

BANKING AND FINANCE COMMISSION

BRUSSELS, 30 November 1992

CIRCULAR B 92/5 TO BANKS AND S 92/4 TO SAVINGS BANKS

Dear Sir or Madam,

The rules relating to the internal organization and the monitoring of credit institutions' transactions on the money and foreign exchange markets (cf. the Banking and Finance Commission circular of 17 April 1990) state inter alia that transactions must be concluded exclusively on terms which are representative of the market's situation at the time (section 3.4.2.1., second paragraph).

In addition, those instructions state that this representativity rule must also be observed in the case of extensions of contracts: an extension must not be effected on the basis of the historic cost.

Credit institutions must strictly comply with this instruction, not only for maturing forward foreign exchange transactions, but also for extensions of contracts which - on the basis of an agreement between the contracting parties - are carried out before the maturity date.

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The Commission seizes this opportunity to make some changes in the above-mentioned rules.

These changes concern inter alia the rules on the relations with intermediaries and counterparties (section 3.4.2.3. of the rules). For one thing, reference is now made to the "Code of Conduct" of the Association Cambiste Internationale. For another, the Banking and Finance Commission wishes to draw attention to the legislation on foreign exchange and deposit broking.

The adapted text is annexed to this circular. The amended parts are indicated.

I would like to draw your attention particularly to the following provisions, which will be followed up actively by the Commission in the framework of supervision of both foreign exchange and deposit broking companies and credit institutions:

- the Law of 4 December 1990 on financial transactions and financial markets:
 - Article 203: foreign exchange and deposit broking companies (as well as their management or staff) shall be prohibited from receiving, or giving, in any form or capacity whatsoever, any remuneration or benefit in relation to broking transactions concluded or to be concluded, other than the broking fee proper;
- the Royal Decree of 25 November 1991 on foreign exchange and deposit broking:
 - Article 7: obligation for foreign exchange and deposit broking companies to sign a written agreement with the client before they commence performing broking services;
 - Article 8: foreign exchange and deposit broking companies may not conclude any transaction at rates not corresponding to those of the market;
 - Article 10: the broking fee may not be adjusted in the course of the transaction; nor may it be linked directly or indirectly to the rates of the transactions;
 - Article 16: foreign exchange and deposit broking companies may not set off, either directly or indirectly, any losses for which they are liable to their clients, particularly not by promises regarding further transactions.

I think it would be advisable to bring these legal provisions - and the other provisions of the Royal Decree of 25 November 1991 - to the particular attention of any person who, in your institution, is involved in transactions on the money and foreign exchange markets - both at the level of the operational line (dealers, head of the dealing room, senior management responsible for activities on the money and foreign exchange markets) and of the processing and monitoring line (back office, etc.) - and of the persons involved in the internal/audit.

Yours sincerely,

J.-L. Duplat

Enclosure: one

Chairman

Annexe to circular B 92/5 to banks and
S 92/4 to savings banks

RULES RELATING TO THE INTERNAL ORGANIZATION AND THE
MONITORING OF CREDIT INSTITUTIONS' TRANSACTIONS ON THE MONEY
AND FOREIGN EXCHANGE MARKETS

MODIFIED VERSION OF SECTION 3.4.2.3.

3.4.2.3. Rules concerning relations with
intermediaries and counterparties

The credit institution's highest management body shall ensure that the dealers are subject to a rigorous code of conduct as regards their relations with intermediaries (e.g. foreign exchange brokers) and counterparties.

The "Code of Conduct" drawn up by the Association Cambiste Internationale may serve as guideline.

In addition, the code of conduct to which dealers are subject must take into account the provisions of Title II ("Foreign exchange and deposit broking") of Book VI of the Law of 4 December 1990 on financial transactions and financial markets, and the provisions of the Royal Decree of 25 November 1991 on foreign exchange and deposit broking. With this respect, particular attention should be paid to the ban on remuneration or benefits other than the broking fee proper (Article 203 of the Law), the obligation to sign a written agreement prior to performing broking services (Article 7 of the Royal Decree), the application of rates corresponding to those of the market (Article 8 of the Royal Decree), the fact that the broking fee may not be adjusted in the course of the transaction, nor be linked to the rates of the transactions (Article 10 of the Royal Decree), the ban on offsetting losses, in particular by promises regarding further transactions (this refers inter alia to "points banking") (Article 16 of the Royal Decree).

It should be noted that these provisions take precedence over the code of conduct in matters on which the code of conduct is more restrictive.

The code of conduct must, in particular, be designed to safeguard the necessary independence and neutrality between the dealers and the intermediaries or counterparties (prohibition on incentives for the dealer to give preference to working with a particular broker or counterparty, and vice versa; prohibition on the dealer receiving commission or any direct or indirect benefit from brokers or counterparties, etc).

Dealers shall notify the management immediately an intermediary or counterparty attempts to breach such codes of conduct.

"Pass-through transactions" (i.e. transactions where a credit institution stands as a counterparty between two other institutions which, for example, want to avoid exceeding their internally imposed limits per counterparty) may only be concluded in exceptional circumstances and subject to compliance with an adequate management-briefing procedure.

The code of conduct must also prevent relations with foreign exchange brokers from resulting in a situation where (part of) the dealers' activities can no longer be monitored. Thus, for example, no transaction may be accepted where the broker only provides the identity of the counterparty after an abnormally long delay.
