

## THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK MELLON  
BROWN BROTHERS HARRIMAN  
CITIBANK, N.A.  
DEUTSCHE BANK  
HSBC SECURITIES SERVICES  
J.P. MORGAN  
NORTHERN TRUST  
RBC DEXIA INVESTOR SERVICES  
SKANDINAVISKA ENSKILDA BANKEN  
STANDARD CHARTERED BANK  
STATE STREET BANK AND TRUST COMPANY

### COUNSEL AND SECRETARIAT TO THE ASSOCIATION:

#### BAKER & MCKENZIE LLP

EUROPE  
ATT: ARUN SRIVASTAVA  
100 NEW BRIDGE STREET  
LONDON EC4V 6JA, ENGLAND  
INT'L TEL: 44 20 7919 1000

GLOBAL  
ATT: ROBIN TRUESDALE  
815 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20006  
TEL: 202 452 7000  
FAX: 202 452 7074

WWW.THEAGC.COM

28 June 2011

### Via Electronic Delivery and Courier

Mr. Alexey Kudrin  
Minister of Finance of the Russian Federation  
9 Ilinka Str.  
109097 Moscow  
Russia  
[mnkorobkin@gmail.com](mailto:mnkorobkin@gmail.com)

Mr. Alexander Voloshin  
Head of the IFC Working group in Russia  
Under the Presidential Council for  
Financial Market Development  
23 Bolshaya Polyanks str., bld.1  
119180 Moscow  
Russia  
[9814757@gmail.com](mailto:9814757@gmail.com)

### **RE: Russian CSD Law; Key Issues**

Dear Mr. Kudrin and Mr. Voloshin:

We write on behalf of the members of the Association of Global Custodians ("Association")<sup>1</sup> to express members' support for the work of the Russian Project Group (the "Group") in developing and drafting central securities depository ("CSD") legislation

---

<sup>1</sup> The Association is an informal group of 11 global custodian banks that provide securities safekeeping services and related asset servicing functions to institutional investors worldwide, including U.S.-registered investment companies subject to SEC Rule 17f-7 under the Investment Company Act of 1940. Association members, listed on the letterhead above, provide such services to institutions that invest in securities of Russian issuers.

## THE ASSOCIATION OF GLOBAL CUSTODIANS

Messrs. Kudrin and Voloshin

28 June 2011

Page 2

for the Russian market. The Association understands that the Ministry of Finance may be nearing decisions on final components of the Russian CSD Law, and the Association wishes to convey its appreciation for the positive legislative elements incorporated into the draft Law. The Association also believes it would be of value to you at this critical juncture to emphasize key points discussed in the conference call this past March between members of the Association's Depository Information-Gathering Project and Group members.

The Russian market is important to the institutional investors that Association members serve in their capacities as global and regional custodians. Association members understand their clients' keen interest in seeing the creation and growth of a sound, regulated national clearance and settlement system in Russia. As we discussed in our recent call, institutional investors, as well as Association members, look largely to U. S. Securities and Exchange Commission ("SEC") Rule 17f-7 under the Investment Company Act (the "Rule") to evaluate the characteristics of each market's CSD and settlement system and to determine the eligibility under that Rule of each market's CSD as a safekeeping repository for investors' securities.

The Association therefore highlights the following key elements, reflected in the Rule's objectives. Members believe these elements are fundamental requirements for a CSD's eligibility and, as such, members strongly encourage you to incorporate these requirements into the Russian CSD Law: (a) well-defined regulation related to finality of settlement; (b) legal recognition defining a CSD and ensuring governmental licensing, regulation and oversight of the CSD; and (c) a statutory mandate requiring compulsory use of the Russian CSD(s) for securities transaction settlement and securities safekeeping. Without these fundamental requirements, Association members and their clients will face challenges in making determinations whether the new CSD structure in Russia can be considered "eligible" under the Rule – particularly in respect of the Rule's requirement that there be a "system for the central handling of securities or equivalent book-entries" as that phrase is used in the Rule.

Mandating intermediary use of the CSD will be particularly important given the background history of reliance in Russia on decentralized, registry-based settlement conventions for equity securities transactions. We note that use of the NSD is mandatory for settlement and safekeeping in respect of Russian government bonds; and we believe that the "mandatory use" principles currently applied to government debt should be equally applied to equities and corporate debt. Such a CSD use mandate, coupled with the other systemic elements noted above (including suitable licensing), will

## THE ASSOCIATION OF GLOBAL CUSTODIANS

Messrs. Kudrin and Voloshin

28 June 2011

Page 3

establish a central focus for regulators to apply appropriate and effective audit and supervision regimes.

Additionally, a mandate that settlements/registration, including in respect of over-the-counter (“OTC”) settlements, take place through a CSD would complement provisions anticipated in the CSD Law that ensure settlement finality both in practice and in commercial law. Such a CSD use mandate, coupled with effective settlement finality provisions, should eliminate investor and intermediary uncertainty regarding where and when finality is achieved. In particular, inclusion of a CSD use mandate in the Russian CSD Law should eliminate the existing market practice of treating settlement on equity trades as final only when completed at the registry – particularly on settlements between a local broker settling via DCC or NSD and a local custodian settling via a registrar on behalf of a foreign investor. That outcome would be important and of significant value to members’ institutional clients.

In contrast, failure to include a CSD use mandate in the Russian CSD Law may well mean that broker-dealers continue to rely on the settlement depositories for inter-broker trade settlements while settlements of foreign institutional investors’ transactions continue to flow through numerous registrars, external to the services/controls of either DCC or NSD. Such continued dependence on decentralized registry settlement on institutional trades will likely not reduce global investors’ concerns about fragmentation in settlement controls and their uncertainty regarding systemic oversight in the Russian market.

Finally, Association members believe that the inclusion of a mandate to use the CSD would be an important component in the continued development of the Russian market as an international financial center. In particular, centralized settlement with finality would strengthen the perception of increased controls in the market around systemic risk and default risk. In this regard, the recent revocation of the Central Moscow Depository’s license illustrates why settlements should be handled and finalized through central safekeeping facilities of regulated CSD(s) rather than at registry facilities. Central utility control promotes systemic risk management, thereby mitigating the potential to destabilize the settlement infrastructure via a registrar’s failure.

\*

\*

\*

THE ASSOCIATION OF GLOBAL CUSTODIANS

Messrs. Kudrin and Voloshin

28 June 2011

Page 4

The Association appreciates the opportunity to engage the Group through these further comments at this important stage in the evolution of the Russian market infrastructure. Association members stand ready to discuss with you the above comments. If the Group would like to discuss these comments and issues further, please contact the undersigned as an initial matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dan W. Schneider", with a long horizontal flourish extending to the right.

Dan W. Schneider  
Baker & McKenzie LLP  
Counsel to the Association