



Edouard Vieillefond  
Secrétaire général adjoint  
Direction de la régulation et  
des Affaires internationales  
Autorité des marchés financiers  
17 place de la Bourse  
75082 PARIS Cedex 2

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## Electronic trade confirmations

Dear Mr Vieillefond

The Council of the Association des Marchés de Taux en Euro (AMTE) (the "**AMTE Council**") operates under the auspices of the International Capital Market Association ("**ICMA**") to contribute to the development and effective operation of the euro-denominated fixed income and derivatives markets. It comprises and represents the interests of 40 of the key financial institutions in these markets.

This letter has been prepared on behalf of the AMTE Working Group on Electronic Trade Confirmations (the "**Working Group**"), which is seeking to put in place an industry best practice for OTC securities trade confirmations. For the reasons explained in this letter, the Working Group strongly believes that the use of electronic and standardised messaging should be extended to all OTC securities transactions, except when the administrative burden imposed by such system is unacceptable (e.g. for some low volume users).

## Benefits of an electronic system

Trade confirmation is the process by which the terms of an executed trade are verified and recorded, either by directly involved market participants or by a central entity<sup>1</sup>. The confirmation must be in writing, subject to the use of any alternative electronic methods permitted by law.

Greater use of standards and automated procedures such as electronic messaging for trade confirmations and electronic confirmation platforms will enhance the standardisation of OTC securities contracts by increasing process uniformity, which in turn will produce efficiency gains for the market. In particular, benefits derive from the reduced uncertainty, reduced risk of unconfirmed trades and the facilitation of full industry straight-through-processing (STP) as a result of automation. Market participants will also be able to reuse the messaging infrastructures to which they are already a party (e.g. SWIFT), thus producing further efficiency gains through reduced costs and improved STP.

<sup>1</sup> ECB Glossary (<http://www.ecb.int/home/glossary/html/glossc.en.html>)

Increased standardisation can in turn facilitate risk management processes and enhance the usefulness of pre and post-trade information. In particular, standardisation through automation contributes to operational risk reduction by minimising the need for manual intervention as well as reducing the settlement risk that can arise between trade and settlement dates<sup>2</sup>.

Standardisation is not only an end in itself, but also a means of facilitating the trade of OTC securities on organised markets (primarily, exchanges and electronic trading platforms), which is widely seen as a key method of strengthening OTC securities markets<sup>3</sup> following the recent financial turmoil. Organised trading can deliver a number of benefits in these markets, including increasing transparency and liquidity, ensuring efficiency and risk reduction and providing easy access for market participants.

### **Legal validity of electronic trade confirmations**

Electronic trade confirmations are recognised as valid and legally binding contractual agreements under the laws of various jurisdictions. The following list is not intended to be exhaustive but rather provides an indication of the general validity of electronic trade confirmations in many of the key global OTC securities markets.

1. EU – a confirmation will be valid under the laws of a Member State if it has been validly concluded under the laws chosen by the parties to the confirmation, or in the absence of an express choice, under the laws of the country where the party required to effect the characteristic performance of the contract has his habitual residence<sup>4</sup>.

We have the benefit of advice from local legal counsel indicating that electronic trade confirmations are valid under the laws of the following Member States: England, Luxembourg, Netherlands, Germany, Spain, France. However, to ensure legal validity (particularly in England, Spain and France), it is advisable that the confirmation agreement includes an express statement that the parties consent to and accept the validity of electronic signature.

2. US – Under federal<sup>5</sup> and state law, a signature, contract, or other record relating to any transaction affecting interstate or foreign commerce may not be denied legal validity solely because it is in electronic form.
3. Japan – An electronic confirmation may replace physical delivery of a written confirmation where the counterparty consents<sup>6</sup>.

<sup>2</sup> See CESR Consultation Paper "Standardisation and exchange trading of OTC Derivatives" Ref: CESR/10-610

<sup>3</sup> As identified by the G20 finance ministers at the 2009 Summit, London , 25 September 2009.

<sup>4</sup> Regulation No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (see Article 11(2))

<sup>5</sup> Electronic Signatures in Global Electronic Commerce Act 2000





### Working Group's proposal

In light of the evidence discussed in this letter supporting the use of an electronic process for trade confirmations, the Working Group has proposed that ICMA's rules and recommendations for the secondary market be amended to include the following new recommendation:

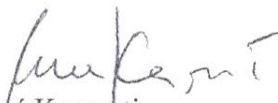
"Where a party has agreed with its counterparty, or is otherwise under an obligation to confirm a transaction which is subject to the Association's rules and recommendations to its counterparty in writing, it is recommended that, subject to applicable laws and regulations, such confirmation be made through the electronic system agreed between the parties to the transaction or, in the absence of a respective agreement, such other electronic means as the party who is under an obligation to confirm the transaction may choose provided the confirmation is capable of being promptly and accurately reproduced in hard copy form".

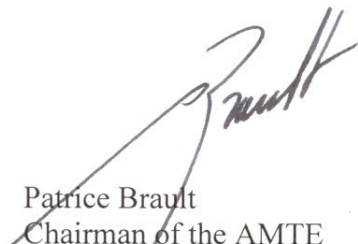
The Working Group fully appreciates the concerns of the Autorité des Marchés Financiers and other governments relating to the automation of trade confirmations, particularly with regard to issues of confidentiality. However, we believe that these concerns are not insurmountable and moreover, are outweighed by the potentially immense benefits of automation, as described in this letter.

Clifford Chance LLP has acted as legal counsel to the AMTE Council in the preparation of this letter.

If you have any comments on the letter, we would be happy to discuss it with you. We are also sending you the letter in your capacity as CESR's post-trade correspondent, and we would be grateful to discuss with you to whom we should send the letter among the regulators of other Member States.

Yours sincerely,

  
René Karsenti  
President of ICMA and  
Chairman of the AMTE Council

  
Patrice Brault  
Chairman of the AMTE  
Electronic Trade Confirmation Working Group

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<sup>6</sup> Financial Instruments and Exchange Act