

Finance

Derivatives and Structured Finance



“ ...this UK outfit is impressively well established in the derivatives marketplace...”

Chambers UK, 2008

Our Derivatives Practice

Derivatives work has been a central part of our Finance Practice for almost 20 years. We advise on fixed income, FX, inflation, equity, credit and commodity (including precious and base metals, energy and weather) derivatives, as well as in relation to on-exchange and securitised transactions. We act for banks, swap dealers and end-users, including corporates, asset managers and pension and hedge funds, so are familiar with both the needs and policy requirements of the big players as well as the sensitivities of the smaller financial institutions and the end-user base. We work on specific transactions and also undertake project-based work. We additionally advise on policy, tax and regulatory issues (often, for example, preparing manuals) and provide or review standard documentation and templates, including long-form Confirmations for exotic,

multi-layered and tax-driven transactions. We can provide derivatives litigation and dispute resolution support where required.

The above is additional to the usual negotiation of ISDA Master Agreements (1992 and 2002), related Credit Support Annexes, repo and stock-lending agreements etc., on which we regularly advise a wide range of institutional and non-institutional clients.

We are members of ISDA and the FOA. Several of our lawyers are recognised as leaders in derivatives and are contributors to well-regarded books and other publications. We are recognised for our work in the field by the leading legal directories.

Our recent work reflects the changing trends in the derivatives market. Our flexibility and

“ ...clients praise the Derivatives & Structured Finance team’s creativity and responsiveness...”

The Legal 500, 2008

knowledge of the industry means that we can meet our clients needs however demanding and complex. Select examples of the areas on which we have been active recently include:

Credit Derivatives

Reflecting the continued expansion of the use of credit derivatives, we have not just been involved in the use of credit derivatives in structured finance, but in respect of other areas including credit linked notes issuance, tranching and indexed credit default swaps, credit default swaps on ABS, total return swaps on emerging market debt and loan-only credit default swaps.

Equity Derivatives

Increasing numbers of derivatives users are now looking at equity derivatives as a way of synthetically taking a position in equity securities without the need actually to hold equities. We advised a number of asset managers and other end-users on the issues arising from holding synthetic positions in equities, and the documentation solutions to these. We have also advised investment banks and broker-dealers who are offering equity derivative products to their customers, including by way of collateral enhancement for finance raised on equity portfolios.

Collateral and Credit Support

We acted for asset and investment managers looking to outsource back office functions to the bigger investment banks who have the benefit of more sophisticated systems for work areas such as collateral management. At a more general level, we advised clients in connection with collateral and netting issues and providing analyses for various jurisdictions in respect of methods of covering exposure.

Netting

Many regulated institutions are seeking to maximise the number of counterparties where they can report their exposure on a net basis. We have recently completed projects for two international banks: the first, to review standard and specially-commissioned netting opinions for ISDA Master Agreements, CSAs, GMRA and GMSLAs in a number of jurisdictions; the second to produce summaries of all ICMA-published netting opinions on the GMRA. In addition, we regularly are asked to commission netting opinions from jurisdictions not covered by the standard opinions (in Asia, Africa, Latin America) and to issue netting opinions on English entities outside the scope of the standard netting opinions (such as universities).

Regulated Funds

With the implementation of UCITS III, European retail funds are now able to invest and trade in derivatives, subject to certain regulatory restrictions. We have advised a number of managers of UCITS III funds on both the regulatory framework for derivatives trading and on the documentation solutions for complying with the FSA regulations. We have also advised investment banks on the specific provisions to be included in derivatives confirmations and master agreements for these types of entity.

Liability Driven Investments (LDI)

As the need for matching liabilities falls increasingly at the feet of investors, liability-driven investment has blossomed. In particular, as pension fund trustees have become more familiar with LDI, schemes are increasingly considering the use of swaps (particularly long dated interest rate and inflation swaps) within LDI solutions. This has led to increased instructions not only from the end users of these products but also from banks who need specialist advice for new types of counterparty.

Repos and Stocklending

We advise investment banks, broker-dealers and hedge funds on their existing repo and stocklending activities and documentation, including committed facilities, tri-partite and agency structures and repos on loan portfolios.

Prime Brokerage

We advise investment banks, broker-dealers and hedge funds on their repo, stocklending, prime brokerage, give-up and cross margining activities and documentation.

