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M E M O R A N D U M

TO: CFRC Working Group
FROM: Emmanuelle Sebton
DATE: 30 September 2005
RE: Notes of meeting of 15 September 2005

The CFRC Working Group met for the first time on 15 September 2005. The agenda for the meeting is attached, together with a list of participants.

1- Presentation by UK FSA

The Group received a first presentation by the UK FSA on the regulatory background and relevant initiatives undertaken by the FSA in relation to MiFID and CRD. Of note was the planned publication of a MiFID Consultation Paper, including a discussion of the FSA's interpretation of the Article 2(1) exemptions, in November 2005.

The FSA has just established a Commodity Standing Group (COMSG) for the purpose of fostering an exchange of views with commodity firms on capital issues. This group will inform the FSA's position in the EU Commission's working group on commodity firms' capital treatment, expected to meet for the first time in January 2006. It was noted that the Commodity Standing Group intersects with the CFRC Working Group, which will ensure good co-ordination and co-operation between the two groups. The CFRC WG will meet in advance of the Commodity Standing Group, and will discuss relevant COMSG agenda items ahead of the FSA meetings.

2- Presentation by Clifford Chance

A second presentation was given by Chris Bates, partner at Clifford Chance, and consultant on ISDA's European Regulatory Committee. Chris focused on the application of MiFID to commodity firms, notably the expansion of the definition of financial instruments to include a broad range of commodity derivatives, and the relevant Article 2(1) exemptions. His presentation brought to the fore the lack of consistency in European regulators' interpretation of the exemptions: BaFin for instance views the exemptions as "binding". It was not clear whether this view was shared by the FSA. Chris explained that a non-UK firm willing to do wholesale business in the UK did not currently need a license. The lack of a passport simply meant that firms would continue to be faced with the current, heterogeneous, licensing requirements in place in each jurisdiction. Most participants felt this posed major difficulties, which having access to the passport would resolve. They expected the Commission to repeal the exemptions specifically tailored for commodity firms in 2007, in order to make the passport available.

Three participants volunteered to produce a summary of the capital treatment of commodity firms' trading arms/activities in their home jurisdictions [Gaselys, BP, RWE] for the benefit of the group.

3- Terms of reference of the group

The terms of reference were discussed briefly. The objectives laid out for the group were endorsed, with one modification to the calendar of the group's activities. It was felt that it would be difficult for firms to have a fully fledged position ready for December 2005, as substantial quantitative work was needed. The KPMG questionnaire, for instance, would require significant time to complete. Furthermore, there was no particular sense of urgency coming from the Commission. Certain CRD provisions (article 45d of CAD) provide additional breathing space. The deadline for the Working Group's paper was accordingly postponed to June/July 2006.

I have spoken to the EU Commission today, to confirm their schedule. The time line for their work on the capital treatment of commodity firms has not changed. They may set up a new regulatory working group or re-use the existing EU trading book working group for the purpose of conducting this review. They will inform us of the date and agendas for the meetings. They are hoping to be able to approach industry as early as November to solicit presentations by commodity firms.

4- Work programme of the group

The Associations then briefly presented their advocacy activities. The attention of participants was brought to the Commodity Firms' Compendium, copies of which were distributed at the meeting. The Compendium can also be downloaded from the ISDA website.

Finally, the draft list of contents of the CFRC position paper was discussed. It was agreed that each item on the list would be reviewed in turn, starting with the scope of the capital treatment.

The following calendar of meetings was approved:

17 October 2005	Scope of proposed capital treatment First draft : Chris Bates Presentation on US regulatory framework: Jonathan Marsh (Hunton Williams)
November 2005	Market Risk Presentation and first draft : Tobias Strothman
December 2005	Overall calibration of capital charge and credit risk Presentation and first draft : Emmanuelle Sebton and Martin Spanier

Issues not mentioned in the table above will be discussed next year.

The FOA suggested that it would be advisable to keep DGTren abreast of the working group's existence and work, as we may need them at the negotiation stage.

CFRC Working Group

First meeting – 15 September 2005

Agenda:

- 1- Presentation of UK FSA's Commodities Standing Group (objectives, time line, interaction with industry) [UK FSA]
- 2- Presentation of MiFID and discussion of link between MiFID and CRD [Clifford Chance]
- 3- Brief presentation of the Associations' activities in the field of regulatory capital advocacy [Associations] [Background document : Compendium on the Capital Treatment of Commodity Firms in the EU]
- 4- Discussion of Terms of Reference [Background document : draft terms of reference] and draft List of Contents [Background document : draft list of contents]
- 5- AOB and next meeting

C F R C
1st Floor, ISDA, One New Change
Thurs 15 Sept 2005, 2.00-5.00pm
(A=Attend in person, C=Called in)

Name	Company	Attend
Alistair Rapley	Amalgamated Metal Trading Limited	A
Karla Barton	BP	A
Lisa Eygenon	BP	A
Chris Bates	Clifford Chance	A
Tobias Strothman	ConEnergy	A
Alex Eve	ConocoPhillips	A
Emma Culley	ConocoPhillips	A
Nelida Lifac	ConocoPhillips	A
Dirk Eichholz	E.ON Sales & Trading	A
Justin Rowland	EDF Trading	A
Maria Taylor	EDF Trading	A
Anthony Belchambers	FOA	A
Jane Green	FOA	A
Gareth James	FSA	A
Stephen Sie	FSA	A
Arnaud Cruziat	Gaselys	C
Emmanuelle Sebtou	ISDA	A
Gideon Hollis	Koch Metals	A
Liam McCarthy	Koch Metals	C
Joerg Sperling	RWE Trading	A
Karl-Peter Horstmann	RWE Trading	A
Nhuhung Boc	RWE Trading	A
Paul Bromley	Sempra Metals	A
James Blount	Stasco	A
Simon Smith	Stasco	A
Anthony Redstone	Totsa	A
Frederick Baule	Totsa	A