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TREATIES

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UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

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TREATIES

Thursday, May 19, 2016

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m., in Room SD–419, Dirksen Senate Office Building, Hon. Johnny Isakson presiding.

Present: Senators Isakson [presiding], Johnson, Gardner, Shaheen, and Murphy.

OPENING STATEMENT OF HON. JOHNNY ISAKSON, U.S. SENATOR FROM GEORGIA

Senator ISAKSON. I will call to order the hearing of the Senate Foreign Relations Committee. We welcome our guests and our two people to testify. I will make opening remarks, and then I will turn it over to Senator Shaheen for her opening remarks.

Today's hearing will review two treaties that will advance U.S. interests in the agricultural and financial sectors, the International Treaty on Plant Genetics and The Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary.

Our first treaty is the International Treaty on Plant Genetic Resources. The plant genetic treaty was voted out of this committee by a voice vote December 2010. Unfortunately, the Senate did not take up the treaty before the end of the 110th Congress.

As our witnesses will explain in their testimony, our food security and the future of United States agriculture depends on access to the plant germplasm that will be made available through the terms of this treaty.

The United States is the global leader in agriculture, and I might add, parenthetically, so is my State of Georgia, so I have a personal and parochial interest in this as well.

In fact, the multilateral germplasm system established under the treaty is based on our own national plant germplasm system, which has been in operation for years.

Without full participation under the treaty, our farmers and researchers are placed in a competitive disadvantage. Without it, they have to engage in costly, time-consuming, bilateral negotiations to access materials that would be fully available under the Treaty.

This treaty entered into force in 2004 and has 139 parties. We look forward to hearing from our witnesses today on how ratification of this treaty will help our national interests.

The second treaty we will consider is The Hague Convention. In this treaty, we will address significant, complex and conflicting laws and issues in global financial markets. Financial markets have evolved over the last couple decades. The Hague Convention represents the other step forward in the evolution of securities law and financial markets.

The capital markets are now global with the presence of new challenges with numerous parties trading securities across national borders. Under the indirect system, intermediaries in the United States manage accounts owned by people all over the world. Although the financial transactions managed by the intermediaries are global, the owners live in different countries from where the law is applicable. Those accounts may vary dramatically from one country to the next.

Determining which laws are applicable and which courts apply brings new challenges with numerous parties trading securities across national borders. Legal issues that once would be resolved under U.S. law now face complex issues regarding the choice of laws and choice of forum.

By providing a set of fallback rules for reconciliation of conflicts of the law, The Hague Convention represents another step forward in the evolution of securities law and financial markets. The Hague Convention would improve upon the current framework, providing a simpler method to resolve these conflicts. If ratified, this convention would reduce risk in global financial markets and reduce costs.

The United States has a natural advantage under The Hague Convention. The Convention is based on U.S. legal principles and the U.S. Uniform Commercial Code.

I look forward to discussing this today and look forward to hearing from our witnesses.

I will now introduce the ranking member, Senator Shaheen.

STATEMENT OF HON. JEANNE SHAHEEN,
U.S. SENATOR FROM NEW HAMPSHIRE

Senator SHAHEEN. Thank you, Mr. Chairman. Thank you for chairing this hearing. I am glad we are having this hearing today because consideration of treaties is one of the critical duties the Constitution assigns to the Senate, and I believe that we need to take that duty seriously.

I am not going to repeat what Senator Isakson has said about the treaties that we are going to be considering this morning, but I just want to make a few points.

First, as Senator Isakson said, the Treaty has been signed by the U.S. and ratified by 139 countries. My understanding is that our ratification will require no changes in U.S. law.

On The Hague Securities Convention, I understand the Convention's principles are based on our own Uniform Commercial Code, which means they are entirely compatible with those already in effect across the United States, and they will not require any implementing legislation. The Uniform Law Commission, the body instrumental in drafting the code, has registered its strong support for ratification of the Convention, as have all of the relevant stakeholders, including banks, stockbrokers, investment firms, the U.S. Chamber of Commerce.

So I will submit my full statement for the record, Mr. Chairman, and apologize in advance that I have to leave early to go to a mark-up in the Appropriations Committee.

Senator ISAKSON. Without objection, your remarks will be made a permanent part of the record.

[The prepared statement of Senator Shaheen follows:]

PREPARED STATEMENT OF SENATOR SHAHEEN

Thank you, Mr. Chairman.

I am glad that we are having this hearing today. Consideration of treaties is one of the critical duties the Constitution assigns to the Senate, and I believe we need to take that duty seriously. So thank you, Senator Isakson, for chairing this hearing.

Global access to plant genetic resources is greatly valuable to America's farmers, our academic institutions, our researchers, and the private sector. With these materials, we can develop new crop varieties that provide more nutrients, better resist pests and diseases, show improved yields, better tolerate environmental stress, and can therefore feed the growing number of people inhabiting this earth. The United States is the world's largest market for seeds, as well as the largest seed exporter.

The International Treaty on Plant Genetic Resources for Food and Agriculture creates a global system for the management of plant genetic resources. Ratification of this treaty will ensure the United States can protect our national interests in the deliberations of the International Treaty Governing Body, which establishes and manages that global system. Once the U.S. ratifies this treaty, our companies and agricultural researchers will be able to engage in a streamlined exchange process for plant genetic resources rather than being forced to negotiate separate bilateral agreements. This shift will reduce uncertainty, logistical challenges and costs.

This treaty has already been ratified by 139 countries, and my understanding is that ratification will require no changes to U.S. laws.

I look forward to hearing the views of our distinguished witnesses on the merits of the Treaty.

We have before us another important treaty: the Hague Securities Convention, which will remove legal uncertainties for cross-border securities transactions. I understand all of the relevant stakeholders, including banks, broker-dealers, investment firms and the U.S. Chamber of Commerce strongly favor its ratification.

These days, cross-border electronic transactions in stocks, bonds and other securities are occurring in higher numbers than ever before. However, uncertainty about what law governs the aspects of these transactions can carry costs. The Convention resolves these uncertainties by providing choice-of-law rules for securities and is intended to modernize the conduct of these transactions.

I understand the Convention's principles are based on our own Uniform Commercial Code, which means they are entirely compatible with those already in effect across the United States and will not require any implementing legislation. The Uniform Law Commission, the body instrumental in drafting the code, has registered its strong support for ratification of the Convention.

I look forward to hearing from our witnesses on the merits of this treaty as well.

Senator ISAKSON. And without objection, I will note that we are all going to be out of here pretty fast, because we have votes coming up pretty soon. So I do not want our two witnesses to think we are being rude or unprofessional, but we do have votes, I think at 11 o'clock, if I am not mistaken.

So we will go right to our testimony.

I want to first, without objection, enter into the record various letters that have been submitted by agricultural interests and financial interests around the country in support of the United States participation in both of the treaties we will discuss today.

Without objection, they will become part of the record.

[The information referred to is located at the end of this document.]]

Senator ISAKSON. Our first witness is the Honorable Judith Garber, Acting Assistant Secretary for the Bureau of Oceans and

International Environmental and Scientific Affairs at the Department of State.

We welcome you, and you will be the first to testify.

Our second witness today is Mr. John Kim, assistant legal adviser for private international law at the Department of State.

Ms. Garber, you are recognized for up to 5 minutes.

STATEMENT OF HON. JUDITH G. GARBER, ACTING ASSISTANT SECRETARY, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Ms. GARBER. Mr. Chairman, Ranking Member Shaheen, thank you for the opportunity to testify today in support of the International Treaty on Plant Genetic Resources for Food and Agriculture.

With your permission, I have a longer statement that I would like to submit for the record.

Senator ISAKSON. Without objection.

Ms. GARBER. The American people depend on U.S. agriculture, which in turn depends on stable, high yields of U.S. crops, which in turn depend on the continual development of new crop varieties. The crops we grow are under constant threat from diseases and pests, droughts, and floods. Our food security and the future of U.S. agriculture will depend on our ability to breed resilient new crops that require less water, less fertilizer, and less energy to grow, and still reliably produce high-quality yields.

To develop these new crop varieties, breeders and researchers require access to a broad spectrum of plant germplasm. Plant germplasm includes the seeds, the bulbs, the roots, and other propagating raw materials from which plants can be reproduced.

These materials for plant breeding contain key traits, such as immunity to virulent pests and diseases or tolerance for drought. Because plant genetic diversity is spread across the globe, U.S. access to germplasm from other countries is critical to develop the crops we need. This means facilitating guaranteed access to what is termed "plant genetic resources" is a very high priority for the United States and the international community. This is the reason the Treaty was established.

This treaty creates a stable legal framework for international plant germplasm exchanges. It benefits both research and commercial interests in the United States.

The Treaty also promotes U.S. and global food security through the conservation and sustainable use of plant genetic resources.

The Treaty's centerpiece is the establishment of a multilateral system. Its purpose is to facilitate access by public and private entities to, and benefit-sharing regarding, certain plant genetic resources to be used for research, breeding, and training for food and agriculture.

Currently, 64 food, feed, and grazing crops are listed in the Treaty. Access is granted through a standard material transfer agreement, essentially a contract that defines the terms of access and benefit-sharing.

As a global leader in agricultural production, research, and breeding, the United States was intensively involved in negotiating

the Treaty and the standard material transfer agreement. President George W. Bush signed the Treaty in 2002. And as you noted, Mr. Chairman, it entered into force in 2004 and now has 139 parties.

Throughout the Treaty's negotiating process, the United States was firmly committed to creating a system that promotes U.S. and global food security, protects U.S. access to genetic resources held outside our borders, and supports research and breeding in both the public and private sectors.

The U.S. also sought to protect the ability of International Agricultural Research Centers, the institutions largely responsible for the Green Revolution, which saved hundreds of millions of lives, to continue to breed crops that are the foundation for global food security. We were successful in achieving these objectives.

U.S. ratification of the Treaty enjoys strong support among stakeholders such as the American Seed Trade Association, the American Farm Bureau Federation, the Association of Land-Grant Universities, and the National Farmers Union.

Mr. Chairman, the Treaty is consistent with existing U.S. practice and can be implemented under existing U.S. authorities. The United States is already in compliance with key provisions of the Treaty.

The Agricultural Research Service would play a major role in domestic treaty implementation. Ratification would not entail major policy or technical changes.

For more than 60 years, the U.S. National Plant Germplasm System has distributed samples to plant breeders and researchers worldwide and without restriction.

One notable example of collaboration is the crop gene bank in Griffin. The gene bank of the Agricultural Research Service and the University of Georgia is working to collect, conserve, and distribute plant genetic resources for sorghum, peanut, vegetables, cowpeas, and other crops and crop wild relatives.

Ratification of the Treaty would not only underscore continued leadership in agricultural research, breeding, and markets, it would also help U.S. farmers and researchers sustain and improve their crops, and promote food security for future generations.

Finally, it would enable the United States to effectively guide the trajectory of the Treaty and its material transfer agreement as they evolve to meet future challenges and changing conditions.

Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

[The prepared statement of Ms. Garber follows:]

PREPARED STATEMENT OF JUDITH G. GARBER

Mr. Chairman, Ranking Member Shaheen, and Members of the Committee:

Thank you for the opportunity to testify today in support of the International Treaty on Plant Genetic Resources for Food and Agriculture ("the Treaty").

U.S. agriculture depends on the stable high yields of U.S. crops which, in turn, depend on the continual development of new crop varieties. The crops we grow are under constant threat from diseases and pests, droughts and floods. Our food security and the future of U.S. agriculture will depend upon our ability to breed new crops that require fewer inputs, such as water, fertilizers, and energy, to grow; new crops that are more resilient or resistant to pests and diseases; and new crops that still reliably produce high-quality yields. To develop these new crop varieties, breeders and researchers require access to a broad spectrum of plant germplasm. Plant

germplasm includes the seeds, bulbs, roots, and other propagating raw materials from which plants can be reproduced. These materials for plant breeding contain key traits, such as immunity to virulent pests and diseases, or tolerance for drought. Because plant genetic diversity is spread around the world, the United States needs to have access to germplasm from other countries in order to be best equipped to develop the crops we need. This means that facilitating access to what is termed "plant genetic resources" is a critical priority for the United States. It is also a critical priority for the entire international community. This is exactly why the Treaty was created.

Technological advances have significantly improved our ability to identify, characterize, and utilize plant genetic materials, meaning that now more than ever it is important for us to be able to access the diversity of plant genetic resources outside our borders. However, U.S researchers have found it increasingly difficult to gain access to plant genetic resources in other countries. This Treaty establishes a stable legal framework for international plant germplasm exchanges, benefitting both research and commercial interests in the United States, and promoting U.S. and global food security through the conservation and sustainable use of plant genetic resources for food and agriculture.

The centerpiece of the Treaty is the establishment of a "Multilateral System" for access to, and benefit-sharing regarding, certain plant genetic resources to be used for research, breeding, and training for food and agriculture. The Multilateral System currently applies to 64 food, feed and grazing crops that are maintained by International Agricultural Research Centers or that are under the management and control of national governments and in the public domain. Access to germplasm in the multilateral system is granted through a Standard Material Transfer Agreement (SMTA), a contract that defines the terms of access and benefit-sharing.

As a global leader in agricultural production, research and breeding, the United States was intensively involved in negotiating the Treaty and the SMTA, which accompanies every transfer of materials under the multilateral system. President George W. Bush signed the Treaty in 2002. It entered into force in 2004 and now has 139 Parties including Australia, Brazil, Canada, Japan, and the EU. President Bush forwarded the Treaty to the Senate for consideration in July 2008, after negotiation of the SMTA was completed.

Throughout the Treaty negotiating process, the United States was firmly committed to creating a system that promotes U.S. and global food security, protects U.S. access to genetic resources held outside our borders, and supports research and breeding in both the public and private sectors. The United States also sought to protect the ability of the International Agricultural Research Centers—the institutions largely responsible for the "Green Revolution" which saved hundreds of millions of lives—to continue to breed crops that are the foundation for global food security. We were successful in achieving these objectives.

