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DOCUMENTATION FOR INVESTMENT FUNDS IN DERIVATIVES OR SECURITIES FINANCING TRANSACTIONS - ISSUES NOTE

This issues note is intended to ask the EFMLG members to provide guidance to the activities of the EFMLG sub-group on documentation for investment funds in derivatives or securities financing transactions. As agreed at the last EFMLG meeting, the subgroup comprises EFMLG members from France, Germany, Luxembourg, Finland, Ireland and Italy.

It is suggested that the above sub-group needs to look into the following:

1. When the fund is not a legal entity

a) The representations in Section 3 of the ISDA will only be applicable to the bank counterparty. The same is true of the representations in the GMRA, GMSLA & EMA. So additional representations would be necessary from the investment manager on behalf of the fund.

b) The bankruptcy provisions in the industry agreements will not be applicable to the funds. So additional termination events needed.

c) Whether an indemnity from the investment manager is feasible and if yes, how to make the investment manager party to the contract, bearing in mind the following:

The investment manager's role in this arrangement is not that of an agent or trustee yet the investment manager is involved in the daily management of the fund. As the investment manager tends to be a regulated entity some comfort can be drawn from this. The flip side is that withdrawal of approval by the regulators does not necessarily mean that we can close-out the agreement with the fund as the regulator may want the agreement to run whilst it substitutes managers. So the documentation must strike a balance in protecting a bank with early

termination clauses to close-out in time whilst not jeopardising the regulators' wish to remedy the situation if possible.

2. Checking whether the fund has any unilateral right of termination and if it does, whether this is an internal restriction it needs to observe or whether the legislator has externalised this onto the counterparties. In France, there is such externalisation.

Please provide us with your views on these matters at the meeting so that the sub-group can arrange its work accordingly.