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CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

LETTRE EN DATE DU 5 AVRIL 2013 DE L'« *INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION* »

(DISPONIBLE EN ANGLAIS UNIQUEMENT)

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LETTER DATED 5 APRIL 2013 FROM THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION

Document d'information No 7 d'avril 2013
à l'attention du Conseil d'avril 2013
sur les affaires générales et la politique de la Conférence

Information Document No 7 of April 2013
for the attention of the Council of April 2013
on General Affairs and Policy of the Conference

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Per e-mail: secretariat@hcch.net

05th April, 2013

Dear Dr Bernasconi,

RE: Council of General Affairs, April 2013 meeting, Preliminary Document 10

Many thanks for inviting ISDA, the International Swaps and Derivatives Association, to attend the upcoming meeting of the Council of General Affairs. As indicated in our earlier response, it will not be possible for ISDA to attend in person this time.

At this occasion we would like to take the opportunity to reiterate the fact that the work of the Hague Conference continues to be highly relevant to the global capital markets. A number of instruments on private international law matters developed by the Hague Conference have had a significant impact on cross-border transactions across the global financial markets.

An issue that has arisen recently with numerous implications is the recovery and resolution of cross-border financial institutions. The stability of financial institutions with cross-border operations are often considered of systemic relevance from a regulatory perspective. Such systemically important financial institutions exist at global as well as regional level and their operations affect a number of jurisdictions at a time. Since 2008, a number of declarations and policy recommendations have been made to address the systemic effects of such institutions. For example, by the G20 leaders, the Basel Committee on Banking Supervision and the Financial Stability Board.

The nature of systemically significant financial institutions makes it inevitable that conflict of law rules come into play whenever financial regulators in the jurisdictions of operation employ recovery and resolution measures with regard to a given institution. Private international law rules come to the fore at any stage of a recovery and resolution process both during the early intervention phase during recovery as well as during resolution and insolvency proceedings vis-a-vis the institution in question.

This far, there are no comprehensive guidelines on private international law rules in this scenario from a global perspective. This includes pieces of national legislation on bank recovery and resolution enacted in various Member States of the Hague Conference over recent years as well as draft legal instrument under discussion in regional economic organizations.

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Preliminary Document 10 as prepared by the Permanent Bureau provides a very helpful outline of the main issues stemming from bank recovery and resolution. From the perspective of global cross-border capital market transactions it would be very beneficial if the Hague Conference were to undertake initial studies and research into the private international law issues that come with cross-border recovery and resolution. This would add to the policy work done by the global community of financial regulators this far. Such a study could include an outline of the various conflict of law issues facing cross-border recovery and resolution and point towards possible solutions to ensure an efficient private international regime that enhances legal certainty across the globe.

ISDA would like to express its support for such a project by the Hague Conference. To the extent member states consider it helpful to include private sector participant in such a project, ISDA stands ready to get involved.

We would be delighted to discuss this further with you. Please do not hesitate to contact the undersigned with any questions. We express our best wishes for the discussions at your Council meeting.

Yours sincerely,

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