

1 **The role and the function of private trade association: the ISDA, the ICMA and the**
2 **LMA in international finance markets and their contribution and importance to**
3 **stabilise and make these markets more efficient**

4
5 **Abstract**

6
7 These days, financial markets have an important role for market-based economies. Therefore,
8 their safety and efficiency reflects the wealth of any society. The question arises whether
9 markets can function well-regulated by themselves via the standard market practice of private
10 trade associations or whether markets need public regulation. The following paper aims to
11 give an answer to this question by examining the regulation of international financial markets
12 through private regulation. As an example, there are explored the organisation and the
13 regulation's structure of three big private trade associations: the International Swaps and
14 Derivatives Association (ISDA), the International Capital Market Association (ICMA) and
15 the International Loan Market Association (LMA). Investigated and compared are the
16 structure, the objects and the regulatory regimes of these three biggest private trade
17 associations, as well as the advantages and disadvantages and actual problems which faces
18 private regulation. The most important conclusions and further open questions are outlined at
19 the end.

20
21 **Keywords: ICMA, ISDA, LMA, SIFMA, EMEA**

22
23 **I. Introduction**

24
25 Today, most modern economies are based on and driven by the market. Financial markets
26 play an important economic, commercial, social and political role for the organisation of any
27 modern society. Markets provide important services and funding without which commercial
28 activities would be impossible. Thus, their stability and efficiency is vital.
29 There are two opposite theories which explain basically how the markets are driven and
30 organised.

The first one is the neoliberal theory, which is assuming that financial markets are driven and regulated by themselves.¹

The second is the realism theory arguing that markets are organised and publicly regulated. Supporters of this theory argue that the state has to regulate and play a central role in the political and economic system of the society.

However, it should be considered, that in reality exact theoretical models do not exist and markets are formed and influenced by both of these principles. Therefore, looking on the history of the periods of strict regulation were followed with movements of free markets without any regulation and otherwise.² This become particular important today, when under the current US administration is risen the proposals to countermand some of the acts introduced after the global financial crisis in 2007 regulating banking responsibilities regarding capital adequacy.³ In this regard, private trade associations⁴ as a form of private markets' organisation have a special role for the regulation of the international financial markets.

II. Definitions

Before starting to examine the role of private trade associations, it is necessary to outline the definitions of international financial markets and those of private trade associations. These terms are both determined and interconnected.

On the one hand, the markets determine the existence of private trade regulators, on the other hand, in order to grow and function well and efficiently, markets have to be organised and retain certain rules for their members. Hence, both terms are related to each other.

1. International finance markets

¹ Haymes, S; Vidal de Haymes, M; Miller, R, eds. (2015). The Routledge Handbook of Poverty in the United States, 7. Proponents of the theory plead for more privatisation, deregulation and free trade.

² After period of no regulation come the Great Depression, followed with the legislature of F.D. Roosevelt. The period up to 1970s was under the sign of 'Big bang' no regulation until the global financial crisis in 2007.

³ There is risen the argument for restricted lending to companies. See: 'Trump orders Dodd-Frank review in effort to roll back financial regulation', available at: <<https://www.theguardian.com/us-news/2017/feb/03/trump-dodd-frank-act-executive-order-financial-regulations>> accessed 7 February 2017.

⁴ In opposite to public authorities in the EU such as the independent European Bank Association (EBA), the European Securities Markets Association (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), which were implemented by regulations from the European Commission.

57 The standard definition defines international financial markets as a worldwide marketplace
58 where sellers and buyers trade financial assets⁵ across national borders.

59 However, such a definition is too narrow. International financial markets nowadays are
60 virtual platforms not related to the traditional view of certain market places. They consist of
61 many other separate markets such as foreign exchange, money, Eurocurrency, bond, equity,
62 insurance, gold or derivatives markets.⁶ Therefore, financial markets have to be organised
63 according to principles of transparent pricing, basic trading regulations and practice,⁷ costs
64 and fees, which are determined by the value of the trading products.

