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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

TRANSACTIONS ON TRANSNATIONAL AND CONNECTED CAPITAL MARKETS

Scope of the project:

“Harmonised Substantive Rules for the Use of Securities Held with Intermediaries
as Collateral”

Rome, June 2002

Based on the decision taken by the Governing at its 80th session, held in Rome, from 17 to 19 September 2001 (cf. UNIDROIT 2001, A.G. (55) 8), the Secretary-General is currently setting up a Study Group on Item 1 (use of securities held with intermediaries as collateral) of the project relating to private law aspects of transactions on transnational and connected markets.

The Secretariat has established a list of issues and problem areas which the Study-Group will consider in defining the precise scope of the project.

1. Substantive requirements and procedure for the creation and perfection of an interest in securities held with an intermediary.
2. Rights of the account holder (investor) evidenced by the account and transferred to the security taker.
3. Requirements for the perfection of a disposition of securities.
4. Extension (scope) of an interest in securities.
5. Priorities as between competing interests.
6. Effects of insolvency of account holder (investor), security taker and intermediary.
7. Effects of upper-tier attachment.
8. Effects of notice of interest at lower tier on higher-tier relationships.
9. Duties of intermediary to account holder (investor), security taker and third parties asserting competing interests (incl. treatment of shortfalls).
10. Intermediary's right to use pledged securities for its own purposes.
11. Security taker's right to use pledged securities for its own purposes.
12. Requirements for the realisation of an interest in securities held with an intermediary.
13. Rights and duties as between CSDs and/or intermediaries in general in relation to the processing of dispositions of securities.
14. Standardised transaction procedures (e.g. time frames for settlement).

Taking into account that, in the relevant decisions taken by the Governing Council and the General Assembly, Item 1 was defined as "the taking of security in securities in indirect holding systems and other transactions carried out through intermediaries and within clearing and settlement institutions", the question arises whether the scope of the project should be confined to securities held with *intermediaries* and, moreover, whether the broader mandate given by the Governing Council and the General Assembly should have an immediate impact on the Study Group's work.