

The role and function of private trade associations as a private regulator in making markets more efficient and stable: the ISDA, the ICMA and the LMA in comparative review

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Abstract

Financial markets play a critical role for market-based economies: their safety and efficiency ensures and reflects the wealth and prosperity of society. But can markets function sufficiently well-regulated by themselves via standard market practices of private trade associations or do they require public regulation? This paper tries to answer this question by examining the regulation of international financial markets through the private regulation of three major private trade associations: the International Swaps and Derivatives Association (ISDA), the International Capital Market Association (ICMA) and the Loan Market Association (LMA). By using systematic approach the structure, the objects and the regulatory regimes of these three biggest private trade associations, their advantages and disadvantages as well as problems which they face are investigated and compared. Furthermore, in order to provide practitioners and researchers with an up-to-date reflection on a most pressing issue of modern financial markets the legal foundations of the recent research material and all relevant publicly available information provided by these private trade associations are critically evaluated. The most important conclusions and further open questions are outlined at the end.

Keywords: ICMA, ISDA, LMA, SIFMA, EMEA

I. Introduction

In our present time, most economies are based on and driven by the market. Financial markets play an important economic, commercial, social and political role for the organisation of any modern society. They provide important services and funding without

which commercial activities would be impossible, rendering their stability and efficiency vital.

Basically, economic theory knows two major opposite theories which fundamentally explain how markets are driven and organised: The first one is the neoliberal theory, which is assuming that financial markets are driven and better regulated by themselves.¹ The second one is the realism theory arguing that markets are organised and regulated publicly.² 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 kept in mind that reality does not ideally conform to theoretical models and markets are formed and influenced by both principles. Therefore, history shows that periods of strict regulation were followed with movements towards free markets without any regulation, and vice versa.³ This has become particularly important today, when under the current US administration proposals have arisen to countermand some of the acts introduced after the global financial crisis in 2007 regulating banking responsibilities regarding capital adequacy.⁴ Quite obviously, this begs the question of what could be the alternative. In this regard, private trade associations⁵ as a potential form of private markets' self-organisation have now received a special role for the regulation of the international financial markets.

II. Definitions

Before starting to examine the structure and the role of private trade associations in ensuring market stability via self-regulation of private markets, it is necessary to outline the definitions of “international financial markets” and those of “private trade associations” for the purposes of this essay, as a clear concept of these terms is a prerequisite for the present investigation. It is also necessitated by the fact that both terms are interconnected: On the one hand, 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 financial markets

The standard definition defines international financial markets as a worldwide marketplace where sellers and buyers trade financial assets⁶ across national borders.

However, such a definition is too narrow. International financial markets are not only limited to traditional markets that facilitate the trade of financial instruments. Financial markets nowadays are virtual platforms not related to the traditional view of certain market places. They consist of many separate markets such as foreign exchange, money, Eurocurrency, bond, equity, insurance, gold or derivatives markets.⁷ Therefore, international financial markets have to be organised according to principles of transparent pricing, basic trading regulations and practice,⁸ costs and fees, which are determined by the value of the trading products.

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

2. Private trade associations

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

III. The function of private trade associations for international financial markets

International financial markets are governed by a range of standards and requirements including market trading, dealing rules and national and international best market practices. They need guidelines in order to function safely and efficiently. As cross-border transactions are exchanged daily on markets between foreign lenders and domestic borrowers, domestic lenders and foreign borrowers or between foreign lenders and foreign borrowers,⁹ differences in economic, social and legal traditions and practice complicate the process of reaching an agreement of cross-border common standards.¹⁰ Such differences will not be overcome if the International Monetary Fund (IMF) and the Basel Committee for Banking Supervision (BCBS) do not rely more on the private sector:¹¹ For instance, Basel II placed reliance upon private sector and included it as one of the three pillars.¹² The private sector and the markets, through the private trade associations, create common trading rules. While this could be also argued to be a role of public regulation, such public regulation could not cover worldwide

financial markets, since there is **immense** difficulty to achieve consensus between many states to restrict their sovereignty in financial sector.