U.S. ratification of the Treaty enjoys broad stakeholder support, including support from major U.S. companies as well as prominent industry organizations such as the American Seed Trade Association, the American Farm Bureau Federation, the National Farmers Union, the National Association of Wheat Growers, the National Corn Growers Association, the Biotechnology Industry Organization, and the Intellectual Property Owners of America. In addition, the Association of Public Landgrant Universities also supports ratification.

U.S. stakeholders strongly support ratification because it would guarantee U.S. users what is known as "facilitated access," that is, access on consistent terms for little or no cost, to plant genetic materials held by other Treaty Parties. Currently U.S. entities are at a disadvantage, as they are not assured access to these resources due to our non-party status. When they do gain access, they sometimes have to engage in lengthy ad hoc negotiations of terms of access, and those terms are not always as favorable as those in the SMTA. If the United States were a Party to the Treaty, U.S. users would have guaranteed access under the SMTA, and the United States could ensure that any revisions to the SMTA were consistent with U.S. interests.

The Treaty is consistent with existing U.S. practice and can be implemented under existing U.S. authorities. The United States is already in compliance with key provisions of the Treaty. The Agricultural Research Service, in its capacity as manager of the National Plant Germplasm System, would play a major role in domestic Treaty implementation. Ratification would not entail major policy or technical changes to current National Plant Germplasm System operations. For more than 60 years, the U.S. National Plant Germplasm System has distributed samples of germplasm to plant breeders and researchers worldwide and without restriction. One notable example of collaboration is the Agricultural Research Service-University of Georgia crop genebank in Griffin, Georgia, which is working to collect, char-

acterize, conserve, and distribute plant genetic resources for sorghum, peanut, vegetables, cowpeas, and other crops and crop wild relatives.

The U.S. Department of Agriculture has long been recognized as the world leader in plant germplasm conservation and distribution. If the United States were to ratify the Treaty, U.S. entities would gain guaranteed access to plant genetic resources covered by the Treaty's Multilateral System. This guaranteed access is critical to the efforts of researchers and plant breeders to develop new crop varieties that are more nutritious, that are resistant to pests and diseases, that show improved yields of high-quality products, and that are better able to tolerate environmental stresses. The emergence of new plant breeding tools only heightens the importance of open access to plant genetic resources.

Ratification of the Treaty would not only underscore our continued leadership in agricultural research, breeding, and markets; it would also help U.S. farmers and researchers sustain and improve their crops and promote food security for future generations. Finally, it would enable the United States effectively to guide the trajectory of the Treaty and its Material Transfer Agreement as they evolve to meet future challenges and changing conditions.

Thank you for the opportunity to testify today. I would be happy to answer any questions.

Senator ISAKSON. Thank you, Ms. Garber.

Mr. Kim?

STATEMENT OF JOHN J. KIM, ASSISTANT LEGAL ADVISER FOR PRIVATE INTERNATIONAL LAW, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. KIM. Chairman Isakson, Ranking Member Shaheen, members of the committee, I appreciate this opportunity to testify today in support——

Senator SHAHEEN. Mr. Kim, could you just pull your microphone a little closer, so we can hear a little better?

Mr. KIM. Okay, excuse me. I will start again.

Chairman Isakson, Ranking Member Shaheen, members of the committee, I appreciate this opportunity to testify today in support of The Hague Convention on the Law Applicable to Certain Rights and Respective Securities Held with an Intermediary.

The Convention was adopted by The Hague Conference on Private International Law on July 5, 2006, and was signed by the United States and Switzerland that same day. Switzerland and Mauritius have ratified the Convention. The Convention will enter into force after the deposit of a third instrument of ratification.

Many countries are looking to the United States, upon whose law the Convention largely was based, to become a party before they take action.

In brief, the rules in the Convention provide a narrow technical fix to a serious problem in cross-border securities markets that has already been fixed domestically through adoption by all U.S. States of Articles 8 and 9 of the Uniform Commercial Code.

The Convention, if widely adopted, would basically extend current U.S. law and practice to the global financial markets. In particular, the rules in the Convention solve the current quandary of determining which country's law apply to certain aspects of a cross-border transaction in which the issuer, the clearing corporation, the security owner's bank or broker, and the owner may be located in different countries.

First, I would like to provide some brief background explaining the nature of the problem that the Convention is designed to address. Over the years, financial markets have moved from a system

of direct holding of security certificates or recordings on a share registry to a system of securities clearance, settlement, and ownership where the ownership information is held electronically as a book entry.

This so-called indirect system consists of one or more tiers of intermediaries between the issuer and the owner. These so-called intermediated securities are maintained through clearing corporations for the accounts at banks and brokers, which in turn maintain accounts for the customers.

In the movement toward book entry systems, it has become increasingly difficult for financial market participants to determine which country's law would apply to transactions involving securities held through these systems that involve different countries. It is crucial that market participants be able to identify the relevant law easily and with certainty for a variety of purposes, including, among many others, ensuring the perfection of interest in the intermediated securities. This problem affects U.S. banks and financial institutions every day and increases legal uncertainty and raises costs.

The Uniform Law Commission and the American Law Institute addressed this problem within the United States by revising the UCC in 1994. The rules and the Convention are based on the rules contained in UCC Articles 8 and 9.

Second, I would like to turn to the solution to this problem provided by the Convention.

The Convention's focus is important but narrow. It deals with intermediated securities, but not securities directly held by the investor from the issuer. The Convention does not prescribe substantive law. Rather, it simply selects a governing law for certain issues related to an intermediated securities transaction, thereby providing legal certainty on issues. These issues include the legal rights and obligations of the intermediary, and the resolution of priority conflicts among the buyer, the secured party, and a judgment lien creditor, if there are conflicting claims to the securities.

The primary role of the Convention for determining the applicable law is to look to the law of the jurisdiction whose law governs the account agreement between the customer and the intermediary. Virtually all book entry systems are covered by an account agreement, and a very large majority of those agreements specify governing law.

Third, the Convention is consistent with and is largely based on U.S. law. The Convention generally follows the approach to choice of law for the indirect holding system already contained in Article 8 of the UCC. In particular, UCC Article 8 permits the intermediary and the customer to determine the law that governs a transaction by express agreement.

My last and perhaps most important point is that we expect that there will be many benefits of U.S. ratification of the Convention. The Convention would contribute to the practical need in the large and growing global financial markets for greater legal certainty as to the laws applicable to interests in securities held through indirect holding systems.

It would reduce the cost of cross-border security transactions for securities investors, market actors, and custodians. U.S. businesses

and individuals would benefit, in particular, because the Convention sets forth modern rules, which already their domestic transactions, and extend those rules more globally, thereby reducing costs and enhancing certainty.

As the Convention was largely based on U.S. law, and given this country's significant role in cross-border transactions, other countries are looking to the leadership of the United States. If United States becomes a party, we expect that many other countries, including Canada, as well as countries in Asia, South America, and Africa, will be encouraged to join the Convention and adopt the same rules on choice of law.

Thank you, Mr. Chairman, Ranking Member. I am happy to answer any questions.

[The prepared statement of Mr. Kim follows:]

PREPARED STATEMENT OF JOHN J. KIM

Chairman Isakson, Ranking Member Shaheen, and Members of the Committee, I appreciate this opportunity to testify today in support of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary ("the Convention").

The Convention was adopted by the Hague Conference on Private International Law on July 5, 2006, and it was signed by the United States and Switzerland that same day. The Convention will enter into force after the deposit of the third instrument of ratification. Switzerland and Mauritius have ratified the Convention. Many countries are looking to the United States, upon whose law the Convention largely was based, to become a party before they take action.

In brief, the rules in the Convention provide a narrow, technical fix to a serious problem in cross-border securities markets that has already been fixed domestically through adoption by all U.S. states of Articles 8 and 9 of the Uniform Commercial Code (UCC). The Convention, if widely adopted, would basically extend current U.S. law and practice to the global financial markets.

In particular, the rules in the Convention solve the current quandary of determining which country's law applies to certain aspects of a cross-border transaction in which the investor or owner, the issuer, the clearing corporation, and the owner's bank or broker may be located in different countries. As a result, the Convention (1) reduces the legal and systemic risks in cross-border investment securities transactions; (2) reduces costs; and (3) facilitates capital flows.

My statement will consist of three parts. First, I will provide some background on the Convention explaining the nature of the problem that the Convention was designed to address. Second, I will explain how the Convention addresses the problem and briefly run through its basic provisions. Third, I will indicate the Convention's relation to domestic law and its importance to U.S. banks, brokers and others.

I. BACKGROUND—THE NATURE OF THE PROBLEM

Historically, owners of securities had a direct relationship with the issuer. Investors or owners would either have physical possession of the securities certificates, or be recorded on the issuer's share registry. The location of the certificate or registry was readily identifiable.

Over time, however, financial markets have expanded and moved to a system of securities clearance, settlement, and ownership where the ownership information is held electronically and indirectly as a book entry. This so-called "indirect system" consists of one or more tiers of intermediaries between the issuer and the owner. These so-called "intermediated" securities are maintained through clearing corporations (or central securities depositories) for the accounts of banks, brokers, and other financial institutions which in turn maintain accounts for their customers (the beneficial owners of the securities). The owners do not appear on any registry maintained by the issuer, nor do they have actual possession of certificates.

In the movement towards book-entry systems, it has become increasingly difficult for financial market participants to determine which country's law would apply to transactions involving securities held through these systems that involve different countries. (For example, suppose that a New York broker holds stock issued by Japanese and Singapore companies for a South American customer.) Also, these cross-border transactions take place very quickly and in huge volumes.

Many countries' legal systems have not kept up with the book-entry system, and their rules remain different than those in the United States. This problem affects U.S. financial institutions every day, and increases legal uncertainty and raises costs associated with the often-complicated determination of which country's law may apply.

That is why the Uniform Law Commission (ULC) and the American Law Institute in 1994 addressed this problem domestically in revising the UCC. The rules in the Convention reflect the modern finance law of the United States in Articles 8 and 9 of the UCC, adopted by all U.S. states and the District of Columbia. The Convention would bring this modern approach to the global markets.

II. THE PROPOSED SOLUTION

I turn now to the solution to this problem that is provided by the Convention.

The Convention's focus is important but narrow. It deals with intermediated securities but not securities directly held by the investor from the issuer. The Convention does not prescribe substantive law for securities intermediaries, and it has no effect on regulatory law. The Convention simply selects a governing law for certain issues related to an intermediated securities transaction, thereby providing legal certainty on the law applicable to those issues, and avoiding the need to comply with the laws of multiple jurisdictions for the same transaction.

The issues covered by the Convention include the legal rights and obligations of the intermediary; the legal nature and effect of a disposition of the investor's interest in the securities by the investor's bank or broker, to a buyer or a secured lender; and how priority conflicts among the buyer, the secured party and a judgment lien creditor are resolved if there are conflicting claims to the securities.

The primary rule of the Convention for determining the applicable law is to look to the law of the jurisdiction whose law governs the account agreement between the customer and the intermediary. Virtually all book-entry systems are covered by an account agreement, and the very large majority of those agreements specify a governing law.

Under the Convention, some minimal nexus must be established for the choice of that law, such as an office (a place of business) of the intermediary that performs certain functions in the chosen jurisdiction dealing with securities, even if those functions are unrelated to any particular securities account. This is generally not an issue for U.S. banks or brokers. They would normally require that the governing law of the account agreement be that of a jurisdiction in which they maintain an office.

If the applicable law cannot be determined pursuant to an agreement between the customer and the intermediary, certain fallback provisions in the Convention would ultimately apply the law of the jurisdiction in which the intermediary is organized.

III. RELATION TO U.S. DOMESTIC LAW

Turning now to the third part of my presentation, the Convention is consistentwith, and was largely based on, U.S. law.

The Convention generally follows the approach to choice of law for the indirect holding system contained in Article 8 of the UCC. Article 8 was specifically revised in 1994 to reflect the increasing use of securities accounts without physically identifiable securities or issuer share registries. In particular, UCC Article 8 permits the intermediary and the customer to determine the law that governs the transaction by express agreement.

As previously noted, the Convention has no effect on regulatory law or the jurisdictional scope or mandate of any banking, securities, or other regulators.

Federal law does not cover these types of commercial transactional matters, so there is no federal law that would be displaced. In addition, the Convention would not affect any other legal rules or contractual provisions that are not specified in the Convention.

UCC Articles 8 and 9 will continue to cover any issues not covered by the Convention and issues related to securities held directly by the investor or owner.

There are some minor differences between the Convention and UCC Articles 8 and 9, relating to perfection by filing, and regarding the consequences of a change in the governing law of the agreement (which would be a rare occurrence). Also, UCC Article 8, while permitting the intermediary and the customer to select the applicable law, does not contain a "qualifying office" rule.

None of these differences are significant, and none of the interested U.S. industry associations or the ULC has indicated any difficulty with these differences. These minor differences are not expected to create any difficulties for U.S. practices under UCC Articles 8 and 9.

The Administration has proposed that the Convention be self-executing. No federal or state legislation would be required to implement the Convention. This method of domestic implementation was supported by the ULC. There is no need to craft federal legislation that would intersect with Articles 8 and 9 of the UCC since the terms of the Convention itself would do that adequately.

Finally, the Convention does not permit reservations, and the Administration has not proposed any understandings or declarations.

IV. BENEFITS OF U.S. RATIFICATION

My last and perhaps most important point is that I hope the Senate will appreciate the many benefits of U.S. ratification of the Convention.

The Convention would contribute to the practical need in the large and growing global financial markets for greater legal certainty as to the laws applicable to interests in securities held through indirect holding systems, and would reduce the costs of cross-border securities transactions for securities investors, market actors, and custodians. As a result, the Convention would facilitate the flow of capital to both developed and emerging markets.

In addition to the aforementioned benefits to the United States, U.S. banks and brokers would benefit in particular because the Convention sets forth modern rules with which U.S. intermediaries already are familiar and are generally applying. Further, U.S. investors would benefit. For example, many Americans have pension funds or 401(k) accounts, and these pension funds have large holdings in securities that are managed under the book-entry systems I have described. Widespread adoption of the Convention would enhance harmonization and lower the costs of cross-border transactions involving these funds.

