

**Explanatory Note for  
Amendment to Section 1.2 of IFXCO**

In the course of a review by the FMLG of the master agreements sponsored by the Foreign Exchange Committee (the “FXC”), it came to our attention that the International Foreign Exchange and Currency Option Master Agreement (“IFXCO”), published on June 1, 2005, does not have a clause making it clear that the parties to a transaction intend to be legally bound from the moment they agree to the terms of the transaction, orally or otherwise. We believe that such a clause expresses market practice. In addition, in those cases when IFXCO is governed by New York law, the clause might be useful to counter any argument that the evidence of the transaction must be in writing. IFXCO therefore has been amended, effective December 4, 2006, to include such a clause.

New York General Obligations Law 5-701(b)(1)(b) makes it clear that such a clause will make inapplicable any requirement that might otherwise exist that an agreement must be in writing under Section 5-701(a) of the General Obligations Law (the “New York Statute of Frauds”). An agreement whose terms cannot be performed within one year is an example of a type of agreement covered by the New York Statute of Frauds writing requirement.

The clause is added as a new sentence at the end of Section 1.2 of IFXCO, and it clarifies the intent of the drafters of the June 2005 version of IFXCO. This intent is evidenced in the language of Section 1.2 preceding the new sentence, which provides that the “Agreement” between the parties includes the “terms agreed” between them. This language is similar to that in the FEOMA/IFEMA/ICOM series of master agreements, and the Guides to those master agreements make it clear that such terms ordinarily will be agreed to orally.

Note that there are alternative bases for removing an agreement from the writing requirement of the New York Statute of Frauds. Section 5-701(b)(1)(a) of the Statute of Frauds provides that the writing requirement also will not apply if the agreement is a “qualified financial contract” and there is “sufficient evidence” of the agreement. Foreign exchange and currency option transactions are included in the definition of a qualified financial contract, and sufficient evidence will exist, for example, when (1) there is a tape recording of the relevant conversations, or (2) a confirmation has been delivered within five business days of the trade date of a transaction, and no objection has been received by the sender within three business days of that delivery.

The IFXCO Adherence Agreement provides that amendments to the June 2005 version of IFXCO are captured by the Adherence Agreement as of its effective date. Accordingly, the December 2006 version of IFXCO would be captured by an Adherence Agreement executed on or after December 4, 2006. Parties that executed an Adherence

Agreement prior to December 4, 2006, and that wish to adopt the revised version of IFXCO, should amend their Adherence Agreement to specify that the December 4, 2006 version of IFXCO is incorporated by the Adherence Agreement.