

**Meeting Minutes**

Federal Reserve Bank of New York

33 Liberty Street

13<sup>th</sup> Floor

Thursday, September 5, 2019

9:00 a.m. – 10:30 a.m.

*Members present:* Syed Riaz Ali (by phone), Sarah Ashkenazi, Chinedu Ezetah (by phone), Maria Douvas-Orme, Terence Filewych, Jill Hurwitz, Glade Jacobsen, Robert Klein (by phone), Matthew Lillvis (by phone), Nancy Rigby (by phone), Jeffrey Saxon, Lisa Shemie, David Trapani, Frank Weigand, and Bryan Woodard

*Federal Reserve Bank of New York (“FRBNY”) participants:* Christina Getz, Michael Nelson, Thomas Noone, Angela Sun, Janine Tramontana

*Other participants:* Leslie Payton Jacobs (Emerging Markets Traders Association (“EMTA”), by phone), Amelia Kaufman (Deutsche Bank, by phone)

**EMTA’s work on Argentina’s capital controls**

Leslie Payton Jacobs, Senior Legal Counsel and Managing Director at EMTA, reported on capital controls reinstated by Argentina over the previous weekend. The controls largely replicate capital controls that were repealed in 2015, including provisions requiring regulatory approval for the exchange of pesos for foreign currency. According to Ms. Jacobs, EMTA was considering whether the news could trigger material event provisions in EMTA’s standard Argentine peso contract (the “Argentine Peso Template Terms for Non-Deliverable FX Forward and Currency Option Transactions”). Under EMTA’s template terms, five unaffiliated EMTA members may declare an “Exchange Rate Divergence” by notifying EMTA that the settlement rate published by Mercado Abierto Electrónico has failed to reflect the actual bid and offer rates for Argentine peso-U.S. dollar swaps settled in Buenos Aires for not less than three consecutive days. In that event, valuation would be postponed for up to 30 calendar days, after which a calculation agent would determine valuation.

Several members commented that Argentina’s capital controls have created market uncertainty. There was a market expectation that the conditions for declaring an Exchange Rate Divergence would occur. Members did not know whether five EMTA members would notify EMTA, triggering contractual fallbacks. Members noted uncertainty over a continuing period of an Exchange Rate Divergence, and antitrust concerns about industry-level discussions. FMLG Chair Michael Nelson requested that FMLG members raise concerns about spill-over disruptions that may not be apparent to the U.S. official sector.

Following Ms. Jacobs’s report, FMLG members continued to discuss legal and market concerns arising from a calculation agent determinations of the settlement rate and the process for amending the EMTA template.

*N.B. EMTA subsequently published bulletins about disruption events and fallbacks under its Argentine peso template on [Friday, September 6](#) and [Monday, September 16](#).*

### **FX Global Code three-year review**

Foreign Exchange Committee (“FXC”) Secretary Christina Getz briefed the members on the process for reviewing the FX Global Code on the occasion of its three-year anniversary in 2020. There would be three channels for proposing revisions: (i) the Bank for International Settlements’ Markets Committee (including its Foreign Exchange Working Group); (ii) local foreign exchange committee input; and (iii) a survey of market participants administered by the Bank of England. Ms. Getz encouraged members to have their firms participate in the survey. FMLG members discussed various aspects of the FX Global Code that may require some degree of revision. Members discussed, among other issues, whether Principle 11 (pre-hedging) and related examples should be reviewed in light recent Federal prosecutions for wire fraud.

### **Recent articles regarding “last look”**

Lisa Shemie began a discussion of two articles about the practice of “last look” published recently by Risk.net: (i) “Forex ‘last look’: how non-banks stack up,” by Natasha Rega-Jones; and (ii) “Six big forex market-makers call for end to last look,” by Robert Mackenzie Smith and Natasha Rega-Jones. The first article compared the “last look” disclosures of five dealer banks and six non-banks. It noted, among other observations, that three non-banks permit pre-hedging during the “last look” period. Principle 17 of the FX Global Code, by contrast, advises against the practice:

Market Participants should not conduct trading activity that utilises the information from the Client’s trade request during the last look window. *Such trading activity would include* (1) any pricing activity on E-Trading Platforms that incorporates information

from the trade request and (2) *any hedging activity that incorporates information from the trade request*. Such activity would risk signalling to other Market Participants the Client's trading intent and could move market prices against the Client. In the event that the Client's trade requests were subsequently rejected, such trading activity could disadvantage the Client. (Emphasis added.)