65 All such rules have to ensure that markets operate in accordance with the adopted standards.

66

67 **2. Private trade associations**

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69 Private trade associations are organization which are founded and funded by businesses
70 participating in the specific market. Their main role is to contribute to the collaboration of its
71 participants facilitating their participation in a particular financial market. Furthermore, they
72 support their members through technical expertise, organizing conferences, conducting
73 educational activities and lobbying. In addition, they also set common rules and standards for
74 the market participants.

75

76 **III. The function of private trade associations for international finance markets**

77

78 Nowadays, international financial markets are governed by a range of standards and
79 requirements including market trading, dealing rules, national and international best market
80 practices. International financial markets need guidelines in order to function safely and
81 efficiently. Cross-border transactions are exchanged daily on markets between foreign
82 lenders and domestic borrowers, domestic lenders and foreign borrowers or between foreign
83 lenders and foreign borrowers.⁸ Differences in economic, social and legal traditions and

⁵ Under “financial assets” should be understood assets such as: stocks, bonds, currencies, commodities or derivatives.

⁶ Roberts R, *Inside International Finance*, (Orion business book 1999), 31.

⁷ The need of the buyers and sellers to trade is conducted through financial intermediaries. Financial intermediaries are usually individuals in the form of legal entities such as: banks, pension or hedge funds, securities and equity firms, insurance companies, which move and allocate capital in the financial system from areas of surplus to there where it is needed.

⁸ Dufey and Giddy, *The International Money Market*, in R. Tennekoon, *The Law & Regulation of International Finance*, (Butterworths 1991), 1.

84 practice complicate the process of reaching an agreement of common standards.⁹ Such
 85 differences will not be overcome if the International Monetary Fund (IMF) and the Basel
 86 Committee for Banking Supervision (BCBS) do not rely more on the private sector.¹⁰ The
 87 private sector and the markets, through the private trade associations, create common trading
 88 rules. However, this could be also argued as a role of the public regulation. Nevertheless,
 89 public regulation could not cover worldwide financial markets, since there is a difficulty to
 90 achieve consensus between many states to restrict their sovereignty in financial sector.

91 Private trade associations play a special role in the organisation and functioning of the
 92 international financial markets. According to the different markets, the three major trade
 93 associations: the ICMA, the ISDA and the LMA contribute to the organisation of the
 94 financial markets via private principles and standards. Consequently, financial markets are
 95 organised through private law - normative rules which are promulgated by a particular group
 96 to define their relations to the industry.¹¹ All these sets of rules applied by private trade
 97 associations are primarily based on **criminal law**, including rules concerning theft, fraud or
 98 insider trading. The regulations also include **civil law** regarding remedies by penalising
 99 market abuse or statutory breaches, or by **specific 'conduct of business' (COB) rules**, which
 100 are imposed in more complex sectors such as in the securities area where firms should
 101 manage firm/client conflicts of interest.

102 Along with regulation, private trade associations also conduct supervision over the financial
 103 markets monitoring and taking care that market participants remain solvent and in accordance
 104 with the relevant best market practice and regulatory regimes.

105 Subsequently, the international standards of the ISDA, the ICMA and the LMA play an
 106 essential role for the organisation of international financial markets.

107

108 1. ISDA

109

110 The ISDA is the largest global financial trade association by number of associated member
 111 firms. The association plays a pivotal role to the development of the derivatives market.¹²

⁹ Eichengreen B, *Toward a new international financial architecture*, (Institute for International Economics 1999), 35.

¹⁰ Eichengreen B, *Toward a new international financial architecture*, (Institute for International Economics 1999), 35.

¹¹ *Private Law Making by trade Associations*, HLR 1949, 1346.

¹² Cf. Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR 309, 310; R. Pickel, Testimony Before the United

ISDA, originally known as International Swaps Dealers Association,¹³ was founded in the 1980s at the same time as the emergence of new derivative products, particularly swaps.¹⁴ In the following decade, the association grew quickly and began to perform broader lobbying beyond its role according to the ISDA Master Agreement and as a result its influence was undoubtedly a key factor in the public deregulation of Over The Counter (OTC) derivatives trading by legislators in the USA.¹⁵

a. ISDA objectives

The ISDA primary goals are to build robust, stable markets and a strong financial regulatory framework.¹⁶ The Association works in three key areas of the financial markets, which are: the reduction of counterparty credit risk; the increase in transparency; and the improvement of the industry's operational infrastructure.

