INTERVIEW
FCA's Ashley Alder on market evolution

DOCUMENTATION
Industry leaders reflect on the ISDA Master Agreement

PROFILE
Eric Litvack looks back on 10 years as ISDA chair

IQ

ISDA® Quarterly

Vol 11, Issue 1: January 2025 | www.isda.org

*MARKING A MILESTONE

As ISDA celebrates its 40th anniversary, the original vision of industry collaboration and standardisation continues to shape the future

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Transaction Data

Daily, weekly and quarterly traded notional and trade count by product taxonomy.

Notional Outstanding

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Transaction Data

Daily, weekly and quarterly traded notional and trade count by product taxonomy.

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40 Years and Counting

In 1985, a small group of mostly New York-based dealers established ISDA, then called the International Swap Dealers Association, to develop standards for the fledgling interest rate swaps market – a market that had become bogged down by a lack of standard terms and a growing documentation backlog. Forty years on, ISDA's mission, membership and geographic reach have expanded beyond recognition, but the early achievements of that group set the foundations for market growth and development that followed and continue to have a profound impact on the industry today.

This issue of **IQ** looks back at the early days of the over-the-counter derivatives market, the circumstances that led to the creation of ISDA and some of the early landmarks, including the development of the ISDA Master Agreement – referred to in a 2010 Lehman Brothers International (Europe) court judgement as "one of the most widely used forms of agreement in the world" and "probably the most important standard market agreement used in the financial world".

This is the first of what will be a series of 40th-anniversary-themed issues this year, which will look at different aspects of the development of the derivatives market and the evolution of ISDA's role, from an association focused primarily on legal standards and documentation to one that supports the industry with a full range of standards, solutions, services and advocacy, from the ISDA Standard Initial Margin Model to the work on LIBOR transition.

Please do keep an eye open for ISDA's various 40th anniversary events throughout 2025. And let us know if you have an anecdote about your experiences in the derivatives market or with ISDA over the past 40 years – we'll publish the best in our end-of-year issue (email: communications@isda.org).

Nick Sawyer
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MILESTONE

"ISDA today is professional, accountable and goals-driven – it aims at the very highest standards, and it delivers an exceptional breadth of value for derivatives users. It has become an integral part of the landscape for both the public and private sectors"

Eric Litvack

Still Critical, 40 Years On

As well as reflecting on ISDA's achievements, the 40th anniversary is an opportunity to double down on the commitment to safe and efficient markets, writes ***Scott O'Malia***

Landmark anniversaries and birthdays can lead to a degree of nostalgia, recollecting bygone days when people were younger, the world seemed smaller and the future was unknown. ISDA's 40th anniversary is no different. It's an opportunity to reflect on the unique set of circumstances that led 10 dealers to establish the association in 1985, and the extraordinary achievements over the 40 years that followed. For the visionary pioneers who were there at the start – many of them feature in this edition of **IQ** – there is certainly some nostalgia in thinking about those early days.

But this 40th anniversary year is about much more than looking in the rear-view mirror. Of course, it's important that we reflect on the journey we've been on, but it's also a time to focus on the future. ISDA's membership and the breadth of services it delivers to that membership are far larger and more diverse than they were in 1985, but we remain resolutely committed to delivering standards, solutions and advocacy to make sure derivatives markets continue to function safely and efficiently.

> "The derivatives market has evolved and so too has ISDA, firmly establishing itself as a critical organisation in developing standards and delivering solutions"

In 2025, you can expect ISDA to tackle several big initiatives that reflect this commitment.

In the US, it is not yet clear what path the Basel III 'endgame' package will take under the new administration, and when we might see the re-proposal that some policymakers have mooted. It has been a year since ISDA responded to the original consultation. Based on data from eight US global systemically important banks, we highlighted the negative impact the proposed rules would have on liquidity and the ability of banks to offer client clearing services. As US regulators consider the path forward, ISDA will continue to advocate for risk-appropriate rules that support deep, liquid markets.

ISDA will also be focusing on the US Securities and Exchange Commission's Treasury clearing rules, which are due to be implemented on a phased basis from the end of this year. Given the extensive workload and the complex nature of introducing clearing in this market, spanning document negotiation, cross-margining capital issues and operational integration, ISDA will request that policymakers adopt a more appropriate implementation timetable.

Digital transformation will remain a strategic priority for ISDA in 2025, as we continue to advance our suite of solutions that serve to drive efficiencies and reduce risk across key derivatives market processes.

For example, ISDA's Digital Regulatory Reporting (DRR) initiative has now established itself as a valuable tool in improving the accuracy of reported data, reducing costs and cutting the risk of regulatory penalties. Following a rush of reporting rule updates last year, several other jurisdictions will follow in 2025, including Canada and Hong Kong. The DRR will be expanded to support market participants in implementing those new rule sets, as well as reflecting future updates to any of the rules supported by the DRR.

The ISDA DRR is underpinned by the Common Domain Model (CDM), a standardised data model for financial products, trades and lifecycle events. We've also used the CDM to bring much-needed efficiencies to the collateral management space, demonstrating how it can be used to digitise key documents, represent eligible collateral terms and automate cash collateral calculations and payment processes.

Also in the digital space, we'll be moving at pace with the development of the ISDA Notices Hub. This is an exciting initiative that will enable the instantaneous delivery and receipt of critical termination notices, eliminating risk exposures and potential losses that can result from delays in terminating derivatives contracts. We found strong industry support for this facility and are looking forward to making it available on S&P Global Market Intelligence's Counterparty Manager platform later this year.

This is just a flavour of what we have coming up in this special anniversary year. It's a very different set of issues and priorities to those contemplated by ISDA's founders four decades ago. The derivatives market has evolved and so too has ISDA, firmly establishing itself as a critical organisation in developing standards and delivering solutions to shared industry challenges. I'm looking forward to celebrating our anniversary and beginning to chart ISDA's course for the next 40 years.

Scott O'Malia
ISDA Chief Executive Officer

Jeroen Krens Appointed Chair of ISDA

ISDA's board of directors has elected Jeroen Krens as its new chair, following the decision of former chair Eric Litvack to step down after 10 years in the role.

Krens is managing director, chief operating officer, markets and securities services at HSBC. He has worked for HSBC for 10 years and has had two stints on the ISDA board – from January 2012 to February 2014 while working at Royal Bank of Scotland and since November 2016 while at HSBC. The appointment became effective from January 1, 2025.

Litvack, who is managing director and group director of public affairs at Société Générale, joined the ISDA board in November 2006 and took on the role of chairman in January 2015, making him the longest-serving chair in ISDA's 40-year history.

During his chairmanship, ISDA has taken a leading role in several critical regulatory and market reforms, including the transition from LIBOR and the development of robust contractual fallbacks based on risk-free rates, implementation of new margin rules for non-cleared derivatives and the creation of the ISDA Standard Initial Margin Model, and the shift to greater automation and digitisation of derivatives markets.

The structure and governance of the board has also been transformed under Litvack's watch. The board now has representation from a broader universe of derivatives users and greater gender diversity, with the proportion of women increasing from 11% to 38% over 10 years.

"I'm very proud of what we have collectively achieved at ISDA over the past 10 years and how the board has evolved to better reflect the market it serves. ISDA's strength is its ability to tap into the collective expertise of its 1,000-plus member firms and reach consensus solutions to common problems. Together as an industry, we have solved some of the biggest challenges ever to face our markets, including finalising post-crisis regulatory reforms and the transition from LIBOR, and ISDA is well positioned to tackle the challenges ahead. Now is the right time to hand the torch to the next generation of leaders, and I'm very confident that Jeroen will do a terrific job as he takes the helm during the next phase of the derivatives market's development," says Litvack.

"Eric has chaired the board during a period that included the post-crisis regulatory implementation process, the coronavirus pandemic and the transition from LIBOR. Throughout, he has been committed to serving the industry and ensuring derivatives markets function efficiently. I'd like to thank him for his leadership, partnership and support," says Scott O'Malia, chief executive of ISDA.

"I would also like to welcome Jeroen as new chair. I know that we share a vision of bringing greater automation and digitisation to the derivatives markets to improve efficiency and reduce costs. I look forward to working with Jeroen and his HSBC colleagues to make this vision a reality and to expand derivatives markets across the globe," O'Malia adds.

"I'm honoured to take on the role of chair in ISDA's 40th year. ISDA was established in 1985 to bring standardisation and common legal documentation to derivatives markets, an objective that remains just as relevant today. I'm looking forward to working with my colleagues on the board, Scott and the ISDA team as we continue to realise ISDA's mission of ensuring derivatives markets are safe and efficient. I would also like to thank Eric for his leadership, friendship and many contributions to ISDA," says Krens. IQ

Read a profile of Eric Litvack on pages 32-35

ISDA Scores Again with Regulation Asia Award

ISDA has been named Industry Association of the Year for the second year running by Regulation Asia at its seventh annual Awards for Excellence. The association also won Best Regulatory Reporting Solution for its Digital Regulatory Reporting initiative.

The Industry Association of the Year award recognises trade groups that have shown outstanding leadership in supporting regulatory reform, addressing compliance challenges and promoting financial stability, including through the development of industry standards and best practices.

The panel of judges highlighted several ISDA initiatives to respond to market and regulatory developments and improve industry efficiency, including the ISDA Close-out Framework, continued regulatory engagement in China and India, efforts to support banks in their implementation of Basel III and the development of climate scenario analysis for the trading book.

"ISDA's continued leadership and regulatory advocacy, along with its commitment to creating innovative industry solutions to regulatory challenges, set a new benchmark for industry associations. Its focus on global regulatory alignment and standardisation and its educational and professional development programmes have been truly beneficial to the market," said one judge on the Regulation Asia Awards panel.

In 2024, ISDA was also named Industry Association of the Year in the GlobalCapital Global Derivatives Awards – an accolade it also collected for the second consecutive year. IQ

ISDA. Safe, Efficient Markets
Celebrating 40 Years

Carbon Market Development at "Critical Moment", Says O'Malia

Following the recent deal to agree a United Nations (UN) backed carbon market and the publication of global best practices, there is now growing momentum for the development of a global voluntary carbon market, but standardisation and consistency will be critical, according to Scott O'Malia, chief executive of ISDA.

"We need to develop a globally consistent market for the trading of carbon credits that serves to deliver a unified, reliable reference price. This can only be achieved if we work together to build and maintain robust standards that can be applied on a global basis. Among other things, we need a universally accepted definition of a ton of carbon, a sound legal framework, a liquid forward market and an effective regulatory framework," said O'Malia, speaking at the Voluntary Carbon Markets Forum in Brussels, co-hosted by ISDA and BeZero Carbon, on December 5, 2024.

During the COP29 climate summit in Azerbaijan in November, a deal was finally reached to develop a UN-backed carbon market under Article 6 of the Paris Agreement, which should enable sovereigns and corporates to offset those emissions they can't immediately reduce while channelling vital investment to green infrastructure and technology. This could be "a game changer in the transition to net zero", O'Malia told delegates.

> "Just think about the opportunity that could be unlocked if we work together to raise standards and increase demand for carbon credits. There is the potential to create a deep channel of investment in the most consequential projects around the world – those that can really move the needle in reducing emissions"
>
> **Scott O'Malia, ISDA**

"Just think about the opportunity that could be unlocked if we work together to raise standards and increase demand for carbon credits. There is the potential to create a deep channel of investment in the most consequential projects around the world – those that can really move the needle in reducing emissions," said O'Malia.

The COP29 summit also saw the publication of a set of good practices by the International Organization of Securities Commissions (IOSCO) to promote the financial integrity and smooth functioning of voluntary carbon markets. The 21 principles are designed to facilitate the orderly and transparent trading of carbon credits, offering a blueprint for market regulators around the world to develop a consistent regulatory framework.

Speaking at the Brussels event, Verena Ross, chair of the European Securities and Markets Authority and co-chair of the carbon markets workstream of IOSCO's Sustainable Finance Task Force, stressed the importance of integrity and trustworthiness as foundations of an effective voluntary carbon market.

"Despite their promise, voluntary carbon markets face systemic vulnerabilities. Criticisms surrounding the environmental integrity of some credits have drawn significant attention. Another area of concerns stems from risks related to financial integrity: a lack of transparency, legal ambiguity, conflicts of interest and insufficient oversight. These issues undermine trust in the market and deter investment at a time when every cent of climate finance counts," said Ross.

Addressing these concerns will unlock the potential for voluntary carbon markets to become robust, credible tools in the fight against climate change, Ross added.

"For us as financial regulators, it is therefore critical that a robust framework is in place to ensure that the underlying carbon projects effectively deliver the environmental outcomes claimed by the carbon credits. That is why we see positively developments to enhance the quality of carbon credits," said Ross, citing EU and UK policy initiatives, as well as the private-sector-led Integrity Council for the Voluntary Carbon Market, as examples of encouraging steps towards greater environmental and financial integrity.

The call for integrity was echoed in a keynote address by Beatriz Yordi, director, carbon markets and clean mobility, in the Directorate-General for Climate Action at the European Commission (EC). Speaking days after the new EC took office on December 1, Yordi stressed the centrality of carbon pricing in achieving the EU's goal of becoming a carbon-neutral economy by 2050.

"The EU Emissions Trading System remains a key pillar of EU climate action, but voluntary and international carbon markets can play an important complementary role for companies willing to go beyond their existing compliance obligations or member states willing to achieve national greenhouse gas reduction targets beyond their nationally determined contributions," said Yordi.

"We understand the relevance of international carbon credits, but we need to ensure the integrity both on the supply and demand side," Yordi added. "On the supply side, we need to ensure that all characteristics of high-quality credits are met, including that reductions or removals are truly additional and permanent, do not result in carbon leakage elsewhere and are not double counted."

Discussions at the event also explored the role carbon markets might play in the implementation of the EU's Carbon Border Adjustment Mechanism (CBAM), which will require importers to pay a tax for carbon emitted during the production of certain products, starting in 2026.

"Importers will need to show they have paid an equivalent carbon price to sell their products in the EU and the UK. But for carbon credits to be considered as a potential recognised carbon cost, there is no question that setting sufficiently robust minimum standards and transparency will be a necessary condition," said O'Malia. IQ

THE COVER PACKAGE

Marking a Milestone

As ISDA celebrates its 40th anniversary, the original vision of industry collaboration and standardisation continues to shape the future

It was a different time and a very different market, but 1985 remains a seminal year in the history of over-the-counter (OTC) derivatives – the year that ISDA was established and the very first industry standard document was published. While modest in its scope and ambitions, the Code of Standard Wording, Assumptions and Provisions for Swaps (Code of SWAPS) put in place a new status quo, based on the recognition that collaboration was the best way to solve shared industry challenges. Forty years on, collaboration remains at the heart of everything ISDA has achieved.

This edition of **IQ** kicks off a year of publications and events to mark ISDA's 40th anniversary by reflecting on some of the key documentation milestones, including the Code of SWAPS and the ISDA Master Agreement (pages 10-15), as well as the development of protocols (pages 43-45). It also recounts the story of how a group of bankers and lawyers set aside their competitive differences to discuss what could be done to alleviate the documentation bottlenecks in the nascent OTC derivatives market, and how that led to the formation of ISDA (pages 16-19).

The anniversary year is an opportunity to share the perspectives of the many visionaries who have been responsible for ISDA's successes over the years – from the senior executives and board members to the lawyers and regulators. This edition features a roundtable with seven of those luminaries (pages 36-42) and an interview with Ashley Alder, chair of the UK Financial Conduct Authority (pages 24-27).

In its 40th year, ISDA remains firmly focused on the future, with a wide-ranging work programme for 2025. Among other projects, this year will see further progress on a landmark review of the 1998 FX and Currency Option Definitions, a continued push towards greater digitisation of documentation and the planned launch of the ISDA Notices Hub (pages 28-30).

