Meeting Minutes
Federal Reserve Bank of New York
33 Liberty Street
13th Floor
Thursday, June 6, 2019
8:30 a.m. – 10:00 a.m.

Members present: Syed Riaz Ali (by phone), Sarah Ashkenazi (by phone), James Brown (by phone), David Buchalter, Martha Burke, Chinedu Ezetah (by phone), Terence Filewych, Jill Hurwitz, Robert Klein (by phone), Matthew Lillvis, Nancy Rigby, Jeffrey Saxon, Lisa Shemie, David Trapani, James Wallin (by phone), Frank Weigand, and Bryan Woodard

Federal Reserve Bank of New York ("FRBNY") participants: Michael Nelson, Thomas Noone, Janine Tramontana, Shawei Wang

Other participants: Amelia Kaufman (Deutsche Bank, by phone)

Membership update

FMLG Chair Michael Nelson announced that David Buchalter, Chair of the Opinions and Documentation Working Group, and Martha Burke, FMLG Treasurer, were resigning from the FMLG following the June meeting. Mr. Nelson and the members thanked Mr. Buchalter and Ms. Burke for their many services to the FMLG.

United States v. Johnson

Mr. Buchalter and FMLG Secretary Thomas Noone discussed the oral argument in *United States v. Johnson*, held in the United States Court of Appeals for the Second Circuit on Friday, May 31. In their view, the court's questions revealed a detailed familiarity with the briefs and the record, and careful regard for the broader consequences of affirming or vacating Mr. Johnson's conviction for wire fraud. In several questions, the judges acknowledged a legitimate role for pre-hedging in some circumstances, and focused attention on the particular facts of the case. Oral argument lasted for approximately one hour—well beyond the 20 minutes allocated on the docket. Members discussed how a decision in *Johnson* could compare with the outcome in *United States v. Bogucki*.

U.S. Treasury Foreign Exchange Report

Matt Lillvis gave a high-level summary of the Department of the Treasury's May 2019 Report to Congress on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States. The report did not raise any fundamental concerns with trading in the foreign exchange market, but criticized countries that engage in persistent, single-side interventions in the market. Some countries—China, in particular—were criticized for a lack of transparency about foreign exchange interventions. Overall, however, the report noted a decline in the scale and frequency of foreign exchange interventions by major U.S. trading partners.

Proposed amendments to Federal Reserve Regulation EE

David Trapani informed the members that the Board of Governors of the Federal Reserve System had proposed amendments to Regulation EE. According to the summary published in the Federal Register:

> The Board of Governors . . . is seeking comment on a proposal to amend Regulation EE to include certain new entities in the definition of "financial institution" contained in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) so that they will be covered by FDICIA's netting provisions. The proposal would also clarify how the existing activities-based test in Regulation EE applies following a consolidation of legal entities.

Mr. Trapani observed that the proposed amendments would, among other things, expand the definition of "financial institution" to include several new categories of market participants: swap dealers and major swap participants registered with the U.S. Commodity Futures Trading Commission ("CFTC"); security-based swap dealers and major security-based swap participants registered with the U.S. Securities and Exchange Commission; non-bank systemically important financial institutions designated by the Financial Stability Oversight Council; certain financial market utilities; bridge institutions, and Federal Reserve Banks. In addition, the amendments to Regulation EE aim to clarify that all foreign banks are "financial institutions," even if they do not have a U.S. branch or agency.

Mr. Trapani noted that comments are due on July 1, 2019. No discussion followed.

FX flash crashes

Terence Filewych drew attention to an article from Reuters that reported an increase in foreign exchange "flash crashes." According to the article, sudden movements in currency prices tend to occur between 5 and 6 pm New York time—that is, between close-of-business in New York and the beginning of the trading day in Tokyo. The article further reported that the International Monetary Fund had created a monitoring system to detect market conditions likely to amplify a liquidity shortage. In addition, it put forward a theory that automated or algorithmic trading was responsible for the frequency and severity of price moves. Mr. Filewych recommended, as further reading, a 2016 report from the Bank of International Settlements and a 2019 report from the Reserve Bank of Australia, which assessed "flash crashes" in sterling and yen, respectively.

A discussion followed about the most effective stabilizers—factors that cause prices to move back to normal levels; whether the benefits of a daily market close for major currencies would outweigh potential costs; "off-market" trading venue policies and contractual terms, which provide frameworks for resolving disputes over aberrant prices; and the role for central banks and monetary authorities going forward.

Phase V uncleared margin rules

Nancy Rigby updated members on market preparedness for "Phase V" implementation requirements for initial margin on uncleared swaps. A May 2019 letter from the CFTC's Chairman to the Federal Reserve's Vice Chairman for Supervision noted that many smaller market participants may not be aware of their new regulatory obligations (and opportunities for regulatory relief) beginning in September 2020. The letter urged guidance for firms with calculated margin amounts of less than $50 million—a threshold amount for triggering systems and documentation requirements. Ms. Rigby posited that lessons could be learned from previous margin implementations, including the need for early preparation and reliable communication. Members discussed differences in approach between U.S. and European regulators.

QFC compliance deadline

Bryan Woodard continued a discussion from the previous meeting about the ability of the industry to comply with qualified financial contract ("QFC") rules by July 1. The rules require U.S. global systemically important banks ("GSIBs") and certain other entities to obtain consents from counterparties in certain QFCs to stay provisions of their trading agreements that may interfere with the orderly resolution of a GSIB. Members discussed continuing difficulties in obtaining consents from smaller and foreign trading partners.

FX prime brokerage and CFTC swap rules

Chinedu Ezetah reported that the International Swaps and Derivatives Association is continuing its engagement with the CFTC to seek clarification on and updates to CFTC swap rules that affect FX prime brokers. Progress has slowed owing to transitions in CFTC leadership and staff departures. Mr. Nelson suggested that the FMLG invite Heath Tarbert, the CFTC's new chairman, to attend an upcoming FMLG meeting.

Quadrilateral update

FMLG Secretary Thomas Noone reviewed plans for the upcoming Quadrilateral meeting.

Administrative matters

Ms. Burke gave a brief update on the group's finances.

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