MASTER AGREEMENT FOR FINANCIAL TRANSACTIONS (EMA)
DRAFT PRODUCT ANNEX FOR DEPOSITS AND LOANS
Explanatory Memorandum

Deposit Annex

- Basis for drafting the new Product Annex for Deposits and Loans was the existing Product Annex for Securities Loans (edition January 2001).

- Section 1(2): As far as the inclusion of Deposits and Loans into the Agreement is concerned, the Annex provides for two different mechanisms.
  (A) "Bottom-up": Inclusion is done by reference in the Confirmation of the relevant Deposit or Loan *("…which shall be subject to the FBE Master Agreement for Financial Transactions between us")*, or
  (B) "Top-down": All Deposit or Loans are included automatically without further reference in the relevant Confirmation as contemplated in the Special Provisions.

- Deposit or Loans are usually concluded either orally or through an electronic trading system (e.g. Reuters Dealing 3000). Confirmations are usually executed via the SWIFT system (based on MT 320). Whether SWIFT message types provide for sufficient free text for any reference to the relevant master agreement has to be analysed.

- Section 2. It should be possible to agree on Market Standard Documentation used in the money market or to incorporate the general business conditions of one party. If this option is used, the terms and conditions provided in Sections 3 and 4 would be obsolete.

- Section 3(5)(b) governs a failure to pay of the Borrower and provides for the payment of default interests only. It has to be indicated by business that the reference to the default interests (Section 3(5) of the General Agreement) might not be appropriate.

- Section 3(5)(d) clarifies that a failure to pay would also constitute an Event of Default that would justify a termination of the Agreement pursuant to Section 6(a) of the General Provision. In case of a close-out pursuant to such Section 6(a), the Non-Defaulting Party could claim the Transaction Values (as defined in Section 7(1)(a) of the General Provisions) of the terminated Deposits and Loans which would include any loss suffered by the Lender due to the fact that he cannot re-invest the lent money at the interest rate initially agreed between the parties. This would resemble the "Break Cost Amount" under the 1996 International Deposit Netting Agreement (IDNA).

- Section 4 provides for a simple interest rate calculation, reflecting the day count convention of the Eurosystem (actual/360). For Deposits and Loans denominated in other currencies (e.g., GBP) a different day count convention would have to be selected. Adjustments are also required if floating rate options (EURIBOR or LIBOR) are used for calculating interests.

Special Provisions

Two changes have been made.

- I (12). The list of Booking Offices has been extended.

- III. A new menu has been introduced to address the selections contemplated under Section 1(2) and 2 of the Annex. The menu provides for a carve-out of deposits and loans that should not be covered by the EMA.