It's also a time of change on the ISDA board of directors, as Eric Litvack recently stepped down from his role as chairman. Reflecting on his 10 years at the helm, Litvack describes ISDA as "professional, accountable and goals-driven", aiming at the very highest standards and delivering exceptional breadth of value (pages 32-35). IQ

"The value of ISDA documentation, right from the start, has been its ability to work for individual market participants in a way that best suits their needs"

Jeffrey Golden

The first ISDA documents sought to bring order to a nascent market that was struggling with a lack of standard-form documentation. Forty years on, the derivatives market has evolved beyond recognition, but standardisation of legal terms and documents remains critical

ISDA's 40-year history is steeped in legal documentation, which remains the foundation of its offering to more than 1,000 members and many other entities. But, to a casual observer, its very first document could easily appear a little underwhelming. Published in 1985, the Code of Standard Wording, Assumptions and Provisions for Swaps – known as the Code of SWAPS – is more of a dictionary of terms than a contract. Even the lawyers who worked with the first members of ISDA and undertook the painstaking work to draft the code would acknowledge that it had limited ambitions and scope.

Nonetheless, the 26-page document represents a watershed moment in the history of the over-the-counter (OTC) derivatives market and ISDA's role in shaping it. The market was still young in 1985, but the leading participants had already found that a lack of standardisation in the way trades were documented was becoming a frustrating challenge that could constrain growth. That challenge led them to set aside their competitive differences and work together to develop a common set of terms and definitions.

As ISDA marks its 40th anniversary in 2025, the association has come a very long way and is almost unrecognisable from those early days, but the commitment to a robust, standardised legal framework remains at its heart. With a membership that now spans 76 countries and a far more diverse range of entities than the initial rump of 10 dealers, it is the willingness to work together to find common solutions to shared challenges that continues to define ISDA today.

"The 40-year milestone is an opportunity to reflect on the journey ISDA has travelled since 1985, and how those early days continue to shape the association," reflects Katherine Tew Darras, ISDA's general counsel. "The Code of SWAPS was developed at a time before internet or email, when meetings always took place in person and contract drafting was far more cumbersome than it is

Illustration: James Fryer

today. The market is very different now, with a much wider array of products and documents, combined with a digital approach that has brought unprecedented efficiencies and savings. But we can credit ISDA's early pioneers with establishing a collaborative approach that has remained central to its success over four decades."

Battle of the forms

In the early days of the derivatives market, there was a unique set of challenges that combined to bring about the formation of ISDA. Following the first modern OTC derivatives transaction – a currency swap between IBM and the World Bank in 1981 – the market quickly began to develop, with a host of dealers setting up teams to offer first currency swaps and then interest rate swaps. This was a new market with the promise of innovative, bespoke structures and attractive spreads that enticed some of the most talented young traders in the 1980s.

It was in the documentation of these trades that problems began to arise. Each dealer would typically develop its own template of a legal agreement that would need to be reconciled with that of the counterparty for every single trade. In-house counsel and external lawyers recall the frustrations and arguments that would often take place between parties – not necessarily because one position was right and the other was wrong, but rather because each party wanted to trade using terms that were familiar. This led to an increasingly challenging documentation process, which was widely referred to as the 'battle of the forms'.

"It was horrible, especially in the interdealer market. The banks were so accustomed to using their own documentation that it wasn't even a battle of forms but rather a mutual exchange of forms, followed by inaction. There was a gradual realisation that it wasn't sustainable, and we needed to do something about this. It turned out that ISDA would be the perfect vehicle to bring about the change that was needed," says Don Thompson, former associate general counsel at JP Morgan, who would become co-chair of the ISDA Documentation Committee in the early 1990s.

Combined with the battle of the forms, there was also a strong desire among dealers to mitigate the risk of protracted litigation, recalls Jeffrey Golden KC (Hon), who began his legal career at Cravath, Swaine & Moore and, together with colleague Dan Cunningham, led the drafting of the first ISDA documents.

"Every trade required its own separate agreement in those early days, and most of the large dealers had their own templates – it was costly and time-consuming to reconcile these forms for every single trade. There was a strong desire to come up with a level of standardisation →

→ that would create a common language, giving rise to greater legal certainty, and give firms final answers when they needed them. They wanted to hermetically seal this new market – with resort to leading dealers for valuations if necessary – so they wouldn't have to rely on courts and judges to resolve disputes," Golden explains.

During 1984, a group of New York-based dealers began to discuss how the lack of standardisation and the growing backlog of documentation could best be tackled (see pages 16-19). In May 1985, they established the International Swap Dealers Association, as ISDA was initially known, and the Code of SWAPS was published. During their early meetings, the dealers had shared their own proprietary versions of a master agreement, with a view to developing a standard-form contract, but it quickly became clear that this would be too ambitious as an initial objective.

"The dealers were very reluctant to make changes to their proprietary master agreements for fear of undoing the magic, but they also recognised that something had to be done. An initial attempt was made to collect and combine the in-house agreements into a single standard form, but it led to push back that nearly derailed the entire project. It was at this point that Cravath was appointed as drafting counsel, and we realised we needed to start with a document that focused on concepts and terminology and didn't bear any resemblance to any single dealer's favourite form," says Golden.

From code to contract

The years that followed the establishment of ISDA in 1985 saw a steady progression in the development of documentation. The first Code of SWAPS had focused on providing standard terminology for US dollar interest rate swaps – the dominant product for US dealers at that time – but it was significantly expanded in 1986 by filling in a list of potential events of default and termination events, standard representations and agreements, cross-border provisions (mostly tax-related) and provisions that facilitated more complex products. In 1987, the ISDA Interest Rate and Currency Exchange Agreement was published, representing the very first prototype of a standard-form agreement and providing documentation support for currency swaps.

While there were certainly frustrations and tensions between parties, the dealers and lawyers that constituted ISDA in those early days had managed to transition from an informal group to an industry association with a standard-form agreement in just three years. By 1987, ISDA's membership had grown to nearly 90 entities, as market participants began to coalesce around the new documents.

"As the derivatives business was growing and dealers were entering into more and more transactions, there was a real need for standardisation of the economic terms of the trade. That's what the Code of SWAPS and the 1986 update achieved. They clarified the nuts and bolts of trading terminology that parties had been spending huge amounts of time trying to work out. Ultimately, the code was a stepping stone towards the ISDA Master Agreement, but it was also significant in its own right," says Robert Pickel, who worked at Cravath, Swaine & Moore at the time of ISDA's inception and would later become its general counsel and then chief executive.

With the Code of SWAPS established, work on a standard-form contract could progress, but the key to success would be to maintain sufficient flexibility in the documentation that would enable parties in different locations to customise their transactions without being shoehorned into a particular structure. Any contract

"As the derivatives business was growing and dealers were entering into more and more transactions, there was a real need for standardisation of the economic terms of the trade. That's what the Code of SWAPS and the 1986 update achieved"

Robert Pickel

“Length and detail can be the death knell of a standard-form contract – we worked hard to develop a template that, ambitious as it was, remained relatively short and readable. In contrast to the standardised trading that takes place on exchanges, ISDA never sought to standardise behaviour”

Jeffrey Golden

template would need to strike a balance between overcoming the battle of the forms and avoiding excess prescription.

“Length and detail can be the death knell of a standard-form contract – we worked hard to develop a template that, ambitious as it was, remained relatively short and readable. In contrast to the standardised trading that takes place on exchanges, ISDA never sought to standardise behaviour. The value of ISDA documentation, right from the start, has been its ability to work for individual market participants in a way that best suits their needs, but not to produce a framework that is so rigid and technical as to dictate results,” says Golden.

In developing a standard-form contract, ISDA faced a new challenge. With the Code of SWAPS, parties could identify some of the terms they needed and then incorporate them into their own documentation, which would be governed by either New York law or English law. But now it was developing a contract of its own, ISDA needed to set out the full terms of a master agreement, rather than a menu of terminology for just some of the clauses. The standard master agreement would need to work under, and be governed by, either New York law or English law.

ISDA’s membership had initially been concentrated in New York, where the derivatives market was largely focused on US dollar interest rate swaps. However, dealers in London were also trading cross-currency swaps and the need for standardisation was no less acute, prompting a group of practitioners to convene in 1986 to consider a way forward.

“The London group had a bit of a head start in developing a draft of a standard agreement because the New York dealers were still focused on the Code of SWAPS. The two groups didn’t communicate much initially, and they came up with their own versions that were a long way apart. Both groups met in London in late 1986, and it was there that we developed the spirit of cooperation and collaboration that was to be really important – not just for this initial project but for all the ISDA documentation that followed,” says Michael Canby, retired partner at Linklaters and drafting counsel for its early English law documentation.

A process of comparing individual clauses and language followed to come up with two documents that would address the needs of their constituent stakeholders in New York and London, but would also be as consistent as possible. The documents that emerged from this process in 1987 had their own unique architecture and focus – the standalone ISDA Interest Rate Swap Agreement for the New York market, governed by New York law, and the broader ISDA Interest Rate and Currency Exchange Agreement for the London market. To enable flexibility for users of the latter agreement, an option was included that would enable parties to elect either English or New York law as the governing law.

“The New York and London markets were not nearly as intertwined then as they are today, so market participants accepted that there needed to be two separate documents. In general, there was a lot of relief in 1987 that we’d managed to develop the first iteration of a master agreement, albeit in two separate forms – that was a major step forward. The market coalesced fairly rapidly around the London multi-currency agreement as a master framework for a relationship between two contracting parties and it’s gratifying to see that framework is still widely used today,” says Canby.

→

"Even with the early ISDA documents in place, banks were still doing trades faster than they could be documented and there was often a backlog of confirmations that exposed them to risk. Traders and lawyers were very much split by asset class, and it became ISDA's mission to unite everything under a single document"

Sir Edward Murray

→ Towards a single agreement

By the early 1990s, ISDA's membership was growing rapidly and its documentation had become well established, helping to ease some of the industry challenges it had sought to address at the outset. But while the 1987 agreements had been a big milestone, ISDA was still to achieve the ambition of a product-agnostic master agreement that would allow two counterparties to net their obligations from different trades across product lines into a single payment in the event of a default.

The 1992 ISDA Master Agreement would be the next major step on ISDA's journey, a development that still counts as one of the most significant documentation milestones in its 40-year history. When combined with product-specific definitional booklets, the master agreement delivered a robust legal framework that would allow the derivatives market to evolve and expand over the years that followed. At the time, the revolutionary element of the new contract was in breaking down product siloes.

"Even with the early ISDA documents in place, banks were still doing trades faster than they could be documented and there was often a backlog of confirmations that exposed them to risk. Traders and lawyers were very much split by asset class, and it became ISDA's mission to unite everything under a single document. That's why the 1992 ISDA Master Agreement was so ambitious and ultimately became such a landmark document, because it was completely product neutral," says Sir Edward Murray, a British High Court judge and former partner at Allen & Overy who played a lead role in the drafting of ISDA documentation in the 1990s.

Developing the first ISDA Master Agreement required a pragmatic approach to ensure the document provided legal certainty to protect parties in the event of a default, while also retaining sufficient flexibility to cover a broad range of products and relationships. This was achieved through a modular architecture that addressed the key legal issues in the core document, while product-specific matters would be the preserve of the definitions, which could be added as and when they were needed.

"The ISDA Master Agreement needed to cater to an incredibly wide range of transactions, markets and market participants. To cover that in all the circumstances that might arise would have invited a contract that was far too long and detailed. The modular architecture led to the development of expert working groups that would be tasked with keeping the product definitions up to date over time. The master agreement is like a razor without the blades, but it's with the definitional booklets that parties could really cut the cloth of each individual transaction," explains Golden.

In delivering a legal framework that allowed two counterparties to net their obligations in the event of a default, the ISDA Master Agreement brought much greater efficiency to the fledgling derivatives market. Its value for market participants increased at the end of 1995, when the Basel Committee on Banking Supervision updated the Basel Capital Accord to recognise the effects of bilateral netting of bank credit exposures in derivatives for capital adequacy purposes. By offering a capital incentive to use standard documentation that would enable netting, this amendment gave additional momentum to the uptake of the ISDA Master Agreement.

"Overcoming the battle of the forms was a long process in the early years of ISDA, because the whole notion of standard terms was so alien that it took time to bring the market onboard. It was really the Basel Committee's recognition of the capital-reducing benefits of netting that became the catalyst for a larger number of firms to embrace standard documentation. Once there was a significant financial incentive for the use of standard documents, market participants were ready to set aside any concerns they may have been harbouring," says Habib Motani, a consultant at Clifford Chance who was involved in the development of the 1992 ISDA Master Agreement.

With the legal foundations set during the early years, ISDA would then track the development of the derivatives markets, regularly updating its product definitions and supporting documentation as the market structure evolved. Publication of the credit support annexes (CSAs) in 1994 and 1995 – with three separate versions applicable under New York, English and Japanese law – came in direct response to the growth and increased diversity of the market.

"The derivatives market went through a period of huge change in the 1990s – the products were evolving and the market was reaching out to a much broader range of counterparties, including corporates, governments, local authorities and sovereign wealth funds. That led dealers to start taking collateral from their customers to reduce credit risk and optimise their capital requirements. Delivering credit support documentation with the CSAs was an important step in providing legal certainty as the market was changing," says Murray.

While ISDA would go on to address a new set of industry challenges in later years, including the global financial crisis, the implementation of regulatory reforms and the retirement of LIBOR, it was in the first decade that the association established itself on robust, sustainable foundations. This was achieved through the willingness of competing entities to set aside their differences to resolve industry challenges, and the development of a series of landmark documents that remain central to the legal framework.

"Without the ISDA Master Agreement, there would be no market today," reflects Diane Genova, former general counsel for JP Morgan's investment bank and an ISDA board member between 1999 and 2018. "That period before ISDA was established could be really hellish at times, with every firm taking pride of authorship in its own agreement. Lawyers were pulling their hair out and the market just wouldn't scale – we couldn't continue to negotiate 10-page agreements for every trade. ISDA's real strength has been not to repudiate earlier documents but to fine tune them over time, which has provided the industry with a carefully maintained, well-crafted suite of standard documentation that has stood the test of time." IQ

How did dialogue between a group of dealers lead to the formation of ISDA in 1985? See pages 16-19

What role did ISDA protocols play in addressing later changes in market structure? See pages 43-45

A JAPANESE AGREEMENT

As derivatives traders and lawyers in New York and London came together in the 1980s to overcome the battle of the forms, market participants in Japan were yet to be convinced of the benefits of a standard-form contract. A generic home-grown agreement template drafted by the Japanese Bankers Association was widely used for domestic transactions at that time, and there seemed to be no obvious advantage to a master agreement that had been drafted on the other side of the world in a foreign language.

"Japanese banks were mainly transacting swaps with domestic clients at that time, and they had a recognised agreement template – the Agreement on Banking Transactions – which provided the general terms of the banking transaction and allowed them to customise terms for each trade. But the document didn't address the concept of close-out netting and wouldn't allow banks to transact swaps with overseas counterparties – US and UK banks would ask them to sign an ISDA Master Agreement," says Akihiro Wani, senior counsel at Greenberg Traurig in Tokyo.

Formerly a partner at Linklaters and legal counsel for ISDA in Japan, Wani worked closely with Akira Watanabe, former head of derivatives at Mitsubishi Bank, to make the case for ISDA documentation with policymakers and market participants in Japan. In the early 1990s, they worked with ISDA's Japan Committee to translate the ISDA Master Agreement into Japanese, which would turn out to be a critical step in making the document more familiar and easier to use.

The Japanese translation of the ISDA Master Agreement was only part of the process of bringing the document to broad acceptance in Japan. The government also needed to be persuaded to recognise the enforceability of close-out netting under Japanese law. ISDA commissioned a legal opinion on netting enforceability and Wani and Watanabe worked together on successive drafts, but it would take years until the necessary law reforms were finally passed in 1998.

It was also in 1998 that the Japanese market would be tested by the collapse of the Long-Term Credit Bank of Japan Limited (LTCB), which had a substantial outstanding derivatives portfolio, comprising interest rate and currency swaps with domestic and foreign counterparties. The bank was eventually nationalised, but ISDA played a key role in making sure all its obligations were honoured, thereby removing the substantial systemic risk of disruption that the insolvency had posed.

"Our priority with LTCB was to make sure ISDA documentation – mostly the 1987 version at that time – was properly interpreted by counterparties to the bank's derivatives transactions. The right to automatic early termination of contracts is accorded to the non-defaulting party, so if that party waives that right, then the transaction can hold and payments continue to be made under the swap confirmation. This was the basis on which we could ensure none of the bank's derivatives were terminated," Wani explains.

