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**AIDE-MÉMOIRE OF THE
21ST MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP,
HELD ON THURSDAY, 12 OCTOBER 2006**

1. Approval of the agenda and of the aide-mémoire of the last meeting

The members approved the agenda and the aide-mémoire of the last meeting. The Chairman welcomed Mr Lindeijer, vice chairman of the ECB Operations Managers Group. He also welcomed Mr Bartos, Mr Bechier and Mr Luyckx, participating on behalf of Mr Harding, Mr Daunizeau and Mr Blokbergen, respectively.

2. Presentation of the activities of the ECB's Operations Managers Group

Mr Lindeijer, chairman of the Contingency Task Force of the ECB Operations Managers Group (OMG), presented the activities of its group to the EFMLG. The OMG is a sub-group of the ECB's FX and Money Market Contact Groups, co-operating closely with its sister organisations at the Federal Reserve Bank of New York and Bank of England.

On-going issues which have a relevance for the activities of the EFMLG include: trade confirmation practices, complexity of new products (inclusive of the usage of new technologies), and the effects of major market disruptions and unscheduled closings of markets. Mr Lindeijer indicated that the OMG is currently undertaking the preparatory work for a global conference, which is intended to take place on 23 & 24 April 2007 in Frankfurt, to which the members of the EFMLG are kindly invited.

Members of the EFMLG recalled the work that has been undertaken in the past regarding force majeure events, the definition of bank holiday, as well as the work on signing authorities, which could be extended to confirmation practices.

Follow-up:

The EFMLG agreed to follow closely the activities of the OMG and co-operate on legal issues considered of interest to the EFMLG. It will be considered whether a fact-finding exercise regarding the national concepts of market disruptions and their effects could be undertaken and the members of the EFMLG are asked to express their views by **Friday, 24 November 2006**.

3. EU documentation for the use of investment funds in derivatives or securities financing transactions

Ms Bhargavan presented the issue of a lack of appropriate documentation under standard market contracts when trading with investment funds in the EU, in particular UCITS. Certain regulatory requirements imposed in some jurisdictions like the fund manager's right to early terminate transactions or the prohibition to invest in certain asset classes or types of transactions are not properly reflected. The same applies to the fact that fund managers act on behalf or for the account of funds or sub-funds, which constitute legally segregated asset pools with own insolvency regime and though a fund manager is neither an agent nor liable. Similar problems exist for pension funds and insurance companies. This situation leads to legal uncertainties which might be overcome by additional representations and termination events in the contract and supplemental legal opinions.

Members of the group mentioned that other market associations are also working on this subject. ISDA is currently looking into this issue in the context of their netting and collateral opinions, which could be expanded in scope. In the same vein, the German Banking Association has started developing a special annex to the German master agreement (Rahmenvertrag) and the European Master Agreement. As an additional issue, it was noted that the absence of standard documentation for these entities may also cause legal bottlenecks in the application of the UCITS Directive (85/611/EEC).

Follow-up:

The group agreed to pursue this issue further through the work of the sub-group that was already established, composed of members from France, Germany, Luxembourg, Finland, Ireland and Italy. A questionnaire to analyse the current legal situation in all EU jurisdictions (based on the issues identified in the issues note of 1 October 2006) will be circulated to the EFMLG members shortly.

Based on the responses, the sub-group will decide whether to pursue the topic further, and if so, whether to establish contact with other relevant market associations or whether to bring the issue to the attention of the Commission.

4. Preparations of the EFMLG Report on legal obstacles to cross-border securitisations

Mr Kerjean up-dated the group on the work undertaken by the working group since the meeting of the EFMLG in April 2006. Around 40 securitisation practitioners from banks, law firms, market associations (and in particular the European Securitisation Forum) and rating agencies as well as representatives of regulatory authorities (including the European Commission) participated to the hearing held in Paris on 12 June 2006. This hearing enabled to gather useful feedback regarding the identification of the main legal obstacles to cross-border securitisations and possible action to overcome them at the EU level. Mr Kerjean also reported that, at its meeting of 27 September, the Commission's Mortgage Funding Expert Group (MFEG) invited the EFMLG to present the state of play of its work which was welcomed by the MFEG.

