

# BAFT-IFSA

**Welcome to the BAFT-IFSA Presentation Series**

Sponsored by

**The BAFT-IFSA Supplier Committee**

**Today's Webinar**

**Trade Update 2010**

Presented by

**Gary Collyer**

**\*\* Will begin Shortly \*\***

*Remember to turn your PC sound ON to hear this webinar*



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## BAFT-IFSA EDUCATIONAL SERIES

### TODAY'S TOPIC

#### Trade Update 2010

Presented by: Gary Collyer, Managing Director

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## ➤ **ICC Initiatives**

- Guidance paper – sanctions clauses
- On board notation paper
- Annual Trade Finance Surveys
- Revision of ISBP

## ➤ **ICC Opinions**

- Defining Opinions & Opinions for April 2010

## ➤ **UK Court case** – Fortis/Stemcor -v- Indian Overseas Bank

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- **Guidance paper – Sanctions clauses**
  - Lack of standard text
  - Questions the irrevocable nature of a credit
  - Implementation when acting as a confirming or nominated bank
  - Practitioners involved in cross-border business should be aware that sanctions may apply
  - Recommendation = that banks should refrain from including clauses where it calls into question the banks commitment

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- **On board notation paper**
  - Result of numerous opinions under UCP 500 and a few now under UCP 600
  - Establishes common ground for practitioners
  - If only place of receipt shown (that is different from port of loading) no on board notation required giving name of vessel and port of loading (overrides opinion R.644)
  - Extensive document, but simple flowchart
  - Subject to vote on 22 April 2010

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## ➤ **Annual Trade Finance Surveys**

- New survey just completed, results will be announced at ICC Meeting on 23 April in Beijing
- Results will be delivered to G20 Ministers and State Heads at their next meeting in Canada
- 2009 Survey received acclaim from a number of sources as helping to realise additional \$250Bn of trade finance funding
- Do not expect any major surprises – there is a long way to go to get back to pre 2007/08 days!

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## ➤ **Revision of ISBP**

- Revision approved at November ICC meeting
- First drafting group meeting on 19 April 2010
- US representatives – Charnell Williams (Citi) and Dan Taylor (BAFT – IFSA)
- Scope of revision to be decided
  - Expand current version to cover more documents
  - Expand and cover matters relating to documentary credit handling

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## ➤ ICC Opinions

### ➤ Conclusion to ICC Opinion R.631:

“According to sub-article 14 (h), banks will deem a non-documentary condition as not stated, (on the basis that there is no necessity for the beneficiary to provide any evidence of compliance) and will disregard it. Should the beneficiary, nevertheless, elect to insert such data on any other stipulated document then they must ensure that it does not conflict with the data in the credit. The view of the Banking Commission is that sub-article 14 (h) is not absolute and is qualified by the content of sub-article 14 (d).”

#### **Issue:**

Beneficiaries still take note of non-documentary conditions and discrepancies arise. Conflict of data #1 form of discrepancy globally.

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## ➤ ICC Opinions for April 2010:

- 15 requests for Opinions from 10 countries (1 joint submission) and 5 educational queries.
- The following issues arise in requests for official opinions:
  - effect of deferred payment undertakings;
  - validity of discrepancies in documents (6);
  - insurance document covering warehouse to warehouse;
  - URC 522 (2);
  - failure of issuing bank to honour, bank in administration;
  - addresses must appear on all documents?;
  - application of article 35; and
  - issuing bank overpays, do they have right of recourse?

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- UK Court case – Fortis/Stemcor -v- Indian Overseas Bank
  - Court case in two parts:
    - First to determine whether documents were discrepant in 17 presentations under 5 credits issued by Indian Overseas Bank
    - Judge determined that 1 discrepancy in each presentation was valid (strict compliance issue)
    - Judge allowed Fortis/Stemcor to take out a separate action against Indian Overseas Bank on question of preclusion

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- UK Court case – Fortis/Stemcor -v- Indian Overseas Bank
  - Second case focussed on whether Indian Overseas Bank (IOB) acted according to article 16
  - 17 sets of documents were refused. 12 gave a status of ‘return’ and 5 ‘hold’
  - Fortis requested return of the 12 sets of documents with Bs/L endorsed by IOB
  - No response from IOB, documents not returned for 105 days

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- UK Court case – Fortis/Stemcor -v- Indian Overseas Bank
  - Fortis requested return of the 5 sets on similar terms, IOB returned them after 34 days
  - Fortis contested that IOB were precluded as they had not acted according to article 16
  - IOB contested that they acted according to article 16 and what happens afterwards has no effect
  - Judge found in favour of Fortis, IOB have appealed
  - Appeal due to be heard July or October 2010

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**Questions??**

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## BAFT-IFSA Educational Series Sponsored by BAFT-IFSA Supplier Committee

The goal of the Supplier Committee is to broaden the industry point of view regarding issues confronting the financial community. The Services Partners Committee will add its knowledge and expertise to offer solutions in partnership with the financial community

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## About BAFT-IFSA

BAFT-IFSA is the premier global financial services association formed by the merger of the Bankers' Association for Finance and Trade (BAFT) and the International Financial Services Association (IFSA). It provides advocacy, education and community-building opportunities for financial services institutions around the globe as well as suppliers to the financial services industry. BAFT-IFSA is the leading forum for analysis, discussion and action among international financial professionals on a wide range of topics affecting transaction banking, including trade finance, payments, compliance and asset servicing. For additional information log on to our website [www.BAFT-IFSA.com](http://www.BAFT-IFSA.com) or contact the BAFT-IFSA at [Info@BAFT-IFSA.com](mailto:Info@BAFT-IFSA.com).

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Our next webinar will be held on

Thursday, May 13<sup>th</sup> at 11:00am

presented by

BAFT-IFSA Supplier Member

ACE

Invitations will be forthcoming shortly.