"Looking back, 1998 was a really critical year for ISDA in Japan," he adds. "The introduction of netting legislation was a great victory that we achieved with the support of the Bank of Japan and ISDA's members. Combined with that, the LTCB collapse proved the value of the ISDA Master Agreement in the effective management of a counterparty default."

* Modest Beginnings

In 1984, a group of young bankers decided something needed to be done to bring standardisation to the fast-growing swaps market. An exploratory meeting in Florida would lead to the incorporation of ISDA in 1985, and the subsequent development of a standard-form contract

For the small group of dealers who convened in March 1984 to develop what would initially be known as the International Swap Dealers Association, a body of ISDA's current size and scope would barely have been imaginable. They had come together with the goal of developing standards to bring some degree of order to the nascent swaps market and alleviate the documentation backlogs that were constraining its efficiency and growth. For its time, and in the context of a market that was still finding its feet, it was an ambitious idea.

Over the course of little more than a year, this cast of young bankers and lawyers set aside their competitive differences, identified the key market inefficiencies they wanted to solve, established themselves as an organisation and brought out the first standard document – effectively, a dictionary of commonly used terms and clauses. In the 40 years that followed the incorporation of ISDA in May 1985, the association would go on to develop the flagship ISDA Master Agreement, advocate relentlessly for the recognition

"The attempt to produce a consensus contract failed because it looked too much like the contract of the underwriting party. We came up with the idea that to break through those kinds of concerns, we should get people focused on concepts and terminology, rather than worrying about what that was going to look like when we spread it all out in contract form"

Jeffrey Golden

of close-out netting, facilitate the collateralisation of swaps and play a key role in addressing and resolving numerous industry challenges and transitions.

In the early 1980s, however, the practitioners who would become the pioneers of ISDA were focused on addressing the most immediate problems they faced. The first currency swap transaction had been struck in 1981 between the World Bank and IBM, brokered by Salomon Brothers. The new structure offered an innovative way to source inexpensive funding and would soon be followed by the first interest rate swaps, enabling entities including savings and loan companies to more efficiently manage their risk. These complex new products were uncharted territory for Wall Street traders as much as for their clients at the time.

"The swaps market was the Wild West in those days. I was at Salomon Brothers doing syndicated loans and there was a lot of talk about these new interest rate swaps. My boss told me that someone needed to figure these contracts out, and I was the person who was going to do it. That's how I fell into interest rate swaps," recalls Tom Jasper, who would later become co-chair of ISDA from its inception in 1985 until 1987.

10

Dealers formed the membership of ISDA when it was first incorporated on May 23, 1985

As sales desks came to understand and promote the products, the swaps business began to take off. Word quickly got around of the attractive bid-offer spreads, but it was when trading volumes started to rise that the first problems emerged.

"Each swap agreement was individually drawn up and each swap dealer had its own house style for trading agreements, so every agreement would be different from the next. The core language wasn't complicated – I'm paying you a fixed rate over this period and you're paying me LIBOR – but there were lots of minor elements that had to be negotiated," says Malcolm Basing, who was global head of swaps at Swiss Bank Corporation at the time and served as ISDA chair between 1992 and 1993.

This meant every time a dealer faced a new counterparty or traded a new type of swap with an existing counterparty, the legal teams at both firms would begin the costly and time-consuming process of thrashing out a trading agreement. In the absence of standard terminology, these negotiations could quickly become fraught. Variations in how parties understood certain terms, the day-count conventions they used or the business day calendar they followed could derail the process and take time and resources to iron out.

Eager swap traders in the front office were often not inclined to wait for their legal colleagues to get trade documentation in place before entering into a swap. The result was that swaps would be agreed verbally, a trade confirmation would be sent and the process of documenting the swap agreement would then begin.

"The problem was that the trade confirmation would be sent to the client for acknowledgement, but sometimes getting a response was difficult, which created some uncertainty until the documentation was executed. Sometimes months would elapse before the documentation was finalised, even though the trade was live. This backlog wasn't healthy, because if something happened to either party or some disagreement arose, what happens to the trade if the transaction is not fully documented? That was a known risk that had to be addressed," explains Patrick De Saint-Aignan, head of the derivatives product group at Morgan Stanley at that time and ISDA chair from 1987 to 1988.

Each firm applied its own remedies to these documentation challenges. Salomon Brothers installed a red rotary telephone on the trading desk that connected it directly to the bank's legal counsel at Cravath, Swaine & Moore.

Despite such measures, the problem had become so chronic that some dealers began to refer to the back office as the 'Document Hotel' – at which the draft documents would check in but never check out. The result was a growing backlog of documentation that was becoming overwhelming.

"Every swap deal was customised, and we ended up falling so far behind that we had to come in on weekends to catch up on the documentation. People were bringing their spouses with them to help out," recalls Gay Huey Evans, who worked at Bankers Trust at the time and served as ISDA chair from 1994 until 1998.

Florida meeting

By early 1984, it was becoming clear that individual dealers were struggling to cope with the challenges on their own and collective action was needed. In the early months of that year, Tom Jasper began contacting his opposite numbers at the other US swap dealers to suggest a meeting to discuss the common problems they faced.

"One advantage of a small, concentrated market was that I knew the heads of swaps at most of the other US dealers. I reached out to them and said we have to do something to solve this documentation problem. We agreed to meet, but since this was a New York-centric group, we decided it would be best to meet somewhere →

“We absolutely began to see improvements after the standardised agreement came out. Swaps became more widely accepted as a risk management tool, the cost of transactions began to come down, there were more swap dealers making prices, more currencies and more rates products”

Malcolm Basing

else to reflect that this was not going to be an exclusively New York body,” says Jasper.

They settled on an initial meeting at The Breakers, the iconic Renaissance-style resort hotel in Palm Beach, Florida. That first meeting in March 1984 lasted a single day, with representatives from Bankers Trust, Citicorp, First Boston, Goldman Sachs, Kleinwort Benson, Merrill Lynch, Morgan Guaranty, Morgan Stanley, Salomon Brothers and Shearson Lehman Brothers.

The main point of discussion was how to solve the documentation backlog. The meeting was animated, but, as the day progressed, tentative consensus emerged on attempting to develop a standardised trading form that all swap dealers could use as the basis of their transaction agreements. With a path forward agreed, the dealers returned to their day jobs and committed to meet again.

They reconvened in July and again in October of 1984, with lawyers joining the group, but as work got underway, problems quickly emerged. Each of the law firms present had developed a standard swap agreement template for their swap dealer clients and now wanted their language to serve as the basis for any new industry standard document. Compounding this impasse, each of the swap agreements had been privately drafted so there was no common terminology. It quickly became clear that developing a standardised swap agreement would be too ambitious at this early stage.

“The attempt to produce a consensus contract failed because it looked too much like the contract of the underwriting party. We came up with the idea that to break through those kinds of concerns, we should get people focused on concepts and terminology, rather than worrying about what that was going to look like when we spread it all out in contract form,” recalls Jeffrey Golden KC (Hon), then a lawyer at Cravath, Swaine & Moore, which was appointed as drafting counsel in 1984.

Leading the drafting with Cravath colleague Dan Cunningham, Golden proposed to go through the various legal agreements and strip out the common components to compile a list of critical terms that all swap agreements could reference. If counterparties would not sign off on a single trading agreement, the next best thing would be to ensure greater consistency in the terminology that was used in bespoke documents. A drafting committee was established to oversee this work, and Jasper was installed as its chair.

A first draft of the code was presented at the next meeting in January 1985, and the group then met regularly to refine the document until a final draft was tabled in February. The 1985 Code of Standard Wording, Assumptions and Provisions for Swaps – known as the Code of SWAPS – would become ISDA’s very first foray into the world of legal documentation.

“The code was more of a dictionary than a contract – parties had the ability to incorporate its terms, in whole or in part, into their documents. It was well received for what it was, insofar as it went,” says Golden.

Copyright in question

With the Code of SWAPS on the table, discussion turned to the issue of ownership of copyright over the document. The group had originally been formed to ensure no single dealer would set baseline standards for the swaps market. Now that the code had been developed, it seemed prudent that the group should retain the copyright. Members also recognised the code was only a first step developed by a small group of professionals – a more formal organisation would be needed to drive the development of a standard-form agreement.

“After all the effort had been made to pull the Code of SWAPS together, only then did the discussion begin around who should own the copyright – it was something of an afterthought. It was agreed to put together a corporation to own the copyright and to provide a forum to raise other initiatives as needed to improve the swap market. Over time, it became an important means of interacting with regulators to address issues affecting the market," recalls Robert Pickel, an associate at Cravath, Swaine & Moore at the time who would later become chief executive of ISDA for 12 years.

With agreement to transition to a formal organisation, the International Swap Dealers Association was incorporated in New York on May 23, 1985, with 10 swap dealers as members. At the same time, the Code of SWAPS was published for the market to use. ISDA was initially to be co-chaired by Tom Jasper of Salomon Brothers and Artur Walther of Goldman Sachs.

The new association began life with no budget beyond the nominal membership fee paid by the swap dealers, no headquarters and no staff. But the impact of the Code of SWAPS was almost immediate. Within weeks, the documentation backlog had started to subside. An updated and expanded version of the code would be published in 1986.

In 1987, ISDA hired its first full-time employee, Sue Cimbricz, as executive director. Her primary responsibility was to solicit swap market participants to join ISDA, a role she conducted from an empty office at the legal counsel of one of its members. That year also saw the long-awaited publication of the first standard-form contract – the 1987 ISDA Interest Rate and Currency Exchange Agreement.

"We absolutely began to see improvements after the standardised agreement came out. Swaps became more widely accepted as a risk management tool, the cost of transactions began to come down, there were more swap dealers making prices, more currencies and more rates products. All these factors fed off each other to propel organic growth," recalls Basing.

In the years that followed, ISDA would develop a raft of new standards and documents that would make the derivatives markets safer and more efficient. The 1992 ISDA Master Agreement was a particular landmark in that it provided, for the first time, a product-agnostic template that could be adapted for derivatives referencing a range of underlying assets. In 1993, ISDA was renamed the International Swaps and Derivatives Association, retaining the well-worn acronym but reflecting its growing diversity and broadening focus, having opened the membership to derivatives end users and service providers from 1987.

In its 40th anniversary year, ISDA has come a very long way since that first meeting in Palm Beach and is almost unrecognisable from what it was in the early days. Crucially, however, it has retained the central, influential position in the derivatives market that the initial group of dealers carved out in 1984, when the market was a fraction of its current size.

"Today, ISDA is *the authority* in the market for swaps. It has been central to everything, from promoting sound risk management principles to establishing settlement dispute mechanisms among counterparties, to managing the recent move away from LIBOR. When you consider all it has done, I think ISDA can be very proud of everything it has accomplished over the past 40 years," says De Saint-Aignan. IQ

"Today, ISDA is *the authority* in the market for swaps. It has been central to everything, from promoting sound risk management principles to establishing settlement dispute mechanisms among counterparties, to managing the recent move away from LIBOR. I think ISDA can be very proud of everything it has accomplished over the past 40 years"

Patrick De Saint-Aignan

* A Journey Through Time

ISDA was established in 1985 to develop standards for the nascent over-the-counter derivatives market. **IQ** *sketches out the key landmarks over the first 15 years of ISDA's existence*

1985

ISDA FACTS AND MILESTONES

- ISDA is formed in New York on May 23, 1985, by 10 practitioners from various commercial and investment banks (Bankers Trust, Citicorp, First Boston Corporation, Goldman Sachs, Kleinwort Benson, Merrill Lynch, Morgan Guaranty, Morgan Stanley, Salomon Brothers and Shearson Lehman Brothers).
- Called the International Swap Dealers Association, ISDA is initially open to dealers only.
- ISDA's first document is the Code of Standard Wording, Assumptions and Provisions for Swaps, which sets a common vocabulary for interest rate swaps.

ISDA Chairs: Tom Jasper / Artur Walther
Member Count: 42 institutions

1986

ISDA FACTS AND MILESTONES

- A revised version of the Code of Standard Wording, Assumptions and Provisions for Swaps is published, including provisions to facilitate more complex products.

ISDA Chairs: Tom Jasper / Ken McCormick
Member Count: 72 institutions
ISDA AGM: New York, The Pierre

FINANCIAL MARKET DEVELOPMENTS

- The 'Big Bang' in October deregulates the London Stock Exchange, introducing new rules for trading, allowing access to foreign firms and enabling electronic trading, which strengthens London's position as a financial hub.

1987

ISDA FACTS AND MILESTONES

- ISDA publishes the Interest Rate and Currency Exchange Agreement and Definitions, a precursor to the ISDA Master Agreement.
- The first end users and service providers join ISDA as members.

ISDA Chair: Patrick de Saint-Aignan **Member Count:** 86 institutions
ISDA AGM: Geneva, Noga Hilton

FINANCIAL MARKET DEVELOPMENTS

- The October 'Black Monday' crash sees stock markets around the globe plummet, with the Dow Joes Industrial Average dropping by 22.6%.

1988

ISDA FACTS AND MILESTONES

ISDA Chairs: Patrick de Saint-Aignan / Mark Brickell
Member Count: 100 institutions **ISDA AGM:** San Francisco, InterContinental Mark Hopkins

FINANCIAL MARKET DEVELOPMENTS

- The Basel Committee on Banking Supervision publishes the Basel Capital Accord in July. It calls for a minimum ratio of capital to risk-weighted assets of 8% to be implemented by the end of 1992.

1989

ISDA FACTS AND MILESTONES

- ISDA publishes an addendum to the Interest Rate and Currency Exchange Agreement, designed to enable counterparties to include caps, collars, floors and similar products.

ISDA Chair: Mark Brickell **Member Count:** 135 institutions
ISDA AGM: Paris, Hotel Intercontinental

1990

ISDA FACTS AND MILESTONES

- ISDA obtains legal opinions on the enforceability of netting in nine countries.

ISDA Chair: Mark Brickell
Member Count: 130 institutions
ISDA AGM: Montreal, Four Seasons and Ritz Carlton

1991

ISDA FACTS AND MILESTONES

- The 1991 ISDA Definitions are published, intended for use with the 1987 ISDA Interest Rate and Currency Exchange Agreement, expanding the 1987 Interest Rate and Currency Exchange Definitions.

ISDA Chair: Mark Brickell **Member Count:** 173 institutions **ISDA AGM:** Vienna, Hotel Intercontinental

1992

ISDA FACTS AND MILESTONES

- The 1992 ISDA Master Agreement is published – a landmark product-agnostic document that allows all derivatives under a counterparty relationship to be netted.
- ISDA publishes the 1992 ISDA FX and Currency Option Definitions.

ISDA Chairs: Mark Brickell / Malcolm Basing
Member Count: 205 **ISDA AGM:** Paris, Hotel Intercontinental

KEY GLOBAL DEVELOPMENTS

- The UK pulls out of the European Exchange Rate Mechanism in September, after an effort to defend sterling by the Bank of England briefly results in interest rates rising to 15% – a day known as 'Black Wednesday'.

ISDA Safe, Efficient Markets
Celebrating 40 Years

1993

ISDA FACTS AND MILESTONES

- ISDA changes its name to the International Swaps and Derivatives Association.
- The 1993 ISDA Commodity Derivatives Definitions are published, marking the first ISDA definitional booklet for an asset class other than interest rates and FX.

ISDA Chairs: Malcolm Basing / Joe Bauman **ISDA AGM:** Hong Kong, Grand Hyatt

FINANCIAL MARKET DEVELOPMENTS

- The Group of 30 publishes *Derivatives: Practices and Principles*, which sets out industry best practices on the measurement and risk management of derivatives.

1994

ISDA FACTS AND MILESTONES

- ISDA publishes the 1994 ISDA Equity Option Definitions.
- The 1994 ISDA Credit Support Annex (Security Interest – New York Law) is published, setting a standard framework for counterparties to collateralise their derivatives exposures.

ISDA Chairs: Joe Bauman / Gay Huey Evans
ISDA AGM: Chicago, The Fairmont

FINANCIAL MARKET DEVELOPMENTS

- A series of derivatives-related losses at Procter & Gamble, Gibson Greetings and Orange County in the US puts a focus on derivatives selling practices.

1995

ISDA FACTS AND MILESTONES

- ISDA publishes the 1995 ISDA Credit Support Annex (Transfer – English Law) and the 1995 ISDA Credit Support Annex (Security Interest – Japanese Law).