Leverage Finance

Hedge funds are gearing up. They are using increasingly sophisticated structures in order to use their existing securities to raise finance and leverage their investment activities. We have advised clients on leverage on portfolios of hedge fund investments through the use of structured equity options. The portfolio may be dynamic and

the issues relating to perfection of security are, accordingly, complex, especially in the case of multiple, non-syndicated leverage lenders.

Emerging Markets

As the use of derivatives and similar instruments continues to spread, we are increasingly involved in transactions where either the underlying and/or one or more parties is based in an emerging market. Recent examples include: a total return swap on an Angolan-issued bonds; a total return swap on Turkish equities; a credit-linked deposit referencing a Brazilian Sovereign entity.

Novations

On the back of work we have done on this area for a global investment bank over the past couple of years, we continue to receive instructions from banks on intra-group transfers of their businesses. In addition to regulatory issues, this work often raises significant issues relating to the novation of master agreements and individual transactions, as well as netting and collateral.

Commodities

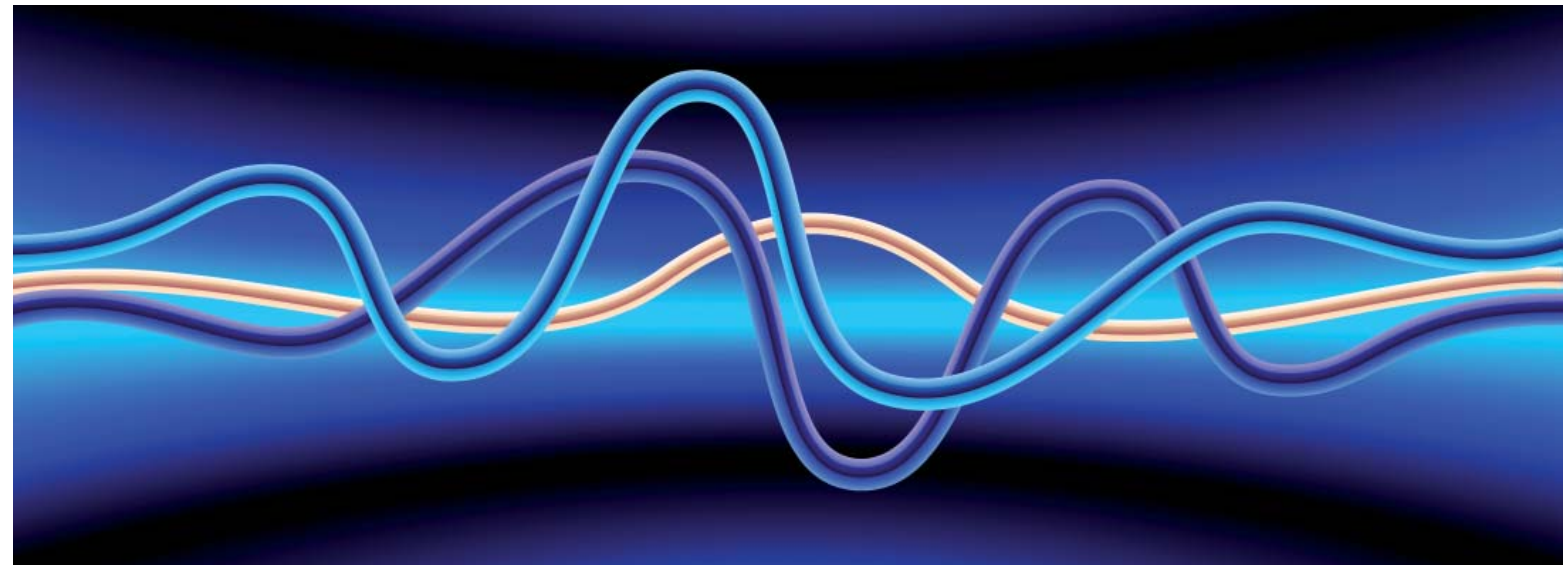
A booming market globally. We advise hedge fund managers, traditional fund managers and brokers on physical and cash settled transactions in bullion, energy and other commodities. We recently advised a FTSE 250 company on the purchase of weather protection through a cold-weather put.

Exchange Traded Derivatives

We also advise broker-dealers and clearing and other members of the London Metals Exchange and LIFFE on exchange traded transactions, documentation and regulation, including margining issues.

Real Estate

We advised a FTSE 100 pension fund on one of the first "new era" IPD-linked total return swaps and a global investment bank on legal, tax and documentation requirements for entering into this new and growing market in the UK.