It is therefore not surprising that industry trade associations such as the International Swaps and Derivatives Association, the Securities Industry and Financial Markets Association, the Association of Global Custodians, and the Trade Association for the Emerging Markets (EMTA) have written to this Committee indicating their support for U.S. ratification. Also, notably, the President of the ULC sent a letter to this Committee supporting U.S. ratification of the Convention.

In view of the successful development of UCC Articles 8 and 9 in the United States, and given this country's significant role in cross-border securities transactions, other countries are looking to U.S. leadership on the Convention.

If the United States becomes a party, we expect that many other countries, including Canada, as well as countries in Asia, South America, and Africa, will be encouraged to join the Convention and adopt the same rules on choice of law for cross-border securities transactions. As other countries proceed to adopt the Convention, legal certainty will continue to increase for all securities transactions, including those carried out by banks, brokers and other market participants in the United States.

Senator ISAKSON. Thank you very much, Mr. Kim.

We will have an opening round of 5-minute questions. I will start on that.

Ms. Garber, your recognition of the University of Georgia was duly noted. I want to tell you how much I appreciate that. [Laughter.]

Senator ISAKSON. They do have a great agriculture extension service throughout the State and a great research center in Griffin, which you acknowledged in your remarks, which I appreciate.

That brings me, actually, to the key question that I have been asking, given the genetically modified organisms issue. It used to be in Asia, but now it seems like the Europeans are using it as well. Will our participation in this treaty help us in having GMOs recognized as being safe and secure as a component part of our agricultural products? Or does it have anything to do with that?

Ms. GARBER. Thank you for that question, Senator.

This treaty deals with the particular product or plant material, the building blocks of plants, but it does not deal with the particular processes or techniques that were used to create any particular seed or bulb or propagating material, so it is completely neutral on the question of genetically modified organisms. It just

deals with access and the particular seeds or tubers or bulbs or plant propagating material.

Senator ISAKSON. Carrying that same thought a little bit further, in terms of trade agreements, we have TPP that is pending in the United States Senate, and hopefully TTIP will be pending at some time in the next Congress, in terms of Europe and Scandinavia, will it be of any help to us?

One of our problems in trade around the world is people will use standards in their country for health and safety and security and/or financial standards, Mr. Kim, in their country to be a reason why they do not want to have free and fair and open trade with United States.

Will this help us, either one of those treaties, by getting into them and having a more level playing field?

Ms. GARBER. This treaty is distinct from that, but what this treaty does do is it creates a level playing field in terms of guaranteed access for our public and private plant breeders, as well as our agricultural researchers.

Senator ISAKSON. Mr. Kim, like most Americans who are not attorneys and not bankers or financial services personnel, I have always been worried about losing a stock certificate, but I am even more worried about an electronic recording of stock ownership that I can never touch, feel, and put in a safety deposit box.

Our participation in this financial Convention with The Hague, will that help in assuring people that their ownership is secure and safe in the event of a cyberattack or some other electronic problem?

Mr. KIM. Senator, this convention will certainly enhance the global financial markets by introducing legal certainty as to the choice of law in a situation where there is currently no certainty. When there are many different countries involved, people do not know which law applies, and they often try to comply with many different laws.

So it would reduce legal and systemic risk, and reduce costs. I think that would be good for U.S. investors, as well as U.S. banks and brokers, and will enhance the integrity of the indirect holding system through which much of our securities trade proceeds.

Senator ISAKSON. To that point, and I want to make sure I am right on this, the laws governing financial transactions in the residence of the owner of the account under this convention will be the laws that govern handling the financial services of that account. Is that correct?

In other words, if I have a financial manager in the United States of America, and I am a resident of the United States of America, and there is a question about an account transfer, this would guarantee the determination that U.S. law prevailed? Is that right?

Mr. KIM. In practical reality, yes, because almost all U.S. banks or brokers and U.S. residents would choose U.S. law to govern their account agreements.

Senator ISAKSON. Thank you very much, Mr. Kim.

Thank you very much, Ms. Garber.

Senator Shaheen?

Senator SHAHEEN. Thank you.

Ms. Garber, can you talk about how and whether the treaty would help address the challenges of global food insecurity?

Ms. GARBER. Thank you for that question, Senator.

This treaty would absolutely help address the challenge of global food security. So many regions of the world that suffer from global food insecurity, such as in Africa, South Asia, or the Caribbean, suffer from low agricultural productivity. What this treaty does is it provides guaranteed access for those who are trying to produce new plant varieties that will be stronger and more resistant to part of the undercurrent reasons why we have low agricultural food productivity or, for example, pests and diseases that may affect certain crops.

So by providing the system of access, it enhances not only the food security of the United States, but food security globally.

Senator SHAHEEN. Thank you.

Mr. Kim, you pointed out that the Convention was signed in July 2006, which is almost a decade ago, that there are only two countries that have actually ratified it today. So why is it taking so long?

Mr. KIM. Thank you, Senator, for the question.

Other countries are looking to the United States for leadership on this convention, as this convention was based on our law and rules, and in view of the significant role that the United States plays in global markets.

U.S. ratification of this convention would lead to the entry into force of the Convention, and we believe that would create momentum to encourage other countries to join the treaty.

I have had conversations with the Canadians. We have heard voices from Japan and Korea that they are very interested in what the United States does with The Hague Securities Convention.

Senator SHAHEEN. I understand that. That makes sense to me. But why has it taken so long for the Convention to come before the Senate?

Mr. KIM. Well, the treaty transmittal package was submitted by President Obama in May 2012.

Senator SHAHEEN. So we have been slow to take it up?

Mr. KIM. Well, it has been before the committee, certainly, but I am sure there have been many other priorities and has taken some time.

Senator SHAHEEN. I guess what I am trying to get at is, given that we heard that the stakeholders seem to all be supportive, have there been objections coming from some areas that are not apparent, that we need to better understand?

Mr. KIM. Thank you, Senator.

No, we are not aware of any opposition or objections posed to this convention. It has near universal support. Almost every industry trade association has written to the committee in support of U.S. ratification of the Convention, as has the Uniform Law Commission, which promulgates the UCC. They have all written in support of the Convention.

I think it is high time we take action. Thank you.

Senator SHAHEEN. Thank you.

Thank you, Mr. Chairman.

Senator ISAKSON. I would comment, Senator Shaheen, that it is understandable why Mr. Kim works for a diplomatic agency of the government. [Laughter.]

Senator SHAHEEN. He did that very well.

Senator ISAKSON. The answer to his question is that it is our fault, number one, that it is so late in coming up. I would compliment Chairman Corker and Senator Cardin on the fact that we are having this hearing, which I think sends a clear signal that we are ready to take action. But I appreciate your diplomacy very much in answering the question.

Senator Johnson?

Mr. JOHNSON. No questions.

Senator ISAKSON. Senator Murphy?

Senator MURPHY. No questions.

Senator ISAKSON. See, you did so good, nobody even has a question. Thank you very much for your testimony, we are going to move to our second panel.

For members, we will leave the record open until the end of business on Monday for questions or additional comments, and would ask the witnesses from the first panel to be sure to reply quickly, if you do receive any additional questions from the committee.

It is now my privilege to recognize our second panel. We have two witnesses. The first is Mr. John Schoenecker, director of intellectual property at the American Seed Trade Association. Our second witness is Mr. Edwin Smith, partner at the Law Offices of Morgan, Lewis & Bockius.

We recognize Mr. Schoenecker for his comments up to 5 minutes.

STATEMENT OF JOHN SCHOENECKER, DIRECTOR, INTELLECTUAL PROPERTY, HM.CLAUSE, ON BEHALF OF AMERICAN SEED TRADE ASSOCIATION, DAVIS, CA

Mr. SCHOENECKER. Thank you, Mr. Chairman and members of the committee. I would just point out that I work for HM.CLAUSE, a vegetable seed company out of Davis, California.

But I want to thank you for the opportunity to testify today in support of the International Treaty on Plant Genetic Resources for Food and Agriculture, which I will call the treaty. I am here on behalf of the members of the American Seed Trade Association. Founded in 1883, ASTA represents over 700 companies engaged in plant breeding, production, and distribution of many seed types, including grains, oil, seeds, rice, cotton, vegetables, flowers, forages, cover crops, and grasses, what we in the vegetable seed business like to call everything from asparagus to zucchini.

ASTA members are research-intensive companies in the business of discovery, development, and marketing of seed varieties with enhanced production and end-use qualities.

As you know, our global food system is highly interdependent. For example, 70 percent of the food we eat and grow in the U.S. comes from crops that are not native to the U.S. As such, not all plant genetic resources needed to improve these crops are found in the U.S. The treaty is an agreement that aims to address this and enhance global food security by providing access to, and exchange of, the plant materials required to improve seed varieties.

A notable example of the impact of plant breeding, which our previous speaker talked about, is the Green Revolution. It demonstrates that you need all these sources of plant genetics to be successful. It was credited with feeding millions and saving countless lives.

The wheat of Dr. Norman Borlaug was developed based on varieties from the United States, Japan, and Mexico, which in turn thrived in India and Pakistan.

In the days of Dr. Borlaug, all plant breeders enjoyed much freer access to global plant genetic resources. However, certain countries began restricting access to their germplasm, and the treaty was drafted to stabilize the situation, with the U.S. playing a key role in its development. The intent was to establish rules and standards to facilitate access and provide benefit-sharing for the global seed resources needed for agriculture.

Recently, the implementation of the Nagoya Protocol under the Convention on Biological Diversity, or CBD, is further threatening the global exchange of germplasm.

With ratification of the treaty, the U.S. would be able to resume its leadership position, enhance the treaty's functioning, and greatly diminish the uncertainty created by Nagoya and the CBD.

Our national plant germplasm system is one of the best in the world. It stores, maintains, and distributes worldwide over a half-million accessions, but almost 2 million more are held in seed banks outside the U.S.

Access to this crop diversity is equally important to all sectors of agriculture, including organic, conventional, public, and private. Lack of access means lost opportunities to improve yield, enhance nutrition, better adapt crops to changing weather, and to address the threats posed by evolving pests and diseases.

As we know, U.S. farmers are global leaders in productivity. Secure access to global plant material will enable public and private breeders working with organic, biotech, and conventional varieties to benefit from the treaty and to supply the best seeds to growers, so they can produce more of the best food tomorrow and well into the future.

As noted, we came close to ratification in 2010 when this committee submitted the treaty and recommended ratification. Today, support for ratification remains broad and committed. More than 80 companies and organizations representing plant breeders, academics, and seed users have expressed support to the committee for ratification. These groups include the American Farm Bureau Federation, American Society of Plant Biologists, Association of Public and Land Grant Universities, National Corn Growers Association, National Cotton Council, and the National Farmers Union, to name a few.

The treaty provides a simple and noncontroversial solution for a pressing problem. As a specialized system to exchange plant materials, the treaty puts all member countries on a level playing field and provides all plant breeders with clear terms and conditions of use.

No new U.S. laws are required to implement the treaty, and no new appropriations are needed. In fact, most of the obligations of the treaty are currently being met by the U.S. system.

With this, and on behalf of the American seed trade and farmers and researchers who support the treaty, I urge the committee to recommend ratification and support passage in the Senate. This access is critical and will greatly assist the U.S. seed industry in developing new varieties to benefit the U.S. farmer and consumer, and enhance global security food security.

Thanks for this opportunity to comment, Mr. Chairman.

[The prepared statement of Mr. Schoenecker follows:]

PREPARED STATEMENT OF JOHN SCHOENECKER

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today in support of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty). I am here on behalf of my company HM.CLAUSE and the American Seed Trade Association which was founded in 1883. ASTA's broad membership includes over 700 companies engaged in plant breeding, production, and distribution of seed varieties including grains, oilseeds, rice, cotton, vegetables, flowers, forages, cover crops and grasses. ASTA members are research-intensive companies in the business of discovery, development and marketing of seed varieties with enhanced agronomic and end-use qualities. Ratification of the Treaty by the U.S. has always been an important issue for the American seed industry. Since its inception, the Treaty has been considered the preferred mechanism for plant breeders to move seed and plant materials between countries in order to improve varieties for the world's farmers.

Many people are not aware of the highly interdependent nature of our global food system. Seventy percent of the food we eat and grow comes from crops that are not native to the U.S. The resources to improve these crops have been brought into the U.S over time. The Treaty is an agreement that aims to enhance global food security through the continued access and exchange of materials used to improve seeds for farmers. Perhaps the most notable example of the impact of exchanging plant materials is the Green Revolution which is credited with saving millions of lives. The wheat that Norman Borlaug developed was based on a combination of materials from the U.S., Japan and Mexico which, in turn, thrived in India and Pakistan. We still use relatives of that wheat today in our breeding programs. There are many examples across crops. In vegetables, some disease and pest resistance in carrots has come from materials from South America and Europe. Green beans have disease resistance from French seed banks bred into commercial varieties.

No country, including the U.S., is self-sufficient when it comes to seed for the future. U.S. seed banks store, maintain and distribute over 560,000 crop varieties. However, over two million more crop lines and their relatives are held in seed banks outside of the U.S. Public and private plant breeders once enjoyed much freer access to seeds for research and development. However, certain countries began restricting access to their germplasm and the Treaty was drafted to try to stabilize this situation. The U.S. played a key role in negotiations leading up to the creation of the final text of the Treaty during the Bush Administration. The intent was to create international rules and standards around access and benefit sharing with regard to seed used for agriculture. Recently, the implementation of the Nagoya Protocol (Nagoya) under the Convention on Biological Diversity (CBD) is further threatening our ability to exchange germplasm globally. With ratification, the U.S. would be able to resume its leadership position to enhance the functioning of the Treaty and greatly diminish the uncertainty created by the CBD and Nagoya.

