



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
HARMONISED SUBSTANTIVE RULES REGARDING
INTERMEDIATED SECURITIES
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**COMMENTS BY GOVERNMENTS
AND INTERNATIONAL ORGANISATIONS**

(Comments by the CCP12)

1. Article 1

Definition of "Securities":

Do transferable instruments include derivatives? Document 19, the Explanatory Notes, at 2.2.2, points out that derivatives are considered as securities in some countries but as contractual rights in others. The matter should be dealt with consistently.

Definition of "Clearing or Settlement System":

As indicated in the Explanatory Notes re Article 7 (now Article 8), a definition of these Systems would be desirable. CCP12 members have a preference for a list of such Systems to be made public (as per the EU's list of Designated Settlement Systems under the Settlement Finality Directive: http://europa.eu.int/comm/internal_market/financial-markets/settlement/dir-98-26-art10-national_en.htm). However, it is not clear which body should be responsible for designation/publication.

It should however be noted that (CCP) Clearing Systems and Settlement Systems do not necessarily share the same interests. While finality is important for (CCP) Clearing Systems, the efficiency of collateral arrangements is perhaps of greater importance. For Settlement Systems however, finality will be paramount. Separate definitions may therefore be appropriate. We raise the issue to be considered at the deferred date when detailed consideration of Article 8 will take place as proposed in the "Final Report" (Document 23 rev).

2. Article 8

We would propose that Article 8 is kept in the Convention as a catch all, as well as to keep the individual exceptions in favour of such Systems. The wording "...which is directed to the stability of the system or the finality of dispositions effected through the system...." should be deleted. Maintaining such wording would only bring uncertainty, and in the situations where the wording is likely to be invoked, time will be the crucial factor; there will not be time to go to court to determine how and where the rule was directed. (This comment applies in respect of each reference to rules of such Systems being so directed).

Accordingly, for the sake of certainty, we also have a preference for Article 8 to allow the rules of (CCP) Clearing Systems to prevail over “any provision of this Convention”.

3. **Article 22**

We query the exclusion of “natural persons”. We understand the intent to exclude retail transactions, but in certain markets natural persons are major market participants.