Private trade associations **therefore** play a special role in the organisation and functioning of international financial markets. According to the different markets, the three major trade associations: the ICMA, the ISDA and the LMA contribute to the organisation of financial markets via private principles and standards. Consequently, financial markets are organised through private law - normative rules which are promulgated by a particular group to define their relations to the industry.¹³ All these sets of rules applied by private trade associations are primarily based on **criminal law**, including rules concerning theft, fraud or insider trading. The regulations also include **civil law** regarding **contractual** remedies by penalising market abuse or statutory breaches, or by **specific 'conduct of business' (COB) rules**, which are imposed in more complex sectors such as in the securities area where firms **have to** manage firm/client conflicts of interest.

Along with regulation, private trade associations also conduct supervision over the financial markets monitoring and taking care that market participants remain solvent and in accordance with the relevant best market practices and regulatory regimes. **Many economists have advocated greater reliance on the private sector and expressed misgivings with official supervision of banks, as by private regulation market discipline is forward-looking, inherently flexible, adaptable and market surveillance is continuous, impersonal and nonbureaucratic.**¹⁴ In contrast, official oversight usually is rule-based, episodic, bureaucratic, and slow to change.¹⁵ However, there is neither pure private nor pure public regulation:¹⁶ **it should be considered that exact public or private models do not exist and there is always a combination of both.**

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

1. ISDA

The ISDA is the largest global financial trade association by number of associated member firms. The association plays a pivotal role **in** the development of the derivatives market.¹⁷ ISDA, originally known as International Swaps Dealers Association,¹⁸ was founded in the 1980s, at the same time as the emergence of new derivative products, particularly swaps.¹⁹ 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.²⁰

a. ISDA objectives

The ISDA primary goals are to build robust, stable markets and a strong financial regulatory framework.²¹ In order to achieve it, 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.

It tries to foster the prudent and efficient development of the derivatives business by encouraging practices conducive to an efficient conduct. 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.²²

b. The ISDA Master Agreement

ISDA published a Master Agreement in 2002 which substantially contributes to self-regulation in the OTC derivatives industry.²³ To some extent it can be seen as a counterpart to the European Market Infrastructure Regulation (EMIR)²⁴ 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.²⁵ It promotes cooperation with appropriate international bodies for protection of customers' positions, default procedures and regulatory co-operation in emergencies.²⁶ While the Agreement provide 'safe harbours' for OTC derivatives, including 'purely speculative' contracts, from the full force of gambling laws,²⁷ 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.²⁸ The Agreement is based on the common law principle of contract with vulnerable binding capacity.²⁹ One particular disadvantage follows swiftly, that is, 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.³⁰ This raises serious questions about contractual enforcement. Hence, the Agreement alone is limited in its capacity to steer the counterparties and other third parties to an appropriate and efficient operation of the private regulatory regime.³¹

c. ISDA regulatory regime

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.³² These are ‘Rules originated by private actors and put into force by sovereign governments’, like the Financial Contracts Bill 1995 of the Irish Parliament.³³ In this context the ISDA regulatory regime depends on the support from the national state. This dependency is a disadvantage of private legislation since, at the end of the day, 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.³⁴ The public capacity has been utilised in order to ‘complete’ the ISDA regulatory regime. So, ISDA generates standards, while norm recognition and enforcement of those standards is farmed out to national legislators or public courts.³⁵ 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.³⁶

2. ICMA

Following next is the ICMA. The ICMA is the self-regulatory 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.³⁷ 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.³⁸ It works closely with members via its market practices and regulatory policy committees and councils.³⁹ One potential advantage of this is that it facilitates cross-border implementation of standard contractual obligations. Another one is that might hamper implementation of best practices in national legislation, which might, by the way, endanger contract enforcement in court, unless there is a valid arbitration clause.