Currently, the Treaty has 139 Contracting Parties, many of which are important sources of seed exchange and also competitors of the U.S., including all EU countries, India, Brazil and Japan. If those countries chose to, they could restrict access to their germplasm to only other contracting parties. Without ratification, U.S. agriculture could then be at a huge disadvantage.

Access to crop diversity is equally important to all sectors of agriculture including organic, conventional, public and private. Lack of access to global crop diversity will lead to lost opportunities to better adapt crops to changing weather and drought, and to address the threats posed by evolving pests and diseases. Improving yields will help us feed a growing global population. In the vegetable sector we are looking for new crop characteristics to enhance nutritional content, improve flavors and extend shelf-life to reduce food waste. Responding to these agricultural challenges requires a much deeper understanding of individual crop varieties, which have been developed under diverse conditions across the globe, and their wild ancestors. High throughput DNA sequencing technologies and bioinformatics tools provide new op-

portunities for university researchers to mine international collections of regional plant materials. These collections can be characterized and leveraged to provide important agronomic, nutritional, and other traits of societal value that can be utilized through traditional plant breeding. This work is hindered when the mechanism to exchange materials isn't in place, and instead has to be negotiated on an ad hoc basis.

The Treaty will benefit public and private breeders working on a variety of crop types, in addition to U.S. farmers who are already global leaders in productivity. As a specialized system to exchange plant materials, the Treaty puts all member countries on a level playing field and provides their plant breeders with clear terms and conditions. Secure access to global materials will enable U.S. researchers and the broader industry to supply the best seeds to our customers to grow more of the best food for tomorrow and into the future.

Support for ratification is broad. More than 80 companies, organizations and universities representing plant breeders, academics and seed users have expressed support for ratification to the Committee. In addition to ASTA, these groups include American Farm Bureau Federation, American Society of Plant Biologists, Crop Science Society, Association of Public and Land-grant Universities' Board on Agriculture Assembly, National Corn Growers Association, National Cotton Council, National Farmers Union and National Wheat Growers Association.

The Treaty provides a simple and non-controversial solution for a pressing problem. We came close to completing the ratification process in 2010 when the Treaty was passed by this Committee. No new laws are required to implement the Treaty in the U.S. and no new appropriations are needed. In fact, most of the obligations of the Treaty are already being met by the U.S. systems that are already in place.On behalf of the American Seed Trade and the farmers and researchers who also support the Treaty, I urge the Committee to recommend ratification and support passage in the Senate. After ratification, the U.S. can resume the leadership role it once played guiding the system that supports all seed research and development to the benefit of U.S. farmers and consumers, as well as food security around the world.

Senator ISAKSON. Thank you very much.

Mr. Smith?

STATEMENT OF EDWIN E. SMITH, PARTNER, LAW OFFICES OF MORGAN, LEWIS & BOCKIUS, LLP, BOSTON, MA

Mr. SMITH. Chairman Isakson and members of the committee, thank you for the opportunity to testify before you today on The Hague Securities Convention.

I am a partner in the law firm of Morgan, Lewis & Bockius, where I regularly represent clients in cross-border transactions and insolvencies, including transactions that would be covered by the Convention. I am also a Uniform Law commissioner, and I participated in the drafting of revisions to the Uniform Commercial Code.

I appreciate the opportunity to appear before you today to express my support for the Convention. The Convention would solve a vexing problem for market participants in cross-border security transactions. That problem is determining which country's law applies to security interests and property rights in intermediated securities.

The problem arises from the fact that the owner of the security, the holder of the security interest in the securities, the issuer of the securities, and the location of the securities, may all be in different countries.

Currently, each country has its own choice of law rules that govern these transactions, and the lack of uniformity creates real uncertainty and risk for market participants in the financial system.

To solve this problem, the Convention would establish clear choice of law rules that are based largely on the choice of law rules in the Uniform Commercial Code that is in effect throughout the

United States. By ratifying the Convention, the United States would take an important step that would not only facilitate international commerce by preventing disputes over property rights and securities, but it would also help mitigate potential systemic risk created by the lack of clarity over the governing law for cross-border security transactions.

To demonstrate the importance of the Convention, let me give you an example drawn from a real situation on which I had to advise a client. A customer of a U.S. bank custodian owned securities of a Japanese issuer. The U.S. bank custodian held those securities for the customer. The customer wanted to pledge those securities, grant a security interest in those securities, to secure a loan from the bank.

The pledge would work very well under U.S. law. The custodian's interest in the securities would be protected from creditors of the customer that try to use U.S. courts to reach the securities. In this case, there would be very little additional cost to the customer.

The problem is that these were securities issued by a Japanese issuer. Could a creditor of the customer ignore the effective pledge under U.S. law and try to reach those securities in Japan? The answer, it turned out, based on advice from Japanese counsel, was yes.

Now, how can that be? It is because we learned that a court in Japan would apply traditional conflict of law rules. Their rule would look to the location of the asset to determine which country's law governs whether the pledge is a good one. Since the securities were issued by Japanese issuers, they were viewed to be located in Japan.

Without them undertaking steps to get a good pledge under Japanese law, the securities could be reached by a creditor of the customer who has a passport to go to Japan and can bring a lawsuit there.

Moreover, if the customer became a debtor under the U.S. bankruptcy code, there would not even need to be an actual creditor who goes to Japan for the pledge to be vulnerable. The customer's bankruptcy trustee likely would have the rights of any creditor who could go to Japan to attach the securities, even if the creditor did not actually do so.

Well, would the pledge then be protected if the lender went through the steps of protecting the pledge under both U.S. and Japanese law? Not necessarily. If the securities were evidenced by stock certificates, a court in Japan or another country might view the applicable law to be the country where the certificates were located. And if the securities were held through a clearing corporation, it might view the applicable law to be where the clearing corporation operates.

Under current law, neither the bank nor the custodian could be sure where a lawsuit could be brought or what country's law might apply. The uncertainty creates risk, and risk reduces the availability and increases the cost of credit for the customer.

The situation would be even worse if there were multiple pledges of securities of different issuers in different countries being pledged, because then you are multiplying the governing laws that could possibly apply.

The Convention would solve this troublesome problem. It would create a simple conflict of law rule that points to the law of the country whose law governs the custody agreement between the bank custodian and the customer, so long as the bank custodian has an office in that country that generally deals with securities. That law would be readily apparent from the agreement.

The Convention also mitigates systemic risk by facilitating the resolution of financial institutions in case of financial distress or market failure by making the receiver's or trustee's job easier in determining which governing law applies.

Then we also talked about the fact that this convention is totally consistent with U.S. law, in terms of choice of law rules.

So in conclusion, the convention creates significant benefits with little practical downside. For that reason, market participants, with no opposition of which I am aware, urge its ratification.

Thank you very much. I would be happy to answer any questions any of you may have.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF EDWIN E. SMITH

Chairman Isakson, Ranking Member Shaheen, and the members of the committee, thank you for the opportunity to testify before you today on the Hague Securities Convention. I am a partner at the law firm of Morgan, Lewis and Bockius LLP, where I regularly represent clients in cross-border transactions and insolvencies, including transactions that would be covered by the Convention. I am also a Uniform Law Commissioner and have participated in the drafting of revisions to the Uniform Commercial Code. I appreciate the opportunity to appear today to express my support for the Hague Securities Convention.

The Hague Securities Convention, formerly known as the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the "Convention"), was promulgated in 2006 by the Hague Conference on Private International Law and has been adopted thus far by Mauritius and Switzerland. The Convention has been signed by the United States but has not been ratified. The Convention requires that at least three countries adopt the Convention for the Convention to go into effect. If the United States were to ratify the Convention, the Convention would then go into effect among the adopting countries, and many more countries would likely follow the lead of the United States in adopting the Convention.

The Convention addresses certain important conflict of laws issues that arise under current law when securities are held with a bank, broker or clearing corporation through the so-called "indirect holding system." The uncertainty under current law on these issues creates significant risks for securities customers, banks, brokers, clearing corporations and third party lenders. The Convention, if widely adopted, would resolve these issues. Ratification of the Convention by the United States is supported by the American Bar Association, the Association of Global Custodians, the International Swaps and Derivatives Association, the Securities Industry and Financial Markets Association and the Uniform Law Commission. The United States should ratify the Convention.

I will first explain why the United States should ratify the Convention and then briefly describe the indirect holding system, explain the conflict of laws problems that arise under current law and describe how the Convention will solve those problems without disrupting current practices in the United StatesThe Indirect Holding System

In the indirect holding system, the registered owner of securities of an issuer is typically a clearing corporation, such as Depository Trust Company, Clearstream or Euroclear. The clearing corporation maintains accounts that reflect that the interests in the securities are for the benefit of a bank or broker. The ultimate beneficial owner of the securities may be a customer of the bank or broker. So, if a retail securities customer says "I own IBM securities," what the customer really means in the indirect holding system is that the customer has a right to the securities against the customer's bank or broker and that the bank or broker has a right to the securities against the clearing corporation.

THE CONFLICT OF LAWS PROBLEMS UNDER CURRENT LAW

The Problems in General

The cross-border holding of securities in the indirect holding system raises conflict of laws issues that are not easily resolved under the current law. Securities may be issued by a company located in Country A to a clearing corporation located in Country B which holds the securities for a bank or broker in Country C and that in turn credits interests in the securities to the account at the bank or broker of a customer located in Country D. A third party lender to the customer, relying on recourse to the securities in extending credit to the customer, may even be located in Country E. Current law is very unclear as to which country's laws govern the following issues:

- The disposition of the customer's interest in the securities by the bank or broker to a buyer of the securities with or without the customer's consent;
- The perfection steps that need to be taken for a customer to grant a security interest in the customer's interest in the securities to the bank or broker or to a third party lender to the customer;
- The right of a judgment creditor of the customer to attach or levy on the interest of the customer in the securities;
- Whether any interest in the securities obtained by the buyer, secured party or judgment lien creditor extends to dividends and other distributions on the securities;
- How the priority conflict among the buyer, the secured party and the judgment lien creditor is resolved if they all claim an interest in the securities; and
- How any transfer of an interest in the securities is characterized for purposes of determining whether the transfer is a sale or merely creates a security interest that secures an obligation.

Under current law, the resolution any of these conflict of laws issues—i.e., determining which jurisdiction's substantive law applies to the issue—may depend upon where any litigation raising the issue is brought. The court in the country in which the litigation is brought would apply the conflict of laws rules of that country. Those rules might point to the substantive law of that country or to the substantive law of another country to resolve the issue. However, if litigation were brought in a court of another country, the court in that other country may, using its conflict of laws rules, apply its own substantive law or the substantive law of an entirely different country to resolve the issue.

An Example

To illustrate, let's assume that a bank located in New York acts as a securities custodian. The bank custodian credits to an account of its customer an interest in securities issued by an issuer in Country X and held by a clearing corporation for the account of the custodian. A third party lender extends credit to the customer, obtains a security interest in the customer's interest in the securities under New York law to secure the repayment of the credit and takes all appropriate steps under New York law to perfect the security interest. Later, a creditor of the customer obtains a judgment against the customer and seeks a judgment lien on the customer's interest in the securities.

Under New York's conflict of laws rules, so long as the custody agreement designates New York as the "securities intermediary's jurisdiction" or, absent that designation, is governed by New York law, New York substantive law will determine how the creditor obtains the judgment lien and how the priority conflict between the lender as secured party and the judgment lien creditor is resolved. Applying New York substantive law, the attachment of the lien must be made by service of process on the custodian. And, under New York substantive law, the lender, holding a perfected security interest in the securities, prevails over the judgment lien creditor.

However, if the creditor brings a lawsuit against the customer in Country X, the court in Country X will apply its own conflict of laws rules. It is possible that the conflict of laws rules of Country X may follow a very common rule that looks to the situs of the asset (often referred to as *lex re sitae*). Under that conflict of laws rule, the issues are resolved under the substantive law of the jurisdiction in which the securities are viewed to be located. Let's say that under the law of Country X securities issued by an issuer located in Country X are themselves viewed to be located in Country X. In that case, the substantive law of Country X will determine how the creditor obtains the judgment lien and how the priority conflict between the lender as secured party and the judgment lien creditor is resolved. The creditor may under the substantive law of Country X attach the securities by serving process on

the issuer in Country X. Moreover, any judgment lien of the creditor arising from the service of process may under the substantive laws of Country X have priority over the lender's security interest if the lender has not previously taken steps under the law of Country X for its security interest in the securities to obtain priority over a subsequent judgment lien. (A similar analysis would apply if, under the conflict of laws rules of Country X, the securities were viewed to be located in Country Y where the clearing corporation is located or where share certificates for the securities are physically held.)

This problem is especially acute under United States bankruptcy law. If the customer were to become a debtor under the U.S. Bankruptcy Code, the customer's bankruptcy trustee would have the hypothetical status of a creditor who has obtained a judgment lien against the customer's interest in the securities at the time of the commencement of the bankruptcy case. If the lender's security interest in the customer's interest in the securities would not prevail over a judgment lien under applicable non-bankruptcy law, the security interest will be set aside in the bankruptcy case, and the lender will be treated as a general unsecured creditor of the customer. It is unclear under the Bankruptcy Code whether the bankruptcy trustee's status as a hypothetical judgment lien creditor could be that of a hypothetical judgment lien creditor in Country X. If that were the case, then the bankruptcy trustee could set aside the lender's security interest and treat the lender as a general secured creditor even though the lender's security interest in the customer's interest in the securities would have been senior to the judgment lien under New York's substantive law.

As a result, for the lender to have confidence that its security interest would be given priority over the lien of the judgment lien creditor or even would not be set aside in the customer's bankruptcy case, the lender would need to comply with not only New York substantive law but also the substantive law of Country X. The lender's doing so will involve additional expense that may decrease the availability or increase the cost of credit to the customer. Moreover, if the lender were extending the credit to the customer based on a security interest in securities issued by issuers or held through clearing corporations in numerous countries, the costs of complying with the substantive law that might be applicable under the conflict of laws rules of each country in which litigation might be brought could be prohibitive.

