



THE CHAIRMAN

To the Members of the
European Financial Markets Lawyers Group

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Dear colleagues,

RE: NETTING ARRANGEMENTS IN THE EU ACCESSION COUNTRIES

We would like to put forward to the EFMLG a project proposal that is expected to be of interest to central banking operations and private sector transactions alike. It is suggested to review the legal situation regarding close-out netting in the countries acceding to the European Union. We are certainly aware that this exercise would extend the geographical focus of EFMLG's activities to date, however, it is a development that is increasingly relevant not only from the point of view of European integration but also for pan-European commercial activities.

Assisted by the ECB's lawyers responsible for the accession countries, we are currently carrying out a review of the legislative framework in the 10 acceding countries. With the help of a short questionnaire (see annex), we are identifying the rules on the most important concepts (recognition of contractual close-out netting, "cherry-picking powers" upon insolvency, the scope of transactions covered, the expected legislative developments, etc.).

At the EFMLG meeting on the 30 October, we would like to discuss with you the results of the initial survey. We will also seek your views about your interest and possible involvement in the project. Going forward, it would be especially interesting to receive input from banks that have substantial operations in the acceding countries. It would be very valuable to assess the practical problems that such financial institutions encounter during their derivatives, foreign exchange, repurchase or lending operations. One possible outcome of this exercise could be to submit certain proposals to legislators in the acceding

countries that are in the process of changing their laws in this area. This initiative could help create a business-friendly environment in the field of close-out netting that can accommodate even cutting-edge financial products.

In light of the above we are suggesting the following plan of action:

September – October 2003: preparation of an initial ECB survey on close-out netting rules in the accession countries

30 October 2003 (EFMLG Meeting): sharing the initial results with the EFMLG, defining the scope of the project going forward

November 2003 – February 2004: ongoing work, also involving lawyers from the EFMLG members' local operations

February 2004 (EFMLG Meeting): presentation of the joint survey, decision about ways of using the survey

We are looking forward to hear your views on the above and in case there is interest in the project we are very much looking forward to working together as well.

Yours sincerely,

Antonio Sáinz de Vicuña

Encl.

ANNEX

CLOSE-OUT NETTING QUESTIONNAIRE

- Is close-out netting valid and enforceable on bankruptcy or insolvency (with special regard to the "cherry-picking powers" of the bankruptcy administrator)?
- How is close-out netting defined in legislation (distinguishing it from set-off)?
- Is multi-transaction netting possible?
- Is multi-branch netting possible?
- Is multi-currency netting possible?
- What transactions does it cover (derivatives, spot fx, repo, etc.)?
- Is enforceability restricted to certain categories of persons (e.g. financial institutions)?
- Is there specific legislation on the subject? (if yes, please attach it, preferably with English translation, if available).
- Is there a publicly available legal opinion from external counsel addressing such issues?
- Any legislative developments expected in the field?
- Are there any special features of the rules or of practice?
- Are there any problem areas of regulation or practice?