

H.E. Mr. Shahid Kardar
Governor
State Bank of Pakistan
Central Directorate
I.I. Chundrigar Road
Karachi
Pakistan
E-mail: shahid.kardar@sbp.org.pk

Mr. Mohammad Ali Ghulam
Chairman
Securities and Exchange Commission of Pakistan
NIC Building, Blue Area
Jinnah Avenue
Islamabad – 44000
Pakistan
E-mail: chairman@secp.gov.pk

By courier and e-mail

23 June 2011

Dear Governor Kardar,
Dear Chairman Ghulam;

RE: Netting of Financial Contracts Act, 2006 – Version adopted by the Cabinet in 2009

The International Swaps and Derivatives Association, Inc. (“ISDA”) respectfully presents this letter to the State Bank of Pakistan and the Securities and Exchange Commission of Pakistan in relation to the Netting of Financial Contracts Act, 2006 (“NFCA”) which was adopted by the Pakistani Cabinet in August 2009.

ISDA is the global trade association representing leading participants in the privately negotiated derivatives industry. ISDA was chartered in 1985, and today has more than 800 member institutions from 56 countries, including Pakistan. These members include most of the world’s major financial institutions that deal in privately negotiated derivatives, as well as many corporations, governmental entities and other end-users that use over-the-counter derivatives to manage efficiently the financial market risks inherent in our business activities. A current list of ISDA’s members, as well as other information about ISDA and its activities, is available on our website at www.isda.org.

ISDA documentation is the global standard for cross-border transactions in OTC derivatives (ISDA Master Agreements and Definitions). It is referred to, inter alia, in paragraph 16 of Annexure P-I to the Financial Derivatives Business Rules published by the State Bank of Pakistan as well as the Statement of Objects and Reasons that was adopted alongside the bill by the Cabinet in August 2009.

For a number of years now ISDA has taken interest in financial legislation in Pakistan with regard to derivative contracts. Throughout 2005 and 2006, ISDA has been in contact with the State Bank of Pakistan to discuss a draft bill that SBP had started at the time. We were delighted to see that from early on the draft NFCA reflected a large number of provisions that are in line with international standards and model provisions. ISDA very much appreciated the opportunity to comment on the initial draft. We were even more delighted to hear in August 2009 that the Cabinet had adopted the NFCA. We understand that the NFCA has been in the parliamentary process ever since.

From the perspective of the participants in the derivative markets, including the Authorized Derivatives Dealers in Pakistan as well as the global trading community, it would be considered a landmark development if the NFCA were to be adopted. The passing of the NFCA would also provide a major precedent for the wider Middle Eastern region as it would make Pakistan the first country in the region (incl GCC and North Africa) to adopt netting legislation. Please note that the adoption of netting legislation would be relevant also from a global perspective. UNIDROIT (the International Institute for

International Swaps and Derivatives Association, Inc.

One Bishops Square
London E1 6AD, United Kingdom
P 44 (0) 20 3088 3550 F 44 (0) 20 3088 3555
www.isda.org

NEW YORK WASHINGTON
LONDON BRUSSELS
HONG KONG SINGAPORE
TOKYO



the Unification of Private Law), an international organization that counts Pakistan among its member states, has recently started a project to develop an international legal instrument on netting of financial contracts (<http://www.unidroit.org/english/studies/study78c/main.htm>). Adopting of netting legislation in Pakistan would put the country at the forefront of this development and make it stand out among emerging market jurisdictions worldwide. A list of countries worldwide that have enacted netting legislation can be found at http://www.isda.org/docproj/stat_of_net_leg.html.

We understand that recent amendments to Pakistani constitutional law (eg, the 18th Amendment to the Constitution of Pakistan) have introduced new requirements for the adoption of bills that have been pending for a certain period of time. Once a bill passed by the National Assembly is not passed by the Senate during the stipulated time period, it can only be passed by a joint session of Parliament. We are well aware of the fact that Parliament has to deal with a number of high priority pieces of legislation which are on its agenda. However, we would respectfully submit that both SBP and SECP support efforts to get the NFCA adopted before any constitutional deadline expires.

ISDA would like to reiterate its support for efforts in Pakistan to adopt netting legislation. Please do not hesitate to contact Peter Werner at ISDA's London office (e-mail: pwerner@isda.org; phone: +44 20 3088 3550, fax: +44 20 3088 3555) for any additional information.

Kind regards,

Dr Peter M Werner
Senior Director
ISDA International Swaps & Derivatives Association
pwerner@isda.org

Enc. Netting of Financial Contracts Act