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Permanent Bureau
Hague Conference on Private International Law
Scheveningseweg 6
2517 KT The Hague
Netherlands

For the attention of Christophe Bernasconi, First Secretary

Dear Sirs,

Preliminary Draft Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary

We thank you once again for your invitation to comment on:

- (1) the latest preliminary draft of the proposed convention on the law applicable to indirectly held securities, set out in Preliminary Document No. 15 of June 2002 (the "**June 2002 Preliminary Draft**"); and
- (2) the more recent proposal, arising out of the Regional Discussion Workshops held in Asia, Europe, and North America during June and July of this year, set out in Preliminary Document No. 16 of September 2002 in relation to Article 4(1) of the June 2002 Preliminary Draft (the "**September 2002 Memorandum**").

As you know, various of our members attended the Diplomatic Session of January 2002. A similar wide range of members from continental Europe, the United Kingdom, the United States of America and Japan participated in most, if not all, of the Regional Discussion Workshops held this summer to present and discuss the June 2002 Preliminary Draft. The universal reaction of our members to the Workshops was positive. They presented a valuable opportunity to consider more deeply the key principles underlying the proposed Convention and to work toward a consensus on the central issues.

In your communication of 4th July, you indicated that it is intended that the final text of the Convention be considered at a Diplomatic Session to be held from 2nd - 12th December, 2002, with the signing of the Final Act of the Diplomatic Session to take place on 13th December, 2002. We also understand that there will be no further meetings of any Special Commission or of the Drafting Committee and that there will be no further drafts of the proposed Convention prior to the Diplomatic Session, apart from the revised drafting of Article 4(1) proposed in the September 2002 Memorandum. We strongly support the conclusion of this project on this timetable, and we remain ready to offer any additional assistance that we can provide to that end.

The principal remaining issues appear to be the approach and drafting of Article 4, as well as the final resolution of the Multi-unit State issues, covered in the June 2002 Preliminary Draft by Articles 11 and 18. It appears that the issues concerning pre-Convention dispositions, including relative priority between pre- and post-Convention dispositions, have largely been satisfactorily resolved in Articles 19 and 20 of the June 2002 Preliminary Draft.

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In relation to Article 4, informal soundings among the same range of our members as mentioned above, who attended the various Workshops suggest that a consensus in favour of a modified version of Option A under Article 4 is emerging. This modified version of Option A is referred to in the September 2002 Memorandum as "Option A+".

We believe that the difficulties with both Option A and with Option B are well set out in the September 2002 Memorandum, and for these reasons we support the proposed revised wording of Article 4(1) set out in the September 2002 Memorandum, which gives effect to the Option A+ approach.

We understand that during the Workshops there was a certain amount of discussion of the drafting of some of the sub-clauses of Article 4 with a view to improving its clarity and certainty. Clearly we support in principle further improvements and refinement of the drafting, provided that discussions on these points do not endanger the current timetable for completion and signature of the Convention in December of this year.

In relation to the Multi-unit State issues, as we have noted in our commentaries on prior preliminary drafts of the proposed Convention, ISDA does not have a single view on how to resolve the issues relating to Multi-unit States. This issue, however, is clearly important to our members, most, if not all, of whom are either based in Multi-unit States or deal from time to time with counterparties who are based in Multi-unit States. Accordingly, ISDA supports any sensible resolution of these issues, provided that it meets the objective of *ex ante* certainty. In this respect, we would support the deletion of paragraph (2) of Article 11, which we understand is being considered, as this would further simplify this already somewhat complex provision and ensure a greater uniformity of approach among member states of the future Convention.

You may count on our continuing support for this important project, and in particular for final preparatory work leading, we firmly hope, to the completion and signature of the Convention at the Diplomatic Session in December.

Yours faithfully,

Richard Metcalfe
Director of European Policy
Co-Head of the European Office