HOW THE CONVENTION WOULD ADDRESS THE PROBLEMS

The Convention would address these problems by creating a single, uniform conflict of laws rule that would apply the substantive law of the country whose law is chosen by the custody or securities account parties to govern their agreement or, alternatively, to govern the issues covered by the Convention. The only limitation is that the chosen law must be that of a country in which the relevant bank, broker or clearing corporation maintains an office for dealing in securities—often referred to as the "Qualifying Office" test.

In our example, if the United States and Country X had adopted the Convention and litigation were brought in Country X and so long as the custodian and the customer have agreed that the custody agreement or, alternatively, the issues covered by the Convention are governed by New York law, Country X would apply New York substantive law to determine how the creditor obtains the judgment lien and how the priority conflict between the lender as secured party and the judgment lien creditor is resolved.

Accordingly, the Convention, by applying a single, uniform conflict of laws rule would simplify very complex conflict of laws issues that arise under current law, provide greater certainty for transacting parties, dramatically reduce transaction costs and potential litigation claims, and provide a basis for increasing the availability and reducing the cost of credit. The Convention would also, by resolving the relevant conflict of laws issues, reduce risks in the entire cross-border securities clearance and settlement system that could arise in resolving competing claims in times of financial crisis.

NO DISRUPTION OF CURRENT PRACTICES IN THE UNITED STATES

Adoption of the Convention would not in any material respect disrupt current practices in the United States. The Convention is largely consistent with the domestic commercial law in the United States, namely Article 8 of the Uniform Commercial Code as adopted in every state of the United States and the District of Columbia. Article 8 contains choice of law rules that are substantially the same as the conflict of laws rules of the Convention. The main difference is that Article 8 does not have a Qualifying Office test. However, this difference is expected to have little effect in practice.

If the Convention were to become effective, it would apply to pre-effective date transactions. Nevertheless, on account of interpretive rules contained in the Convention, it should not be necessary in most cases for pre-effective date agreements to be modified to account for the Convention. Even so, many private parties have already been inserting into their contracts a clause that would address the Convention if the Convention were to come in effect.

Senator ISAKSON. Thank you for your testimony. I have only two questions to ask.

One is, on all treaties, there is usually some question about U.S. ceding sovereignty. Have you heard of any objection in either case on these two treaties to the sovereignty question of the United States?

Mr. SCHOENECKER. Not I, Mr. Chairman.

Mr. SMITH. No, Mr. Chairman.

Senator ISAKSON. That is the right answer, and that is a good answer. Thank you very much.

The second question is, I am a Swedish—and I am Swedish, so I can use that as an example. This is a hypothetical. I am a Swede who owns stock in a U.S.-based corporation. I take a legal action against that company. If we are a member of this treaty, that guarantees that the legal action would be governed under the laws of who? Sweden or the United States?

Mr. SMITH. The convention does not deal with that issue, Mr. Chairman. It does not deal with actions against the issuers of the securities. It just deals with who has property rights of the securities.

So all of the normal rules dealing with rights of action against an issuer of securities, or security law disclosures, are not impacted at all by this convention.

Senator ISAKSON. So in that same example, if I was the corporation and had a question with the owner of the stocks, U.S. law would govern any action I took against the owner? Is that correct?

Mr. SMITH. It would govern any action dealing with whatever property rights the investor had in the securities.

Senator ISAKSON. Which is why this is so important to domestic companies in the United States of America.

Mr. SMITH. It is. It is, Mr. Chairman. That is why it is important for mutual funds, 401(k)s, for lots of investors who want certainty on what law governs their property rights.

Senator ISAKSON. Mr. Schoenecker, I have been told many times, and heard in many hearings, that we have about a 90-day supply of food available in the world, at any given point in time. It is the most important commodity we have for nutrition and security and safety.

This will help enhance the food security of the United States and the rest of the world. Am I correct?

Mr. SCHOENECKER. Absolutely, without a doubt.

Crop varieties and productivity of agriculture is fundamental to having reasonable access under clear terms to these resources, so that we can build new varieties to solve problems and increase productivity for farmers in the U.S. and around the world.

Senator ISAKSON. We appreciate both of your willingness to be here today to testify. I hope you will not take all the Senators leaving as any affront to your testimony. In fact, it is acknowledgment

that we needed to have done what we are doing now a long time ago.

I will do everything I can to expedite the hearing and passage of this legislation from the subcommittee to the full committee.

We will keep the record open for 5 days until the end of the business day on Monday, if anybody has additional questions. I would ask both of you to try to respond as quickly as possible, if you get any additional questions from the committee.

Senator ISAKSON. Unless there are any other comments, we will stand adjourned, and I thank everybody for their testimony.

[Whereupon, at 10:43 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES TO QUESTIONS SUBMITTED TO JUDITH G. GARBER BY SENATOR CORKER

Question. In its transmittal documents, the Administration suggested the Senate include in its resolution of consent to ratification an understanding with respect to U.S. laws on intellectual property laws and the operation of Article 12.3(d). Please explain why this recommended understanding is necessary.

Answer. Article 12.3(d) of the Treaty states that recipients shall not claim intellectual property rights that limit access to the plant genetic materials in the form received from the Multilateral System. Our understanding would underscore that an invention derived from material obtained from the Multilateral System could be patented or protected by plant variety protection. For example, if corn germplasm is taken from the Multilateral System and used to create a new corn hybrid that is distinct from the original material, intellectual property protection would be available for the new variety. Similarly, a modified gene sequence or modified extract from the corn or a method of use of material isolated from plant genetic materials from the Multilateral System could also be patentable. A number of other Parties, including Japan, the United Kingdom and Germany, have submitted similar declarations; no country has submitted a declaration to the contrary.

Question. It is my understanding that, because the U.S. has not ratified the Treaty, U.S. citizens may not take full advantage of the rights provided under the Standard Materials Transfer Agreement. U.S. agriculture must instead negotiate for plant germplasm under the Nagoya Protocol to the Convention on Biological Diversity which came into effect in October 2014. It is also my understanding that the Convention on Biological Diversity requires a benefit sharing arrangement, negotiated on a bilateral contractual basis, in order to exchange germplasm. United States industry and public researchers have raised concerns about requirements under the Nagoya Protocol, such as the necessity of obtaining government-issued proof of prior informed consent to acquire materials, and have characterized such compliance issues as posing significant logistical problems, and likely to be both cumbersome and costly.

Please describe the difficulties and challenges presented to U.S. agriculture by the requirements of the Nagoya Protocol.

Answer. Because the United States is not a party to the Treaty, U.S. users do not have guaranteed access to plant genetic resources for food and agriculture from other nations under the terms of the International Treaty on Plant Genetic Resources for Food and Agriculture and the Standard Material Transfer Agreement (SMTA). U.S. users therefore often must negotiate access and the terms of transfer on a case-by-case basis. Some U.S. entities seeking access to foreign genetic resources have been subjected to burdensome terms and conditions. These circumstances threaten to impede U.S. government and stakeholders' access to and use of genetic resources, their ability to conduct research and even, in some cases, to obtain overseas patents, public funding, or market access. In some cases, countries cite their domestic legislation implementing the Nagoya Protocol when imposing terms of access and benefit sharing on U.S. industry and other users. However, with regard to covered plant genetic resources for food and agriculture, if the provider's and user's countries both are Party to the Treaty, then access to those resources is governed by the Treaty and guaranteed to be under the terms of the Standard Material Transfer Agreement. Being a Party to the International Treaty on Plant Genetic Resources for Food and Agriculture would therefore offer U.S. researchers and

breeders guaranteed access, on the predictable terms of the SMTA, to the covered plant germplasm collections of the other 140 Parties.

Question. It is my understanding that the Treaty covers the exchange of plant materials that are used in traditional breeding within a single species. Is the Treaty related in any way to the development or use of transgenic biotech crops?

Answer. The focus of the Treaty is on propagating materials (e.g., seeds and cuttings)—the building blocks for crop improvement—as opposed to specific technologies or traits. The Treaty is neutral on the question of genetically modified organisms and does not address the regulation of genetically engineered crops, genetically modified organisms, or biotechnology. However, being a Party to the Treaty would benefit all breeders—regardless of whether they use techniques of biotechnology, techniques of conventional breeding, or a combination—by ensuring access on predictable terms to genetic resources that are important to researchers and breeders seeking to improve plant varieties and ensure food security.

Question. Explain how the treaty's benefit sharing regime will work. How will payments made to the treaty's Trust Account be allocated and for what purposes will they be used?

Answer. The centerpiece of the Treaty is the Multilateral System under which a Party provides access to other Parties and its users, upon request, to listed plant genetic resources held in national and international gene banks and collections.

As part of the Multilateral System, the Treaty provides for non-monetary benefit sharing that is consistent with longstanding USDA and USAID work to advance agricultural progress and support global food security. The Treaty also established a Benefit Sharing Fund. If an entity using the Standard Material Transfer Agreement commercializes a product containing plant genetic material covered by the Treaty, the entity can choose either to make the product freely available for further research and breeding, or can pay a relatively small royalty into the Fund. Contracts with royalty provisions are already in widespread use commercially for such plant genetic material, and the rate specified by the Treaty is well within range of terms used by agricultural industry. The Fund supports projects to improve on-the-ground efforts to conserve plant genetic resources for food and agriculture, especially in developing countries. This in turn promotes global food security.

The Treaty's Governing Body oversees the Fund, which is managed by the Treaty's Secretariat. As a Party to the Treaty, the United States would be able to participate in decisions regarding operation of the Fund and block consensus on any proposals contrary to U.S. interests. The Administration's policy on the appropriate uses of these funds will include consideration of consistency with the Treaty's objectives, as well as efficiency, effectiveness and accountability in the use of such funds.

Question. What is the relationship between this Treaty and the Convention on Biological Diversity (CBD) which the U.S. has not ratified? Does ratification of this Treaty imply acceptance of any of the obligations under the CBD?

Answer. This Treaty and the Convention on Biological Diversity (CBD) are separate instruments, with separate implementation. Joining the Treaty does not imply acceptance of or incur any obligation for the United States under the CBD.

Question. If the United States becomes a party to the treaty, what financing commitments will the U.S. be adopting with respect to capacity-building resources for the conservation and use of agricultural biodiversity globally and for the implementation of the MLS provisions by developing countries.

Answer. The Treaty does not obligate Parties to contribute specific amounts of financial resources for national activities in developing countries for the conservation and sustainable use of plant genetic resources. Further, there are no mandatory contributions from Parties to the Treaty. The Treaty is funded through voluntary contributions from Parties and other sources. There are no plans to make voluntary financial contributions toward the Treaty's budget at this time.

Letters Submitted in Support of
The Treaty on Plant Genetic
Resources for Food and Agriculture,
Treaty Doc. 110–19

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 205120

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relation
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

The National Sorghum Producers would like to urge the Foreign Relations Committee to support ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Our organization serves as the voice of the sorghum industry from coast to coast through legislative and regulatory representation and education.

Our organization is deeply committed to supporting research to improve the profitability of sorghum production. Our researchers depend on access to a global bank of genetic materials. All nations, including the U.S., are dependent upon others for such access. The ITPGRFA creates a specialized, global system for the management and exchange of plant genetic resources to avoid countries' blocking access to their materials or placing undo restrictions on their use.

Ratification now is critical. The ITPGFRA will provide a guarantee that US plant breeders can access germplasm from the countries that are the major sources of breeding materials. By delaying ratification, the U.S. is missing an opportunity to protect our national interest as contract terms are debated amongst those countries that have already ratified the Treaty.

The National Sorghum Producers urge the Foreign Relations Committee recommend the ITPGRFA for ratification on the Senate floor. We look forward to working with the Committee as this process moves forward.

Sincerely,

Tim Lust

Tim Lust
CEO
National Sorghum Producers

ASA
American Soybean Association®

If you believe, belong.

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February 29, 2016

The Honorable Bob Corker
United States Senate
Washington, DC 20510

The Honorable Ben Cardin
United States Senate
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

On behalf of the American Soybean Association (ASA), I am writing to express our support for ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) by the Senate Foreign Relations Committee. ASA represents all U.S. soybean farmers on domestic and international issues of importance to the soybean industry. ASA's advocacy efforts are made possible through the voluntary membership in ASA by over 22,500 farmers in 31 states where soybeans are grown.

ASA is a strong supporter of innovation and research. As the world's leading producer of soybeans, the U.S. is at the forefront of plant breeding. In the coming years, American farmers must produce enough food, fuel, feed, and fiber to feed a global population of 9 billion by 2050. We must do more with less, and it will take innovation in agriculture to accomplish this task. Ratification of the ITPGRFA will guarantee our plant breeders and researchers access to germplasm from around the world, which is key to breeding new varieties and ensuring the soybean industry continues to meet a growing global demand.

Currently, soybeans are not covered under the ITPGRFA. It is one of the commodities subject to the Convention on Biological Diversity's Nagoya Protocol. Many countries require a benefit sharing arrangement for the exchange of germplasm. Under Nagoya, these are negotiated on a bilateral basis, which creates significant uncertainty. Not only do bilateral agreements pose significant logistical problems, the compliance issues raised are both cumbersome and costly. There have been instances where public researchers have been unable to access germplasm due to the high cost of compliance. By delaying ratification, the U.S. is missing out on the opportunity to negotiate a place for soybeans. It is imperative the U.S. be at that table and work toward the inclusion of all crops.

The ITPGRFA establishes uniform terms for the exchange of plant materials which provide the greatest certainty to public sector plant breeders and seed companies. Without ratification, the U.S. is missing an opportunity to influence the terms of these exchanges, potentially putting our researchers and therefore soybean farmers at a disadvantage.

ASA urges immediate ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture. We look forward to working with the Committee to achieve this goal in the coming months.

Thank you for considering our views.

