

EFMLG – Press release

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STANDARD MARKET DOCUMENTATION: EFMLG URGES MARKET ASSOCIATIONS TO DRAW THE LESSONS FROM THE FINANCIAL CRISIS

On 15 September the EFMLG sponsored a Legal Symposium on standard market documentation, which was attended by about 50 participants from various market and banking associations, financial institutions, companies and international law firms. The purpose of the Symposium was to discuss the lessons to be learned from the financial crisis and to identify potential areas for the harmonisation of crisis-related clauses in the standard market documentation used for different financial products. This forum will be reconvened in mid-2010 in order to monitor and evaluate the progress made.

On 15 September, the EFMLG organised in London a High-Level Legal Symposium hosted by Calyon, in which various representatives from market and banking associations such as ISDA, SIFMA, ICMA, ISLA, the European Banking Federation and the European Savings Banks Group, and from various major financial institutions, companies, legal groupings and international law firms participated. The main purpose of the Symposium was to initiate a dialogue between leading industry organisations sponsoring standard market documentation on the lessons to be learned from the financial crisis regarding specific provisions commonly used in financial transactions documentation, also with a view to identifying potential divergences between various master agreements.

Mr Antonio Sáinz de Vicuña, Chairman of the EFMLG and moderator of the Symposium said: *‘The financial crisis has provided a momentum which should be seized in order to narrow the existing divergences existing between product-oriented standard agreements, as it has shown the close inter-relationship among them. The EFMLG very much encourages this dialogue between the various organisations sponsoring standard market documentation and the credit institutions using these agreements. EFMLG members are ready to contribute to this task.’*

In the context of the Lehman Brothers bankruptcy and of the freezing orders of the Icelandic and UK Governments, the termination and close-out procedures as well as the master agreements supporting them were severely tested. Although the overall perception is that the close-out of financial transactions worked quite well, there is also consensus on the fact that the existing fragmentation and diversity of standard market documentation and the co-existence of different, sometimes outdated, versions caused unforeseen issues which need to be addressed. Against this backdrop, the EFMLG initiated a dialogue early this year with the leading industry organisations sponsoring standard market documentation and an ad hoc EFMLG Task Force chaired

by Mr Holger Hartenfels of Deutsche Bank was set up. This Task Force mainly focused on five aspects that all standard master agreements have in common: (i) definition of bankruptcy-related events of default; (ii) procedures for terminating master agreements by notice; (iii) operation of automatic early termination clauses; (iv) calculation of close-out amounts including valuation of securities and currency conversion; and (v) resolution of collateral and margin disputes.

The EFMLG – encompassing senior lawyers from major international banks – is ready to play a neutral catalyst role among the market associations which sponsor standard market documentation used in European financial markets and globally in the areas of derivatives, foreign exchange, repurchase and securities lending transactions. Mr Hubert de Vauplane, General Counsel of the Crédit Agricole Group and Vice-Chair of the EFMLG concluded: *‘There is a need for further simplification and legal convergence of standard market documentation. End-users should also be given an opportunity to provide their views’*.

Mr Hartenfels concluded: *‘The work already undertaken by the EFMLG should now be continued by the sponsoring organisations. We trust that the issues already identified by the EFMLG and the recommendations for further standardisation and harmonisation which will follow will serve as a starting point. The EFMLG invites the other associations not yet represented in the Symposium to join this initiative in order to develop further projects and will reconvene this forum in a few months to evaluate the progress made by that time in the area of standard market documentation’*.

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Note to editors

1. The European Financial Markets Lawyers Group (EFMLG) is an international group of senior lawyers of the major commercial banking institutions of the European Union, who are able to provide high-quality input to the Group's activities, to identify and propose areas of work, and to contribute to the collective activity with resources drawn from the institutions they represent. The membership in the Group is limited to the credit institutions that are part of the Euribor and Eonia panels, these being representative of those credit institutions that are active on a European scale of financial markets in Europe following the introduction of the euro.
2. The members of the EFMLG are selected, on the basis of their personal experience, amongst lawyers of those credit institutions based in the EU which are most active in the European financial markets, namely the banks of the Euribor and Eonia panels.
3. The EFMLG is committed to provide legal support to the historical task of achieving an integrated financial market in the EU, on the basis of professional excellence of its membership, of the breadth of knowledge brought together on national and European financial law, of cooperative work among the legal services of the wholesale banking industry in Europe and of the support of the banking institutions which are represented in the Group.
4. The EFMLG strives at examining legislative and regulatory issues and differing market practices that hinder the full development of a EU-wide single financial market, and at identifying major barriers, providing advice, recommendations, and best practices, aimed at facilitating harmonisation and convergence in the EU financial markets.
5. The EFMLG Task Force on Standard Market Documentation is chaired by Mr Holger Hartenfels, Deutsche Bank AG. The EFMLG Rapporteurs to the Symposium are: Mr Mario Bona, Intesa SanPaolo; Ms Natalia Butragueño, Banco Santander S.A; Ms Helen Moran, Allied Irish Banks; Ms Susan O'Malley, HSBC and Mr Ulrich Parche, Unicredit. The presentations from the five Rapporteurs are available on the EFMLG website (www.efmlg.org).