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31ST MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP, 18 JUNE 2009

Aide-mémoire

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

The EFMLG has approved the agenda and the aide-mémoire of the last meeting.

2. Draft Common Frame of Reference

The EFMLG discussed the finalised draft of the position paper on the DCFR prepared by the Task Force. Some specific aspects of the paper such as issues related to legal tender gave rise to suggestions for amendments. The group agreed that the paragraph on independent personal security on first demand should be deleted. More generally, the group agreed to clarify in the paper that, despite its support to the European contract law initiative, the EFMLG does not consider that the DCFR is yet adapted to the needs of the financial industry. EFMLG members were invited to provide their comments by cob 30 June. The EFMLG position paper will be edited in the course of the summer and published on the EFMLG website.

3. Preparations of the EFMLG event with General Counsels for the 10th anniversary of the EFMLG (scheduled for Wednesday 21 October)

The EFMLG pursued the discussion initiated in March in Amsterdam on the preparations of the EFMLG event with General Counsels on 20-21 October in view of the celebration of the 10th anniversary of the EFMLG. The Chairman recalled the importance of benefiting on this occasion of the authorised views of the General Counsels in order to reflect critically on the EFMLG achievements so far, to discuss the composition, format and procedures of the group and to seek their support for an increased involvement for the future. The Chairman also indicated that the EFMLG will invite Mr Lucas Papademos, Vice-President of the ECB and Mr Alberto Giovannini as keynote speakers for the dinner and the meeting of 21 October respectively.

As regards the agenda of the next EFMLG meeting, the following topics which will be discussed at the meeting were allocated as follows to EFMLG members:

- Role of the EFMLG: past, present and future (EFMLG Chairman);
- The impact of the turmoil on the function of General Counsel (H. de Vauplane; D. Tsibanoulis; M. Harding/T. Bartos; G. Strehovec);

- Current issues in the field of market standard documentation and impact for legal departments (H. Hartenfels; S. O'Malley);
- The regulatory agenda in the EU following the financial turmoil and the reform of European financial supervision (F. Conlledo; F. Passamonti; C. Zilioli);
- Prospective legal issues to achieve integration of wholesale banking markets (P. Ferreira Malaquias, O. Myhrman; M. Bâ; S. Kerjean).

The EFMLG took note of the state of play of the EFMLG draft brochure. EFMLG members are invited to comment on the document by cob 30 June. [*Letters of invitation were sent on 14 July by the EFMLG secretariat to General Counsels. A draft agenda will follow in due course*].

4. Legal issues arising out of the market turmoil: The Lehman Brothers case

Mr Simon Firth, partner at Linklaters in London was invited as a guest speaker for the meeting. His presentation entitled 'Observations from the Lehman Insolvency: Prime brokerage and market issues' focused on the origins and developments of the Lehman Brothers insolvency. Simon also described how several trades remained unsettled for many months and why it was so difficult to return the clients assets, especially for the re-hypothecated assets in the UK. He provided elements of comparison regarding the nature of the clients rights under the US and UK rules, the prospects for changes in the UK legislation as well as a comparison between the US and UK as regards the close-out process in case of derivatives. Simon's presentation was followed by a debate with EFMLG members.

5. Market Standard Documentation: Lessons Learned from Turmoil

Mr Holger Hartenfels (Deutsche Bank) debriefed the EFMLG on the outcome of the activities of the Task Force on market standard documentation since the launch of this initiative early this year in Amsterdam and in particular on the kick-off meeting with market associations of 27 May. He mentioned the positive outcomes of this dialogue which will lead to the organisation of a Symposium on this topic [*N.B: It was agreed since the Milan meeting that the Symposium will take place on 15 September in London in the premises of Calyon UK. A draft agenda was prepared by the Task Force together with the market associations and was circulated on 23 July to the EFMLG*].

6. Other issues of relevance to the EU financial markets

6.1. Unregulated financial markets and products + OTC derivatives

Mrs Susan O'Malley (HSBC) informed the group of the IOSCO proposals in the field of securitisation. The group noted the increasing attention of regulators to the need for more coordinated solutions in this field. It was decided not to contribute to the IOSCO public consultation, the deadline of which had already expired mid-June.

6.2. Recent Consultations to review Directive 94/19/EC on deposit-guarantee schemes

Mr Tom Bartos (Barclays) debriefed the group on the main issues covered in the Commission's on-going consultation on deposit-guarantee schemes. The group agreed to continue to monitor the developments in this field. Mr Fernando Conlledo (CECA) proposed to prepare a draft letter to the

Commission expressing the EFMLG concerns in terms of level playing field and of obstacles to further consolidation of the banking sector. [*Members of the EFMLG will be invited to comment on the letter in written procedure*].

6.3. EMA: New Annex for Deposits and Loans

Mr Holger Hartenfels informed the group of the positive developments regarding the changes (originally proposed by the EFMLG) and introduced to the EMA annex for deposits and loans.

7. **Other issues – Next meetings**

It was agreed by the group that the agenda of the Quadrilateral meeting did not require further discussion and the Chair adjourned the meeting. As mentioned above (see 3.), the next EFMLG meeting will take place on 20-21 October in Frankfurt am Main.