

COMMITTEE LETTER

Commenting on the Practice of Issuing Authorization Letters

February 23, 2004

Dear Market Participant:

Member firms of the Foreign Exchange Committee have recently noted that a number of participants in the foreign exchange market are forwarding to dealing firms documentation that includes a number of investment limitations and restrictions affecting that participant's ability to trade and invest. The limitations in this documentation may take a number of forms including, but not limited to, restrictions on particular employees with respect to currency, amounts that may be traded, and type of instrument. This documentation may or may not require that the receiving firm indicate its acceptance of these limitations by returning a signed acknowledgment.

The Committee believes that these attempts to shift to dealing counterparties the burden for monitoring and maintaining compliance with internal procedures and limitations are not consistent with Committee guidance with respect to the responsibilities of wholesale market participants. The Committee has consistently taken the position that wholesale foreign exchange market participants are responsible for ensuring compliance with their own internal policies and procedures. Most notably, the Committee in its 1995 *Principles and Practices for Wholesale Financial Market Transactions* noted that "[A] participant should maintain and enforce internal and compliance procedures designed so that its Transactions are conducted in accordance with applicable legal and regulatory requirements, internal policies, and any specific requirements contained in any agreements applicable to its Transactions." (*Principles and Practices* is available at www.newyorkfed.org/fxc/annualreports/ar1995/fixar9518.html.) Parties may agree that one counterparty will, for compensation, offer to monitor a counterparty's investment limits and restrictions. But unilateral attempts to transfer responsibility for adherence to such procedures are not consistent with best practice and, as a matter of law, raise serious issues regarding enforceability.

In the context of electronic trading, the Committee also feels that it is impracticable for participants to attempt to impose the burden of monitoring these limitations on dealing counterparties. The rules generally governing the electronic trading of foreign exchange



allow a dealing counterparty to treat orders received through authenticated codes as per se authorized by the participant that has been assigned such codes.

In sum, the Committee believes that letters or other documentation that purport unilaterally to shift the burden of enforcing compliance with internal policies and limitations to a market counterparty, or that may have that effect, are not consistent with best practices in the wholesale foreign exchange market. A market participant may wish to reply to such letters or documentation in the event that such participant has a policy, and wishes to assert that policy, of not agreeing to such letters. These responses may take the form of a communication in which the participant affirms that its receipt of such a letter does not impose any duty on it to monitor compliance with the restrictions set forth in the letter or impose any liability if it fails to do so.

Very truly yours,

Mark Snyder
Chair
Foreign Exchange Committee

