



Securities Industry Association

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January 4, 2002

Dr. Christophe Bernasconi, LL.M.
First Secretary of the Permanent Bureau of
the Hague Conference on Private International Law
Scheveningseweg 6
2517 KT
The Hague, Netherlands

Re: Comments on December 2001 Draft of Proposed Convention on Law
Applicable to Dispositions of Securities Held Through Indirect Holdings.

Dear Dr. Bernasconi:

The Operations Committee (“the Committee”) of the Securities Industry Association (“SIA”)¹, would like to supplement its December 7, 2001 letter with a brief comment on the December 2001 draft of the convention on law applicable to proprietary rights in indirectly-held securities (“the December Draft.”). The December Draft was not available when we submitted our prior letter.

As we previously noted, the Committee believes that the work on the Convention by the delegates to the Hague Conference will substantially advance public trust and confidence regarding transactions where securities are held as collateral. We are also

¹ The Securities Industry Association brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 80 million investors directly and indirectly through corporate, thrift, and pension plans, and generates more than \$300 billion of revenues yearly in the U.S. economy. U.S. securities firms employ more than 600,000 individuals. (More information about SIA is available on its home page: <http://www.sia.com>.)



keenly interested in ensuring that laws are harmonized in a way that does not drive market participants to create unnecessary operational costs or inefficiencies.

In general, the December Draft is very constructive. We continue to strongly support the Convention's approach of emphasizing the place of the relevant intermediary ("PRIMA") as the test for determining the applicable law. However, one aspect of the December Draft concerns us. Article 4(2) contains three possible options for a primary test for determining the place of the relevant intermediary. While some practical issues may exist with respect to all three options, we will limit this letter to significant operational concerns regarding Option Y.

Specifically, we are troubled by the proviso in Option Y that an agreement among the parties as to the office or branch that will maintain the securities is only effective if "an account number, bank code or other means of identification identifies the securities account as being held at that office or branch." Compliance with this requirement is difficult to estimate precisely without extensive study, but we believe that, as proposed, the operational expenses and complexities of ensuring that identification codes match the agreement between parties would be enormous.

In particular, compliance for existing accounts and agreements would require manual review of untold thousands of such account agreements, and reassignment in many instances of identification codes for those accounts, with attendant complexities in reprogramming account tracking software and other systems to recognize both the old and new codes. Substantial systems changes would also be required for account agreements entered into after the Convention takes effect to ensure that systems containing account identifiers tie those identifiers to the office or branch agreed to by the parties. Other systems that interface with the system that tracks the account might also require software changes to the extent that they need the capability to read the account identifier.

In addition to this overarching concern about the need for manual review and for systems and programming changes, we have other concerns with Option Y in its present form. For example:

- It is unclear if Option Y would require that all identification codes for an account have to point to the agreed location. There would be very substantial costs if an intermediary must search all codes that might be related to the account to ensure that they "point" toward the same office or branch;
- The language concerning identification codes is unnecessarily broad. What does "other means of identification" mean? Does the intermediary have to review internal codes that are not shared with the account holder



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or any other entity outside the firm? Do parties have to consider things like letterhead, return address on the envelope, phone and fax number of any branch or individual mentioned in the agreement, etc., to make sure that these all match the location of the account code? While we appreciate that this broad language may have been intended to provide flexibility to intermediaries, we are concerned that instead it may breed confusion.

Thank you for providing the Committee with the opportunity to provide this additional comment on the Hague Convention's excellent work on the proposed Convention. If we can be of further assistance, please do not hesitate to contact George R. Kramer or Mariya Rosberg of the SIA staff at gkramer@sia.com, 011-202-296-9410, or mrosberg@sia.com, 011-212-608-1500 respectively.

Sincerely,

C. Michael Viviano
Chairman, SIA Operations Committee

Cc: U.S. Delegates to the Hague Convention

Ms. Joyce Hansen, Deputy General Counsel and Senior Vice President, Federal Reserve Bank of New York

Mr. Harold S. Burman, Executive Director, Secretary of State's Advisory Committee on Private International Law

Mr. Allen S. Weiner, Legal Counselor, Embassy of the United States of America, The Hague

Mr. Richard T. Kortright, Davis, Polk & Wardwell

Mr. James S. Rogers, Professor, Boston College of Law

Mr. Harry Sigman, Commercial Law Adviser

Mr. Jack R. Wiener, Managing Director & Deputy General Counsel, The Depository Trust & Clearing Corporation

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Canadian Delegates: Ms. Kathryn Sabo, Senior Counsel, Private International Law Team, Public Law Policy Section, Department of Justice, Ottawa, Canada

Chinese Delegates: Mr. Hu Bin, Third Secretary, Ministry of Foreign Affairs, Beijing, China

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Italian Delegates: M. Fausto Pocar, Professeur, Université de Milan; Juge, Tribunal Penal International Pour L'Ex-Yougoslavie, La Haye

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Latvian Delegates: Ms. Kristine Drevina, Senior Legal Adviser, Enforcement Division, Securities Market Commission, Latvia

Luxembourg Delegates: M. Daniel Ruppert, Attaché de Gouvernement 1^{er} en Rang, Ministère de la Justice, Luxembourg

Moroccan Delegates: M. Nouredine Belabbès, Conseiller, Ambassade du Royaume du Maroc, La Haye

Mexican Delegates: Mr. Leonel Pereznieta Castro, External Adviser of the Department of Legal Affairs, Ministry of Foreign Affairs, Mexico

Netherlands Delegates: Mr. Antoon (Teun) V.M. Struycken, Professeur à la Faculté de Droit de l'Université Catholique de Nimègue; Président de la Commission d'Etat Néerlandaise de Droit International Privé, Netherlands

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Swedish Delegates: Mr. Lars Afrell, Director, Securities Market Division, Ministry of Finance, Stockholm, Sweden

Swiss Delegates: M. Hans Kuhn, Chef de Section Ajoint, Section du Droit International Privé, Office Fédéral de la Justice, Berne, Switzerland



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Mr. Lawrence Brandman, International Swaps and Derivatives Association (ISDA)
Mr. Clifford Dammers, International Primary Markets Association (IPMA)
Mr. Omar Oztan, The Bond Market Association
Mr. Scott Rankin, International Councils of Securities Associations (ICSA)

United States Securities and Exchange Commission: Larry E. Bergmann, Senior Associate Director, Division of Market Regulation