

ISDA

International Swaps and Derivatives Association, Inc.
360 Madison Avenue, 16th Floor
New York, NY, 10017
Telephone: (212) 901-6000
United States of America
Facsimile: (212) 901-6001
email: isda@isda.org
website: www.isda.org

17 December 2004

Assistant Secretary of State for Economic Affairs
E. Anthony Wayne
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Re: The Hague Convention on the Law Applicable to Certain Rights in Respect of Securities
Held with an Intermediary

Dear Assistant Secretary Wayne:

We understand that you are currently considering whether to recommend that the United States should adhere to the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the "Hague Securities Convention"). We wish to bring to your attention the strong support of our members, and of the financial markets more generally, for the Hague Securities Convention. The International Swaps and Derivative Association ("ISDA"), along with other financial industry associations, was closely involved in the consultative process undertaken by the Permanent Bureau of the Hague Conference on Private International Law during the course of preparing the draft Convention.

The International Swaps and Derivatives Association, Inc. (*ISDA*) is the global trade association representing leading participants in the privately negotiated derivatives industry, a business that includes interest rate, currency, commodity, credit, and equity swaps, options and forwards, as well as related products such as caps, collars, floors, and swaptions. Promoting the enhancement through law reform of legal certainty for cross-border financial transactions is one of ISDA's key missions. A considerable proportion of the resources of ISDA and its members are devoted to acquiring legal opinions from a wide range of jurisdictions on netting and collateral arrangements, and related issues, as well as promoting law reform and participating in consultations on legislative and regulatory developments affecting the financial markets. Additional information on ISDA, its membership and its interest in and commitment to the development of international law affecting the financial markets is available at www.isda.org.

ISDA believes that the final text of the Hague Securities Convention represents a careful balance of the fundamental objectives of:

- *ex ante* certainty for financial market participants achieved by clearly defining and simplifying the conflict of laws rules for dispositions of securities held in book-entry form by financial intermediaries;
- compatibility with the computer age and realities of modern systems for holding and transferring book-entry securities; and
- compatibility with a broad range of legal traditions.

ISDA has from the outset of this project supported the central principle that the law applicable to proprietary and related rights in securities held with financial intermediaries should be determined by reference to the relevant intermediary. ISDA believes the conflict of laws rules set out in the Hague Securities Convention are critical for reducing legal uncertainty and legal costs regarding the law applicable to indirectly held securities.

ISDA further believes that there is significant evidence that the conflict of laws rules set out in Articles 4 and 5 of the Hague Securities Convention represent the best hope of establishing on an international basis a considered and practicable set of rules for determining the law most appropriate to govern the proprietary aspects of a transfer of securities in book-entry form from one financial intermediary to another through modern securities settlement systems. It is crucial that market participants be able to identify the relevant law easily and with certainty for a variety of purposes, including (among many others) ensuring perfection of security created over securities held in book-entry form. We note that the conflict of laws rules in the Hague Securities Convention have, to some extent, been inspired by the conflict of laws rules in Articles 8 and 9 of the U.S. Uniform Commercial Code, as enacted in the various States of the United States.

As the leading financial market in the world early action by the government will bolster the U.S. position as a global leader and encourage other countries to sign and ratify the Hague Securities Convention. It is very important for U.S. financial markets and for U.S. market participants active in global markets to have the Hague Securities Convention adopted; therefore, we urge the United States to sign and ratify the Hague Securities Convention without delay. We look forward to hearing from you on the status of U.S. action and would be pleased to discuss these issues in more detail with you if you would find that helpful.

Sincerely,



Robert Pickel
Executive Director and CEO
ISDA