

ISDA

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**Market Conduct Policy Division
Market and Business Conduct Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117**

For the attention of: Mr Pang Siu Taur / Mr Alvin Tay

Dear Sirs,

Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary

We have been advised that the Monetary Authority of Singapore (“MAS”) have invited industry participants to comment on whether Singapore should accede to the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary. The International Swaps and Derivatives Association (“ISDA”) has strongly supported the work of the Hague Conference on Private International Law since the Permanent Bureau of the Hague Conference began working to develop an international convention on the conflict of laws rules applicable to indirectly held securities over two years ago.

ISDA, as you may be aware, 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, as well as related products such as caps, collars, floors, and swaptions. ISDA was chartered in 1985 and today numbers over 600 member institutions from 46 countries on six continents. These members include most of the world’s major institutions who deal in, and leading end-users of, privately negotiated derivatives as well as associated service providers and consultants.¹

ISDA participated as an observer at the sessions at the Hague in January 2001, January 2002, and December 2002 during which formal work on the Convention was undertaken and, in December 2002, completed. ISDA was also active in the informal process during which the Permanent Bureau consulted with financial market participants around the world with a view to identifying the key issues, analysing market practice, and addressing financial market concerns. For further detail of the documents directly submitted to the Hague Conference on Private International law, please visit our website at www.isda.org/c_and_a/collateral.html.

¹ For further information on ISDA, please consult our website at <http://www.isda.org>.

ISDA believes that the final text of the 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 through indirect holding systems;
- compatibility with the 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 indirectly held securities should be the law of the place of the relevant intermediary, often referred to as the “PRIMA” principle. ISDA believes the PRIMA principle will have the desired effect of reducing legal uncertainty and legal costs regarding the law applicable to indirectly held securities.


ISDA further believes that there is significant evidence that the PRIMA approach is the only practicable approach to determining the law applicable to indirectly held securities. 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 validity and finality of sales and collateral transfers of indirectly held securities and ensuring perfection of security created over indirectly held securities.

With respect to the insolvency aspects of the Convention, it is essential to legal certainty that insolvency proceedings do not defeat the expectations of the parties in relation to dispositions and other acts affecting indirectly held securities prior to the opening of the proceedings. Article 8 provides an important part of the legal certainty intended to be established by the Convention.

We believe that Articles 15 and 16 represent a reasonable approach to the difficult issues of transition.

We urge the Monetary Authority of Singapore to recommend that Singapore accede to the Convention. We would be pleased to discuss these issues in more detail with you if you would find that helpful.

Yours faithfully,



Angela Papesch
Head of Asia-Pacific Office