The ISDA tries to encourage the prudent and efficient development of the privately negotiated derivatives business by encouraging practices conducive to the efficient conduct of the business. Moreover, the Association promotes the development of sound risk management practices and fosters high standards of commercial conduct. It advertises the international public understanding of its business, educating its members and others on the legislative regulatory documentation, in accountancy, taxing and other operational and technological issues. In addition, the Association is used as a forum for the analysis and discussion of these issues and developments and of the common interest of its members.¹⁷

b. The ISDA Master Agreement

ISDA published a Master Agreement in 2002 which substantially contributes to self-regulation in the OTC derivatives industry.¹⁸ To some extent it can be seen as a counterpart

States Senate Committee on Agriculture, Nutrition and Forestry (Washington D.C., 14 October 2008), available at: <<http://www.isda.org/press/pdf/Testimony-of-Robert-Pickel.pdf>> accessed 19 March 2015.

¹³ Later renamed as International Swaps and Derivatives Association, in order to cover all spectrum of deals.

¹⁴ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 323.

¹⁵ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 323.

¹⁶ See: ISDA Safe, Efficient Market <<http://www2.isda.org/about-isda>> accessed 18 March 2015.

¹⁷ Walker G. A., Financial Derivatives, 26.

¹⁸ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 324.

to the European Market Infrastructure Regulation (EMIR)¹⁹ regulating publicly through European legislation the EU OTC derivatives market.

The Master Agreement establishes international contractual standards governing privately negotiated derivatives transactions and credit risk through netting of contractual obligations. Ensuring the enforceability of the netting provisions of the ISDA Master Agreement has been, and remains, a key initiative in reducing the credit risk arising from the business. It promotes cooperation with appropriate international bodies for protection of customers' positions, default procedures and regulatory co-operation in emergencies.²⁰ While the Agreement provide 'safe harbours' for OTC derivatives, including 'purely speculative' contracts, from the full force of gambling laws,²¹ it has been suggested that the regulatory role and expertise of ISDA should be formally recognised and appropriately harnessed by public actors in the creation of a new public-private regulatory regime in the OTC derivatives markets.²² The ISDA Master Agreement contains standards for the OTC derivative market based on legal obligations arising out of the transactional relationship.²³ The Agreement is based on the common law principle of contract with vulnerable binding capacity.²⁴ One disadvantage of this is that, disputes under the Agreement could end up somewhere other than London in England or New York in the US and, if this happens, the jurisdiction where the contractual dispute 'touches down' will not be OTC derivatives-friendly, or at least not as friendly as London and New York.²⁵ This raises questions about contractual enforcement. Thus, the Agreement alone is limited in its capacity to steer the counterparties and other third parties, to the operation of the private regulatory regime.²⁶

c. ISDA regulatory regime

¹⁹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories Text with EEA relevance, OJ L 201, 27.7.2012, p. 1.

²⁰ Windsor Declaration, Part III, <http://www.cftc.gov/International/InternationalInitiatives/oia_windsordeclaration> accessed 18 March 2015.

²¹ Derivatives speculation was classified as gambling.

²² Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 310.

²³ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 324.

²⁴ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 326.

²⁵ Cf. Walker G. A., Financial Derivatives, 27; *Bankers Trust Co v PT Jakarta International Hotels and Development* [1999] 1 All ER (Comm) 785; [1999] Lloyd's Rep 910. While the Agreement may be governed by either English law or that of the State of New York, in case an arbitration agreement has been entered into, injunctive relief will be available to restrain the other party from proceeding to litigation.

²⁶ Walker G. A., Financial Derivatives, 27.