ISDA Chair: Gay Huey Evans **ISDA CEO:** Carolyn Jackson
Member Count: 273 **ISDA AGM:** Barcelona, Hotel Arts

FINANCIAL MARKET DEVELOPMENTS

- The Basel Committee on Banking Supervision recognises the effects of bilateral netting of bank credit exposures in derivatives for capital adequacy purposes.
- Unauthorised trading by Nick Leeson ultimately leads to the collapse of Barings Bank, the UK's oldest bank.

1996

ISDA FACTS AND MILESTONES

- ISDA opens an office in London.
- ISDA publishes the 1996 ISDA Equity Derivatives Definitions, expanding the 1994 ISDA Equity Option Definitions to cover a wider range of transactions.
- The 1996 Model Netting Act is published, designed to provide a template that can be used by jurisdictions considering close-out netting legislation.

ISDA Chair: Gay Huey Evans
ISDA CEO: Carolyn Jackson
Member Count: 303
ISDA AGM: San Francisco, Hyatt Regency

1997

ISDA FACTS AND MILESTONES

- ISDA publishes the 1997 ISDA Government Bond Option Definitions and the 1997 ISDA Bullion Definitions.

ISDA Chair: Gay Huey Evans **ISDA CEOs:** Carolyn Jackson / Richard Grove **Member Count:** 345 **ISDA AGM:** Sydney, The Regent

FINANCIAL MARKET DEVELOPMENTS

- Sustained pressure on the Thai baht peg to the US dollar forces Thailand to devalue its currency in July, sparking a broader crisis in Asia Pacific, including Malaysia, the Philippines and Indonesia.

1998

ISDA FACTS AND MILESTONES

- ISDA publishes the 1998 FX and Currency Option Definitions, covering a wider range of currencies and transactions than the 1992 ISDA FX and Currency Option Definitions.
- Publication of the 1998 EMU Protocol marks the first ever ISDA protocol, giving market participants a cost-effective way of revising their documents to prepare for the emergence of the euro. ISDA also publishes the 1998 ISDA Euro Definitions.

ISDA Chairs: Gay Huey Evans / Mark Harding
ISDA CEO: Richard Grove
Member Count: 407
Member Countries: 34
ISDA AGM: Rome, The Hotel Excelsior

FINANCIAL MARKET DEVELOPMENTS

- Russia devalues the ruble and defaults on its sovereign debt, triggering economic and political instability in the country, as well as global financial market volatility.
- Hedge fund Long-Term Capital Management implodes, prompting $3.6 billion in emergency financing from a group of 14 banks.

1999

ISDA FACTS AND MILESTONES

- ISDA publishes the 1999 ISDA Credit Derivatives Definitions, providing the basic framework for the documentation of privately negotiated credit derivatives transactions.

ISDA Chair: Mark Harding **ISDA CEO:** Richard Grove **Member Count:** 426 **Member Countries:** 36 **ISDA AGM:** Vancouver, Hotel Vancouver

FINANCIAL MARKET DEVELOPMENTS

- The Glass-Steagall Act is repealed, ending the separation of commercial banking from investment banking in the US.
- The euro is launched, initially on an electronic basis only.

2000

ISDA FACTS AND MILESTONES

- ISDA opens offices in Tokyo and Singapore.
- The 2000 ISDA Definitions are published, updating and consolidating the 1991 ISDA Definitions, the 1998 Supplement to the 1991 ISDA Definitions and certain provisions of the 1998 ISDA Euro Definitions.

ISDA Chairs: Mark Harding / Keith Bailey **ISDA CEO:** Richard Grove
Member Count: 493 **Member Countries:** 40
ISDA AGM: Amsterdam, Golden Tulip Grand Hotel Krasnapolsky

FINANCIAL MARKET DEVELOPMENTS

- A surge in the valuations of technology and internet-based companies, known as the dotcom bubble, reverses in March, with sharp declines in stock prices around the globe.

2001-2025: The subsequent phase of ISDA's history will be documented in further IQ articles later this year

ISDA. Safe, Efficient Markets
Celebrating 40 Years

*Global Perspective

Having been chief executive of Hong Kong's Securities and Futures Commission, chair of IOSCO and now chair of the UK Financial Conduct Authority, ***Ashley Alder*** *reflects on the evolution of derivatives markets and ISDA's contribution*

IQ: It's been nearly two years since you took up the post of chair of the board of the Financial Conduct Authority (FCA) in February 2023. What have been your key priorities?

Ashley Alder (AA): Since starting the role as chair, an immediate priority has been to support the organisation in finalising a multi-year plan to transform the way the FCA works, making the organisation a faster and more effective decision maker, prioritising the right outcomes for consumers, markets and firms, and advancing the use of intelligence and information technology across all our operations. During this period, we recruited heavily following a fairly high level of staff turnover. All credit goes to the FCA's senior leaders in championing a challenging transformation programme, which has resulted in lower staff turnover, high levels of staff engagement and an organisation that is match-fit to deliver our next five-year strategy.

Current priorities for the board centre on the development and delivery of this strategy, while completing the final year of the FCA's strategy for 2022 to 2025. This will be framed against the backdrop of the FCA's secondary objective to facilitate the international competitiveness and economic growth of the UK and the government's overall growth agenda for the UK economy.

IQ: At the FCA's International Capital Markets Conference in October, you talked about the need for capital markets that deliver "the returns people need, and the investment that growth requires". What role does a vibrant derivatives market play in achieving this?

AA: A crucial one. Derivatives are a key risk management tool for corporates and the firms that provide them with capital. They allow firms to tailor the risks they are comfortable taking and hedge those they aren't. Better managed risk translates into more efficient use and lower cost of capital in the real economy, ultimately delivering higher returns and incentivising increased investment. It also allows corporates to focus on their core business and use the capital raised to drive the growth that benefits the UK economy and enables financial firms, including long-term investors, to optimise risk-adjusted returns, which, in turn, facilitates further capital raising.

Having said that, having become a regulator in the early stages of the global post-crisis reform, I'm acutely aware of the problems that can arise if derivatives are not risk managed properly, which is why I and others spent so much time on reforms across cleared and non-cleared markets. Events such as the collapse of Archegos Capital Management, the liability-driven investment crisis and the nickel market turmoil demonstrate why this remains a live topic.

"Derivatives are a key risk management tool for corporates and the firms that provide them with capital. They allow firms to tailor the risks they are comfortable taking and hedge those they aren't"

accurate and complete data that allows us to better monitor for systemic risk in the UK derivatives market.

IQ: Regulators now have a lot of information on derivatives exposures. How can better use be made of this data?

AA: UK EMIR data has been essential to our market monitoring and firm supervision for years. We use it to understand the impact of events on firms and markets, as well as to monitor trends in markets. It also supports firm supervision across the various wholesale portfolios, allowing us to understand firms' exposures and their activities with up-to-date data.

Better quality of reporting through firms is, however, crucial to ensure our resulting analysis is robust. To help with this, we significantly increased headcount on related reporting matters and trade repository data quality more generally over the course of the past year. But we need firms to continue to improve their reporting, ensure data quality and, when an issue is identified, fix it quickly.

Separately, we have continued to invest significantly in our cloud infrastructure and data capacity. By pairing this with investment in people and capabilities, we are increasingly seeing the returns, giving us ever more insight from our data and ensuring that our actions can be data informed.

IQ: The UK's derivatives reporting framework was upgraded in September when the UK European Market Infrastructure Regulation Refit (EMIR Refit) came into effect. Have you seen improvements in data quality and market transparency as a result? What more might be needed to achieve this?

AA: UK EMIR Refit, which took effect from September 30, aims to align the UK derivatives reporting framework with international guidance issued by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) to ensure a more globally consistent data set. The changes to the reporting requirements are significant. New reporting fields have been introduced that provide us with more granular data, ultimately allowing us to monitor markets better and respond to market events more effectively.

We are part way through a six-month transition period intended to allow members of the industry to update their outstanding derivatives to ensure conformity with the amended reporting requirements. During this time, we recognise there is potential for data quality issues to arise as the industry makes the necessary changes to outstanding contracts. From the end of the transition period on March 31, 2025, our expectation is that the quality of the data should increase once all trades are being reported under the new requirements.

We will work closely with trade associations and reporting counterparties to ensure the industry can report details of trades accurately and authorities are getting

IQ: During your long career in Hong Kong, you worked in a number of private- and public-sector roles before becoming chief executive of the Securities and Futures Commission (SFC) in 2011 – a post you held for 12 years. How did Hong Kong's capital markets evolve during that time and what is your outlook for the future?

AA: I worked in Hong Kong for 30 years. It was fascinating to witness the central role that capital markets in mainland China and Hong Kong played in financing the astonishing China growth story over the period and in connecting China with the world as part of 'reform and opening up'.

While at the SFC, it was clear that without significant rule change, the Hong Kong →

→ and mainland markets would not have grown in the way they did – and, absent that expansion, investment in the real economy would have been far more muted. The sentinel reform was undoubtedly the Stock Connect programme, launched in 2014, and Bond Connect in 2017 and 2021, which facilitated cross-border market access for overseas and mainland China investors, while preventing the sort of capital leakage that was a continual concern of Chinese authorities.

These programmes did not, however, rest on relaxed risk and conduct standards. In fact, market confidence depended on maintaining intensive cross-border market surveillance and intelligence sharing. It was interesting to see, though, a very large degree of caution over the use of derivatives, especially after the 2015 market crash in mainland China markets. This is why it took many years to reach agreement to launch index futures in Hong Kong that referenced mainland market underlying securities.

These experiences have relevance to the UK, particularly in a climate where the role of regulation in relation to economic growth is top of the agenda. Regulatory reform lies at the heart of ambitions to increase the opportunities for businesses to tap public and private markets and mobilise domestic savings to provide better long-term returns for consumers while increasing the pool of capital available to invest in the real economy.

One aspect of the current debates around regulation and growth wasn't as prominent in Hong Kong. This concerns societal acceptance of the risks that accompany reforms, such as landmark changes to the listing rules and the forthcoming Private Intermittent Securities and Capital Exchange System, which will give some public investors access to private markets, and the trade-offs all of this implies. It won't surprise you to know that retail investors in Hong Kong are, by and large, enthusiastic and sophisticated participants in risk markets. In this respect, the UK scene is very different and, of course, these differences have deep cultural roots.

IQ: As chair of IOSCO between 2016 and 2022, you led the organisation in addressing key issues including sustainable finance, market fragmentation and technological innovation. What do you see as the main issues on the global regulatory agenda today, and how should they be addressed?

AA: The FCA's remit and priorities have an important international dimension due to the scale of our activities and the intensely cross-border nature of the markets we regulate. Our global regulatory agenda forms an important aspect of our next five-year strategy. Much is being said globally about the possibility of radical deregulation amid increasingly protectionist signals. I recently made the point in the UK parliament that the continued success of the UK as a centre for fixed income, currencies and commodities rests on the pursuit of common global standards or baselines to ensure our open international markets continue to function with maximum achievable efficiency. We should not join a race to the bottom.

Day-to-day cross-border regulatory cooperation (such as through IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information) will also be incredibly important as so much market activity now operates outside single domestic systems. This will increase as digital markets evolve as sophisticated networks connecting traditional financial services and innovative markets.

FCA priorities will continue to include work on non-bank financial intermediation (NBFI) at IOSCO and the Financial Stability Board (FSB). The FSB's recently published consultation report, *Leverage in Non-Bank Financial Intermediation*, which the FCA co-chairs with the European Central Bank, is a good example of the type of global influence the FCA will continue to pursue. This, in turn, relates to some big questions about the role of regulation as private markets account for an increasing slice of global financial assets. We will also continue to encourage the development of standards for sustainable finance and crypto assets and work to understand the risks posed by emerging artificial intelligence technology through the lenses of financial stability, market integrity and investor protection.

IQ: You began your career in 1984, a year before ISDA was established to bring greater standardisation to legal documentation in the derivatives markets. What contribution has ISDA made to the development of this market? What do you see as its biggest achievements?

"ISDA has been fundamental to the development of modern derivatives markets. The creation of standard documentation templates has enabled derivatives to grow far more rapidly, with increased liquidity founded on higher levels of investor confidence"

AA: ISDA has been fundamental to the development of modern derivatives markets. The creation of standard documentation templates has enabled derivatives to grow far more rapidly, with increased liquidity founded on higher levels of investor confidence. ISDA has also played a key role coordinating and marshalling its broad membership to adopt important changes in response to new issues.

In this way, ISDA does much more than represent its members as a trade association – it also functions as a sort of standard setter. From the 'Big Bang' credit derivatives reforms after the global financial crisis to the creation of the ISDA Standard Initial Margin Model and the multi-year transition away from LIBOR, ISDA has led the development of vital industry mechanisms and processes that have provided invaluable support to the global regulatory agenda.

In recent years, ISDA's progression from standardising documentation to standardising data, embodied in the Common Domain Model and the Digital Regulatory Reporting initiative, promises to help further advance our regulatory objectives. I see this focus on data availability and interpretability as being of the utmost importance to the soundness and safety of instruments that not too long ago were labelled as destructive.

"From the 'Big Bang' credit derivatives reforms after the global financial crisis to the creation of the ISDA Standard Initial Margin Model and the multi-year transition away from LIBOR, ISDA has led the development of vital industry mechanisms and processes that have provided invaluable support to the global regulatory agenda"

IQ: As a regulator, you've collaborated with ISDA on a number of key initiatives over the years, including the retirement of LIBOR. How has constructive public-private sector collaboration helped to effectively address industry challenges and transitions?

AA: We value engagement with all our stakeholders across a wide range of topics. Sometimes this is on major strategic issues and sometimes it is at the more granular level of implementation challenges, and it is always important in delivering our desired outcomes effectively and proportionately. But ISDA's work on the LIBOR transition in coordination with the authorities, both domestically and internationally, and the wider industry sets the standard for how much we can achieve when we work together. It is an example I hope we can learn and build from to help deliver the successful markets we all want to see.

IQ: During your career, you've seen derivatives markets evolve from a variety of different perspectives and in several locations. What have been the highlights of this evolution, and how do you think derivatives markets will develop from here?

AA: Over the past few decades, across every asset class and region, we have seen derivatives markets grow and evolve to continue meeting the ever-changing needs of an increasingly broad range of users.

Before the global financial crisis, standardisation led to rapid growth that embedded derivatives more deeply within global financial markets. However, this perhaps unchecked growth also played a significant role in exacerbating stress in 2008, as uncollateralised exposures famously stoked contagion fears among financial institutions.

Since 2008, derivatives markets evolved again, transforming to meet demands from authorities for increased central clearing and margining, as well as further standardisation to support growth in on-venue trading. All of this helped to address the vulnerabilities exposed during the financial crisis.

But, as the events of the past five years have demonstrated, the post-2008 evolution in derivatives markets transferred a portion of that vulnerability from counterparty risk into an increased vulnerability to liquidity risk, not least due to sudden spikes in margin calls during periods of stress. The current challenge for derivatives markets is to develop solutions that can address this liquidity risk without compromising the gains we have made in mitigating counterparty risk.

Much work on this is already underway within the global regulatory community – at IOSCO, the Basel Committee on Banking Supervision, CPMI, the FSB and others – so I'm optimistic about our collective ability to achieve the right balance, working together with ISDA and other industry stakeholders. IQ

* A Steady Focus

A continued commitment to standardisation has been key to ISDA's success over the years. In its 40th anniversary year, the association will move forward with several landmark projects, including a review of the FX definitions and development of the ISDA Notices Hub

A shared need for legal standards and documentation in the nascent derivatives market was the reason ISDA came into being in 1985. Forty years on, it has added many more strings to its bow to serve the continued evolution of the market, but standard documentation remains at the heart of the association's mission. As ISDA marks its 40th anniversary, its commitment to keeping in step with market changes and driving efficiencies for participants will underpin its key documentation priorities in 2025.

Over the coming months, ISDA will move to a critical stage in the update of its flagship FX product definitions – a project that was initiated in response to industry feedback on the need to update the widely used definitions to reflect the nature of today's FX market. ISDA will also continue to work with market participants to reap the benefits of digitisation in eliminating bottlenecks in the negotiation and execution of documentation, reducing risk and saving costs for market participants.

