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BY E-MAIL

8 June 2006

To: Mr Vladislav Reznik
Chairman of the Committee on Credit Organisations
and Financial Markets of the State Duma
Moscow
E-mail: reznikvm@duma.gov.ru

Mr Anatoly Aksakov
Deputy Chairman of the Committee on Credit Organisations
and Financial Markets of the State Duma
Moscow
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Mr Sergei Vasiliev
Chairman of the Committee on Financial Markets and Currency
of the Council of Federation
Moscow
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Copy: Mr Pavel Krasheninnikov
Chairman of the Committee on Civil, Arbitrage and Criminal
Legislation of the State Duma
Moscow
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Dear Sirs

Proposed amendment to Article 1062 of the second part of the Civil Code of the Russian Federation

We understand that you are currently considering draft legislation to amend Article 1062 of the second part of the Civil Code of the Russian Federation. We understand that the purpose of the amendment is to clarify that the enforceability of financial and commodity derivatives and

similar contracts is not called into question by Article 1062 of the second part of the Russian Civil Code. We would like to offer some comments on the proposed scope of the amendment, with a view to strengthening the legal certainty it is intended to provide.

We are grateful for the opportunities we have had over the past few years to discuss issues relating to the financial markets in Russia with experts from the Russian State Duma and with the Association of Russian Banks. We commend the excellent work you are doing, and we continue to stand ready to advise from the perspective of the global derivatives markets on ways in which the Russian legal framework for derivatives may be strengthened to enhance the confidence of international financial market participants when dealing with Russian banks and large Russian corporate counterparties, reinforcing the efficiency and integrity of the Russian financial markets.

ISDA is the global trade association representing leading participants in the privately negotiated derivatives industry. ISDA was chartered in 1985, and today has more than 700 member institutions from 50 countries, including Russia. These members include most of the world's major financial institutions that deal in privately negotiated derivatives, as well as many corporations, governmental entities and other end-users that use over-the-counter derivatives to manage efficiently the financial market risks inherent in our business activities. As you know, ISDA documentation is the standard for OTC derivatives transactions globally. A current list of ISDA's members, as well as other information about ISDA and its activities, is available on our website at www.isda.org.

We have had the opportunity to review an English translation of the proposed amendment, a copy of which we attach to this letter as Annex 1 so that you may assess our comments against the translation we have used. Some of the drafting is quite difficult to understand, but this may reflect the translation or a lack of expert familiarity on our part with principles of the Russian Civil Code that may be relevant to interpretation of the proposed amendment.

As in our previous discussions, we defer completely to national legal and regulatory policy experts in Russia as to the appropriateness of the proposed amendment and its relation to other substantive areas of Russian financial and commodity law and regulation. We offer these comments exclusively from an international financial market perspective as respectful suggestions for your consideration.

We have two principal substantive comments and, as noted above, some questions regarding the drafting. Our principal substantive comments both relate to the scope of the amendment. They are:

1. Scope of transactions covered. The proposed amendment does not appear to be wide enough to cover the full range of derivative transactions that Russian banks and Russian corporate counterparties will want to transact in order to manage their financial or commodity price risk. Our experience, having looked at these issues in a wide range of jurisdictions from various legal traditions, strongly suggests that a broad, inclusive and flexible definition of the scope of financial transactions protected from the risk of the anti-gambling statute provides the best protection from legal uncertainty. It also helps to

avoid the need to revisit and amend the legislation as market activity deepens and evolves. In Annex 2 to this letter we have proposed drafting to expand the scope of financial transactions protected by the amendment.

2. Scope of licensed entity requirement. Many countries, when implementing legislation to exempt financial and commodity market activity from anti-gambling rules, have not felt the need to restrict the scope of the exemption so that at least one party is a licensed or regulated institution. The key point is that the policy that underlies anti-gambling rules is not relevant to legitimate investment and risk management activities carried out in the financial and commodity markets. Nonetheless, to the extent that you conclude that this limitation should remain, we strongly believe that it is in the interest of the future stability, efficiency and liquidity of the Russian financial markets that the limitation be clarified to include non-Russian financial institutions. Russian corporate counterparties will strongly benefit from the widest possible choice of financial services, generating greater depth and liquidity in the markets and therefore greater opportunities for all Russian financial market participants, including Russian banks and other Russian financial institutions. In Annex 2 we have proposed some drafting amendments to clarify this point.