The mechanisms through which the ISDA Agreement become enforceable by its voluntary standards includes national private norms which use the legislative capacity of national governments to encourage consistent public regulatory treatment of OTC derivatives transactions across jurisdictions and to ensure cross-jurisdictional enforceability of the Agreement.²⁷ These are ‘Rules originated by private actors and put into force by sovereign governments’, like the Financial Contracts Bill 1995 of the Irish Parliament.²⁸ In this context the ISDA regulatory regime depends on the support from the national state. This dependency is a disadvantage of the private legislation since finally its enforceability depends on national legislation.

d. The ISDA norms and the national state

The degree of ‘private oversight of the public sector’ by the industry, institutionalised through ISDA, appears to have been necessary in order to underpin the integrity of OTC derivatives trading.²⁹ The public capacity has been utilised in order to ‘complete’ the ISDA regulatory regime. Hence, ISDA generates standards, while norm recognition and enforcement of those standards is farmed out to national legislators or public courts.³⁰ This illustrates the interdependence of the public-private regulation. The national states need ISDA members attracting employment and economic growth such as in the case of Ireland where the government acquiesced specific legislation concerns of an ISDA member. However, while ISDA and its members are acting in their own interests in seeking transposition of key private market norms, such norms may or may not always be aligned with the interests of less well-informed third-party stakeholders.³¹

²⁷ Biggins J / Scott C, ‘Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform’, (2012) EBLR, 327. ISDA and its members work with national governments to ensure smooth OTC derivatives transactions.

²⁸ Biggins J / Scott C, ‘Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform’, (2012) EBLR, 329 ff. The government bill was influenced by the ISDA member Merrill Lynch.

²⁹ Cf. Biggins J / Scott C, ‘Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform’, (2012) EBLR, 333; C. Scott, ‘Private Regulation of the Public Sector: A Neglected Facet of Contemporary Governance’, 29 Journal of Law and Society (2002), 56.

³⁰ Cf. Biggins J / Scott C, ‘Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform’, (2012) EBLR, 333; G. A. Walker, (n 25), 26; *Deutsche Bank AG v ANZ Banking Group Ltd* [2000] Lloyd’s Rep Bank 304; *Peregrine Fixed Income Ltd (in liquidation) v Robinson Department Store Plc* [2000] CLC 1328; and 2000 WL 1027115. The court confirmed Master agreement’s interpretation of the terms of a credit default swap.

³¹ E. Benvenisti, ‘Exit and Voice in the Age of Globalization’, 98 Michigan Law Review (1999) p. 167, at pp. 200-201

2. ICMA

The next big private association is the ICMA. The ICMA is the self-regulatory and trade association representing the financial institutions which are active in the international capital markets worldwide. ICMA maintains standards of good market practice through its handbook in the primary markets. The association has developed standard documentation for new issues leading to greater efficiencies and cost savings for issuing banks. Due to its inherent cross border nature, the international capital market is not subject to the same degree of regulation that governs domestic primary and secondary markets. Therefore, the ICMA is focused more on cross-border, rather than on domestic regulatory and market practice issues.³² It works closely with members via its market practices and regulatory policy committees and councils.³³

a. Tasks of the ICMA

With the expansion of the markets across geographic boundaries and product areas, the ICMA has assisted the free movement of capital across borders and the integration of economies by removing obstacles, enhancing structural reform and integration of capital and financial sources.³⁴ The ICMA like the ISDA promotes the development of efficient international capital markets by maintaining the framework of cross-border issuing, trading and investing through development of internationally accepted **standard market practices**. It liaises closely with governments, regulators, central banks and stock exchanges, both at the national and international level, to ensure that financial regulation promotes the efficiency and cost-reduction of the international capital markets. The ICMA informs its members about new market products. Furthermore, it provides education and training, organises market events and encourages networking.³⁵

³² International Capital Market Association, <<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

³³ International Capital Market Association, <<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

³⁴ See ICMA Centre, The International Capital Market Association (ICMA), <<http://www.icmacentre.ac.uk/about-us/the-international-capital-market-association-icma>> accessed 19 March 2015.

