegality or Force Majeure Event would not be able to trigger close out. This ensures consistency in the treatment of CSAs and helps parties better manage their risks across their portfolios of English law and New York law governed derivatives.

These changes offer potential benefits to market participants, providing more flexibility and clarity. We encourage our clients to review the amendments carefully and seek advice from their legal advisor if they have any questions or concerns. Our firm is always available to assist with the implementation of these changes and to provide any additional guidance required.

If you would like more information on these changes or to discuss your legal needs, please do not hesitate to get in touch. We are always available to help.

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