In terms of drafting comments:

- (a) It does not seem to be entirely clear what is intended by the phrase “any event governed under this Law”. Does the reference to “Law” simply mean the amendment itself (as opposed to the whole of Article 1062 or some greater part or indeed the whole of the Russian Civil Code? We assume so and have suggested an amendment to clarify this, but we appreciate that this may simply be a question of the translation, and that the reference is clear in Russian.
- (b) Regarding the phrase “the probability of occurrence of which is unknown” (which modifies “any event governed under this Law”), we were not entirely sure whether this is a necessary qualification. Again, this may be a translation issue, but probability can only ever be estimated, and reasonable market participants may differ as to the degree of probability. It is not clear, therefore, what is meant by the probability of something being “unknown”, or in what situations, by contrast, a probability could be said to be known. We have suggested deleting this qualification, simply for the sake of clarity.

We hope that you find these comments helpful. We have attached English and Russian versions of Article 1062 Civil Code with and without ISDA’s comments. We would be very pleased to discuss them further with you.

We have in the past discussed a number of other issues with you relating to the development of the legal framework for Russia’s financial and commodity markets. We refer in this regard to our letter of 15 December 2005 to Mr Oleg Ivanov of the State Duma and Dr Ekaterina Sidorova representing the Association of Russian Banks (which itself refers to earlier discussions and correspondence over the past few years).

In particular, we would be pleased to continue our discussions with you regarding close-out netting legislation and also would be pleased to discuss with you the introduction in Russia of a comprehensive modern legal framework for financial collateral arrangements. As you know, most jurisdictions in the world with developed financial markets have not only introduced close-out netting legislation (where close-out netting was not already available under general principles of law) but have also modernized their legal regimes for financial collateral arrangements (including the member states of the European Union) by the introduction of the European Financial Collateral Arrangements Directive. It is important to the strength, stability, efficiency and liquidity of modern financial markets, both over-the-counter (OTC) and organized exchanges, that financial collateral be available to support trading and to manage credit risk. This can only occur where the local legal framework is sufficiently clear and robust.

We hope that you find these comments helpful. We remain at your disposal for further clarifications. Please keep us up-to-date regarding further amendments to this proposed legislation or any related issues on which you might find our perspective helpful. Should you require any further information, please do not hesitate to contact Peter Werner in London on +44 20 7330 3550 / pwerner@isda.org.

Yours faithfully,

Dr Peter M Werner
Director of Policy
pwerner@isda.org

ANNEX 1

English translation of proposed amendment to Article 1062 – WITHOUT ISDA COMMENTS

Deputies of the State Duma
V.M Reznik, A.G. Aksakov and
Member of the Counsel of the Russian
Federation C. A. Vasiliev

Draft

FEDERAL LAW

On amendments to the Article 1062 of the second part of the Civil Code of the Russian Federation

Section 2 to be added to the Article 1062 of the second part of the Civil Code of the Russian Federation (The Code of Laws of the Russian Federation, 1996, #5, Page 410):

Section 2. Claims arising from the monetary obligations of the party (or parties) involved in transactions that depend on price changes of commodities or securities, exchange rates, level of inflation (or estimates calculated on the basis of these measures or their combinations) or any payments that is dependent on the occurrence or nonoccurrence of any event governed under this Law the probability of occurrence of which is unknown, are not subject the rules of the present article and should be granted judicial protection in the case when at least one of the parties is a legal entity licensed to conduct banking operations or activity on securities markets, or licensed to conduct operations on organized exchanges for transactions on organized exchanges. Claims of physical entities (individuals) related to the transactions specified in this section should be granted judicial protection only in the case when such transactions are conducted on organized exchanges.

President
Russian Federation
V. Putin

ANNEX 2

English translation of proposed amendment to Article 1062 – WITH ISDA COMMENTS

Deputies of the State Duma
V.M Reznik, A.G. Aksakov and
Member of the Counsel of the Russian
Federation C. A. Vasiliev

Draft

FEDERAL LAW

On amendments to the Article 1062 of the second part of the Civil Code of the Russian Federation

Section 2 to be added to the Article 1062 of the second part of the Civil Code of the Russian Federation (The Code of Laws of the Russian Federation, 1996, #5, Page 410):

Section 2. Claims arising from the monetary obligations of ~~the party (or parties)~~ involved in transactions that depend on ~~price~~-changes in the prices of ~~securities or~~ commodities ~~or securities~~, interest rates, currency exchange rates, ~~level of inflation (or estimates calculated on the basis of these measures or their combinations) or any payments~~levels of inflation or credit risk, levels of financial or commodity indices or similar transactions or combinations of such transactions transacted in the financial or commodity markets whether over-the-counter or on organized exchanges or any payment obligation under such a transaction that is dependent on the occurrence or ~~nonoccurrence of any event governed under this Law the probability of occurrence of which is unknown~~non-occurrence of any change in a price, rate, or level of a type referred to above are not subject to the rules of the present article and should be granted judicial protection in the case when at least one of the parties is a legal entity licensed to conduct banking operations or activity on securities or commodities markets, or licensed to conduct operations on organized exchanges for transactions on organized exchanges, including any such legal entity licensed under the laws of a foreign jurisdiction or an international financial institution. Claims of physical entities (individuals) related to the transactions specified in this section should be granted judicial protection only in the case when such transactions are conducted on organized exchanges.

