

ISDA Releases Whitepaper Regarding Legal Perspectives on Smart Contracts and Distributed Ledger Technology (International Swaps and Derivatives Association)

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On August 3, 2017, the International Swaps and Derivatives Association (“ISDA”) and Linklaters LLP released a whitepaper titled “[Smart Contracts and Distributed Ledger – A Legal Perspective](#).” The whitepaper sets out to define the terms “smart contract” and “distributed ledger,” to analyze their applications to the derivatives industry, and to highlight potential legal issues raised by these new technologies. Of particular interest is the inherent nature of contractual elements – whether they define conditional logical statements (“operational clauses”), or whether they define a broader legal relationship between the parties (“non-operational clauses”). An example of an operational clause would include a provision that defines the amount of funds to be paid to one party based on a calculated amount, applicable rate, and duration. A non-operational clause would include a provision specifying the law that governs in the event of a dispute.

The whitepaper proposes a series of distinctions in order to clarify discussions around smart contracts – most notably between “smart contract code” (programs that automatically execute certain tasks but are not contracts) and “smart legal contracts” (representation and execution of the elements of a contract via software). Also relevant are distinctions between “external” smart contracts (in which smart contract code provides a means of automatic performance; a traditional legal agreement is used to bind the parties) and “internal” smart contracts (in which performance and the operational clauses of the agreement are built into the code, with a traditional agreement covering the non-operational aspects). The whitepaper further discusses various areas in which smart legal contracts could be beneficial to the derivatives industry (e-signing and the use of so-called oracles to ease execution, among other things), and where they have difficulty replicating the functionality of a traditional agreement (representing concepts like jurisdiction and single agreement provisions).

The paper concludes that smart contract and distributed ledger technology have great potential for use in derivatives products and ISDA documentation, but that there must be industry-wide coordination if this potential is to be realized. ISDA’s Market Infrastructure and Technology Oversight Committee intends to facilitate such development, and other working groups have been set up to coordinate workstreams and standards.

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