INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT CONVENTION ON SUBSTANTIVE RULES REGARDING INTERMEDIATED SECURITIES
Third session
Rome, 6 / 15 November 2006

UNIDROIT 2006
Study LXXVIII – Doc. 48
Original: English
October 2006

COMMENTS BY GOVERNMENTS AND INTERNATIONAL ORGANISATIONS

(Comments by the CCP12)

The language “securities settlement system” is not intended to be substantive in nature to exclude central counterparties, as evidenced by the definition's own terms, since "Securities Settlement System" - whether or not the words "or Clearance" are included in the defined term, i.e. at the head of Article 1 (q) - would cover an entity or system that “clears, settles or clears and settles securities transactions”. We do not believe that there is any dispute that the activities of securities central counterparties constitute "clearance" of securities transactions. Obviously, any central counterparty, to be included within the definition of a Securities Settlement System, would also have to meet the other requirements of the proposed definition (that is to say, be listed in a contracting state's declaration, have accessible rules, be subject to regulatory oversight, as per 1(q)(ii)-(iv)).

We would thus like to confirm our views that the definition does (and should) be understood to include central counterparties, as entities engaged in the clearance, or clearance and settlement, of securities transactions. And that this is appropriate, particularly given that under the proposed draft, contracting states can determine what entities, if any, they believe should be entitled to such special Securities Settlement System protection via a declaration. Presumably states, and their respective regulators, will consider those CCP entities they believe are critical to the stability and functioning of their respective securities settlement systems.