



International Swaps and Derivatives Association, Inc.
One Bishops Square
London E1 6AD
United Kingdom
Telephone: 44 (20) 3088 3550
Facsimile: 44 (20) 3088 3555
email: isdaeurope@isda.org
website: www.isda.org

BY E-MAIL

Jean McMahon
Ministry of Justice
International & Property Branch, Civil Law & Justice Division
Point 4.23, 4th Floor
Selborne House
54-60 Victoria Street
London
SW1E 6QW

E-mail: Jean.McMahon@hmcourts-service.gsi.gov.uk

25 June 2008

Dear Ms McMahon

Rome I – Should the UK opt in?

We are grateful for the opportunity to respond to your Consultation Paper CP05/08 entitled “Rome I – Should the UK opt in?” published on 2 April 2008.

As you know, the International Swaps & Derivatives Association, Inc. (ISDA) is the global trade association representing leading participants in the privately negotiated derivatives industry. As at year-end 2007, our annual market survey showed that \$454.5 trillion of over-the-counter derivative transactions was outstanding across the asset classes survey (principally, the interest rate (including cross-currency interest rate), equity and credit asset classes).

The legal bedrock of this trading activity is the documentation supporting it, most of which is based directly or indirectly on standard forms published by ISDA. Documentation, of course, must be given effect to by national legal regimes, and it is important for legal certainty that it be clear which national legal regime applies in each circumstance. It is also important to efficiency and legal certainty that party autonomy be respected, as far as possible, in the choice of law to apply to their contractual arrangements. Finally, it is important to efficiency and legal certainty that consistent and well-understood rules apply to determine the law applicable to the contractual obligations created by derivatives documentation (as for other financial and commercial transactions).

As an international trade association, we defer to national legal experts as to whether any particular law reform proposal is appropriate for the domestic regime, consistent with its fundamental principles and/or a standard to which local legal norms may be conformed. We are therefore not writing to express a view on whether the proposed text of the Rome I Regulation is appropriate for the UK. We trust that you will receive many helpful responses from national legal experts and other interested stakeholders with views on that question.

We are therefore merely writing to suggest that, if you conclude that the text of the Rome I Regulation is acceptable to the UK, then there is a clear benefit to the European financial market of the UK opting in, as this means that there will be a consistent regime across the European Union (with the exception of Denmark).

Finally, we note that English law is one of the two standard choices of law that users of an ISDA Master Agreement have (the other standard choice being New York law). In the European market, English law is typically chosen to govern cross-border OTC derivative transactions under an ISDA Master Agreement. It would therefore be particularly helpful to the market for that choice to be supported by a set of rules consistent with the choice of law rules in effect in the rest of Europe.

We would be happy to discuss this further with you should you find it helpful to have further input from an international financial markets perspective. Please do not hesitate to contact either of the undersigned if we can be of further assistance in relation to the subject of this consultation.

Yours faithfully,

Dr Peter M Werner
Director of Policy
pwerner@isda.org

Edward Murray
Chairman
ISDA Financial Law Reform Group
ed.murray@allenoverly.com