"The standardisation of legal documentation has been central to ISDA's mission for four decades. We remain committed to leveraging our legal expertise and commitment to digitisation to navigate the evolving market landscape, ensuring safe, efficient and resilient derivatives markets for the future. This means continuing to pioneer digital solutions and ensuring all our documentation is relevant and appropriate for today's derivatives market," says Katherine Tew Darras, ISDA's general counsel.

FX definitions review

The review of ISDA's 1998 FX and Currency Options Definitions got underway last year following an industry survey in 2023 to determine how the definitions could be improved to reflect the evolution of the FX market. While the contractual terms applicable to FX derivatives have evolved with the addition of supplemental publications, the survey showed strong industry support for a more comprehensive review, given the changes that have occurred since the definitions were originally developed in the 1990s.

160+

Documents and document versions now available on ISDA MyLibrary

The FX market trades around the clock and across the world, with $7.5 trillion in average daily notional turnover, of which 72% is swaps, forwards and options, according to the Bank for International Settlements (BIS) triennial survey in 2022. The market is not only far larger than it was in 1998 – when the BIS survey recorded average daily turnover of $1.5 trillion in traditional FX instruments – but recent geopolitical events, such as Russia's invasion of Ukraine in 2022, have highlighted the need for an update.

"The FX definitions still function very well, but given the substantial growth and general evolution in the FX market over the past two decades, coupled with more recent geopolitical events, ISDA undertook a market participant survey to ensure the definitions are fully aligned with the realities of today's market," says Ann Battle, senior counsel, market transitions, at ISDA.

Specifically, the sanctions on Russian entities following the invasion of Ukraine led to uncertainty over outstanding deliverable ruble transactions. Industry feedback to the 2023 survey revealed widespread interest in reviewing provisions relating to disruption events and fallbacks to create greater certainty for market participants in the event of future geopolitical shocks. This work will be a key area of focus in the coming months.

"Following the Russian invasion, there is a realisation that deliverable markets could be more sophisticated in managing geopolitical risk. Some techniques and solutions are already available under the existing definitions, but we need to develop operational approaches and documentation standards that are more nuanced and agile to capture wider trading and valuation disruption scenarios, while allowing for some volatile and challenging markets," says Paul Landless, partner at Clifford Chance.

Beyond the work on disruption events and fallbacks, ISDA is considering updates to other aspects of the definitions, including the treatment of unexpected holidays. Specifically, ISDA is discussing with members whether the contractual language should address the declaration of a non-business day that is announced after the forward price has been set.

ISDA expects to complete the drafting of the new definitions later this year, with implementation targeted for the end of 2027. The definitions and related documentation will be consolidated into a single definitional booklet, which will be made available to market participants in digital form via the online ISDA MyLibrary documentation platform, where users will be able to access a single-source version of the definitions.

"The 1998 definitions have stood the test of time really well. However, it now makes sense to consolidate in one place all the documents that have been published around the FX definitions. For instance, standalone documentation exists for certain FX products and bringing everything together in one place will make things easier. Experience shows us that when you have disparate sets of documents, you risk creating documentary inconsistencies," says Deepak Sitlani, partner in the derivatives and financial markets group at Linklaters.

Digital journey

The 1998 FX definitions have been available in digital form on ISDA MyLibrary since 2022, which has enabled updates to be made far more efficiently over the past two years, but the digital format will continue to bring efficiencies for market participants once the new definitions are finalised and published. It will mean that rather than having to physically identify and locate supplemental publications to account for changing market conventions in the future, market participants will always be able to access the very latest version of the definitions.

> "Having a digital version of the relevant documents means we can find everything in one place, can easily locate the most recent version of the definitions and can also avoid printing and updating hard copies of those documents"
>
> **Janet Wood, Bank of America**

In the event an update is needed for any of its definitions, ISDA can use the MyLibrary platform to amend and restate those definitions. Not only does this make ISDA documentation much easier to use on a day-to-day basis, but it also allows market participants to quickly and efficiently retrieve the digital version of the definitions that applied at the time a legacy transaction was agreed, with the ability to compare different iterations and marked-up changes. In the event of a market shock, users can quickly identify the key terms of an affected trade without having to wade through mountains of paper documentation to find the terms that prevailed at the time the transaction was executed.

ISDA has prioritised making its most frequently used documents available on ISDA MyLibrary. To date, more than 160 documents and document versions have been published on the platform, including the 2021 ISDA Interest Rate Derivatives Definitions, the 2002 ISDA Master Agreement and the 2005 ISDA Commodity Definitions. Having immediate access to all these documents in digital form, with intuitive search and comparability tools, is driving ever greater efficiencies for market participants.

"The legal profession has a tradition of paper documentation and most of us keep our favourite definitional booklets to hand on our desks, but the increasing number of changes required to the definitions over time means there are often multiple supplements. Having a digital version of the relevant documents means we can find everything in one place, can easily locate the most recent version of the definitions and can also avoid printing and updating hard copies of those documents. This is especially helpful if people are working in multiple locations and do not have access to physical documents," says Janet Wood, managing director and associate general counsel at Bank of America.

ISDA's commitment to digitisation extends beyond the documents themselves to the negotiation of contracts. ISDA Create, which is now available through S&P Global Market Intelligence's Counterparty Manager platform, enables firms to digitally generate, negotiate and execute documentation and then seamlessly capture, process and store the data from those negotiations. This brings huge improvements to the speed and efficiency of negotiations, enabling firms to start trading with new counterparties at a quicker pace. It also allows firms to →

negotiate with multiple counterparties simultaneously, which is far more efficient than conducting negotiations manually. More than 500 buy- and sell-side entities are now using ISDA Create, and ISDA will continue to drive further adoption throughout 2025.

"When it comes to negotiating contracts, everyone is very conscious of both the cost and the time it takes. From a business perspective, the longer it takes to onboard a client, the longer it takes to do business. If you can compress that time frame – from onboarding clients to getting documents executed – there is value for everyone. ISDA Create gives users immediate access to all their contractual data and enables them to quickly update contracts as well. Firms can get a far more holistic overview, giving them a quick snapshot of what their contracts look like across different counterparties," says Sitlani.

Serving notice

As ISDA continues to work on the digitisation of documentation through its existing platforms, it will also launch a major new initiative this year to help market participants manage the termination of a derivatives relationship. The ISDA Notices Hub, an online platform that will enable the instantaneous delivery and receipt of critical notices, will reduce the risk and potential losses that can result from delays in the delivery of notices or the use of out-of-date address details.

Under the ISDA Master Agreement, termination-related notices must be delivered by certain prescribed methods using the counterparty's address as listed in the agreement. This becomes problematic if a counterparty moves offices and the documentation is not updated. Having to physically deliver notices can lead to delays even during relatively calm markets but can cause particular problems during more unsettled periods – such as during the pandemic, when offices were vacated, and following Russia's invasion of Ukraine, when market participants were unable to deliver notices to offices located in a hostile environment. Uncertainty over the delivery of notices can have serious economic consequences, with losses running to millions or even hundreds of millions of dollars.

Having identified strong support from buy- and sell-side institutions globally, ISDA is moving forward with the development of the Notices Hub. An industry outreach initiative last year indicated that more than two-thirds of ISDA's global primary dealer membership intend to adopt the platform in principle. Support for the initiative spans geographies, with 39% of positive responses from the US, 47% from Europe and 14% from Asia Pacific.

"The Notices Hub will be of benefit across the market. Smaller firms will struggle as much as larger ones when it comes to delivering notices to an entity that has undergone multiple reorganisations and moved offices several times. Furthermore, smaller companies may have fewer resources to manage delivery of multiple physical notices in various jurisdictions. We will be looking to promote understanding of the Notices Hub as it moves forward, both internally and with our clients," says Bank of America's Wood.

As well as facilitating the online delivery and receipt of notices from anywhere in the world, the ISDA Notices Hub will maintain a golden source of updated office addresses for those counterparty relationships where physical delivery will continue. ISDA is working with S&P Global Market Intelligence and Linklaters to build the platform, draft the necessary documentation and commission legal opinions in priority jurisdictions to confirm the validity of delivering notices via a central hub.

The Notices Hub will be free for the buy side, and the associated protocol – which will incorporate delivery of notices via the Notices Hub as an acceptable option into existing agreements – will be free for all users. The hub will be available via S&P Global Market Intelligence's Counterparty Manager platform, which, when combined with the functionality of ISDA Create, will provide users with wide-ranging functionality, including client onboarding, documentation and the serving of notices. IQ

REVIEW OF DETERMINATIONS COMMITTEES PROGRESSES

Following a market-wide consultation on proposed changes to the structure and governance of the Credit Derivatives Determinations Committees (DCs), ISDA will work with market participants and policymakers this year to put flesh on the bones of the resulting proposals and show how they could be implemented in practice.

The DCs were introduced in 2009 as a centralised decision-making body to enable a standardised auction settlement process and ensure central clearing could be implemented for credit default swaps. Although ISDA does not control the DC rules and is not involved in the determinations process or administration of the committees, ISDA has an interest as a global derivatives trade association in ensuring the committees continue to function robustly.

The consultation, conducted by Boston Consulting Group, was based on recommendations proposed by Linklaters as part of an independent review on the composition, functioning and governance of the DCs. The review was initiated to identify amendments that could be made to improve the structure of the DCs and strengthen their long-term viability and robustness in changing economic and market conditions.

"The current DC structure has been in operation since 2009, but the number of firms willing to serve on the committees has declined steadily in recent years, so it is an appropriate time to consider whether potential changes could be made to maintain a robust, centralised and transparent mechanism for the determination and settlement of credit events," says Nima Farkhondeh, associate general counsel at Bank of America.

The consultation indicated broad market support to implement many of the recommendations made by Linklaters, including establishing a separate governance body, implementing certain transparency proposals relating to information disclosure and appointing up to three independent members of the DCs. ISDA is now working with its members to translate the recommendations into proposed changes to the DC rules and governance. These will then be presented to the DCs, which are solely responsible for agreeing and implementing any amendments.

ISDA. Safe, Efficient Markets
Celebrating 40 Years

*Decade of Transformation

*After 10 years at the helm, **Eric Litvack** stepped down as chairman of ISDA at the start of 2025. He talks to **IQ** about the highlights of his tenure and reflects on the transformation of the association and the industry*

As he steps down as chair of ISDA's board of directors after 10 years, Eric Litvack has much to reflect on. His period of service – first as a board member, then as vice chair before becoming chair in 2015 – constitutes nearly half of the association's history and coincided with unprecedented change in the derivatives market, from the financial crisis and the implementation of regulatory reform to the cessation of LIBOR.

Yet some of ISDA's greatest accomplishments under Litvack's stewardship are those that didn't necessarily make the headlines. Margin requirements have been successfully introduced for non-cleared derivatives, with the ISDA Standard Initial Margin Model (ISDA SIMM) assuming a central and critical role in the market structure. LIBOR, a benchmark that once underpinned trillions of dollars' worth of contracts, has been gracefully retired from service without disrupting the functioning of the market. Both were seismic industry transitions that were achieved through diligent, painstaking work spanning many years.

"The fact that these changes were achieved without generating headlines is massive," muses Litvack. "We don't talk much about LIBOR anymore – the industry and the public sector have moved on – but the huge success of the transition is a testament to the tens of thousands of hours that were spent planning it out and laying the groundwork."

Beyond the big-ticket milestones, there has also been a more subtle transformation in the work of the ISDA board and its interactions with the association's membership and staff. Under Litvack's leadership, board committees were set up to reflect key areas of ISDA's work and were tied to the various ISDA working groups to keep continual track of progress, with a culture of transparency and accountability underpinning the flow of discussions and meetings.

"ISDA today is professional, accountable

> "ISDA today is professional, accountable and goals-driven – it aims at the very highest standards, and it delivers an exceptional breadth of value for derivatives users. It has become an integral part of the landscape for both the public and private sectors"
>
> **Eric Litvack, ISDA**

and goals-driven – it aims at the very highest standards, and it delivers an exceptional breadth of value for derivatives users. It has become an integral part of the landscape for both the public and private sectors and continues to provide innovative solutions to shared problems that would otherwise be very difficult to solve. That's an exciting place for ISDA to be, and it gives me confidence that this is the right time to step down," says Litvack.

Different time

When Litvack first joined the ISDA board in November 2006, unprecedented challenges lay ahead for the derivatives market. Within months, the financial crisis would begin, triggering a far-reaching package of regulatory reforms that would require the association to advocate for appropriate policy measures while also helping the industry with implementation. But for the equity derivatives veteran – Litvack has worked at Société Générale for 38 years, based in Paris since 1996 – the more immediate challenge was to find his feet with ISDA.

"The ISDA board was fairly intimidating when I became a director – these were giants in the industry, many of them now retired, and I felt rather out of my depth. It could also be a little frustrating at times. We could sometimes have really interesting discussions about important topics, but ultimately stopped short of making decisions or giving clear directions to staff. As we began to deal with the post-crisis reforms, it was clear that the governance process needed to evolve," he says.

In September 2012, Litvack became vice chair of the board, a role he would hold for two years before becoming chair at the start of 2015. As the workings of the board have been transformed over the past decade, so too has its composition. The board has grown from 25 to 30 members, which includes six representatives from the buy side and three from central counterparties (held on a rotating basis). Gender diversity has also improved, with the proportion of women increasing from 11% in 2015 to 38% today.

"The board used to be very much a primary dealers' club, but having expanded the ISDA membership to incorporate users more broadly, it became necessary to ensure those users were also better represented →

▲ Eric Litvack delivers chairman remarks at ISDA's 38th Annual General Meeting in Tokyo, April 2024

“Chairing an organisation the size of ISDA and leading the transformation, together with the board and the executive, has been a full-on role but it has also been exceptionally rewarding”

Eric Litvack, ISDA

→ on the board. Today, the board is a bigger tent that is much more reflective of the broad universe of derivatives users, and I believe it’s a better decision-making body because it incorporates a greater diversity of perspectives into top-level governance,” says Litvack.

Changing agenda

Following the financial crisis, the advent of the regulatory reforms quickly dictated the board’s agenda and presented a new set of challenges that ISDA would need to address. While each challenge had its own specific features that necessitated a unique approach, the common thread for ISDA was the need to identify what it could bring to the table and what role it might play in helping the industry overcome implementation challenges.

The introduction of margin requirements for non-cleared derivatives would prove to be one of the most defining transitions during Litvack’s tenure on the board. With central clearing of standardised derivatives a core plank of the Group-of-20 reforms in 2009, regulators subsequently sought to reduce the systemic risk posed by those transactions that couldn’t be cleared. The bilateral posting of initial margin (IM) for non-cleared derivatives presented significant operational challenges, but the alternative would have been a fully cleared, futures-style market, which would have significantly reduced choice and flexibility for derivatives users, says Litvack.

“This was one of the more difficult messages we needed to carry after the crisis,” he explains. “Clearing was a good solution for fairly standard types of contracts, but there is a long tail of more bespoke products that may not be safe to clear because the market might not be deep enough, or they might have specificities that would make them difficult to liquidate in a crisis. Those products are still an essential part of the risk management and investment toolkit. If we

wanted to preserve that market segment, we needed to come up with a universally accepted framework that would allow market participants to agree risk-appropriate margin requirements rather than having to use the standard schedule, which would have been punitively expensive.”

In June 2013, the ISDA board agreed to the concept of an industry standard margining model during a meeting at Cliveden, an English country estate. It would take several years to develop the model and governance structure, but by the time the largest market participants were required to begin posting IM in September 2016, the ISDA SIMM was ready. As the margin requirements extended to an ever-larger group of market participants over the years that followed, the model would play a fundamental role in implementation.

“We were probably a bit naïve when we came up with the concept at the Cliveden retreat, but I believe the greatest accomplishments come from not knowing they’re almost impossible. Moving this from a concept to a reality took an enormous amount of work, but it’s now an integral part of the market infrastructure – you can’t imagine this market without the ISDA SIMM. To me, it’s really the poster child of ISDA’s achievements in rallying the community’s collective intelligence to deliver a solution that would be sustainable over the long term,” says Litvack.

