

**DRAFT**

10 October 2007

EFMLG MEETING, 15.10.2007

**THE APPLICATION OF THE MIFID TO FORWARD FOREIGN EXCHANGE  
TRANSACTIONS:  
QUESTIONS TO BE DISCUSSED BY THE EFMLG**

- From a policy and economic perspective, what would be the appropriate level of regulation for the European markets of forward foreign exchange transactions?
- The most important FX markets in Europe have opted for an exclusion of forward foreign exchange transactions from the scope of the MiFID. As a consequence of this interpretation, the providers of such services would not be subject to the requirements imposed by the MiFID to investment firms and, as a corollary, would not benefit from the 'European passport' provided by the MiFID:
  - To which kinds of requirements should providers of forward foreign exchange agreements be subject (for instance, in terms of conduct of business rules or of best execution)?
  - What are the consequences of the absence of European passport for these activities (including for branches)?
- The MiFID does not allow to establish with sufficient legal certainty whether forward foreign exchange transactions fall under the legal qualification of financial instruments within the meaning of the MiFID, whether these transactions could be considered as ancillary services or whether these instruments should entirely be out of the scope of the MiFID.
- The current implementation of the MiFID indicates that diverging solutions are adopted by regulators regarding forward foreign exchange transactions. What could be the content of an EFMLG recommendation to the Commission with a view to promoting legal certainty and ensuring a level playing field?