The Chairman congratulated the members of the EFMLG working group on securitisation for the impressive work already undertaken and the quality of the draft report. At the meeting, the EFMLG has reviewed the various proposed recommendations contained in the draft report and discussed the Part IV of the report on the regulatory options. Some suggestions have been made by the group with a view to refine certain of the recommendations proposed. It was also proposed to introduce a ranking of the recommendations in order to distinguish among them the most critical measures which would need to be adopted. Otherwise, the EFMLG broadly welcomed the structure of the report at this advanced stage of the project and approved the policy options presented in Part IV.

Follow-up:

It was agreed that the EFMLG would have the possibility to provide comments until cob **Friday, 10 November 2006**. Following the meeting of the securitisation working group scheduled in November, a revised version of the draft report will be circulated to the EFMLG for a short written procedure. In a second stage, the draft report approved by the EFMLG will be circulated for comments to the participants to the hearing of 12 June. The Chairman of the EFMLG indicated that the final version of the EFMLG report could be endorsed by the EFMLG at its meeting of February 2007.

5. Commission review of the Collateral Directive

Mr Löber and Mr Hartenfels reported on a meeting with Commission representatives that took place on 19 September 2006 in Frankfurt. The meeting, in which representatives of the Collateral Working Group of the EFMLG and of the City of London Law Society (CLLS) Working Party on Collateral participated, was dedicated to the review of the Collateral Directive and in

particular the concerns and suggestions raised by the two groups in the open consultation conducted by the Commission in early 2006.

The Commission was interested in obtaining information on a number of issues raised in the EFMLG and CLLS responses to the public consultation, such as the personal and material scope of application, (non-)coverage of certain collateral techniques (such as floating charges) and netting. Furthermore, the issues of coverage of securities loans, rating related top-up collateral and margin collateral were mentioned. The Commission thanked the two groups for their helpful suggestions, which at least partially might be reflected in the on-coming transposition report.

Follow-up:

The EFMLG agreed to monitor the Commission's transposition report and continue to intervene in the future developments if deemed necessary.

6. Application of the derogation powers under the Takeover Bids Directive

Mr Tsibanoulis presented an issues note regarding the Take-over Bids Directive, which most Member States have implemented by now. In this respect, a concern has arisen in respect of the application of the derogation powers under Article 4(5) of the directive by Member States, which could lead to national deviations. Mr Tsibanoulis presented some examples under the Greek transposition.

It was noted that in a few Member States, the regulatory authorities have been empowered to establish implementing rules. The possible competence of the ESC and CESR in this respect was mentioned.

Follow-up:

The group agreed to await the full implementation of the directive in all Member States to make a final assessment as to the extent of the issue.

The EFMLG members are asked to collect the list of exemptions under their national implementing legislation, where existing, and send it to the EFMLG secretariat in advance of the next meeting.

7. FX market issues and FX transactions not governed by a master agreement

Mr Bloom presented the UK regulation of FX markets in respect of spot, forward and fx swaps, which if conducted for commercial purposes are not covered by the ISD in the UK. There has been the question as to the treatment under the new MiFID (where fx transactions are listed as

ancillary services) and the FSA has confirmed the status quo (with the status of NDF transactions being left open). However, at DG Markt, as well as among other domestic regulators and at CESR, there seem to have been divergences of opinion as to whether MiFID is intended to expand the regulatory perimeter around FX forwards and NDFs or not.

The EFMLG members discussed the topic. It was felt that there should be a common interpretation of the application of MiFID on Level 3 to avoid a patchwork of different applications in the single market to these kinds of transactions. It was noted that the FMLC was also looking into this matter.

Follow-up:

The group agreed to collect information on the respective national regulations. A draft EFMLG letter to Level 3 could be prepared under the lead of Mr Bloom, liaising to the extent possible with the FMLC, and be circulated to the EFMLG for comments in due course. EFMLG members interested in this project should contact the EFMLG secretariat.