The transition away from LIBOR would be a very different challenge for the derivatives market, but one that would also come to define Litvack’s time as chair. In July 2017, Andrew Bailey, then chief executive of the UK Financial Conduct Authority, announced that the regulator would no longer compel or persuade banks to submit to LIBOR after the end of 2021. At that point, it was estimated that more than $370 trillion of notional exposure was referenced to LIBOR and other interbank offered rates across derivatives, bonds, loans and other instruments.

“The immediate reaction to the Bailey speech was a mix of shock and denial – most people thought he couldn’t really have meant 2021. Moving trillions of dollars’ worth of contracts to alternative reference rates was going to be a massive transition that nobody thought could be achieved in four years.

Over-the-counter derivatives represented the biggest single segment of LIBOR exposures, so it was clearly something ISDA had to take on," says Litvack.

The LIBOR transition quickly became a top agenda item for the board, as ISDA's staff and membership worked closely with the public sector to lay the groundwork for the transition. This multi-faceted work included efforts to accelerate the transition to risk-free rates for new contracts, as well as the development of fallbacks for those contracts that would still reference LIBOR at the point at which it ceased publication or became non-representative.

Despite the initial anxiety about the timeline and the additional challenge of maintaining momentum during the pandemic, most LIBOR settings ceased publication at the end of 2021, with five US dollar settings continuing until mid-2023. LIBOR is now largely a historical benchmark and Litvack has sometimes referred to the transition as "the dog that didn't bite". But the fact that it didn't bite was the result of thorough preparation and collaboration to ensure a smooth transition.

"LIBOR was a very different challenge to the ISDA SIMM, but it was a similar scale of effort and resources that were required, and we leveraged ISDA's collective capabilities to pull it off successfully. It's a great achievement for ISDA and one that we can certainly look back on with a high degree of pride in a job well done," says Litvack.

▲ Eric Litvack in the studio at ISDA's 37th Annual General Meeting in Chicago, May 2023

On the road

As well as the day-to-day responsibilities of chairing the ISDA board and holding the staff and working groups to account in achieving their objectives, the role also demands a fair number of high-profile appearances. These include meeting with policymakers, speaking at the Annual General Meeting (AGM) and attending ISDA's regional events – in short, a large amount of time on the road.

Having attended every AGM during his decade as chair, Litvack has a few favourites. In 2015, his first year in the role, it was held in his home town of Montreal. The meeting in Lisbon in 2017 was also symbolically important in the wake of the UK's Brexit referendum. "Following the trauma of Brexit, that was an important moment to gather in a European city and talk about European values," he says.

Litvack's swansong AGM in Tokyo in April 2024 allowed him to take some time out with his wife and children after the event. "I've always loved visiting Tokyo with ISDA, because the local members and the public sector are super invested. Japan is also a beautiful country, and it was great to extend the trip with my family – that was a very special time."

With a little more time on his hands after relinquishing the role of ISDA chair, Litvack hopes to spend more time travelling the world and disconnecting from work. He will continue to support the board during the near-term transition, but he leaves the role with no regrets, having enjoyed every aspect that it entailed.

"This has been the highlight of my career," he says. "Chairing an organisation the size of ISDA and leading the transformation, together with the board and the executive, has been a full-on role but it has also been exceptionally rewarding. I'll certainly miss the feeling of satisfaction that has come with every accomplishment. Tomorrow will bring its own share of problems and challenges, but right here, right now, we rose to the occasion and we did it."

And finally, what advice would Litvack give to his successor, and those that will carry ISDA's mantle in the future?

"Enjoy the job. Lean into it. Pay attention to the details and the people. This isn't an industry where we can move fast and break stuff. If you break stuff, you pay a big fine and you have to be able to demonstrate that you won't ever break stuff again. You have to think very carefully about where ISDA can best add value and drive efficiencies for derivatives users. And, of course, there comes a point when you don't need to own all of the problems any more, recognising that what got us here won't necessarily get us there. For me, it's a bit of a wrench but that time is now." IQ

* Starting Out

To mark the start of ISDA's 40th year, **IQ** *convened a group of derivatives pioneers to talk about the early days of the market, the reasons for ISDA's formation and its initial landmarks*

IQ: What were your first roles in the derivatives market?

Tom Jasper (TJ): I was at Salomon Brothers at the time, and I fell into interest rate swaps because no one at the firm had any idea what they were. But we were seeing interest rate swaps being transacted in London and I was asked by my boss to figure this out. Salomon had done the first currency swap between IBM and the World Bank, but the people involved at Salomon didn't know much about interest rate swaps. So, I did some sniffing around the market and started to get some sense for what they were and was terribly confused, but my job was to explain those instruments to everybody in New York. The question was who was going to be the counterparty, and we thought logically it would be a corporation. So, I went to the investment bankers and asked them to take me out to their clients to explain interest rate swaps. Of course, they were extraordinarily protective of their clients, and they didn't want to be embarrassed by taking some young vice president out to talk about something called interest rate swaps. Ultimately, I prevailed and had a few meetings with clients, but I can assure you it was very basic. Fortunately, they took a leap of faith that Salomon would figure it out and we completed the first transaction, and everybody was happy. This was before ISDA – it was probably 1982 or 1983.

Fast forward to the beginnings of ISDA. There was a very small group of people in the market doing interest rate swaps at the time and everybody knew each other. The big issue was that we could transact but it was incredibly tough to get documents negotiated and signed and we all had huge backlogs. That was the genesis for realising that something had to be done about this. We had a meeting in March 1984 to discuss how to take this forward. It was like the Wild West at the time. We were out doing transactions, and everybody was happy. I can assure you our back offices were not happy because of the documentation issue, and everybody understood this was a risk. So, that was the start of ISDA.

Jeffrey Golden (JG): I began my legal career at Cravath, Swaine & Moore and I acted as legal counsel in the early 1980s for what were then some of the earliest swaps. More importantly, I was lucky enough to be at the first meeting of the group that included lawyers in July 1984, acting for Salomon Brothers. As I recall, it was 11 banks gathered around the table to discuss standardising documentation, and my recollection is that I managed to attend every one of those small group meetings. Maybe more importantly, I got to be in the room when ISDA picked its name. Then it became my privilege with Dan Cunningham to hold the pen when writing the 1985 Code of Standard Wording, Assumptions and Provisions for Swaps, the 1986 code and the master agreements that flowed from that.

THE PARTICIPANTS

Mark Brickell
ISDA chairman 1988-1992

Jeffrey Golden
formerly Cravath, Swaine & Moore, drafting counsel for the first ISDA documents

Rick Grove
ISDA CEO 1997-2001

George Handjinicolaou
ISDA deputy CEO 2007-2009, 2011-2016

Carolyn Jackson
ISDA executive director 1995-1997

Tom Jasper
ISDA chairman 1985-1987

Patrick de Saint-Aignan
ISDA chairman 1987-1988

"There was a very small group of people in the market doing interest rate swaps at the time and everybody knew each other. The big issue was that we could transact but it was incredibly tough to get documents negotiated and signed and we all had huge backlogs"

Tom Jasper

Patrick de Saint-Aignan (PSA): I was in the capital markets group at Morgan Stanley when the World Bank-IBM deal took place. Obviously, we thought we can't let a competitor get all the kudos, so I became the first product manager for currency swaps and then later also for interest rate swaps. Our office in London was very active at the time and a lot of innovation came from London. At that point, the Brits wanted to call it a swop and not swaps, so they put up a bit of a struggle there. But eventually the name was decided and ISDA became the International Swap Dealers Association. Obviously, ISDA changed its name subsequently because it wanted to embrace the whole derivatives market and not just swaps. I think it was a brilliant move to keep the acronym but change the name to the International Swaps and Derivatives Association, and it also enabled us to bring in non-dealers and end users as members of ISDA, which was somewhat controversial, but a lot of us felt it was desirable.

I remember, of course, the first meeting in Palm Beach, Florida in March 1984, when the decision was made to try and organise this activity, which, as Tom explained, suffered from complexity and a lack of standardisation. We were crumbling under the weight of documentation and the fear of having a three-yard-long telex as supporting documentation for a transaction that might not be documented for another year. So those were real concerns.

JG: I remember well the battle between the Brits and the Yanks about whether to spell 'swap' with an 'o' or an 'a'. I think we moved the needle on that because, when we did the 1985 code, we focused almost as much on the title as we did on what went between the pages. We came up with this idea that we were going to focus on wording, assumptions and provisions. If we could spell that out – Code of Standard Wording, Assumptions and Provisions for Swaps – and you read the first letter of each word, it spells swaps. We came up with the word 'assumptions', but we couldn't come up with a word beginning with 'o'. So, I think that won the day for swaps with an 'a'.

Mark Brickell (MB): My first contact with swaps came in 1984 or 1985. I had been assigned by JP Morgan to the funding operation of the bank to establish the base rate of interest on every fixed-rate loan we made in dollars from our US operation, from overnight out to 10 or 12 years. That brought me into contact with interest rate swaps as an end user. I sat in the bank's treasury using swaps and the prices on those swaps as a way to set rates for loans that went out far longer than the normal overnight, three-month or one-year horizon for a fixed-rate loan. Swaps were reducing costs and generating valuable information, and they took off.

Carolyn Jackson (CJ): In 1983, I had finished business school, and I joined Chase Manhattan Bank as the fifth and most junior member of the swaps team, which was part of the capital markets group within the investment banking division. The group had been set up by a person who had left Bankers Trust and had been working for Allen Wheat, one of the big names in the industry, so it was my boss's opportunity to see what he could do on his own to grow the team. What was interesting was that nobody wanted to be in this newly formed group at the time because it was so unknown what the success rate or trajectory would be for such a group.

George Handjinicolaou (GH): My start was on the buy side when I joined the funding department of the World Bank in 1983. The World Bank had discovered that issuing in Deutsche marks, yen, Swiss francs and later the euro and swapping the proceeds into US dollars would typically result in cheaper costs. As one of my first assignments, I was asked to make sense of a 200-page telex, which was essentially a confirmation. There was no standard documentation – just customised legal agreements and this one ran to about 200 →

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George Handjinicolaou

→ pages. Trying to decipher this was how I learned what a swap is, and I eventually wrote a handbook about swaps for the World Bank, which was used for several years. After that, I moved to the sell side at various organisations, including Security Pacific, Dresdner and UBS, and I was fortunate to watch the growth of this market, which probably exceeded everybody's expectations. There were very few people initially – maybe a couple of dozen globally and we all knew each other. I knew the market would grow because it was attracting the best people, but I never in my wildest dreams thought it would grow as big as it did.

Rick Grove (RG): In January 1984, I was a lawyer at Cravath, Swaine & Moore and was posted to London. It was very quiet, but Jeffrey Golden handed me what turned out to be an interest rate swap. I thought it was going to be one and done and I would never see another one. By the summer of 1984, I was working on hundreds of interest rate swaps. By the time I got back to New York in late 1985, I was put in charge of a group of 20 associates working on these transactions. On that desk, I had a red telephone that was a hotline connected to Tom Jasper's desk at Salomon Brothers and, anytime from 7:00am in the morning until deep into the evening, that phone would ring, and I'd answer it, and we'd try to work through the documentation backlog. Eventually, I decided to move to Paribas, where I was on the derivatives sales and trading desk for several years, before becoming chief executive of ISDA in 1997.

IQ: A couple of you have said you didn't expect the market to grow to the extent that it did. Was that view shared? Did you see this as a market with a long-term future?

MB: As an end user on JP Morgan's funding desk, it was very clear these contracts were reducing our funding cost, and they were also a valuable source of information about the yield curve for corporate fixed income. So, it seemed they had great potential. The bank soon moved me over to the dealer side, and the growth trajectory was so robust that the prospects looked really bright for the product, as long as we managed our operations, our accounting and our regulatory risk.

GH: You said it, Mark, because the growth was incredible, and then the first rain started falling in the back offices because of the backlogs. I think most of the firms that were involved in the early days got into trouble.

TJ: Again, part of the problem was there was no standardisation in the market. At Salomon, we wanted to trade these instruments, and you couldn't trade them unless you had something approaching a standard contract. So, that really became the Holy Grail. We envisioned the growth of the market – not as an agency-type business, but as a principal business where you could trade the contracts. That's where we saw the real growth, but you needed to have a standardised contract to get there.

JG: In the pre-ISDA days, being a swaps lawyer was three things. It was glamorous. I got my first Concorde flights in that period because the margins justified it. A lot of exciting stuff was happening in London and some of us were sitting in New York, so we had to get back and forth quickly. It was exciting. There were immutable deadlines. You weren't going to put on the hedge without the underlying trade, and you weren't going to do the underlying trade until you were comfortable with the hedge. So, everything had to happen simultaneously. But if you kept your cool and you met those deadlines, then there were closing dinners, Lucite cubes and fountain pens – all the things that made it exciting for lawyers. But it was also frustrating. People fought, not because they were necessarily right, but because they were more familiar with their versions of the agreements. Different lawyers for different firms had produced their own contracts, and everybody was told 'don't change a word of it because you might undo the magic'. We had to figure out a way to cut through the time and cost it was taking to finalise the documents.

PSA: Most of us recognised the market could not develop unless there was some element of standardisation in the documentation. Also, clients hated it. They questioned why they needed to have a different agreement for Morgan Stanley, for Salomon Bothers and for Bankers Trust. There was tremendous pressure, not only because of the backlog, but simply because it would become more attractive and we could grow the business.

MB: It's true there was a focus on improving the documentation process, but I would broaden the theme to be greater than standardisation. To me, it was a collective effort to find more efficient ways to handle custom-tailored transactions. Yes, with respect to documentation, but also with respect to back-office activity and risk management.

RG: It may seem counterintuitive that standardising language was key to the growth of a market that is known for bespoke transactions. However, ISDA standard language is a library of terms from which transactions can be assembled in an infinite number of ways to suit the needs of the parties. Standardising language actually facilitated the growth of customisable OTC derivatives transactions.

GH: Another development that was critical to the growth of the market was when the banks stopped acting as arrangers and started to carry the position and hedge the risk until they found a counterparty. To me, that was one of the most critical transformations in the development of the market. It allowed the market to mushroom, but it put a burden on banks to hedge the risk and manage documentation.

IQ: ISDA was established in 1985 to bring greater standardisation to the market. How important was that development? Would the derivatives market have developed in the same way without it?

PSA: There were two objectives that guided the creation of ISDA. One was the standardisation of documentation – that was by far the most important objective. The second was to promote the development of swaps. The way of doing that was to publish volume statistics. We felt we could not get into the press because no one cared about it, but if we showed this was a market that was growing rapidly, then people would pay attention. That came back to haunt us later, as regulators started to worry about the growth of the derivatives market.

CJ: There needed to be some grouping of participants to decide how this market could best grow. We had many deals mature before the documents were actually in place, so it was critical. Without being able to have some discipline of documentation and getting those transactions documented, we would not have been able to grow, because having one or two deals that aren't documented properly – that's okay. But you can't necessarily grow into the thousands and then hundreds of thousands. So, I would say it was extremely critical to have that documentation base.

MB: ISDA was essential. But the way in which we did it was also important. There are two kinds of trade association. One trade association model is like a mediaeval guild – you erect barriers to entry against your competitors. That →

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Jeffrey Golden

tends to ossify the business. We never did that. We were very careful to keep an open-source approach and never build the competitive moat. That meant that we had to compete not only with each other, but also with potential new entrants. As a result, we had to race faster than they did to be successful. That choice by ISDA helped generate the explosive success of the swaps business.

TJ: As mentioned earlier, there was the competition between New York and London in the early days. We knew ISDA had to be more than just a collection of New York dealers – it had to be a broader organisation than that. Kleinwort Benson was the token UK firm involved initially, so we knew we had to get the London dealers involved and then further broaden out the membership.

IQ: ISDA's first publication was the Code of Standard Wording, Assumptions and Provisions for Swaps – a document that essentially set out a common language for swaps. Was this always seen as a first step or was this the extent of the ambitions at the time?

JG: It certainly wasn't the end game, but we had to get people speaking a common language. Another law firm tried to standardise things first but put out a document that looked too much like one firm's documentation and it lost the mandate because of that. So, Dan Cunningham and I realised we had to get it looking so different that nobody could tell whether it was based on their document and to focus the group instead on getting a common vocabulary.