President
Russian Federation
V. Putin

ПРИЛОЖЕНИЕ 2

Перевод на английский язык предлагаемого изменения к статье 1062 с комментариями ISDA

Вносимого депутатами
Государственной Думы
В.М.Резником, А.Г.Аксаковым и
членом Совета Федерации
С.А.Васильевым

Проект

ФЕДЕРАЛЬНЫЙ ЗАКОН

О внесении изменения в статью 1062 части второй Гражданского кодекса Российской Федерации

Статью 1062 части второй Гражданского кодекса Российской Федерации (Собрание законодательства Российской Федерации, 1996, № 5, ст. 410) дополнить пунктом 2 в следующей редакции:

Часть вторая На требования, связанные с участием в сделках, предусматривающих обязанность стороны (сторон) уплачивать денежные суммы в зависимости от изменения цен на ценные бумаги или товары или ценные бумаги, процентных ставок, курса валют, уровня инфляции (или значений, рассчитываемых на основании указанных показателей или их совокупности), или любых компенсируемых уровней инфляции или кредитного риска, уровней финансовых или товарных показателей, или в аналогичных сделках или совокупности таких сделок, проводимых на финансовых или товарных рынках вне биржи либо на бирже, или с любым платежным обязательством по подобной сделке, которое зависит от возникновения либо от невозникновения иного предусмотренного законом обстоятельства, относительно которого неизвестно наступит оно или нет, не возникновения иного изменения цен, ставок или уровней, подобных вышеуказанным, правила настоящей статьи не распространяются, и указанные требования подлежат судебной защите, если хотя бы одной из сторон по сделке является юридическое лицо, получившее лицензию на осуществление банковских операций или операций на рынке ценных бумаг либо товарном рынке, а по сделкам, заключенным на бирже – юридическое лицо, получившее лицензию, на основании которой возможно заключение сделок на бирже в соответствии с законами иностранной юрисдикции, или международное финансовое учреждение. Требования физических лиц (граждан), связанные с участием в указанных в настоящей части сделках, подлежат судебной защите только при условии заключения таких сделок на бирже.

Президент
Российской Федерации
В.Путин

ПРИЛОЖЕНИЕ 2

*Перевод предлагаемого изменения к статье 1062 на английский язык с
комментариями ISDA*

Вносимого депутатами
Государственной Думы
В.М.Резником, А.Г.Аксаковым и
членом Совета Федерации
С.А.Васильевым

Проект

ФЕДЕРАЛЬНЫЙ ЗАКОН

**О внесении изменения в статью 1062 части второй Гражданского кодекса Российской
Федерации**

Статью 1062 части второй Гражданского кодекса Российской Федерации
(Собрание законодательства Российской Федерации, 1996, № 5, ст. 410) дополнить
пунктом 2 в следующей редакции:

Часть вторая На требования, связанные с участием в сделках, предусматривающих
обязанность ~~сторон (сторон)~~ уплачивать денежные суммы в зависимости от изменения
цен на ценные бумаги или товары или ценные бумаги, процентных ставок, валютного
обменного курса, уровня инфляции (или значений, рассчитываемых на основании
указанных показателей или их совокупности), или любых компенсируемых уровней
инфляции или кредитного риска, уровней финансовых или товарных показателей, или в
аналогичных сделках или совокупности таких сделок, проводимых на финансовых или
товарных рынках вне биржи либо на бирже, или с любым платежным обязательством по
подобной сделке, которое зависит от возникновения либо от невозникновения иного
предусмотренного законом обстоятельства, относительно которого неизвестно наступит
оно или нет, невозникновения иного изменения цен, ставок или уровней, подобных
вышеуказанным, правила настоящей статьи не распространяются, и указанные требования
подлежат судебной защите, если хотя бы одной из сторон по сделке является юридическое
лицо, получившее лицензию на осуществление банковских операций или операций на
рынке ценных бумаг либо товарном рынке, а по сделкам, заключенным на бирже –
юридическое лицо, получившее лицензию, на основании которой возможно заключение
сделок на бирже в соответствии с законами иностранной юрисдикции, или
международное финансовое учреждение. Требования физических лиц (граждан),
связанные с участием в указанных в настоящей части сделках, подлежат судебной защите
только при условии заключения таких сделок на бирже.

Президент

Российской Федерации
В.Путин