Sincerely yours,

Richard Wilkins

Richard Wilkins
President

Bio Biotechnology Industry Organization

James C. Greenwood
President & CEO

September 8, 2015

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
U.S. Senate
Washington, D.C. 20510

The Honorable Benjamin L. Cardin
Ranking Member
Committee on Foreign Relations
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Cardin:

The Biotechnology Industry Organization (BIO), which represents nearly 1,000 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States, urges the Senate Foreign Relations Committee to support ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty) during the current Congress. BIO and its members are committed to cooperating with and supporting your committee, in addition to the full Senate membership, should you move the process of ratification forward.

Ratification of the International Treaty is very important to American farmers and to our nation's public and private sector agricultural innovation community. It would ensure the United States is able to participate in the deliberations of the International Treaty Governing Body, which is responsible for establishing and managing a global system for the exchange of plant genetic resources via the Standard Material Transfer Agreement (SMTA). The international exchange of plant genetic resources will enable U.S. plant breeders and seed researchers to continue developing plant varieties that help society meet challenges posed by diseases, insects, climate change, and global food security. Only through ratification does the United States have the ability to fully engage in the international process and to promote the interests of our country within this global setting.

Through the International Treaty and SMTA, countries agree to establish an efficient, effective, and transparent multilateral system to facilitate access to plant genetic resources for food and agriculture and to share the benefits in a fair and equitable way. These two agreements are important steps in promoting the conservation of and continued access to plant genetic resources.

We hope the Senate Foreign Relations Committee will agree that moving the ratification process forward is sound public policy and in the best interest of American agricultural innovation. Please do not hesitate to contact us with any questions you might have about our longstanding and strong support for the International Treaty.

Sincerely,

Jim Greenwood

James C. Greenwood
President and CEO

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Washington DC 20024

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National Association of Wheat Growers
415 Second St. NE, Suite 300 • Washington, D.C. 20002 • (202) 547-7800 • www.wheatworld.org

February 25, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

The National Association of Wheat Growers is writing to express our support for ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) by the Senate Foreign Relations Committee. NAWG is deeply committed to supporting research to improve the profitability of wheat production.

All nations, including the U.S., are dependent upon others for access to germplasm. In the past decade, wheat has become more global than ever. Access to international germplasm is an important aspect of wheat research efforts by both public and private sector researchers to fight critical diseases and pests. The ITPGRFA creates a specialized, global system for the management and exchange of plant genetic resources to avoid countries' blocking access to their materials or placing undo restrictions on their use. This is particularly important for wheat, as the wheat genome is one of the most complex genomes in existence.

Ratification now is critical. Many countries require some sort of benefit sharing arrangement in exchange for access to the genetic resources within their borders. Negotiating these terms on a bilateral basis creates significant uncertainty. The ITPGFRA will provide a guarantee that US plant breeders can access wheat germplasm from the countries that are the major sources of these materials. By delaying ratification, the U.S. is missing an opportunity to protect our national interest as contract terms are debated amongst those countries that have already ratified the Treaty.

The National Association of Wheat Growers urges immediate ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture. We look forward to working with the Committee to achieve this goal in the coming months. Please let us know if we can be of assistance.

NAWG is a federation of 22 state wheat grower associations that works to represent the needs and interests of wheat producers before Congress and federal agencies. Based in Washington, D.C., NAWG is grower governed and grower funded, and works in areas as diverse as federal farm policy, trade, environmental regulation, agricultural research and sustainability. By combining their strengths, voices and ideas, NAWG grower members are working to ensure a better future for themselves, their industry and the general public. Learn more about what we work for at our website: www.wheatworld.org.

Sincerely,

Brett D. Blankenship

Brett Blankenship
President
National Association of Wheat Growers

UNIVERSITY OF CALIFORNIA, DAVIS

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College of Agricultural and Environmental Sciences
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March 14, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 205120

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

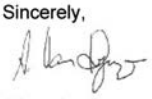
Dear Chairman and Honorable members:

We are writing to urge the Senate Foreign Relations Committee to recommend ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture. As leading research universities we are working collectively to address one of the world's greatest challenges: global food security. By 2050, the worldwide demand for food will double and it is agricultural innovations such as those in the Green Revolution that will allow farmers to grow enough food to meet that need. These agricultural innovations rely upon plant breeding and our understanding of plant growth and how changing environments affect plants. Effective plant breeding is only possible with the exchange of germplasm across country borders. The International Treaty on Plant Genetic Resources for Food and Agriculture was created as a specialized, global system for the management and exchange of plant genetic resources. Current treaties such as the Convention on Biosafety are not sufficient to effectively facilitate the needed germplasm exchange. Germplasm exchanges under this vehicle are a far less favorable option for U.S. agricultural researchers and the entire U.S. seed sector, because of legal uncertainties as well as being more cumbersome and more costly than they would were the Treaty ratified.

Throughout history, plant breeders have generated new diversity using plant materials sourced from around the world to increase plants' ability to withstand stress and to introduce characteristics prized by consumers. These advances have only been possible because the exchange of germplasm across country borders. The US land grant university system has been crucial to the advancement of germplasm and technologies to deliver solutions and plant varieties in the US and importantly to developing countries. The Horticulture Innovation labs and crop centers funded by the USDA as well as private consortiums such as at the African Orphan Crop Consortium focus on developing solutions in crops and applying the latest genomic technologies to advance nutritious crops grown in developing countries and training local plant breeders. These efforts have made significant progress towards reducing hunger and malnutrition, but more is yet needed to be done.

The International Treaty on Plant Genetic Resources for Food Agriculture provides a vehicle to prudently address germplasm exchange. We believe that it is critical that the United States ratify the treaty for US research to have impact on reducing hunger and malnutrition and saving lives, and strongly urge the Senate Foreign Relations Committee to hold a hearing on it as soon as possible.

Sincerely,



Allen Van Deynze
Associate Director of Plant Breeding

RUTGERS
New Jersey Agricultural Experiment Station

Bradley Hillman
Senior Associate Director
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June 23, 2015

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 205120

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relation
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

The New Jersey Agricultural Experiment Station (NJAES) at Rutgers University urges the Senate Foreign Relations Committee to recommend the International Treaty on Plant Genetic Resources for Food and Agriculture for ratification by the Senate. As a Land-grant university, whose mission includes teaching, service and research, we strongly support the tenets of the ITPGRFA and the valuable genetic resources provided to our scientists through the Treaty. Rutgers became the Land-grant university for the state of New Jersey more than 150 years ago, and over that time has enjoyed a proud and deep history of plant breeding for the good of the people of the State and of the Nation. Rutgers and the State of New Jersey have derived great economic benefit from plant germplasm from around the world, and it is critically important that we continue to have access to such materials.

Global access to plant genetic resources is incredibly valuable to the work done at NJAES and Rutgers University. This access helps our researchers develop new crop varieties that are more nutritious, more resistant to pests and diseases, show improved yields, and are better able to tolerate environmental stress. With ratification, U.S. researchers would be guaranteed access to these plant genetic resources from countries operating under the ITPGRFA.

The public-private partnership between public universities and private companies is one critical to the continued success of public plant breeders. Much of the labor and time used weeding out undesired genetic materials is performed by university scientists. After this is done, universities are able to transfer the high value materials to those who can commercialize them. University researchers now have the computing tools to efficiently analyze large collections of materials. However, they need a predictable method to access the genetic resources for analysis.

RUTGERS

Without the ITPGRFA and the Standard Material Transfer Agreements under the Treaty, there have been instances where the demands placed by other countries for plant materials are so high that US plant breeders had to forgo using them. The point of access and benefits sharing has become even more pressing since October 2014, after the Convention on Biological Diversity's Nagoya Protocol came into effect. Under Nagoya, countries negotiate their benefit sharing terms on a bilateral basis, which creates uncertainty. The ITPGRFA is recognized by the CBD and should provide legal protection for crops covered by the ITPGRFA. Under Nagoya, compliance is likely to be extremely costly for our public sector scientists – to the point where it would not be fiscally possible to access some foreign germplasm.

By delaying ratification of the ITPGRFA, the U.S. is missing from the negotiation table. Ratification of the ITPGRFA will guarantee U.S. scientists have access to plant material to develop new varieties to meet the challenges of disease and pests, climate changes and a growing population. If we do not ratify the ITPGRFA, we are missing the opportunity to protect our national interests, and our researchers' may not be able to develop new plant varieties to meet the coming global agricultural challenges.

Rutgers University appreciates your consideration of our request. We would welcome the opportunity to respond to questions you may have. We thank you for your consideration of this request.

Sincerely,

Bradley Hillman, Ph.D.
Director for Research, NJAES

NATIONAL CORN GROWERS ASSOCIATION

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 205120

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relation
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

The National Corn Growers Association is writing to urge the Foreign Relations Committee to support ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Founded in 1957, NCGA represents 42,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state organizations work together to create and increase opportunities for corn growers

Our growers need access to the full-range of tools available for successful farming. Every year, our members invest in new seed varieties for optimal yield and for their ability to fight against diseases and pests. While much attention is paid to the advances from biotechnology, the underlying plant variety is very important to our success. U.S. corn production is based on predominantly two races of maize from more than 250 New World races. This limited genetic diversity renders the U.S. corn crop, and therefore, the global food supply, more vulnerable to attack by new diseases.

Ratification now is critical. The ITPGRFA creates a specialized, global system for the management and exchange of plant genetic resources. Many countries require some sort of benefit sharing arrangement in exchange for access to the genetic resources within their borders. Negotiating these terms on a bilateral basis creates significant uncertainty. This is an important point because under the terms of the CBD's Nagoya Protocol, which went into effect in October 2014 after the European Union signed onto the agreement, compliance is likely to be more cumbersome and costly than under the ITPGRFA. The CBD requires contractual (bilateral) arrangements including government issued proof of prior informed

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consent to acquire materials and negotiated mutually agreed terms (contracts), all of which pose tremendous logistical problems.

However, the ITPGRFA is recognized by the Convention on Biological Diversity and should provide legal protection for crops covered by the ITPGRFA. The ITPGFRA will provide a guarantee that US plant breeders can access maize germplasm from the countries that are the major sources of these materials. Under Nagoya, there have been instances where the demands placed by other countries for plant materials are so high that US plant breeders had to forgo using them.

The ITPGRFA is already impacting U.S. public and private sector plant breeders. Certain materials are already coming into the US under the rules put in place by the Treaty. Without ratification, the US is missing an opportunity to protect our national interest as contract terms are debated amongst those countries that have already ratified the Treaty. By forfeiting our place at the negotiating table, we are missing a critical opportunity to protect our national interests.

International exchange of plant genetic resources has been part of agriculture research since the time that USDA sent plant explorers to other countries. We are concerned that without ratification of the ITPGRFA, the ability of US researchers to develop the best varieties for our farmer members may be compromised in the future.

NCGA urges the Foreign Relations Committee recommend the ITPGRFA for ratification on the Senate floor. We look forward to working with the Committee as this process moves forward.

Sincerely,

Chip Bowling

Chip Bowling
President
National Corn Growers Association

College of Agriculture,
Food and Environment
Office of the Dean
S123 Ag. Science Building – North
Lexington, KY 40546-0091

859 257-4772
Fax 859 323-2885

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 205120
The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relation
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

On behalf of the University of Kentucky College of Agriculture, Food and Environment we urge the Senate Foreign Relations Committee to recommend the International Treaty on Plant Genetic Resources for Food and Agriculture for ratification by the Senate. As a Land-grant university, whose mission includes teaching, service and research, we strongly support the tenants of the ITPGRFA and the valuable genetic resources provided to our scientists through the Treaty.

Global access to plant genetic resources is incredibly valuable to the work done at The University of Kentucky College of Agriculture, Food and Environment. This access helps our researchers develop new crop varieties that are more nutritious, more resistant to pests and diseases, show improved yields, and are better able to tolerate environmental stress. With ratification, U.S. researchers would be guaranteed access to these plant genetic resources from countries operating under the ITPGRFA.

The public-private partnership between public universities and private companies is one critical to the continued success of public plant breeders. Much of the labor and time used weeding out undesired genetic materials is performed by university scientists. After this is done, universities are able to transfer the high value materials to those who can commercialize them. University researchers now have the computing tools to efficiently analyze large collections of materials. However, they need a predictable method to access the genetic resources for analysis.

Without the ITPGRFA and the Standard Material Transfer Agreements under the Treaty, there have been instances where the demands placed by other countries for plant materials are so high that US plant breeders had to forgo using them. The point of access and benefits sharing has become even more pressing since October 2014, after the Convention on Biological

Diversity's Nagoya Protocol came into effect. Under Nagoya, countries negotiate their benefit sharing terms on a bilateral basis, which creates uncertainty. The ITPGRFA is recognized by the CBD and should provide legal protection for crops covered by the ITPGRFA. Under Nagoya, compliance is likely to be extremely costly for our public sector scientists – to the point where it would not be fiscally possible to access some foreign germplasm.

By delaying ratification of the ITPGRFA, the U.S. is missing from the negotiation table. Ratification of the ITPGRFA will guarantee U.S. scientists have access to plant material to develop new varieties to meet the challenges of disease and pests, climate changes and a growing population. If we do not ratify the ITPGRFA, we are missing the opportunity to protect our national interests, and our researchers' may not be able to develop new plant varieties to meet the coming global agricultural challenges.

The University of Kentucky College of Agriculture, Food and Environment would welcome the opportunity to respond to questions you may have. We thank you for your consideration of this request.

Sincerely,

Nancy M. Cox

Dean

CC Honorable Mitch McConnell, Senator
Eddie Gouge
Hunt Shipman

National Farmers Union
UNITED TO GROW FAMILY AGRICULTURE

October 6, 2015

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relation
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

The National Farmers Union is writing to ask the Senate Foreign Relations Committee to recommend ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). NFU has been working since 1902 to protect and enhance the economic well-being and quality of life for family farmers, ranchers and rural communities through advocating grassroots-driven policy positions adopted by its membership. Our mission is to advocate for the economic and social well-being, and quality of life of family farmers, ranchers, fishermen and consumers and their communities through education, cooperation and legislation. National Farmers Union advocates sustainable production of food, fiber, feed and fuel.