a. Tasks of the ICMA

With the expansion of 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.⁴⁰ 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**.⁴¹ 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.⁴²

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 works 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.⁴³ 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.⁴⁴ In this regard there is a private-public cooperation, where ICMA promoting such practices to other countries. The Association also supports measures to prevent settlement fails and cash penalties,⁴⁵ 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

One of its most exemplary tools to achieve best market practices, in 1985 the ICMA launched its Primary Market Handbook named "IPMA Handbook". Since then the document has been developed into 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.⁴⁶

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 the issuance of Green Bonds which promulgated version was issued on January 13, 2014.⁴⁷ The ICMA Primary Market Handbook regulates the issuance of international securities worldwide.⁴⁸ 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.⁴⁹

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.⁵⁰ 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 British case law defining numerous potential, but unlikely situations.

Nowadays, the LMA is active on the primary as well as on the secondary market. It operates in Europe, the Middle East and in Africa (EMEA). Working with lenders, borrowers and regulators, the LMA educates the market about the benefits of syndicated loan products and removes barriers to entry for new participants.⁵¹ 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 to over 600 organisations from 55 countries.⁵²

a. LMA goals

The LMA aims to improve the liquidity, efficiency and transparency in the primary and secondary loan market.⁵³ In this regard, the Association is responsible for the effective provision of loan business and managing portfolios, reducing transaction costs and exchange on experience about ideas for 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.⁵⁴ The LMA has published papers of expertise regarding various actual topics

such as: Documentations Law and Governance Developing Markets, Risk Mitigation and Lender Assistance with different finance products.⁵⁵ The Association provides efficient execution of primary and secondary loan business and efficiently managing loan portfolios. The LMA exchanges views and ensures 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. These three mentioned associations contribute to international financial markets' safety and efficiency in many ways.

Firstly, they secure the return on funds. Borrowers in 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 regulation created by 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.

Consequently, market transparency becomes better and market efficiency increases.

In addition, transaction costs decrease and credit volumes and investments increase both nationally and globally. This provides better market liquidity and allocation of financial sources and ushers in more production and increased welfare, for the benefit of all.

However, there are also critics of 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.⁵⁶ 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.⁵⁷ There is also an argument, if private regulation serves public interests or private enforcement mechanisms and standardizations such as ISDA may threaten to "capture" market regulation not as a public good, but for the aggregated individual self-interests of its members, thereby introducing

special interests into public legislation. Nevertheless, by the debate private public regulation it could be argue to the contrary that appropriate private regulation tends to serve to the benefit of all, whereas politicians can use powerful supervisory agency to pressure banks to lend to politically connected firms; powerful banks can also ‘capture’ bank regulators and induce regulators to act in their interest, not the interest of the society as a whole and political and large institutions are generally unable to contain these focus.⁵⁸ Finally, the point as to be mate that private market solution seemed to work well to the problem – bank fragility, especially where banks were allowed to branch. Branched banks in a clearinghouse coalition has a significant improvement in banking system stability.⁵⁹

V. Conclusion

In modern markets, private trade associations contribute to international trade by governing financial markets with a range of standards and requirements including market trading and dealing rules and 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. This hinders companies and their management, as different national legislations and transaction taxes have to be considered. Large financial institutions with numerous cross-border activities have to comply with dozens of duplicating questions from national banking supervisors about how to implement the necessary national approaches.⁶⁰ However, since the global financial crisis, there is a trend to recognize that public regulation is necessary. The case with ISDA in Ireland was an example of a synergy or interaction between private and public regulation. One of the reasons is that private regulation depends for its enforceability on the national states or courts.⁶¹ 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 safety and soundness of the OTC and unregulated wholesale markets.

