

ISDA'S NOTICES HUB

A SOLUTION FOR DELIVERY OF CRITICAL NOTICES - A BUY-SIDE PERSPECTIVE

Many market participants will have received the [recent letter](#) from ISDA asking for industry support for the ISDA Notices Hub - a project which aims to go a step further than re-thinking the delivery of notice provisions in the ISDA Master Agreement and, more fundamentally, modernise the manner in which market participants can validly serve notices, receive notices and keep their own notice details accurate facing their counterparties. The success of the Notices Hub will rely on wide adoption within the industry. ISDA is consequently looking to receive sufficient indications of support by 5 June 2024, from buy-side as well as sell-side institutions, in order to proceed with building and launching the Notices Hub.

Experiences with Notices

Market participants have, at times, experienced difficulties not only with actual delivery of notices, but also with the circumstances and ways in which the delivery is deemed effective under the ISDA Master Agreement. These problems have been particularly acute during periods of market stress such as a financial crisis and exasperated during more general disruptions such as a pandemic or war. In such times, the provisions have been tested, sometimes to the extreme, which has highlighted areas where improvements could potentially be made. The area of most concern is notices relating to critical events such as Events of Default and Termination Events.

In 2023 ISDA published amendment language - Amendments to the Notices, Illegality and Force Majeure Event Provisions of the ISDA Master Agreement which, amongst other things, adds email as a means of delivering notice of default. This amendment was published following member feedback related to the Covid-19 pandemic and recent global sanctions. The amendment particularly aims to address the situation where the specified notice methods and details, especially for physical delivery, in the ISDA Master Agreement are difficult, dangerous or impossible to use.

Another difficulty encountered by those serving notices is not having the most up-to-date notice details for their counterparty. Some research was undertaken by ISDA into notices served in relation to the administration of Lehman Brothers International Europe - they estimated that around 180 notices went to only the old address, which had been vacated four years previously. Some were sent to the old address and the new address, clearly in an attempt by counterparties to deliver

wherever they could in the hope of improving chances of at least one method of delivery being deemed effective.

Unfortunately there are problems with using multiple delivery addresses and methods - it can be difficult to determine which avenue for delivery first constituted effective delivery. If notice is sent by email (alone or together with other methods) there can be potential problems here too. How do you evidence effective time and date of effective delivery when no third party is involved? What if the email address of the intended recipient ceases to exist - particularly if the email address relates to a named individual rather than an email address for a particular role or distribution group within an organisation?

There are many scenarios that can give rise to potential uncertainty and dispute over whether and when a notice is deemed effective. In the case of critical notices served in relation to Section 5 and 6 of the ISDA Master Agreement this is particularly problematic. Certainty is very much needed to allow parties to take consequent action at the right time bearing in mind grace periods and, importantly, the calculations for valuations required for close-out amounts to be determined accurately.

The Notices Hub

ISDA has been exploring and designing a new technological and legal mechanism for the delivery and effectiveness of notices under the ISDA Master Agreement: an online platform to be known as the "ISDA Notices Hub". The proposal aims to provide market participants with a safer and more efficient method for delivering and receiving critical notices under the ISDA Master Agreement, generally providing users greater control in the face of counterparty default.

The centralised platform will also allow market participants to update their physical notice details in one place, easing the administrative burden of instead having to update on a counterparty by counterparty basis. Initially, the platform would cover notices relating to Termination Events and Events of Default (Section 5 and 6 notices), but ISDA plans to extend its scope to deal with other notices under the ISDA Master Agreement and potentially also to similar notices under non-ISDA agreements.

Some key features of the Notices Hub

- “instantaneous” and effective delivery/receipt of notices via online platform (with time and date stamped evidence of delivery)
- ability for market participants to update its physical notice details for ISDA Master Agreements with all counterparties in one centralised place
- the platform will be provided by S&P Global Market Intelligence’s Counterparty Manager platform which is expected to be free to use for buy-side (dealers pay a subscription fee)
- a recipient of notice on the Notices Hub would have “immediate” access to the notice, via various technological channels, “controlled” by the recipient, not the sender
- instant alerts - market participants elect how they wish to be “notified” of a notice delivered to them on the Notices Hub - by email, by SMS and possibly other means
 - each method could potentially be to a number of contacts - individual or centralised
 - parties can choose to designate specific third parties (e.g. a security trustee or guarantor) to access a copy of the notice/receive alerts
- allow communication from resolution authorities to counterparties of financial institutions
- adherence/implementation of the Notices Hub can be by 3 methods:
 - ISDA protocol (multilateral)
 - Amendment agreement (bilateral)
 - Incorporation in new ISDA Master Agreements (using ISDA published template language)

What would need to be changed for an organisation to use the Notices Hub?

Whilst considering the improvements and benefits that the Notices Hub aims to offer, market participants should also be conscious that in order to fully benefit from the hub, improvements may need to be made to the organisation’s relevant internal processes, systems and policies to ensure (i) access to the hub is optimised and (ii) notifications of delivered notices on the hub can be received in the best and most effective way possible.

In order to make best use the Notices Hub, an entity needs to be confident that email and other notification methods will always be received by the right people. For entities that already use centralised email distribution lists for important notices, rather than named individuals, there may still be an internal requirement for others in the organisation to be copied - e.g. some

businesses require termination/close-out notices to be copied to the general counsel or head of treasury. Entities will also need to make sure that the various notification details and other details required to access the Notices Hub are updated as the business evolves or better still, to future-proof the details to withstand changes within the organisation. Note however that this process is intended to be facilitated by the Notices Hub, as a six-monthly verification process will prompt users to update details. In summary, use of the Notices Hub is likely to prompt some changes, albeit positive, to the way such important notices are received, delivered and dealt with, within an organisation.

ISDA’s [letter](#) emphasises that users should not need to rework their IT systems in order to use the Notices Hub, unless they wish to make use of optional API functionality to draw information directly into their internal systems.

What next?

ISDA has stated that they will create the Notices Hub only if there is sufficient support from the market to adopt it. ISDA has therefore asked its members to provide ‘pre-build’ indications of support, as well as inviting derivatives users which are not ISDA members to provide feedback on the proposal. ISDA have provided template forms of responses to facilitate responses. Although the [current timeline](#) indicates a proposed ‘go live’ date in early 2025, ISDA has requested indications of support by 5 June 2024 to allow sufficient time for the platform to be developed.

To provide reassurance as to the legal effectiveness of the Notices Hub, ISDA plans for it to be backed by legal opinions from around 70 jurisdictions. So far, opinions from around 60 jurisdictions have been received by ISDA indicating no major impediment to effective delivery of a notice via the Notices Hub.

For anyone with further questions, ISDA has established a dedicated ‘infohub’ here: [ISDA Notices Hub](#), including a fact sheet [What is the ISDA Notices Hub?](#) and [ISDA Notices Hub Q&A](#). For any ISDA members interested in joining the ISDA working group, you can do so [here](#).

If you would like to discuss any queries you have in relation to the proposal, for the purpose of responding to ISDA’s early June [request for support](#) or more generally, please contact a member of our team.

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