The ability to plant high-value, proven seed is of the utmost importance to our members. Advances in plant breeding have made it so that we can grow more crops while utilizing fewer natural resources, but the ability to breed new varieties is just as important to our members. For example, domestic corn production is based predominantly on two lines of maize from more than 250 New World races. Diversification of the U.S. corn crop gene pool will reduce vulnerability to global food supply through phytosanitary threats.

Multilateral agreements, such as the ITPGRFA, are crucial to ensure that genetic resources are available to plant breeders so they can help farmers improve their crop yields and profitability. By establishing a specialized global management system for germplasm, public and private breeders know the terms for access to these materials. The access, exchange, and conservation of plant genetic materials have a direct impact of the future viability of U.S. plant breeding.

Ratification now is critical. The ITPGRFA creates a specialized, global system for the management and exchange of plant genetic resources. Most countries require some sort of benefit sharing arrangement in exchange for access to the genetic resources within their borders. Negotiating these terms on a bilateral basis creates significant uncertainty. The ITPGRFA is recognized by the Convention on Biological Diversity and should provide legal protection for crops covered by the ITPGRFA. This is an important point because under the terms of the CBD's Nagoya Protocol, which went into effect in October 2014 after the European Union signed onto the agreement, compliance is likely to be more cumbersome and costly than under the ITPGRFA. The CBD requires contractual (bilateral) arrangements including government issued proof of prior informed consent to acquire materials and negotiated mutually agreed terms (contracts), all of which pose tremendous logistical problems.

It is imperative the U.S. ratify the ITPGRFA. By delaying ratification, we do not have a seat at the negotiating table. The majority of major American crops are covered by the ITPGRFA. However, two major crops – soybeans and tomatoes – are not. Therefore, plant breeders and scientists wishing to utilize foreign germplasm for these two crops will be subject to the harsh terms of Nagoya. By ratifying the ITPGRFA, the U.S. would gain a seat at the negotiating table and be able to bring these crops under the umbrella of the Treaty.

The U.S. is the global leader in agriculture innovation and production, yet we cannot speak with authority if we are absent from these discussions. If we do not ratify, we run the risk that our farmers will not be able to grow enough food to feed the projected global population of 9 billion by the year 2050. NFU looks forward to working with the Foreign Relations Committee as the ratification process moves forward. Thank you for your consideration of this important issue.

Sincerely,

Roger Johnson
President

April 11, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
446 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

By the year 2050, farmers will be required to grow twice as much food as they currently produce to feed rapidly growing numbers of people inhabiting earth. Food will be grown in the face of greater strains on water, soil, and energy resources. A significant portion of addressing this burden falls to plant breeders who, if they are to be successful, must have the tools necessary to meet this goal. Our organizations urge the Senate Foreign Relations Committee to recommend ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture, as they did in 2010, and encourage the Senate to take swift action. As agriculture is asked to do more, it is important that U.S. researchers are not left behind in their ability to access the most basic materials needed to improve seeds and food.

Over the last 10,000 years, civilization has created a situation where twelve cultivated species provide approximately 90% of the world's food. In fact, four crops (rice, wheat, maize and potatoes) account for more than 50% of dietary energy globally. In addition to these caloric staples, American consumers desire year-round access to a wide array of fruits, vegetables and grains. Many of these crops are grown in the U.S., but significant genetic diversity used by breeders to meet consumer's needs comes from other countries. The U.S., like all countries, is dependent on genetic resources for plant breeding, which is the basis of our food, coming from other world areas.

Plant breeding is the means by which germplasm, in the form of seeds and plant materials, is converted into the food that provides what the global population needs to survive and thrive. Plant breeding investigates and unlocks the genetic potential of plants to sustainably increase yields in the face of increasing challenges such as drought, pests and diseases. Throughout history, plant breeders have generated new diversity using plant materials sourced from around the world to increase plants' ability to withstand stress and to introduce characteristics prized by consumers. These advances have only been possible because the exchange of germplasm across country borders has been recognized as a common good.

The global food system is interdependent. International exchange of plant materials dates back millennia from Native Americans who introduced corn into the northern continent and more recently to the earliest North American settlers who brought seeds from their home countries. In the modern era, a rational international system to facilitate exchange of plant materials across borders is needed. The International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty) was created as a specialized, global system for the management and exchange of plant genetic resources. Two foundational principles of the Treaty are that "plant genetic resources are a common concern of all countries" and "[they] are the raw material indispensable for crop genetic improvement".

The U.S. was integrally involved in negotiating the finalized treaty and signed it in 2002 during the Bush administration. However, ratification is still pending in the Senate. Today, 139 countries have ratified

the Treaty, many of which are key competitors with the U.S. in international seed markets. Importantly, these include the EU28 including France, Germany, Italy, Netherlands, Spain and UK, as well as Argentina, Australia, Brazil, Canada, Japan, India, and most of Africa and Central America. As the world's largest market for seeds and the largest seed exporter, it is time for the U.S. to join other nations and ratify the Treaty.

Support for U.S. ratification is robust because it provides facilitated access to plant materials for Contracting Parties. Although the U.S. National Plant Germplasm System (NPGS) gene banks are impressive, they are not all-encompassing. The U.S. still needs to access genetic resources from other countries, many of which are Parties to the Treaty. The time is right to ratify the Treaty because Parties to the Treaty are now discussing how to improve its functionality and make it more user-friendly like our NPGS. It is critical the United States be a full participant in these discussions.

Ratification will require no changes within the U.S. NPGS system. The USDA, public university researchers and U.S. companies must already comply with the terms of the Treaty for all the germplasm acquired from Contracting Parties and from the 15 global centers that form the Consultative Group on International Agricultural Research (CGIAR). Ratification, would give the U.S. a prominent voice in making the Treaty more user friendly for both private and public sector users of international germplasm. Without ratification, the United States would miss an opportunity to protect our national interests in these on-going discussions on refining the operations of the Treaty.

Currently, public and private sector breeders are vulnerable to the Nagoya Protocol, which was established under the auspices of the Convention on Biological Diversity and goes beyond the agriculture sector. The Nagoya Protocol is a far less favorable option for germplasm exchange for U.S. agriculture researchers and the entire U.S. seed sector. Exchanges under the Nagoya Protocol currently have no precedence. As such, they create legal uncertainty as well as being potentially cumbersome and more costly than under the Treaty.

The situation in the U.S. is prime for ratification. No U.S. laws would need to be changed. The Treaty would not alter access to U.S. gene banks by U.S. researchers. The Treaty will not diminish existing intellectual property protections and there are no additional funding obligations associated with ratification of the Treaty.

We urge the Senate Foreign Relations Committee to hold a hearing on the International Treaty on Plant Genetic Resources for Food and Agriculture as soon as possible. It is critical that the Committee recommend ratification of the Treaty, as they did in 2010, so that U.S. researchers have the opportunity to unlock the full potential of seeds to feed a hungry world.

Sincerely,

AgReliant Genetics (Indiana)
American Farm Bureau Federation
American Phytopathological Society
American Seed Trade Association
American Society of Plant Biologists

American Soybean Association
Arkansas Seed Dealers' Association
Bayer CropScience LP (North Carolina)
Beck's Hybrids (Indiana)
Biotechnology Innovation Organization (BIO)
California Seed Association
Colorado Seed Industry Association
Condor Seed (Arizona)
Crop Production Services (Colorado)
Crop Science Society of America
Curtis & Curtis (New Mexico)
Delaware-Maryland Agribusiness Association
Dow AgroSciences (Indiana)
DuPont Pioneer (Iowa)
Enza Zaden U.S. (California)
Georgia Agribusiness Council
Georgia Crop Improvement
Georgia Seed Association
Grain and Feed Association of Illinois
Grassland Oregon
GROWMARK (Illinois)
HED Seeds (California)
HeinzSeed (California)
HM.CLAUSE, Inc. (California)
Idaho-Eastern Oregon Seed Association
Illinois Fertilizer & Chemical Association
Illinois Seed Trade Association
Independent Professional Seed Association
Indiana Seed Trade Association
Iowa Seed Association
J.R. Simplot Company (idaho)
JoMar Seeds (Indiana)
Justin Seed (Texas)
Kansas Seed Industry Association
Kansas Wheat Alliance
Keithly-Williams Seeds (Arizona)
Land O'Lakes, Inc (Minnesota)
Latham Hi-Tech Seeds (Iowa)
Limagrain Cereal Seeds
Monsanto (Missouri)
National Association of Plant Breeders
National Association of Wheat Growers
National Corn Growers Association

National Cotton Council
National Council of Commercial Plant Breeders
National Farmers Union
National Sorghum Producers
Nebraska Agri-Business
New York State Agribusiness Association
North Carolina Seedsmen's Association
Northern Seed Trade Association
Northwest Nursery Improvement Institute
Ohio AgriBusiness Association
Oregon Seed Association
Oregonians for Food & Shelter
Pacific Seed Association
Produce Marketing Association
RiceTec (Texas)
Rocky Mountain Agribusiness Association
Rural and Agriculture Council of America
Sakata Seed America (California)
Seedway LLC (Pennsylvania)
Sharp Bros Seed (Kansas)
Southern Crop Production Association
Southern Seed Association
Syngenta North America (Minnesota)
Texas Ag Industries Association
Texas Seed Trade Association
US Rice Producers Association
USA Rice
Vilmorin, North America (California)
Warner Seeds (Texas)
Washington Tree Fruit Research Commission
Wisconsin Agri-Business Association
Wyoming Ag-Business Association
Wyoming Wheat Marketing Commission

Note: States in parenthesis indicate location of company headquarters.

Letters Submitted in Support of
The Convention on the Law Applicable to
Certain Rights in Respect of Securities
Held With an Intermediary,
Treaty Doc. 112–6

FINANCIAL SERVICES FORUM

May 19, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
423 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
444 Dirksen Senate Office Building
Washington, DC 20510

RE: Ratification of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary

Dear Chairman Corker and Ranking Member Cardin:

The Financial Services Forum (the Forum) writes today to express our support for the 2006 Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, and urges bipartisan approval of the Convention by the Senate.

The Convention provides uniform rules for determining the law applicable to certain rights in commercial transactions involving investment securities held through intermediaries, such as brokers, banks, and other financial institutions. Ratification of this treaty would help mitigate systemic risk and strengthen efforts to harmonize global financial regulations by providing greater legal certainty associated with cross-border securities transactions, which will benefit market participants and the financial system as a whole. Furthermore, the Committee's leadership in approving the Convention would encourage other countries to also adopt the treaty.

The Forum thanks you for the Senate Foreign Relations Committee's advancement of this treaty, and urges bipartisan support for its passage.

Sincerely,

John R. Dearie
Acting CEO
Financial Services Forum

cc: The Honorable Richard Shelby, Chairman, Senate Committee on Banking;
The Honorable Sherrod Brown, Ranking Member, Senate Committee on Banking

sifma
Invested in America

May 16, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
U.S. Senate
Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin Cardin
Ranking Member
Committee on Foreign Relations
U.S. Senate
Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

The Securities Industry and Financial Markets Association (SIFMA)[i] strongly supports ratification of the 2006 Hague Securities Convention, which will remove legal uncertainties for cross-border securities transactions. We applaud the Senate Foreign Relations Committee for its consideration of this agreement, which would promote capital formation and decrease unnecessary friction in cross-border securities activities while upholding necessary customer, investor, and market protections.

We urge the Senate to ratify the Hague Securities Convention since it will provide much needed legal certainty regarding the rights to securities held within intermediaries in cross-border transactions. Currently, various jurisdictions treat securities held by intermediaries differently, which leads to legal uncertainty, conflicts of law, and increased risk for investors. The Convention would address such uncertainty by creating a single test that will identify the law that governs the rights of parties with an interest in securities that are held by an intermediary and used as collateral. Accordingly, SIFMA believes that the Convention, if ratified, will substantially improve investor confidence in the capital markets and, in turn, reduce systemic risk and enhance efficiency in cross-border securities markets. U.S. investors and end-users would benefit from the increased market liquidity and broadened investor participation in domestic capital markets as a result of ratifying the Convention.

Thank you for your consideration of ratifying the Hague Securities Convention, which we strongly believe will help strengthen the legal foundation in international securities markets, mitigate systemic risk, and enhance our capital markets competitiveness.

Sincerely,

Andy Blocker
Executive Vice President, Public Policy and Advocacy
SIFMA

[i] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

Washington | New York
1101 New York Avenue, 8th Floor | Washington, DC 20005-4269 | P: 202.962.7300 | F: 202.962.7305
www.sifma.org

The Clearing House
At the Center of Banking Since 1853

May 19, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
U.S. Senate
Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Benjamin Cardin
Ranking Member
Committee on Foreign Relations
U.S. Senate
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Corker and Ranking Member Cardin:

I am writing in support of the Senate Foreign Relations Committee's consideration and approval of the 2006 Hague Securities Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary. This important treaty would resolve legal uncertainties that prove detrimental to certain cross-border securities transactions. Ratification of the Convention will provide greater legal clarity for all parties in these transactions, resulting in a more predictable legal framework which would support the affordability and availability of credit around the world.

The majority of securities in financial markets are indirectly held by their ultimate beneficial owner. The registered owner is commonly a clearing corporation, holding the securities on behalf of a bank or a broker, which in turn may hold them for their clients. Each of these entities may reside in a different country, creating choice of law concerns when certain disputes arise. The rules that ultimately bind the transaction may depend on where litigation is initiated. Lenders need to comply with substantive law in multiple countries in order to be satisfied that their interests will be preserved in litigation. This complexity leads to an increased cost to customers and reduces credit availability. The Convention addresses this problem by creating a single framework for determining the governing law in a transaction.

The Clearing House appreciates your consideration of this important treaty and strongly urges its ratification by the Senate. Adoption of the treaty will support economic growth by improving the movement of capital, and access to capital globally.