363 Nevertheless, there still are a number of new challenges. The common trade practices should
364 ensure and guarantee the safety of the fast development of financial innovation and extension
365 of the palette of new products and services. Some of the tools of the international private
366 trade associations such as the ISDA-Master Agreement and the ICMA-Handbook have to be
367 actualized.

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

371 In the banking sector, effective liquidity and credit control and best supervisory and monetary
372 policy practices have to be included.

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

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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 See Barth, James R./Capiro, Gerard Jr./Levine Ross, Rethinking Bank Regulation,
Cambridge University Press 2006, 21ff. The public interest approach for bank or finance
regulation aims boosting economic development, preventing or mitigating costly crises and
protecting consumers. With regard to the neoliberal approach, where the market is imperfect,
Adam Smith's invisible hand will not work. The imperfection can impede the function of the
market. This is the case by the information asymmetries – parties on one side of an actual or
potential transaction know more than those on the other side. Those who entre such markets
will be confronted by two problems: adverse selection and moral hazard. Such situation
clearly indicates why information asymmetry can explain a tendency in finance toward
seemingly oligopolistic, or clublike behaviour: lender tend to deal with those that they know,
and information barriers tend to keep out other potential entrants. Information imperfection
can explain secrecy in lending and the dearth of secondary market for banks loan. Both
negative information about borrowers (they default) and positive (number of times they pay

on time) have value in lending decision and credit allocation. The main negative externality in banking resulting from imperfect information is a bank run or a generalized banking crises.

³ After a period of no regulation came the Great Depression, followed by the New Deal legislature of F.D. Roosevelt. The period up to the 1970s was under the sign of 'Big bang': no regulation until the global financial crisis in 2007.

⁴ For example, restricted lending to companies by banks has become an issue. 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.

⁵ Opposite to public authorities in the EU such as the independent European Banking Authority (EBA), the European Securities Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), which were implemented by regulations from the European Union.

⁶ For present purposes, "financial assets" should be understood as assets such as: stocks, bonds, currencies, commodities or derivatives.

⁷ Roberts R, *Inside International Finance*, (Orion business book 1999), 31.

⁸ The need of 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 or insurance companies, which move and allocate capital in the financial system from areas of surplus to there where it is needed.

⁹ Dufey and Giddy, *The International Money Market*, in R. Tennekoon, *The Law & Regulation of International Finance*, (Butterworths 1991), 1.

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

¹¹ Eichengreen B, *Toward a new international financial architecture*, (Institute for International Economics 1999), 35.

¹² Barth, James R./Capio, Gerard Jr./Levine Ross, *Rethinking Bank Regulation*, Cambridge University Press 2006, 60.

¹³ *Private Law Making by trade Associations*, HLR 1949, 1346.

¹⁴ Barth, James R./Capio, Gerard Jr./Levine Ross, *Rethinking Bank Regulation*, Cambridge University Press 2006, 60.

¹⁵ Ibid.

¹⁶ Barth, James R./Capio, Gerard Jr./Levine Ross, Rethinking Bank Regulation, Cambridge University Press 2006, 60. Some question placing excessive trust in private sector monitoring, especially in countries with poorly developed capital markets, accounting standards and legal systems. Viewed from the public interest perspective, countries with weak institutional environment will benefit more from official regulators containing excessive risk-taking behaviour of banks and thereby instilling more confidence in depositors than would exist via private sector monitoring. In this regard, increased reliance on private monitoring leads to exploration of small savers and hence much less bank development.

¹⁷ 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 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.

¹⁸ Later renamed as International Swaps and Derivatives Association, in order to cover all spectrum of deals.

¹⁹ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 323.

²⁰ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 323.

²¹ See: ISDA Safe, Efficient Market <<http://www2.isda.org/about-isda>> accessed 18 March 2015.

²² Walker G. A., Financial Derivatives, 26.

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 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.

²⁵ Fusaaro Peter C./James Tom, 'Energy Hedging in Asia, Market Structure and Trading Opportunitie', Palgrave Macmillian (New York 2005), 21.