That recommendation does not apply in a “cover-and-deal” model, in which a market participant explicitly documents its intent not to take on market risk in connection with the trade by entering into offsetting transactions. The first article included commentary from market participants that the risk management practices in connection with “last look” ranged from “legitimate” to “predatory,” and raised questions about the appropriate use of rejected order information, a topic not addressed in the FX Global Code. The second article reported that the six non-bank liquidity providers profiled in the first article had issued statements calling for an end to “last look.” Several non-banks were particularly critical of “hold times” beyond what was required for credit and price checks.

Members discussed, among other issues, the propriety of publicly adhering to the FX Global Code while negotiating private contracts that disclose practices expressly discouraged by the Code. Some members questioned whether any provisions of the FX Global Code could be waived through counterparty consent—and, if so, whether certain provisions of the Code should be exempt from waiver. The discussion also covered other practices that could prompt revisions to the FX Global Code, including updates to defined terms such as “client” and “last look” in light of diverging market usage. Finally, members discussed the theoretical possibility of an industry body responsible for policing market practice and admonishing practices that fall below the standards contained in the FX Global Code.

### **“Caveat emptor” disclosures**

Terence Filewych began a discussion of a related topic: so-called “caveat emptor” disclosures. Guy Debelle, Deputy Governor of the Reserve Bank of Australia and chair of the Global Foreign Exchange Committee, drew attention to the practice during a speech delivered in July. According to Mr. Debelle, some market participants took the view that so long as a practice was disclosed, it was permissible. In his view, transparency was not the sole criterion of legitimate practice. A “caveat emptor” approach would work against the spirit of the FX Global Code, which aimed to raise standards across the market. Members discussed how revisions to the FX Global Code might address Mr. Debelle's concerns while preserving the essential differences between an equities exchange and a principal-to-principal, over-the-counter market. Members also discussed whether it would be feasible or desirable to establish an interpretive body for the FX Global Code.

## **Membership update**

Mr. Nelson reminded members to submit ideas for new members, especially from firms that would increase the diversity of views on the FMLG.

## **Phase IV margin rule implementation**

Matthew Lillvis offered a few high-level observations on the experience of Millennium Management LLC in complying with “Phase IV” implementation of new derivatives margining rules. In his view, the process of establishing collateral transfers in triparty arrangements was not scalable to the number of firms involved in upcoming phases.

## **LIBOR in FXC master agreements**

Mr. Nelson asked members to consider how to address provisions in FXC-sponsored master agreements that reference LIBOR. Those agreements are the International Currency Options Master Agreement (1997), the International Foreign Exchange Master Agreement (1997), the Foreign Exchange and Options Master Agreement (1997), and the International Foreign Exchange and Currency Option Master Agreement (2005). Members discussed briefly the most efficient way to make changes, and agreed to pursue the matter in a working group.

## **Quadrilateral recap**

FMLG Secretary Thomas Noone summarized presentations and panel discussions from the July 2019 Quadrilateral meeting, highlighting FMLG member contributions. Those presentations addressed the application of the EU’s settlement finality directive in third-country systems (David Trapani), uncleared derivatives initial margin (Greg Todd), an update on industry codes and their use by regulators (Nancy Rigby and Frank Weigand), the U.S. regulatory approach to digital assets (Robert Klein and Mr. Filewych), and U.S. benchmark rate reform (Mr. Noone). The 2020 Quadrilateral will take place in London and will be hosted by the Financial Markets Law Committee.

## **Administrative matters**

FMLG Treasurer Jill Hurwitz gave a brief update on the group’s finances.

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