Our Structured Finance Practice

The structured finance practice has developed significantly over recent years, originally on the back of our reputation in derivatives. Given the increasing use made of derivatives products as components of such transactions this is not surprising. Structured finance work has also expanded into other areas such as liquidity, credit enhancement, interest rate protection and GICs in more traditional securitisations.

In addition we continue to advise on EMTN programmes, CP programmes, CDs and other traditional debt capital market transactions.

Residential Mortgage Backed Securities

Over the last year alone we have worked on over 15 UK prime and sub-prime RMBS transactions, acting for liquidity providers, swap providers and GIC providers.

Commercial Mortgage Backed Securities

We have worked on even more CMBS transactions, again, primarily for the liquidity provider. These include UK, pan-Euro, single loan and multi-loan – and more recently synthetic – transactions.

CDOs and SIVs

We have been involved in some of the more recent and innovative CDOs into which liquidity is now required due to the flexibility required by

asset managers who want not only synthetic as well as cash buckets but also multi-currency and revolving classes of Notes and portfolio hedging of asset and liability mismatches. We have also advised on putting liquidity into Structured Investment Vehicles (SIVs) and SIV-Lites. We also advise investors in delay draw notes in cash flow CDOs.

Other ABS

We have been involved in various aspects of securitisations of IP rights/royalties, lease receivables and German ground lease payments (one of only two to date). Not only do we advise participants in these transactions but we also issue the UK tax opinions where required on transactions on which we may not be a main advisor.

Asset Backed Commercial Paper

We have been involved in a number of European, US and Canadian ABCP issuances, often advising the provider of direct or indirect liquidity – which can take any number of forms, including 'traditional' liquidity, risk participation, sub-participation and repo.

CPPI

We have advised investors and asset managers in principal protected investments to synthesise the return (using a hybrid equity swap transaction) on a bespoke index created by the investor as well as an investment bank on structuring an EMTN issuance as CPPI.

“...Guy Usher is technically excellent and always up to date on market practice...”

Chambers UK, 2008

Repackagings

We frequently advise various hedge funds, traditional asset managers and other institutional investors on the repackaging of emerging markets equity, private equity and debt, including leveraged loan tranches.

EMTN Programmes

We have advised on numerous EMTN programmes for issuers and on structured EMTNs under them, including Nikkei and S&P-linked, step-up, step-down, callable, deliverable and fixed to floating Notes issued under them.

About Field Fisher Waterhouse LLP

Field Fisher Waterhouse LLP is a full service European law firm with offices in Brussels, Hamburg, London and Paris. In addition to our European offices, we have exclusive relationships with Spanish firm Jiménez de Parga and Italian firm La Scala. We also have strong affiliations with firms in the Czech Republic, Hungary and Poland.

Our reach means we attract a broad range of clients throughout Europe, Asia and the US. We advise our international clients on domestic and EU law and have extensive experience advising on multi-jurisdictional matters.

With more than 110 partners and over 220 other lawyers, we assist a wide range of international clients, advising across a full range of legal issues. Our main areas of practice are corporate and commercial, banking and finance, IP and technology, regulatory and real estate. We also have particular expertise in competition & EU law, dispute resolution, employment, pensions and tax.

Our Finance Practice

We have an unusually wide ranging and well regarded Finance Practice for a firm of our size. *The Legal 500*, the leading guide to UK law firms, acknowledges us as having particular expertise in asset finance and leasing, bank lending, derivatives and structured finance, investment funds, financial services and tax.

Our finance practice encompasses:

- acquisition finance
- property finance
- trade related credits and guarantee, bonding and letter of credit facilities
- export credit facilities
- finance leasing
- ship, aircraft and other asset and project financing
- Islamic funding
- electronic trading platforms and payment systems
- bank reorganisations and mergers
- swaps, options, commodity, equity, credit and other derivatives
- repos and stocklending
- securitisation – RMBS and CMBS
- structured finance – ABCP and CDOs
- structured and derivative embedded notes
- commercial paper, medium term notes and other eurobond offerings
- taxation of financial instruments
- investment funds and products
- financial services regulation

“...Edward Miller’s advice on netting and collateral is much sought after...”

The Legal 500, 2008

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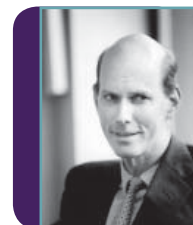
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