³⁵ ICMA Centre, The International Capital Market Association (ICMA), <<http://www.icmacentre.ac.uk/about-us/the-international-capital-market-association-icma>> accessed 19 March 2015.

b. ICMA regulated areas

ICMA has traditionally been most active in the international debt market in order to promote resilient and well-functioning international debt capital markets. In this regard, the Association is focusing on all types of securities, cash and derivatives markets and work together with other national and international trade associations. ICMA pays active contribution through recommendations and advices on the international repo market. For instance, the ICMA's European Repo Council is the responsible body which defines the best practice in the European cross-border repo market, via its steering committee of market practitioners.³⁶ ICMA fully supports initiatives to improve safety and efficiency of settlement systems in the EU, whether infrastructure driven like the ECB Target 2 settlement platform, or regulatory such as Central Securities Depository (CSD) Regulation.³⁷ The Association also supports measures to prevent settlements fails and cash penalties,³⁸ and has devoted resources to the creation of standard master agreements for repo transactions in conjunction with the Securities Industry and Financial Markets Association (SIFMA).

c. ICMA Handbook

In 1985 the ICMA launched its Primary Market Handbook named a “IPMA Handbook”. Since then the document has been developed to a comprehensive rulebook continuously responding to market developments with guidelines and harmonisation practices. Currently, the Handbook includes recommendations for firms trading on the capital market. The ICMA recommendations are focused on key areas such: transparency, fair play, timelines, efficiency and standardisations.³⁹ ICMA has a central role by providing and enforcing a self-regulatory code of industry-driven rules and recommendations which regulate issuance and trading in the international capital market. The Authority has published as voluntary guidance to bond market participants for

³⁶ See: ICMA, International Capital Market Association, Repo Market, <<http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/>> accessed 19 March 2015.

³⁷ ICMA Response to ESMA CSD Regulatory Level 2 Consultation Paper, February 19th 2015, <<http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/erc-contribution>> accessed 19 March 2015.

³⁸ ICMA Response to ESMA CSD Regulatory Level 2 Consultation Paper, February 19th 2015, <<http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/erc-contribution>> accessed 19 March 2015.

³⁹ See ICME European regulatory development for primary debt issuance accessed 19 March 2015.

the issuance of Green Bonds which promulgated version was issued on January 13, 2014.⁴⁰ The ICMA Primary Market Handbook regulates the issuance of international securities worldwide.⁴¹ ICMA also makes rules and recommendations in the secondary market for trading debt and related securities between its members as well as its members and other professional market participants and the clearing and settlement of trades in such securities.⁴²

3. LMA

The LMA is the third big private trade association, which is responsible for the syndicated loan markets. The Association was established in 1996 by group of banks primarily to focus on the development of the secondary loan market in Europe.⁴³ Initially the Association assisted the development of the secondary loan market in Europe with best practices and standard documentation. Market operations are organised via contract law. The contracts are created according to the British Case Law defining any considered unlikely situation. Nowadays, the LMA is active on the primary as well as on the secondary market. It operates now in Europe, the Middle East and in Africa (EMEA). Working with lenders, borrowers and regulators, the LMA educates the market about the benefits of the syndicated loan products and removes barriers to entry for new participants.⁴⁴ The Association includes a wide spectrum of members actively engaged in the international syndicated loan market such as commercial and investment banks, institutional investors, rating agencies, law firms and services providers. The number of LMA members has increased steadily and at the moment, there are over 600 organisations from 55 countries.⁴⁵

a. LMA goals

⁴⁰ See ICMA Governance Framework, <<http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/green-bonds/governance-framework/>> accessed 19 March 2015.

⁴¹ International Capital Market Association, <<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

⁴² International Capital Market Association, <<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

⁴³ Cf. The Act Borrowers Guide to LMA Loan Documentation for Investment Grade Borrowers, Slaughter and May ed. <<http://www.treasurers.org/loandocumentation/investmentgrade>> accessed 19 March 2015. The LMA Mission, <http://www.lma.eu.com/landing_aboutus.aspx> accessed 23 January 2016.

⁴⁴ The LMA Mission, <http://www.lma.eu.com/landing_aboutus.aspx> accessed 23 January 2016.

⁴⁵ See Membership of the LMA under: <http://www.lma.eu.com/landing_membership.aspx> accessed 19 July 2016.

