

DRAFT

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**AGENDA FOR THE
38TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP,
TO BE HELD ON TUESDAY, 22 MARCH 2011,
FROM 09.00 TO 16.00 HRS, DUBLIN**

**VENUE: Head Office of Allied Irish Banks, Merrion Reception. Bankcentre, Merrion Road,
Ballsbridge, Dublin**

1. Approval of the agenda and of the aide-mémoire of the last meeting	
2. Close-out netting legislation of the EU Commission	
<u>Issue:</u>	Following the meetings of the Commission with banks, law firms and Government representatives, it is expected that there will soon be a public consultation on an EU netting directive. EFLMG had a conference call on 21 February 2011, discussing the latest state of affairs and possible EFMLG steps. Rogier Wezenbeek from the Commission shall join the meeting in order to give EFMLG an update and it would also be a chance for the group to put forward its views. Representatives from ISDA will also attend the meeting, as previously there was a joint EFMLG/ISDA proposal.
<u>Documents:</u>	<ul style="list-style-type: none"> • Discussion paper for the 2nd meeting of the close-out netting member states working group of 26 January 2011 – Legislation on close-out netting
<u>Rapporteur:</u>	Holger Hartenfels
3. Two recent English High Court judgements with special relevance to financial markets	
<u>Issue:</u>	<ul style="list-style-type: none"> • <i>English High Court judgements on the construction and effect of Section 2(a)(iii) of the 1992 and 2002 ISDA Master Agreements</i> <p>On 21 December 2010, in <i>Lomas v JFB Firth Rixson, Inc</i>, the English High Court</p>

	<p>ruled on an application for directions by the Joint Administrators of Lehman Brothers International (Europe) (LBIE) as to the true construction and effect of Section 2(a)(iii) of the 1992 and 2002 ISDA Master Agreements. Section 2(a)(iii) provides, amongst other things, that the obligation of each party to make the payments specified in each confirmation is subject to the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing.</p> <ul style="list-style-type: none"> • <i>High Court Judgement on meaning of control in financial collateral arrangements</i> <p>On 7 May 2010 in <i>Gray & Ors v G-T-P Group Ltd (Re. F2G Realisations Limited (in Liquidation))</i> the High Court issued an important judgement. This case is of interest because it is the first English case to consider the meaning of 'control' under the Financial Collateral Arrangements (No. 2) Regulations 2003 (the 'Regulations'). The particular floating charge was held to be void against the liquidator due to lack of registration and the Regulations could not be relied upon due to the interpretation of 'control' for the purpose of the Regulations. There are references in the Judgment to 'real legal control' as opposed to simply 'administrative control'.</p>
<u>Documents:</u>	<ul style="list-style-type: none"> • Allen&Overy Client Briefing on Lomas v JFB Firth Rixson, Inc • Clifford Chance Client Briefing on Gray & Ors v G-T-P Group Ltd • Judgement in Gray and others v G-T-P Group Ltd Re F2G Realisations Ltd (in liquidation)
<u>Rapporteur:</u>	Helen Moran
4. Presentation on the reform of the saving banks (Cajas) in Spain	
<u>Issue:</u>	The system of savings banks in Spain is expected to undergo some significant reforms in the near future. This does not only provide some investment opportunities but also raise some interesting legal issues. Fernando kindly agreed to give a short presentation to the EFMLG on the topic.
<u>Documents:</u>	<ul style="list-style-type: none"> • Publication of Royal Decree for the Reinforcement of the Financial System • Presentation on the reform of the saving banks (Cajas) in Spain (table document)
<u>Rapporteur:</u>	Araceli Leyva
5. Crises management framework	
<u>Issue:</u>	In its Communication of 20 October 2010, the Commission announced its plans

	<p>for an EU framework for crisis management in the financial sector, together with a timetable for action to implement the ideas set out in that document. The EU Commission is currently seeking views of the market on the technical details of a possible EU framework for the management of failing credit institutions and an appropriate class of investment firms. The deadline for such responses is 3 March 2011; nevertheless it is of interest to learn the input provided by EFMLG members. The Commission intends to adopt a legislative proposal on bank recovery and resolution in June 2011.</p>
<u>Documents:</u>	<ul style="list-style-type: none"> • EU Commission consultation: technical details of a possible EU framework for bank recovery and resolution • Progress in the implementation of the G20 Recommendations for Strengthening Financial Stability (Report of the Financial Stability Board to G20 Finance Ministers and Central Bank Governors) • FBF response to the above consultation of the EU Commission
<u>Rapporteur:</u>	Hubert de Vauplane
6. Extraterritorial effects of the Dodd-Frank Act, in particular Title VII	
<u>Issue:</u>	<p>There is still a lot of uncertainty as to the scope of the Dodd Frank Act, and its extraterritorial effects, in particular Title VII, which deals with the registration of swap dealers and major swap participants. This can have a significant impact on the business of European banks. The US Commodity Trading Futures Commission provided rather unclear guidance and SIFMA, SocGen, IIB and Davis Polk & Wardwell (on behalf of Barclays, BNP, Deutsche Bank, Royal Bank of Canada, RBS, SocGen and UBS) submitted their position to CFTC, SEC and FED.</p>
<u>Documents:</u>	<ul style="list-style-type: none"> • Discussion document prepared by Mike Prokop • Guidance from the UCTF • Response letters of the banks et al.
<u>Rapporteur:</u>	Mike Prokop
7. Tour de table of EFMLG responses regarding MIFID 2 and PRIP consultations	
<u>Issue:</u>	<p>Reponses were due on the public consultation of the EU Commission on MIFID 2 by 2 February 2010. A related consultation is on legislative steps for Packaged Retail Investment Products, where the deadline was 31 January 2011. It is understood that several EFMLG members submitted input on these consultations directly. It is of general interest to go through the key points in order to learn the different views. As regards MIFID, key points include developments in market</p>

	structures, automated trading, pre- and post-trade transparency, investor protection and provision of investment services, and regulatory framework and supervisory practices.
<u>Documents:</u>	<ul style="list-style-type: none"> • Discussion points regarding the MIFID 2 review • Public consultation of the EU Commission of 8 December 2010 on the Review of the Markets in Financial Services Directive. • Consultation by Commission Services of 26 November 2011 on legislative steps for the Packaged Retail Investment Products initiative
<u>Rapporteur:</u>	Bertrand Brehier
8. Establishing a specialized financial tribunal for complex financial products in The Hague	
<u>Issue:</u>	In acknowledging the damages from legal uncertainty in the financial markets, the World Legal Forum and its partners are investigating the establishment of a Panel of Recognized International Market Experts in Finance (PRIME Finance), an international tribunal specialized in resolving cases arising from the most sophisticated financial instruments. Through its unique list of experts, comprised of the most recognized market and legal experts on complex financial instruments, arbitration and mediation, PRIME Finance intends to ensure access to authoritative conflict resolution expertise for financial market participants.
<u>Documents:</u>	<ul style="list-style-type: none"> • Presentation of the World Legal Forum Foundation
<u>Rapporteur:</u>	Prof. Jeffrey Golden and Ms. Camilla Perera, World Legal Forum Foundation.
9. Discussion on the work of the EFMLG	
<u>Issue:</u>	It is proposed to have an informal discussion about some ideas to develop further the work of the group.
<u>Documents:</u>	n/a
<u>Rapporteur:</u>	The Chairman
10. Quadrilateral meeting (for discussion/information)	
<u>Issue:</u>	It is proposed to discuss topics to be proposed by the EFMLG for the Quadrilateral meeting and the logistics of the meeting.
11. Other issues – (for discussion/information)	