There was another important point that got people around the table in the early days and that was achieving legal certainty for these markets – we didn't want the courts deciding what the answer should be. So, we relied on the concept of 'liquidated damages' – of making sure that when the market reached a result, there would be no second guessing by the courts. We called that agreement value, then subsequently the term became market quotation. It was a form of alternative dispute resolution that sent people to dealers for answers rather than to courts, so the answers would come more quickly and be more commercial. And I think that appetite for legal innovation has characterised ISDA throughout its history. The common language we came up with in producing the code really equipped us to then contemplate a standard-form agreement.

IQ: The Code of Standard Wording, Assumptions and Provisions for Swaps covered interest rate swaps, with currency swaps added in 1987 with publication of the Interest Rate and Currency Exchange Agreement. Why was the focus so narrow initially, and was there resistance to extending to other asset classes?

MB: There was external resistance from those who saw that swap teams were doing things they wanted to do but couldn't do as well. What was more intriguing to me was that there was some internal conflict on the ISDA board about whether we should expand beyond interest rate and currency swaps. We had a planning session in Naples, Florida, where a couple of us debated in front of the board whether we should extend our purview, and a distinguished English board member pointed out that if we didn't keep ourselves in check, there might come a day in the future when ISDA members would be managing the price risk of used cars. It might have troubled him that we would descend to that level. Nonetheless, the board chose to push out the frontiers, overcoming those challenges.

CJ: If you weren't willing to treat all asset classes as falling under the ISDA umbrella, there would be opportunities for various other trade associations. Netting was also an issue. The last thing you would want to do is truncate the document by asset class.

PSA: I don't know whether other firms had the same experience, but we were struggling within our own firms as well, because the FX department had a very different perspective. The equity guys also didn't want fixed income guys to have anything to do with equity swaps. So, the expansion of ISDA to different products was not simple because we had our own challenges internally.

JG: Nobody's mentioned the modular architecture of the ISDA Master Agreement, but, whether it was by luck or by vision, it played a huge part in reaching a result with these other desks. There was competition and there was defensiveness about moving away from what was familiar to something that was new. But we decentralised the documentation process and set up separate working groups with the expertise that was needed to deal with each market. People got familiar with the process of reaching a collective yes, which was really ISDA's magic – being able to get people who were otherwise competitors to buy into a process that reached consensus in the end. So, that decentralised process, which meant having different people in different rooms moving at a different pace to get to grips with a particular product covered by the documentation, really helped move things along.

IQ: The ISDA Master Agreement is product agnostic and allows all derivatives under a counterparty relationship to be netted. How important was this development?

MB: The capital savings that were achieved by having enforceable netting provisions in the ISDA Master Agreement were critically important to the success of the

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business. It just would not have been possible to capitalise all this activity if we did not have those enforceable netting provisions. We sat in the White House Rose Garden next to Federal Reserve officials as George H W Bush signed the first netting legislation into law.

CJ: The netting was critical, and it made ISDA's role very central once capital was imposed, because the ISDA netting opinions and later the collateral opinions became invaluable, and they are still one of the main reasons that ISDA continues to be so viable.

JG: When you ask the question is netting important, I keep thinking of that football coach who said 'winning isn't everything – it's the only thing'. I mentioned earlier the appetite for legal innovation if that's what it would take to move things to a better place. There were concepts that we could hardwire into the contract – things like single agreement theory and flawed asset theory. But if we thought it would make a positive difference, ISDA was prepared to roll up its sleeves and go on a world bankruptcy law tour to get law reform. In those early days, people said to us 'ISDA wants to amend bankruptcy laws in all these jurisdictions? Good luck. That's not going to happen in your lifetime. Those are the slowest areas of the law to revise.' But look at the map. Look at the list of countries that have since adopted legislation to ensure netting enforceability. That's not to be underestimated.

IQ: Carolyn, Rick – you served as the first two CEOs of ISDA in the 1990s. What were your ambitions for the association when you joined and what issues did you face?

CJ: My main mission when I started was to put the 'I' back into 'International'. I had a look at our membership, and we had lots of European and Asian members, but we only had an office in New York. That led to the opening of the London office, as well as the formation of the Southeast Asian group. The most memorable thing was the visits to Washington, DC. I used to go at least every week, and Mark Brickell would join me every couple of weeks, and we met with nearly every Congressional staff member to educate them about why derivatives are important. That helped set the ground for the legal certainty that came with the Commodity Futures Modernization Act (CFMA) of 2000.

RG: One of the first things I faced as CEO of ISDA was a concept release by the Commodity Futures Trading Commission in 1998. It asked several questions, but one of them was whether over-the-counter (OTC) derivatives are futures. Futures not listed on an exchange are unenforceable under the Commodity Exchange Act, so it raised a question about whether OTC derivatives were enforceable. This cast a shadow over the entire market. That required me to spend a lot of time in in Washington, DC with Mark and many others, meeting with members on the Hill and testifying multiple times in the House and Senate. Ultimately, Congress passed the CFMA, which was essential in ensuring the enforceability of OTC derivatives. Also, picking up on Carolyn's point about the international nature of the market, ISDA was very US-focused when I joined, notwithstanding the opening of the London office. So, we built out the London office and opened offices in Tokyo and Singapore during my tenure, as well as strengthening the Southeast Asian members committee that Carolyn had formed and starting a Canadian members committee. Those were all important initiatives.

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Mark Brickell

→ IQ: What's your fondest memory of being involved in derivatives markets?

GH: When I was at the World Bank, I had the luxury of speaking to the smartest guys on Wall Street. I knew I was participating at the beginning of something really big, which was driven by deregulation, innovation and globalisation, and it was really a thrilling time. I will also mention another time when I was on the sell side and I did my first $1 billion swap and it was done with a very quick exchange of 'oh yeah, done'. That was exciting in retrospect.

PSA: The high point was being asked by Dennis Weatherstone, then chief executive of JP Morgan, to co-chair a Group-of-30 report on derivatives with David Brunner of Paribas. The work was commissioned to demystify derivatives activity and to establish principles of sound risk management, which I think have endured the test of time. My greatest moment was me and David walking into Paul Volcker's office to negotiate the wording of a foreword that he graciously wrote for this report, which is a good read even today.

MB: I treasure the friendships made as part of this 40-year ISDA journey, and that working with all our colleagues, we've been able to achieve things that other people did not even conceive of, much less attempt.

RG: Three things really. It's been a privilege to meet and get to know and work with everybody I've met in the derivatives industry. It's been a terrific experience. Second, it was a great experience to be involved with a product that was brand new, exciting and was growing and is still growing. The third thing I most appreciate is that ISDA continues to thrive and grow today, and I hope that will continue for at least another 40 years.

CJ: My happiest moment was being asked to head up the trading desk for the first time for the Chase Manhattan Bank and to be involved in the evolution of the interest rate swaps market.

JG: To echo what somebody clever once said, 'you're only as good as the company you keep'. And boy, I've kept some great company working with ISDA. But let me mention one real thrill. When Lord Briggs, a Justice of the Supreme Court of the UK, was Mr Justice Briggs, he decided one of the early Lehman cases. In his published decision, he said the ISDA Master Agreement is probably the most widely used contract in the world, and it's probably the most important standard-form document in the financial world. When I first met Lord Briggs, I said to him 'I sleep with one of your decisions under my pillow', and he said 'why would you ever do that?'. I said, 'well, it's the one where you said that the ISDA Master Agreement is the most important contract in the financial world. It was my privilege to hold the pen when we wrote that agreement'. So that was a big thrill.

TJ: Obviously, being first co-chair of ISDA with Artur Walther from Goldman Sachs was extraordinary and I never conceived that ISDA would be what it is today. I'm very proud of my small contribution to that. I agree completely on the friendships that we've all developed. I was also the one who came up with the idea of the first annual general meeting, and I'm glad to say that ISDA has continued that wonderful idea. They were fun in the early days and I'm sure they're fun today. Last, I'd like to recognise Dan Cunningham, who can't be with us. He was a dear friend and had a huge impact on this market. IQ

*Matter of Protocol

Prior to the introduction of the euro in 1999, ISDA turned to a unique structure to update derivatives contracts tied to legacy currencies. The protocol mechanism subsequently became a key tool to support the implementation of regulation and market structure changes

On January 1, 1999, in a moment of huge economic and political significance, the euro was introduced as the single currency of 11 member states of the European Union. Although it would be another three years before physical coins and banknotes would appear, the euro became a traded currency for the first time as part of the third phase of the EU economic and monetary union (EMU).

The implications for financial markets were massive. At a single stroke, tens of thousands of live contracts tied to the former national currencies of those 11 countries – from German marks and Spanish pesetas to French francs and Italian lira – could potentially have become void or had their viability challenged. Bilateral renegotiation of every single contract would have been impractical, so market participants needed a robust solution to provide legal certainty and ensure contract continuity.

It was this unique challenge – presented to ISDA by its membership in the lead-up to the introduction of the euro – that led to the development of the very first ISDA protocol, a highly innovative multilateral mechanism to orchestrate an update to numerous contracts simultaneously. Devised and tested by a group of lawyers at Allen & Overy (A&O), the EMU Protocol of 1998 not only delivered a watertight solution for derivatives contracts ahead of the euro rollout, but it also established a blueprint for the amendment of contracts that ISDA would turn to repeatedly over the years.

"The EMU Protocol provided a mechanism to facilitate the amendment of the ISDA Master Agreement ahead of the introduction of the euro in a very efficient manner. It has been used time and time again during the implementation of the post-crisis regulatory reforms. Without that structure, I don't know how the market could have possibly dealt with some of the issues it faced. We always knew that in a situation where we needed to implement a market-wide change in trading terms or market practice, the protocol was a structure that had been proven to work very effectively," says Robert Pickel, who served as ISDA's general counsel at the time of the EMU Protocol and later became its chief executive.

184,000+

Entities have adhered to ISDA protocols since the EMU Protocol in 1998

Frustration of purpose

For the A&O group that worked on the project in the 1990s, led by partner Jeffrey Golden KC (Hon), it was clear that the introduction of the euro was going to be a unique challenge without precedent. Derivatives markets were well established by this point and the ISDA Master Agreement was widely used, but there was no historical market event that gave a steer on how to handle the replacement of 11 widely referenced currencies with a single new currency.

The essence of the challenge lay in the concept of frustration of purpose in contract law. This is best illustrated by *Krell v Henry*, a 1903 English court case in which CS Henry had agreed to rent a flat from Paul Krell on London's Pall Mall in June 1902 to watch the coronation procession of Edward VII. When the coronation was postponed due to the king's illness, Henry refused to pay the balance of £50 and the case came to court, which applied the concept of frustration of purpose to rule in favour of Henry.

As the implied purpose of the contract was for Henry to watch the coronation procession, the cancellation of the event had frustrated that purpose, the court ruled. This same concept could prove problematic for contracts that had been drawn up with the purpose of swapping European currencies that ceased to be traded.

"In 1998, we were facing a unique scenario where the euro was going to replace 11 national currencies and all the price sources attached to them were going to disappear overnight. *Krell v Henry* showed that the courts could recognise the concept of contract frustration and there was a concern this would be used as a precedent to tear up or walk away from contracts referenced to outgoing European currencies. That was a pretty challenging set of circumstances for those contracts, and there were literally tens of thousands of trades that could have been affected," says Golden.

As ISDA's external counsel at that time, A&O was tasked to find an effective legal solution. It was clear to Golden that this would require a degree of creative thinking and any solution would need to be thoroughly tested to ensure it was legally sound.

"We needed to find a way to fix this, but to do so at a single moment, when the clock struck midnight on December 31, 1998. We couldn't do it a nanosecond earlier because that would have adversely affected legacy contracts, or a nanosecond later because that would have left a gap. We had to make sure the affected contracts would all be amended at that single moment in time," says Golden. →

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John Berry, Adaptive Reasoning

→ The solution came from an unexpected source – the International Court of Justice (ICJ), which Golden had studied 30 years earlier as a student of international relations. As an international court that adjudicates disputes between nations, the ICJ has a protocol that allows member states of the United Nations to adhere to its jurisdiction. They can either do this for all cases for which the ICJ is competent, or they can carve out exceptions, such as matters of national security, for which they are not willing to go to the ICJ. The court operates a matching system that ensures reciprocity – one state can only compel another to appear at the court to the extent that it has agreed to do so under similar terms.

"By adhering to a protocol, individual states can accept the ICJ's jurisdiction to varying degrees and it struck me that a similar approach could be taken to amend bilateral contracts to reference the euro without requiring all the parties to make exactly the same choices about the scope of the amendments for all those affected contracts. This was the procedural mechanism that was going to get us to the right place, but we needed to delve further into case law to establish the legal basis for the use of such a protocol," says Golden.

Yachts to euros

The key challenge for the A&O team was to prove the legal viability of the protocol structure in derivatives trades. They needed to show that if counterparties were going to sign a letter to adhere to an ISDA protocol, this would result in there being an enforceable contract with any other counterparty that had adhered to the protocol.

"This was a novel challenge," says John Berry, principal and co-founder of Adaptive Reasoning and former derivatives counsel at A&O. "English law typically requires offer and acceptance, whereby one contracting party makes an offer of a contract, and the other party accepts that offer. The protocol concept didn't fit comfortably within that traditional model, so we had to find a way of proving that there would be an enforceable contract in place between adhering parties."

As part of Golden's team, Berry's role was to research English case law to find other situations that didn't fit neatly into the offer and acceptance model. "For me, and indeed the rest of the A&O team, it was incredibly exciting and rewarding to have the opportunity to work on something so consequential for the derivatives market, which required an innovative solution to be quickly identified and implemented," says Berry.

One particularly compelling case originated with a yacht race that took place on the Firth of Clyde in western Scotland in July 1894. Each yacht owner had agreed to the rules set by the Mudhook Yacht Club, which included liability for damage caused to another competitor's yacht. When the Satanita yacht collided with the Valkyrie II and caused it to sink, the Court of Appeal held that the owner had to pay compensation to Lord Dunraven, owner of the Valkyrie II. While there was no bilateral contract in place between the two yacht owners, and the offer and acceptance model therefore didn't apply, their adherence to the rules of the club was considered equivalent to a contract.

"In the case of Satanita, the court had found a contract based on a mutual understanding among the competitors that they would be liable to each other for any breach of the rules – those rules had been clearly expressed and adopted for the purpose of a specific activity. This all seemed to fit quite nicely with the idea of a protocol, where parties would multilaterally adhere to a clearly defined set of rules to amend their contracts with other adhering parties," Berry explains.

With this precedent established, the legal team had growing confidence that a protocol structure would be an effective solution and were ready to present it to the relevant ISDA working groups in early 1998, with a view to publishing and promoting the protocol for adherence later that year.

"We had realised by this point that the protocol would be an elegant solution and, having kicked the tyres to make sure it was legally sound, we were confident it could work effectively. It immediately appealed to market participants because it solved the concerns they had about contract continuity. Although we didn't realise it initially, it soon became clear that the protocol structure would have much broader utility to solve other issues in the derivatives market over the years that followed," says Richard Tredgett, a retired partner at A&O who worked with Golden and Berry on the project.

Once the protocol structure had been approved by ISDA, the next step was to operationalise the adherence process and draft the protocol itself. The EMU Protocol was finally published on May 6, 1998, providing market participants with a mutualised solution to the challenges posed by the entry of the euro, with nearly eight months left before the deadline to educate firms about the structure and encourage adherence.

In total, 1,139 entities adhered to the EMU Protocol. While adherence to later protocols reached much higher levels, this was an extraordinary number of adherents at the time, given ISDA's membership in 1998 only numbered 407 entities. The list of →

adherents also revealed the breadth of ISDA's reach, with adhering parties ranging from McDonald's Corporation to Qantas Airways.

"The EMU Protocol had an immediate impact, and the wide range of adherents highlighted just how many entities around the world were active users of ISDA documentation. It was a new and novel concept to apply the protocol structure to this problem, but it was also the magic of the ISDA process that got us to an ever more comfortable position in 1998. There was a great deal of market discussion and review, with significant interest and support from the public sector. It created an exceptionally strong precedent as a mechanism to solve other challenging situations the market would face over the years," reflects Golden.

Further innovation

Fast forward to 2025 and the protocol has become a deeply entrenched component of ISDA's toolkit that has been used to address a wide range of industry developments, including credit derivatives market changes, the implementation of Dodd-Frank Act reforms in the US and the adoption of fallbacks for interbank offered rates to enable the safe removal of LIBOR. Adherence to the Dodd-Frank (DF) protocols in 2012 and 2013 surpassed 25,000 entities, while total adherence across all protocols now exceeds 184,000.

