

Re: SIGNING/AUTHORISATION PROCEDURES:

FINANCIAL MARKETS AGREEMENTS

1. These procedures ought to be straightforward and transparent; instead they are, very often and quite unnecessarily, fraught with ambiguity giving rise to time consuming and tortuous enquiry.

This apparent of lack of attention to detail has the potential to increase legal risk for the parties involved.

This view is shared by many practitioners who have given detailed consideration to the issue and is echoed in the paper of February 2004 issued by the Foreign Exchange Committee, a copy of which is attached.

2. The EFMLG has concerns regarding the increasingly inadequate authorisations (form and substance) issued by many financial institutions in relation to the execution of ISDA Master Agreements, Global Master Repurchase Agreements, European Master Agreements and other agreements, including guarantees, ancillary thereto (the 'Master Agreements'). In many cases, it is not possible for the duly diligent counterparty to confirm with any reasonable degree of certainty the type, nature and context of authorised transactions. In consequence, a Sub-Group has been formed to examine the many diverse procedures currently adopted by financial institutions with a view to proposing coherent procedures for signing off on Master Agreements in an expeditious manner mutually protective of the interests of each party.
3. The Sub-Group's brief will include:
 - (a) An examination of the procedures to be adopted in determining:-
 - (i) the most appropriate form/forms to describe the transactions intended to be entered into as set out in the relevant Authorisation;
 - (ii) the signatories to the Agreement as set out in the relevant Authorisation;
 - (iii) the adequacy of the Form/Source of the Authorisation furnished and of its certification.
 - (b) An analysis of typical inadequate Authorisations in order to establish the possible reason for same including such variables as poor draftmanship, constricting domestic legislation, linguistic and translation issues, attempts by one or other of the contracting parties to limit its risk by externalising its internal controls to the potential prejudice of its counterparty.
4. Finally, the Sub-Group would very much welcome the observations of those present of their experiences, positive and/or negative, in this matter. All such comments might be addressed to EFMLG, attn. Mr Klaus Löber, Postfach 16 03 19, D-60066 Frankfurt am Main or e-mail: secretariat@efmlg.org.

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