

ISDA

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Dr.Ing. Juan María Arteagoitia
Principal Administrator
DG Internal Market
Directorate G - Financial Services
European Commission
Avenue de Cortenbergh, 107
B-1049 Bruxelles

Dear Dr Arteagoitia,

Directive on financial collateral arrangements

As we discussed during the very helpful meeting we had with you and Mr Degerbeck in March, we understand that the Commission will be meeting on Monday, 19th May with the Member States to discuss whether or not the Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements of 6 June 2002 (and the Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems) should be amended to reflect the final text of the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary, signed by the Member States of the European Union, as well as other member countries of the Hague Conference on Private International Law, at the Hague in December 2002.

We understand that whether or not such an amendment is necessary or desirable is one of the principal issues for discussion on Monday, and the International Swaps and Derivatives Association (ISDA) has no formal view on this issue. We look forward to hearing the conclusions of Monday's meeting.

ISDA feels strongly, however, that whatever the outcome of Monday's meeting, it is imperative that no step be taken that would delay implementation of the Collateral Directive beyond the implementation date of 27 December 2003. We understand that the European Banking Federation (EBF) and other financial market associations share this concern. We also understand that EBF will address these concerns in a letter to the Commission. As you know, ISDA strongly supported the Commission's initiative that lead to the preparation and ultimately the adoption of the Collateral Directive, and we actively participated in the various consultations of the Commission and other interested parties with a view to urging its adoption. It is an essential measure for the efficiency and integrity of European financial markets.

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In this regard, we also wish to note that we have been actively monitoring, through our members and other contacts in each of the Member States, what steps, if any, have been taken in each Member State towards implementation of the Collateral Directive. It is disquieting to note that with a little over seven months to go until the implementation date, less than a third of the member states appear to have prepared draft legislation, and only one Member State (Germany) has made its draft legislation available for public comment.

We would strongly urge the Commission to use the occasion of Monday's meeting to urge Member States to accelerate, where necessary, their efforts in this regard. We believe that uncertainty about the interaction between the Hague Convention and Article 9 of the Collateral Directive may be, to some extent, responsible for the delay in preparing implementing legislation in some Member States, and we would also urge the Commission to encourage Member States not to delay preparing implementing legislation for this reason.

As always, ISDA and its members are supportive of the Commission's efforts in this regard, and we stand ready to provide any information or assistance regarding market practice that may aid in the process of national implementation of this crucial internal market measure.

Your sincerely,

(Dr Peter M Werner, Assistant Director of European Policy, pwerner@isda-eur.org)

