

FIELD FISHER WATERHOUSE

Our ref: GEW/TJC/2949500 v1

RECEIVED
FEDERAL RESERVE SYSTEM
SEP 10 11 09 54
OFFICE OF THE COMPTROLLER OF THE CURRENCY



1189

To the Agencies and Persons Named in Appendix A

ATTACHMENT AVAILABLE UPON REQUEST IN THE SECRETARY'S OFFICE

3 September 2004

Dear Sirs

Proposed Interagency Statement (the "Statement") on Sound Practices Regarding Complex Structured Finance Activities (69 Fed. Reg. 28980 (May 19, 2004))
Office of the Comptroller of the Currency Docket No. 04-12
Federal Reserve System Docket No. OP-1189
Office of Thrift Supervision No. 2004-27
Securities and Exchange Commission Release No. 34-496695; File No. S7-22-04

I am a capital markets and derivatives lawyer practicing out the offices of City of London law firm Field Fisher Waterhouse. I am also author of "Mastering Finance-linked Swaps", published by the Financial Times in August 2003, the first book in the market that addresses the legal, regulatory and documentation issues that arise in relation to interest rate and other derivatives that are linked to specific debt, debt capital market (including repackagings and securitisations) and analogous financings (such derivatives being referred to as "finance-linked swaps", "structured swaps", "structured finance swaps" and/or "micro-hedges"). I enclose a complimentary copy of the book for your attention.

Although I am aware that the deadline for comments relating to the Statement passed on July 19, 2004, I am writing to you nevertheless since much of what I say in the book supports various aspects of the Statement and may assist you in addressing objections to/comments on the Statement. While the book was written with the UK debt markets in mind, much of its content is applicable to the US, Asian and Western European markets. There is, unfortunately, no substitute for reading it but I would encourage you to look in particular at Chapters 1, 2, 5, 9 and (especially) 10 and at the debt capital markets transaction described on pp 148-150.

In general, the book highlights concerns (that are independently raised in and endorsed by the Statement) relating to the following:

- the legality and appropriateness of complex products

- the widespread use of complex products (even at the small-ticket end of the transaction spectrum)
- the reputational risks associated with such use
- various shortcomings in the documentation of complex product transactions and over-reliance on standard-form documentation to document non-standard products
- a general lack of awareness/literacy (particularly among certain sectors within the professional/financial community) of/around the legal, regulatory and documentation issues that arise in the context of complex product transactions
- inadequate training, resource and specialised documentation capability/functionality within many institutions.

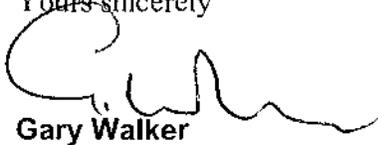
It is worth adding that the book has received critical claim in the London market and that many banks have come out in support of what it says, admitting - at least privately - that the concerns raised are legitimate. Some banks, indeed, now have the issues under formal review at the policy/legal/documentation level. By way of contrast, it is also worth mentioning that, in December 2003, the European Documentation Committee of the International Swaps and Derivatives Association, Inc. ("ISDA") declined, without giving a reason, to act upon a suggestion that a formal working committee be established to address the issues raised in the book. The conclusion must be that while there is a degree of industry/public resistance, privately the book is well and readily accepted.

I should like to conclude by saying a few words about the comment letter, dated July 19, 2004, of ISDA and others to the Statement. In particular, certain assertions made in that comment letter run counter to what is said in the book (and, necessarily, the Statement itself):

- that complex product transactions are in the minority (the book argues that it is routine transactions that are in the minority)
- that routine, high volume transactions of a less complex nature do not entail heightened legal or reputational risk (the book argues that even small-ticket, vanilla transactions can and do carry heightened legal and reputational risk)
- that the costs of changing policy and procedure would be enormous (the book argues that such costs would be more than offset by the benefits)
- that institutions understand, recognise and fulfil their additional contractual obligations to their customers/clients when selling them complex structured products (the book agrees that this is true at the very top end of the market but argues that precisely the opposite is the case for the rest of the market).

I hope the foregoing is of interest and use. I am very happy to discuss further with you at your convenience, whether in correspondence, by telephone or in meeting. In any event, I would welcome your comments on the book.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gary Walker', with a large, stylized initial 'G'.

Gary Walker

Partner

Direct Line: 020 7861 4189

Email: gary.walker@fw.com

Appendix A

Department of the Treasury
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Attention: Public Reference Room, Mail Stop 1-5

Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

Attention: Regulation Comments, Chief Counsel's Office
No. 2004-27

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Attention: Jennifer J. Johnson, Secretary

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Attention: Robert E. Feldman, Executive Secretary
Comments/OES

Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

Attention: Jonathan G. Katz, Secretary