Further, Ms Bhargavan reported on the fact that whilst ideally fx trades were governed upfront by an industry master agreement, this is not always possible. Certain entities seem to be reluctant to sign up to complex industry agreements which cover a whole range of product types, with regulatory capital charge benefits not being a driving force for these entities. At the same time, fx confirmation procedures have become more automated, for instance through SWIFT confirmations. These confirmations contain a field to indicate that the trade is governed by a certain industry agreement, but this field is not automatically matched. The EFMLG understands that the FMLG is looking into similar issues in respect of the SWIFT/CLS mechanics.

Follow-up:

The group agreed to look further into this topic. Mr. Bloom will liaise with the FMLG on its work on SWIFT and CLS and look into the matching of SWIFT message fields in which the industry agreement can be specified. Further, Ms Bhargavan, supported by the EFMLG secretariat will establish contact with the OMG to obtain further details on market usage.

8. Other issues of relevance to the EU financial markets

8.a) Hedge Fund developments

The chairman presented the final report of the Commissions Expert Group on alternative investments to the group. The group considered whether hedge fund related aspects should be included in the work plan of the EFMLG in 2007.

Follow-up:

The group agreed to look further into this topic. Mrs Bhargavan, supported by the EFMLG secretariat will establish contact with the OMG to obtain further details on market usage.

8.b) ECJ judgment in the case of Eurofood IFSC Ltd

Mrs Moran presented the final ECJ judgment in the case of Eurofood IFSC Ltd to the EFMLG. The group took note of its implications for the interpretation of the concept of center of main interests and the competent insolvency court in this respect.

8.c) Impact of the proposed Rome I Regulation

Mr Löber gave an overview on the state of play regarding the work on the proposed Rome I Regulation on the law applicable to contractual obligations.

The draft is mostly a straightforward transposition of the Rome Convention of the law relating to contractual obligations. However, several new articles were included in the Regulation proposal, specifically, Article 5 on consumer contracts, Article 7 on agency and Article 13(3) on the proprietary aspects of the assignment of intangibles. All these might relate to securities transactions. Article 5 may be of particular concern as the contractual nature of a financial instrument means that, in the hands of a retail investor, it may be governed by the law of the investor's home state.

Follow-up:

The group agreed to lend its support to the parallel activities of the FMLC in this respect. The EFMLG secretariat will establish the contact and will submit any relevant documentation to the EFMLG to see whether the EFMLG could support the content.

8.d) Clearing and settlement update / Advice of the Legal Certainty Group

Mr Löber presented the advice of the Legal Certainty Group to the Commission which was released on Monday, 7 September 2006, on the Commission's DG Markt website. The Group's advice can be summarised as follows: The Group's majority believes that new legislation is required regarding the legal effects of book entries made on securities accounts. The Group favours an approach that creates a substantive law regime for the legal effects of book entries. The advice sets out the basic principles for such new legislation which includes most prominently core provisions addressing the legal effects of book-entries, provisions on priorities, bona fide, the prohibition of upper tier attachment, account provider insolvency and the validity

of credit entries. Duties of the account provider are also included. The advice does not express a view as to the form the legislation should take, including on whether action at member state level, EU level or international convention would be best.

The group noted with satisfaction that the advice mirrors to large extent the main features of the EFMLG proposal for book-entry securities made in 2003. It was also noted that the advice corresponds with the approach taken in the context of the UNIDROIT project regarding intermediated securities. There are, however, some differences in respect of the level of detail and approach taken.

Follow-up:

The group agreed to follow closely the further activities of the Legal Certainty Group, providing its views whenever deemed necessary in the future process.

9. Members from the ten new Member States

The group agreed to a gradual enlargement of the EFMLG, as a consequence of which over time, it is envisaged to add lawyers from all ten new EU Member States to the group. The process will be conducted in steps, following the identification of suitable candidates. In a first step, one new member from a major credit institution in the Czech Republic and in Slovenia will be invited to join.

10. Planning of meetings for 2007

There will be three regular EFMLG meetings scheduled in 2007, to be held at the end of February, June and October, respectively. The dates will be indicated shortly.

Further, Mr Tsibanoulis kindly suggested to invite the EFMLG for its next meeting to Athens, an invitation which the group gratefully accepted.