²⁶ Windsor Declaration, Part III, <http://www.cftc.gov/International/InternationalInitiatives/oia_windsordeclaration> accessed 18 March 2015.

²⁷ Derivatives speculation was classified as gambling.

²⁸ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 310.

²⁹ Biggins J / Scott C, 'Public-Private Relations in a Transnational Private Regulatory Regime: ISDA, the State and OTC Derivatives Market Reform', (2012) EBLR, 326.

³⁰ 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.

³¹ Walker G. A., Financial Derivatives, 27.

³² 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.

³³ 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.

³⁴ 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.

³⁵ 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 30), 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 the Master Agreement's interpretation of the terms of a credit default swap.

³⁶ E. Benvenisti, 'Exit and Voice in the Age of Globalization', 98 *Michigan Law Review* (1999) p. 167, at pp. 200-201

³⁷ Vishwanath, S. R./ Krishnamurti Chandrasekhar, 'Investment Management: A Modern Guide to Security Analysis and Stock Selection', Springer (Berlin, Heidelberg 2009), 44.

³⁸ International Capital Market Association,
<<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

³⁹ International Capital Market Association,
<<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

⁴⁰ 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.

⁴¹ ISDA response to the Fair and Effective Markets Review Consultation
<<http://www.bankofengland.co.uk/markets/Documents/femr/isda.pdf>> accessed 10 March
2017.

⁴² 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.

⁴³ See: ICMA, International Capital Market Association, Repo Market,
<[http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-
markets/Repo-Markets/](http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/)> accessed 19 March 2015.

⁴⁴ 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](http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/erc-contribution)> accessed 19 March 2015.

⁴⁵ ICMA Response to ESMA CSD Regulatory Level 2 Consultation Paper, February 19th
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⁴⁶ See ICME European regulatory development for primary debt issuance accessed 19 March
2015.

⁴⁷ See ICMA Governance Framework, <[http://www.icmagroup.org/Regulatory-Policy-and-
Market-Practice/green-bonds/governance-framework/](http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/green-bonds/governance-framework/)> accessed 19 March 2015.

⁴⁸ International Capital Market Association,
<<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

⁴⁹ International Capital Market Association,
<<http://de.scribd.com/doc/48174708/ICMApdf#scribd>> accessed 23 January 2016.

⁵⁰ 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.

⁵¹ The LMA Mission, <http://www.lma.eu.com/landing_aboutus.aspx> accessed 23 January 2016.

⁵² See Membership of the LMA under: <http://www.lma.eu.com/landing_membership.aspx> accessed 19 July 2016.

⁵³ The LMA Mission, <http://www.lma.eu.com/landing_aboutus.aspx> accessed 23 January 2016.

⁵⁴ See LMA Membership Benefits, <<http://www.lma.eu.com/membership/membership-benefits>> accessed 10 March 2017.

⁵⁵ See LMA, Developing Loan Market, (Edwin Buckley & Co Ltd. 2013).

⁵⁶ A. J. Kirby, 'Trade associations as information exchange mechanismus', The RAND Journal of Economics (1988), 138.

⁵⁷ Cf. A. J. Kirby (n 56), 138; *American Collow 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).

⁵⁸ Barth, James R./Capiro, Gerard Jr./Levine Ross, *Rethinking Bank Regulation*, Cambridge University Press 2006, 179.

⁵⁹ See Barth, James R./Capiro, Gerard Jr./Levine Ross, *Rethinking Bank Regulation*, Cambridge University Press 2006, 32.

⁶⁰ This hinders, companies and their management, as there have to be considered different national legislations and transaction taxes. Large financial institutions which are cross-border active have to comply with dozens duplicating questions from the national banking supervisors, how the necessary national approaches should be implement.⁶⁰

⁶¹ See b. ISDA regulatory regime, p. 5 and c. The ISDA norms and the national state, p. 6.