With the ISDA August 2012 DF Protocol, which enabled market participants to comply with the US Commodity Futures Trading Commission's (CFTC) external business conduct rules, ISDA pioneered an innovative new approach to protocols. This allowed adherence to be customised to provide specific counterparty information that was required using a questionnaire matching structure, which could be completed entirely on the ISDA Amend platform. The same approach would later be taken for other protocols that required the provision of specific counterparty information, including the ISDA 2013 DF Protocol and the ISDA 2016 Variation Margin Protocol.

"With the CFTC external business conduct rules, firms were faced with a challenging new requirement to obtain certain information and representations from their counterparties. Up until that point, ISDA protocols had always taken a one-size-fits-all approach to amend contracts in a uniform way, but the questionnaire matching approach introduced customisation and data collection to ISDA protocols for the first time. This innovative new approach enabled a standardised protocol to be effectively customised to recognise the unique features of individual trading relationships, and the simultaneous launch of ISDA Amend allowed it all to occur efficiently," says Doug Donahue, partner at Linklaters who worked with ISDA on the Dodd-Frank protocols in his previous role at Cadwalader, Wickersham & Taft.

While the ISDA Master Agreement is rightly considered the jewel in ISDA's crown for the standardisation it brought to the nascent derivatives market, the birth and continued development of protocols should also be recognised for their transformative effect in enabling contracts to be multilaterally updated as regulation and market conventions evolved.

"Nothing like the protocol had ever really been done in any other market and it was an incredibly innovative solution to get the industry to move in an efficient, coordinated way from one position to another. While it was initially developed to mitigate the impact of the introduction of the euro, it was discovered to be a very powerful tool to effectively navigate other industry transitions from a documentation perspective," says Sir Edward Murray, a British High Court judge and former partner at A&O. IQ

"The EMU Protocol had an immediate impact, and the wide range of adherents highlighted just how many entities around the world were active users of ISDA documentation. It was a new and novel concept to apply the protocol structure to this problem, but it was also the magic of the ISDA process that got us to an ever more comfortable position in 1998"

Jeffrey Golden

ISDA Safe, Efficient Markets
Celebrating 40 Years

MISSION STATEMENT

ISDA fosters safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products

STRATEGY STATEMENT

ISDA achieves its mission by representing all market participants globally, promoting high standards of commercial conduct that enhance market integrity, and leading industry action on derivatives issues.

THE PREEMINENT VOICE OF THE GLOBAL DERIVATIVES MARKETPLACE

Representing the industry through public policy engagement, education and communication

AN ADVOCATE FOR EFFECTIVE RISK AND CAPITAL MANAGEMENT

Enhancing counterparty and market risk practices and ensuring a prudent and consistent regulatory capital and margin framework

THE SOURCE FOR GLOBAL INDUSTRY STANDARDS IN DOCUMENTATION

Developing standardized documentation globally to promote legal certainty and maximize risk reduction

A STRONG PROPONENT FOR A SAFE, EFFICIENT MARKET INFRASTRUCTURE FOR DERIVATIVES TRADING, CLEARING AND REPORTING

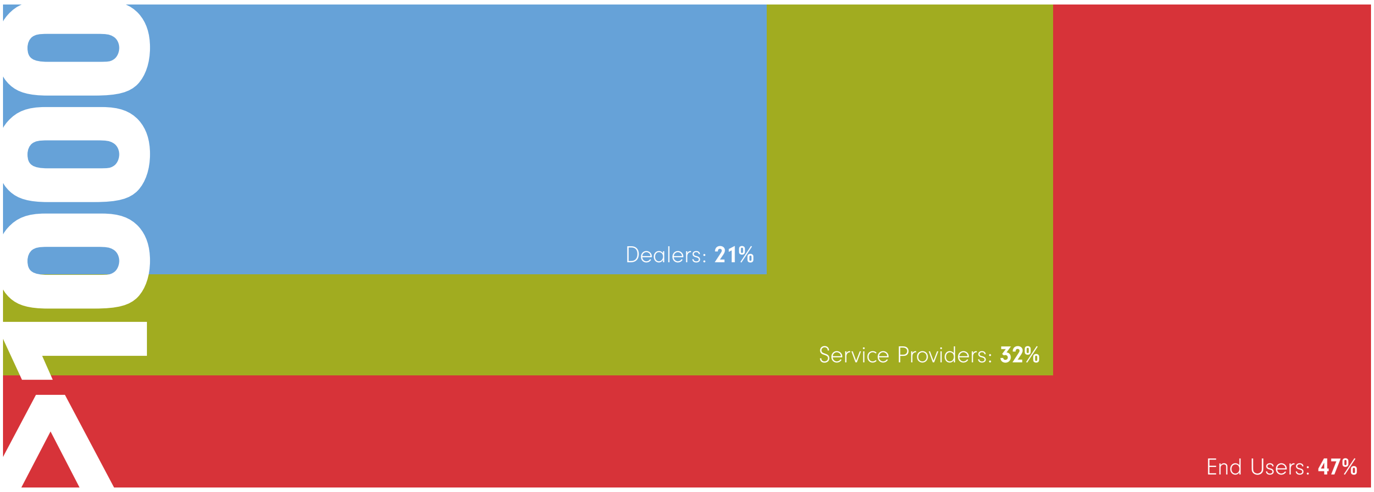
Advancing practices related to trading, clearing, reporting and processing of transactions in order to enhance the safety, liquidity and transparency of global derivatives markets

www.isda.org

MEMBERSHIP INFORMATION

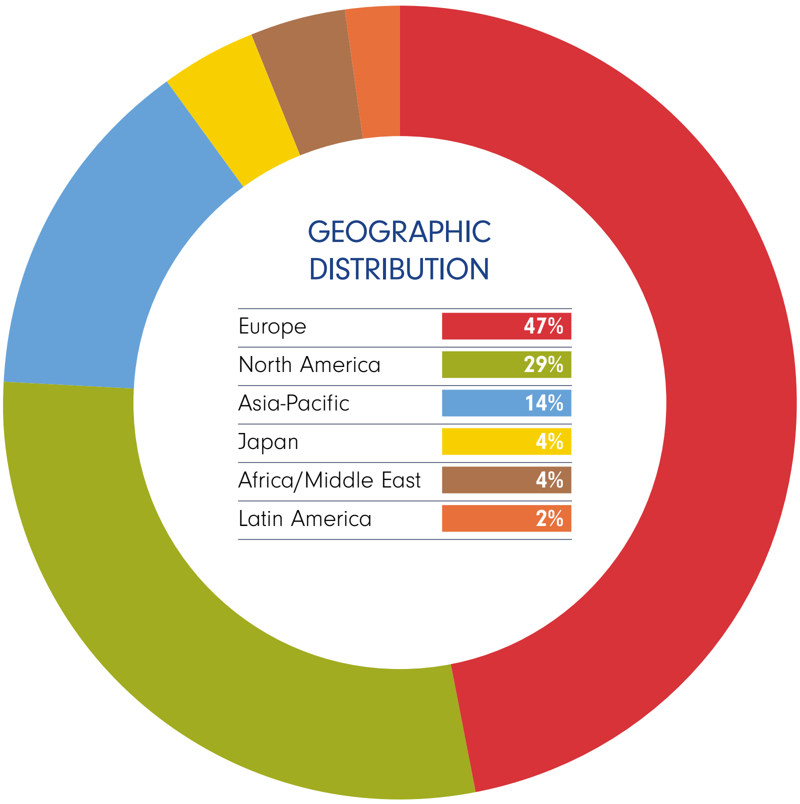
ISDA has over 1,000 members from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition 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.

MEMBERSHIP BREAKDOWN



TYPES OF MEMBERS

Banks	30%
Law Firms	21%
Asset Managers	9%
Government Entities	13%
Energy/Commodities Firms	8%
Diversified Financials	6%
Technology/Solutions Providers	4%
Other	9%



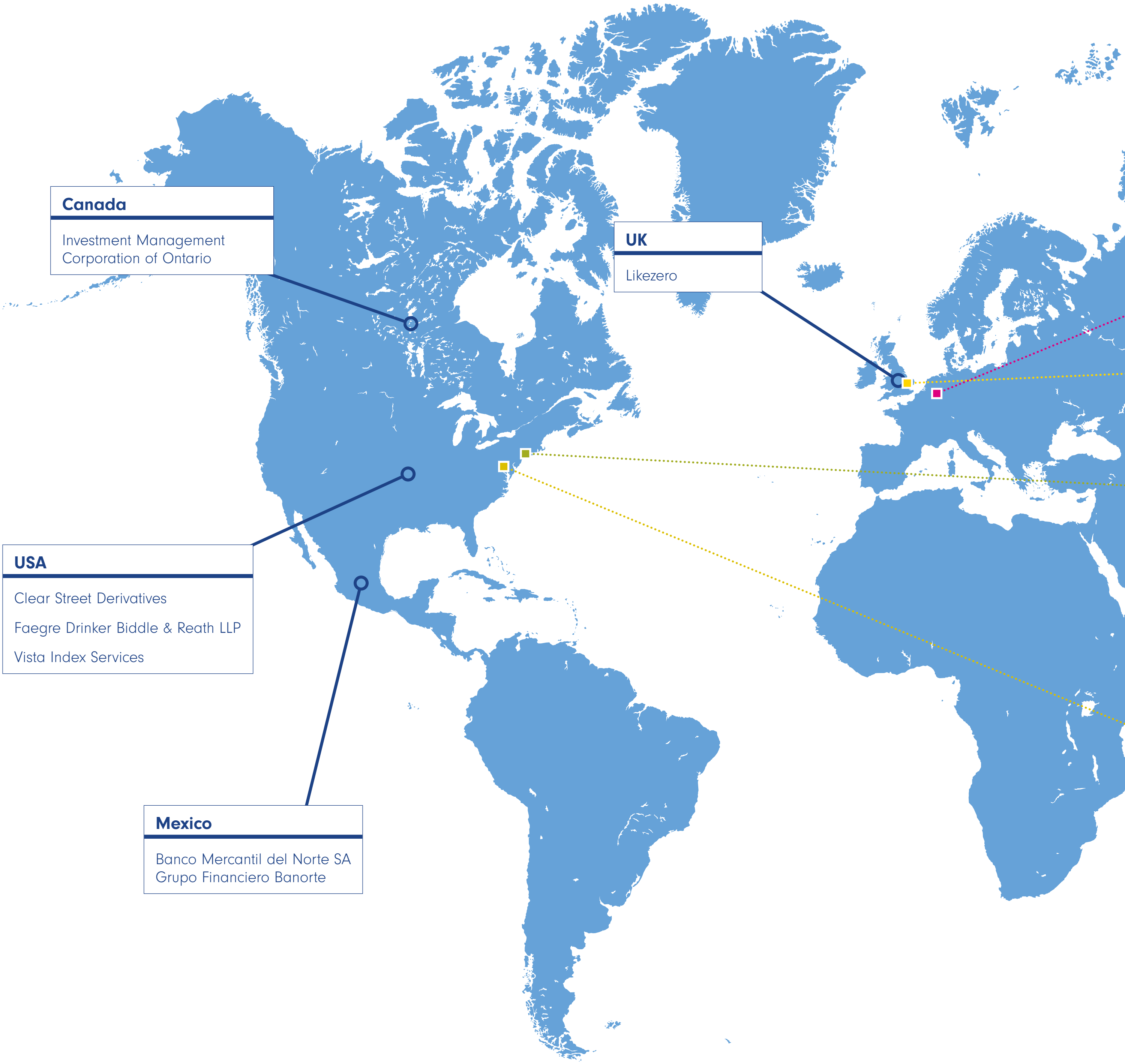
GEOGRAPHIC DISTRIBUTION

Europe	47%
North America	29%
Asia-Pacific	14%
Japan	4%
Africa/Middle East	4%
Latin America	2%

Additional information regarding ISDA's member types and benefits, as well as a complete ISDA membership list, is available on the ISDA Membership Portal: https://membership.isda.org/

NEW ISDA MEMBERS

A big welcome to all new members that have recently joined ISDA. We look forward to working with you in the future



For additional information on joining ISDA, please visit the ISDA Membership

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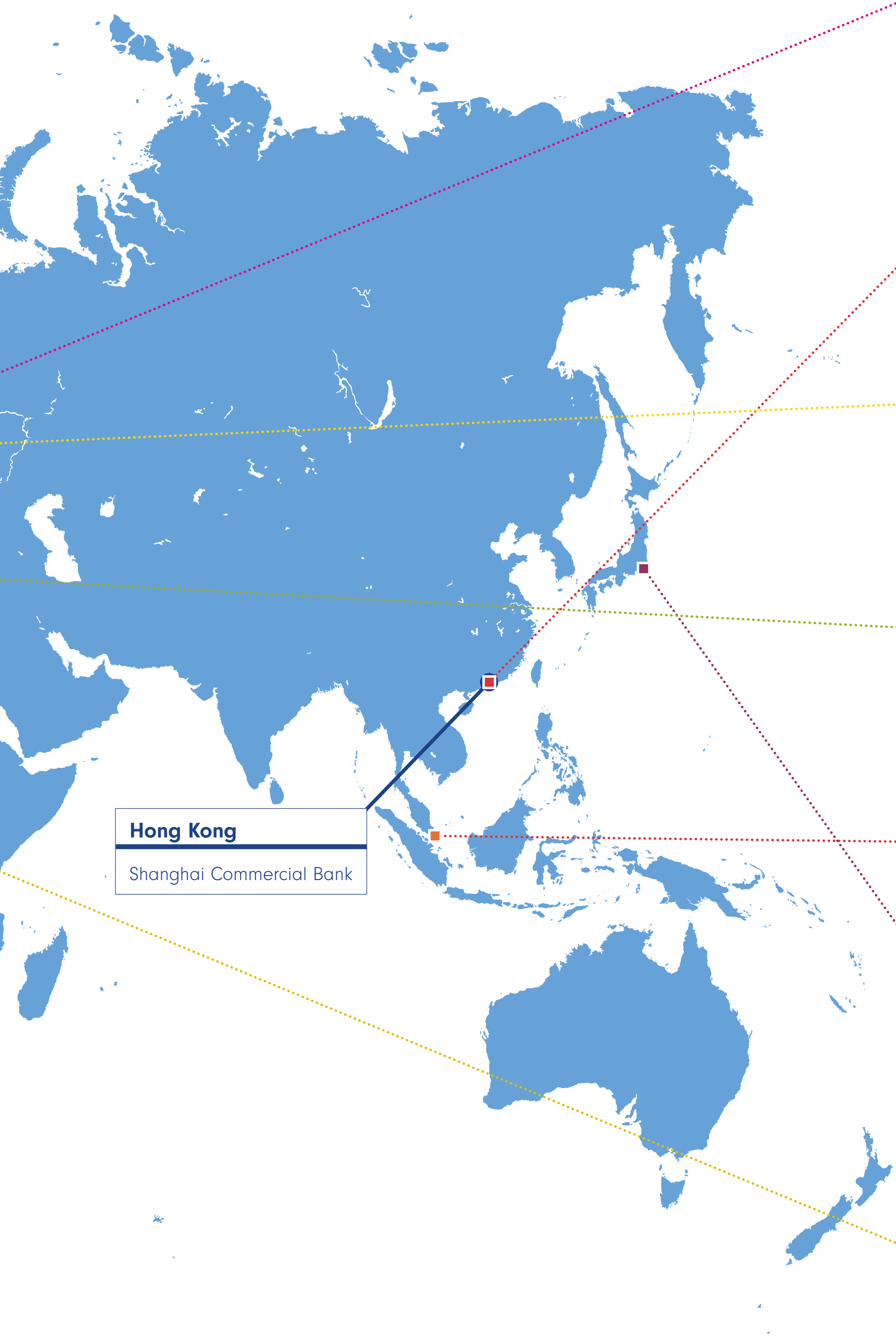

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*

"ISDA has been fundamental to the development of modern derivatives markets. The creation of standard documentation templates has enabled derivatives to grow far more rapidly, with increased liquidity founded on higher levels of investor confidence"

Ashley Alder, Financial Conduct Authority