The LMA aims to improve the liquidity, efficiency and transparency in the primary and secondary loan market.⁴⁶ In this regard, the Association is responsible for the effective provision of loan business and managing portfolios, reducing the transaction costs, exchange on experience ideas by particular problems. The LMA ensures provision of recommended documentation for the primary and secondary syndicated loan market. In addition, it establishes the necessary market practice and provides networking opportunities.

b. Benefits of the LMA membership

LMA increases the liquidity in the primary and secondary loan markets and reduces the trading costs. The LMA has published papers of expertises regarding various actual topics such as: Documentations Law and Governance Developing Markets, Risk Mitigation and Lender Assistance with different finance products.⁴⁷ The Association provides efficient execution of primary and secondary loan business and efficiently managing loan portfolios. The LMA exchanges views and circulation of topical information as well as the opportunity to participate in addressing issues and solving problems. It supplies information through its website for accessing recommended form documents and offers education and training courses.

IV. The contribution of private trade associations for market's safety and efficiency

International financial markets are organised via private law, applying the principles and practices of the ISDA, the ICMA and the LMA. The three mentioned associations contribute to international financial markets in many ways.

Firstly, they secure the return on funds. Borrowers on the market can pool (increase) and transform (extend) maturities (the time for repayment).

Secondly, the associations provide additional payment services and general information about management services. The market information will be collected, distributed and assessed.

Thirdly, through the created regulation from the associations, the credit risk becomes subject to specialised management. It is assessed, managed and properly priced. This way counter party risk will be reduced and the market corporate discipline is strengthened.

⁴⁶ The LMA Mission, <http://www.lma.eu.com/landing_aboutus.aspx> accessed 23 January 2016.

⁴⁷ See LMA, Developing Loan Market, (Edwin Buckley & Co Ltd. 2013)

Consequently, market transparency becomes better and market efficiency increases. In addition, the transaction costs become lower and the credit volumes and investments increase nationally and globally. This provides better market liquidity and allocation of financial sources and brings more production and increased welfare. However, there are also critics of the private market regulation. Some of them take aim at the fact that the Associations often operate mechanisms for exchanging or sharing information within a particular branch or industry.⁴⁸ They gather and aggregate sales information which later is disseminated. There is a debate of whether the exchange of information makes market more or less competitive. Much of the discussion was against several private trade associations which have kept information private and were not sharing it.⁴⁹

V. Conclusion

Nowadays, private trade associations contribute to international trade by governing financial markets with a range of standards and requirements including market trading and dealing rules, national and international best market practice. Firms and individuals are supervised and regulated at the national level, but contracts are governed by standard market documentations which define rights, obligations and remedies for the parties. However, since the global financial crisis, there is a trend to recognize that public regulation is necessary. One of the reasons is that private regulation depends for its enforceability on the national states or courts.⁵⁰ Another disadvantage is that all these private standards are obliging only to its members. On the other hand, international financial markets have grown too fast and became so large and influential that it is almost impossible for governments or any authority to regulate them via public law. Consequently, the role of private contract regulation conducted through private trade associations will continue to be a significant contribution to the stability and the efficiency of the international financial markets. Moreover, the international principles and standards of ISDA, ICMA and LMA will be a necessary factor guarantying the security of the OTC and unregulated wholesale markets.

⁴⁸ A. J. Kirby, 'Trade associations as information exchange mechanismus', *The RAND Journal of Economics* (1988), 138.

⁴⁹ Cf. A. J. Kirby (n 48), 138; *American Columm and Lumbr Co v United States*, 257 U.S. 377 (1921); *Maple Flooring Manufacturies Associations v United States*, 268, U.S. 563 (1925); *United States v Container Corp. of America*, 393, U.S. 333 (1969).

⁵⁰ See b. ISDA regulatory regime, p. 5 and c. The ISDA norms and the national state, p. 6.

322 Nevertheless, there still are a number of new challenges. The common trade practices should
323 ensure and guarantee the safety of the fast development of financial innovation and extension
324 of the palette of new products and services.

325 Furthermore, the effective system of private financial regulation including appropriate
326 bankruptcy mechanisms should involve more countries at all levels in order to ensure global
327 stability.

328 In the banking sector effective liquidity and credit control and best supervisory and monetary
329 policy practices have to be included.

330 Finally, an effective system of international development and indefinite support should be
331 established in order to give possibilities to emerging and developing economies to share the
332 global benefits from the actual expansion of financial markets and systems.