Sincerely,

Jill E. Hershey

Jill E. Hershey
Executive Managing Director, Head of Government Affairs
The Clearing House

The Clearing House Association L.L.C. 1001 Pennsylvania Avenue, NW, Suite #720 North Tower, Washington, DC 20004 Phone 202.649.4600 Fax 202.649.4606 www.theclearinghouse.org

DTCC
Securing Today. Shaping Tomorrow.®

Larry E. Thompson
Vice Chairman and General Counsel

55 Water Street
New York, NY 10041

Tel. 212 855 3240
lthompson@dtcc.com

May 17, 2016

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

RE: Ratification of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary

Dear Chairman Corker and Ranking Member Cardin:

I am writing on behalf of The Depository Trust & Clearing Corporation ("DTCC"), in support of the 2006 Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary. DTCC urges the Senate to take advantage of this opportunity to approve the Convention so that the United States, which signed the Convention in 2006, can ratify it.

The Convention provides uniform rules to facilitate the determination of the law applicable to certain rights in commercial transactions involving investment securities which are held through intermediaries, such as stockbrokers, banks and other financial institutions.

As you may be aware, DTCC is the parent corporation of The Depository Trust Company ("DTC"), the world's largest securities depository. It holds interests in equity and debt securities as a clearing corporation and securities intermediary for its clients, principally banks, broker-dealers, other financial institutions and linked global depositories or central counterparties. DTC provides a central location in which securities may be immobilized, or through which securities may be dematerialized, and interests in those securities reflected in accounts maintained for its member financial institutions. DTC clients are usually securities intermediaries themselves, maintaining accounts for their customers and crediting interests in the securities they hold to those accounts for the benefit of their customers. Ultimately, in a chain of tiered accounts, the last customer is the ultimate beneficial owner of the interest in the securities credited to its account with its securities intermediary. Interests in securities are transferred among clients and customers by debits and credits to accounts, i.e., by book-entry, in lieu of the physical delivery of securities certificates. This tiered holding system is referred to as the indirect holding system or, sometimes, as an intermediated system.

In this intermediated structure, to promote certainty in the transfer or pledge of interests in securities held in this manner, it is crucial that there be clear guidance as to principles for the choice of applicable law. In the U.S., this has been achieved by the universal adoption of the Uniform Commercial Code, Article 8 (Investment Securities) and Article 9 (Secured

Transactions), which clearly establish a set of rules for the choice of law to govern these relationships and transactions.[1]

Transfers in securities typically involve book entries by the chain of intermediaries. The transaction counterparties, the securities intermediaries or the issuer of the security may be located in several countries; the transaction may also involve dispositions of securities as collateral (that is, the creation of a pledge or grant of security interest in the security) in jurisdictions outside of the United States. The question of which law governs is of significant importance to market participants as well as their regulators, as it may impact the validity, enforceability and finality of the transaction. The objective of the Convention is to provide greater legal certainty as to the applicable law, and thus reduce legal and systemic risk.

DTCC as well as other market participants played an active role in the development of the Convention, the rules of which reflect modern finance law in the United States (principally as set out in the Uniform Commercial Code, Articles 8 and 9). We believe that approval of the Convention presents an important, and unique, opportunity to harmonize choice of law rules across contracting states in a manner consistent with U.S. law that would promote cross-border commerce and economic development. The Committee's leadership in approving the Convention would, we believe, encourage its adoption by other countries and facilitate the modernization of finance law in these jurisdictions.

Please feel free to contact me, or Mark Wetjen, Head of Global Public Policy at 202-383-2675, if you have any questions or require additional information.

Sincerely,

Larry E. Thompson

Larry E. Thompson
Vice Chairman and General Counsel

cc: The Honorable Richard Shelby
Chairman
Committee on Banking

cc: The Honorable Sherrod Brown
Ranking Member
Committee on Banking

[1] The U.S. Treasury has adopted an integrated and comparable set of regulations for the maintenance of interests in Federal Reserve System book-entry securities, including choice of law provisions.

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

June 10, 2015

Honorable Robert Corker
Chairman, Committee on Foreign Relations
U.S. Senate Committee on Foreign Relations
423 Dirksen Senate Office Building
Washington, DC 20510-6225

RE: Ratification of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with and Intermediary

Dear Mr. Chairman:

In my capacity as President of the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws), I am writing to reiterate the support of the Uniform Law Commission for Senate review and approval of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with and Intermediary ("the Convention"). The Convention was transmitted to the Senate for advice and consent by the President in the summer of 2012.

This Convention provides choice of law rules for securities that are held by an intermediary, which are very important in modern international commerce. The Convention was drafted with close attention to relevant United States law, Articles 8 (Investment Securities) and 9 (Secured Transactions) of the Uniform Commercial Code.

The ULC has worked closely with the State Department's Office of Private International Law to review the Convention and develop the materials concerning the Convention that are currently before the Senate Foreign Relations Committee. Commissioner Carl S. Bjerre, Kaapcke Professor of Business Law at the University of Oregon School of Law, and a recognized expert on investment securities and Article 8 of the UCC, has taken the lead on this project for the ULC. He also has drafted a Commentary for the Permanent Editorial Board for the Uniform Commercial Code that describes the relationship of the Convention to Articles 8 and 9 of the UCC. The Commentary concludes that the Convention "meshes very well with UCC Articles 8 and 9, and in most instances will not lead to different results." The usual PEB public comment process for this Commentary has been completed, and the Commentary will be finally published when the Senate gives its advice and consent to the Convention.

Professor Bjerre has reported to me concerning the substantial benefits that ratification of this Convention would bring:

> Based on my direct and indirect knowledge of industry activity I can report that the prospective advantages of Convention ratification remain as large as ever. Cross-border commercial law transactions in stocks, bonds, and other securities continue to present choice-of-law issues of legal and business concern. [T]he Convention carries the clear promise of alleviating a great deal of this concern, by unifying the choice-of-law rules among Contracting States in a way that meshes very closely with the Uniform Commercial Code. The result would be to modernize the transactions, greatly enhance their predictability, and thereby promote cross-border commerce. *(Memorandum to ULC President Harriet Lansing, November 1, 2014)*

Thus the Uniform Law Commission supports the Convention and the recommendation to implement the Convention as self-executing, without any implementing federal or state legislation. The PEB Commentary referred to above includes approved revisions to the comments to various provisions of the Uniform Commercial Code that will help ensure smooth implementation of the Convention in the United States after the Convention's ratification by the United States.

As you know, the Uniform Law Commission was founded in 1892 to provide non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. Commissioners are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state and territorial governments to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. While best known for our work with the Uniform Commercial Code (UCC), over the past century the ULC has provided its member jurisdictions with important statutory advances in such areas as probate and trust and estates law, business entity law, family law, and interstate and international recognition and enforcement statutes.

Sincerely,

Harriet Lansing
President, Uniform Law Commission

Cc: Hon. Ben Cardin, Ranking Member, U.S. Senate Committee on Foreign Relations
Members of the U.S. Senate Committee on Foreign Relations:

Hon. James E. Risch	Hon. Barbara Boxer
Hon. Marco Rubio	Hon. Bob Menendez
Hon. Ron Johnson	Hon. Jeanne Shaheen
Hon. Jeff Flake	Hon. Christopher Coons
Hon. Cory Gardner	Hon. Tom Udall
Hon. David Purdue	Hon. Chris Murphy
Hon. Edward J. Markey	Hon.Tim Kaine
Hon. Johnny Isakson	Hon. Rand Paul
Hon. John Barrasso	

Professor Carl Bjerre

Liza Karsai, ULC Executive Director

EMTA

360 Madison Ave., 17th fl.
New York, NY 10017
646 289-5410

August 19, 2015

The Honorable Bob Corker Chairman Committee on Foreign Relations United States Senate Dirksen Senate Office Building Washington, DC 20510	The Honorable Benjamin Cardin Ranking Member Committee on Foreign Relations United States Senate Dirksen Senate Office Building Washington, DC 20510

Subject: U.S. Ratification of Hague Securities Convention

Dear Chairman Corker and Ranking Member Cardin:

I am writing to express the support of EMTA for the ratification of the 2006 Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the "Convention"), which was signed by the United States in July 2006.

EMTA (formerly the Emerging Markets Traders Association) is a global association of approximately 130 bank, broker-dealers and other investment firms that trade and invest in public and private sector emerging market debt for their own account and for the account of their customers. EMTA is a not-for-profit corporation which was formed in 1990 by the leading financial institutions, both within and outside the United States, to promote the orderly development of fair, efficient and transparent trading markets for emerging markets instruments and to support the globalization and integration of the emerging capital markets. A list of EMTA's members that trade or invest in emerging market debt is attached as Exhibit A to this letter.

EMTA, along with other financial industry associations, was an active participant (as an Observer) during the consultative process conducted by the Permanent Bureau of the Hague Conference on Private International Law during the preparation of the Convention.

By addressing only choice of law rules, the Convention reflects the views of many market participants and practitioners alike that harmonizing substantive law rules – however desirable that may be – would require a level of coordination in cross-border and emerging market infrastructure that is unlikely to be achievable in the near term. Implementing a harmonized set of choice of law rules that eliminate the time and expense of identifying and assessing the potential consequences of the application of every possible jurisdiction whose laws could be implicated in any given securities transaction will play a significant role in enhancing certainty in this vital market.

We note that the Convention's principles are highly compatible with those in effect in the United States through the various State adoptions of the Uniform Commercial Code (the "UCC"). It is also worth noting that the UCC's choice of law rules for intermediated securities have been in effect for nearly 20 years in most States and have stood the test of market stress. United States ratification of the Convention would signal support for a legal approach that offers an effective way for jurisdictions to determine the law most appropriate to apply to certain aspects of securities transactions without encroaching on domestic legal interests. United States ratification also would bring the Convention into force (which requires adoption by three Hague member states).

The Convention is a well thought out and practical response to the existing uncertainty regarding the law applicable to transactions of enormous significance to the global financial markets and EMTA strongly supports U.S. ratification.

Very truly yours,

Michael M. Chamberlin
Executive Director

ASSOCIATION OF GLOBAL CUSTODIANS

WWW.THEAGC.COM

October 2, 2015

Via Federal Express

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

Re: Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary

Dear Chairman Corker and Ranking Member Cardin:

I write on behalf of the Association of Global Custodians (the "AGC") to express the AGC's support for ratification of the 2006 Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the "Convention"), which was signed by the United States in 2006.

In today's international financial markets, the vast majority of investment securities are held in "book-entry" form, and are transferred electronically, by financial intermediaries, such as the bank members of the AGC.[1]

[1] *The Association of Global Custodians is an informal group of international banking institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations.*

The Convention addresses an issue faced by US investors and US participants in global financial transactions: namely, the law governing certain rights in cross-border investment securities held by and transferred by financial intermediaries (referred to as "intermediated securities"). Differences in laws among nations relating to intermediated securities has given rise to a large degree of legal uncertainty regarding the law applicable to, and the rights of the parties with an interest in, intermediated securities in many cross-border transactions. Legal uncertainty may increase the cost of these transactions and in some cases will mean that the transactions will not be done at all. In addition, the legal uncertainty increases the time and expense of resolving disputes over the transactions. The Convention would reduce this legal uncertainty by providing a uniform rule for establishing the law applicable to cross-border transactions in intermediated securities.

The AGC actively participated in the consultative process undertaken by the Permanent Bureau of the Hague Conference on Private International Law during the preparation of the text of the Convention. The AGC believes now, as it did throughout the process, that the Convention will be an important step in protecting US investors and US participants in global financial transactions by reducing their legal uncertainty and thus their risk. As such, the AGC supports and encourages ratification of the Convention.

Sincerely yours,

Dan W. Schneider
Baker & McKenzie LLP
Counsel and Secretariat to the AGC

cc: John J. Kimm, Assistant Legal Adviser for Private International Law, U.S. Department of State

ISDA® Safe, Efficient Markets

June 23, 2015

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

The Honorable Benjamin Cardin
Ranking Member
Committee on Foreign Relations
United States Senate
Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Corker and Ranking Member Cardin:

I am writing to express the International Swaps and Derivatives Association, Inc.'s ("ISDA")[1] support for the ratification of the 2006 Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the "Convention"), which was signed by the United States in July 2006.

ISDA, along with other financial industry associations, was closely involved in the consultative process undertaken by the Permanent Bureau of the Hague Conference on Private International Law during the course of preparing the text of the Convention. We believe that the Convention represents a unique opportunity to strengthen the integrity and resilience of the international securities markets by clarifying and harmonizing the rules for determining the law applicable to investment securities held and transferred by intermediaries in electronic book-entry form (usually referred to as "intermediated securities"), which is how the vast bulk of securities are held and transferred in modern financial systems.

These securities settlement systems are a critical part of financial market infrastructure. The financial crisis of 2008 has led to a number of globally coordinated legislative and regulatory initiatives to extend and strengthen financial market infrastructure to reduce risk and increase market resilience. Enhancing legal certainty as to the operation of securities settlement systems would be a significant contribution to this important work.

[1] Since 1985, ISDA has worked to make the global over-the-counter ("OTC") derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 67 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Additional information on ISDA is available at www.isda.org.

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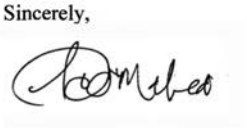
ISDA believes that the Convention is the most effective way to facilitate the establishment of an internationally agreed upon set of rules for determining the law most appropriate to govern the proprietary aspects of a transfer of intermediated securities from one financial intermediary to another through modern securities settlement systems. It is crucial that market participants be able to identify the relevant law easily and with certainty for a variety of purposes, including (among many others) ensuring perfection of security created over intermediated securities. We note that the conflict of laws rules in the Hague Securities Convention have, to some extent, been inspired by the conflict of laws rules contained in the U.S. Uniform Commercial Code.

For the aforementioned reasons, we urge that the Senate approve the Convention, in order that the United States can ratify it. If you have any questions, please do not hesitate to contact our Acting Head of U.S. Public Policy Christopher Young at (202) 756-7543.

Sincerely,



Scott O'Malia
CEO

Cc: Mary McLeod
Acting Legal Adviser
U.S. Department of State

John J. Kim
Assistant Legal Adviser for Private International Law
U.S. Department of State

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