



**F M L G | F I N A N C I A L M A R K E T S L A W Y E R S G R O U P**

**Meeting Minutes**

By Teleconference

Thursday, November 5, 2020

8:30am – 10:00am

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

*Federal Reserve Bank of New York (“New York Fed”) participants:* Michael Nelson, Thomas Noone, Sanja Peros, Shrilaxmi Satyanarayana, Joseph Torregrossa, Janine Tramontana, and Shawei Wang

*Other participants:* Mary Breslin (Deutsche Bank), Victoria Cumings (Global Financial Markets Association (“GFMA”), Leslie Payton Jacobs (Emerging Markets Traders Association (“EMTA”), Jeffrey Lillien (Wells Fargo), Annette Maluenda (Barclays)

**Membership update**

FMLG Chair Michael Nelson announced that Bryan Woodard of State Street Global Markets will resign from the FMLG following the November meeting. Mr. Woodard joined the FMLG in 2013. Mr. Nelson thanked Mr. Woodard for his many contributions to the FMLG, including his service on the Steering Committee, and asked him to stay in touch with the group. Members also expressed their gratitude to Mr. Woodard.

Mr. Nelson said that new members would join the FMLG in the near term.

**Post-election markets discussion**

Mr. Nelson asked members to contact New York Fed staff if they observed any market disruptions following the November 3, 2020 election.

## **ISDA IBOR protocol**

FMLG Treasurer Jill Hurwitz announced that, on October 23, 2020, the [International Swaps and Derivatives Association \(“ISDA”\)](#) had published a [protocol](#) containing a [definition supplement](#) to address the transition from LIBOR and other inter-bank offered rates (“IBORs”). The protocol will become effective on January 25, 2021.

Ms. Hurwitz summarized the years of work that had led to ISDA’s new protocol, highlighting the 2017 announcement by Andrew Bailey—then Chief Executive Officer of the Financial Conduct Authority—that official sector support for LIBOR may cease by the end of 2021, and the subsequent work of the New York Fed’s Alternative Reference Rate Committee that resulted in the publication of a risk-free rate (the Secured Overnight Financing Rate or “SOFR”) in 2018. She also described the key features of the ISDA protocol, including a spread adjustment to take account of the nature of LIBOR as a forward-looking rate with a credit component. Members discussed ongoing efforts to pass LIBOR transition legislation at the state and national levels.

## **Alternative fallbacks and calculation agent practices**

Victoria Cumings, Managing Director at the Global Foreign Exchange Division of the GFMA, and Leslie Payton Jacobs, Senior Legal Counsel and Managing Director of EMTA, joined the meeting to discuss alternative fallback mechanisms and calculation agent practices. Maria Douvas, Chinedu Ezetah, and Terence Filewych recapped the FMLG’s presentation at the September meeting of the Foreign Exchange Committee (“FXC”), which raised three questions: (1) Can the market develop an intermediate fallback before reverting to calculation agent determination? (2) Can the market develop best practices to improve the predictability and transparency of calculation agent determinations? and (3) Which group should lead this work?

Members discussed the evolution of market practices since the early 1990s, when calculation agent determinations were the standard fallback; the impact of EU benchmark regulation and the LIBOR scandal on dealer polling; the possibility of basing a new fallback mechanism on a lookback window; and the need for price transparency in calculation agent determinations. Members also discussed the role that the Global Foreign Exchange Committee and other groups might play in the development of alternative fallbacks and calculation agent practices, and whether to address these questions solely in the context of foreign exchange or in light of other financial markets and contracts too. Members agreed to form a working group to further consider these questions and continue the conversation with Ms. Cumings and Ms. Jacobs. Mr. Nelson thanked Ms. Cumings and Ms. Jacobs for their attendance and insights.

## **CFTC/SEC request for comment on portfolio margining of uncleared swaps and non-cleared security-based swaps**

Lisa Shemie reported that, following a joint meeting of the U.S. Commodity Futures Trading Commission and the U.S. Securities and Exchange Commission on October 22, 2020, the agencies [requested public comment](#) on all aspects of the portfolio margining of uncleared swaps and non-cleared security-based swaps, and related positions. Also at the meeting, the agencies approved a [joint final rule](#) to align the minimum margin level for security futures held in a futures account with the minimum margin level for security futures held in a securities portfolio margin account. Members expressed their appreciation for collaboration between the two agencies and discussed the difficulties that can arise when swaps governed by one legal regime are held in an account governed by another regime. In particular, members raised questions about margin models in accounts that may have comingled instruments.

## **ESMA MAR report: pre-hedging**

FMLG Secretary Thomas Noone asked members to review the [European Securities and Markets Authority's \("ESMA's"\) final report](#) to the European Commission on the European Union's Market Abuse Regulation ("MAR"). He asked specifically that members look for any potential conflict between the report's conclusions and recommendations and the FX Global Code, especially on the topic of pre-hedging. Mr. Noone also asked members to consider how best to monitor other groups and jurisdictions for publications that may overlap with the FX Global Code.

## **ECB consultation on digital currency**

Mr. Ezetah, Mr. Filewych, and Jeffrey Saxon reported that the European Central Bank ("ECB") initiated a public consultation on October 12, 2020 following the publication of a [report on a digital euro](#). The ECB's report outlines considerations relevant for deciding whether to pursue a digital euro—both pros and cons. Among other issues, the report addresses the increasing digitization of financial transactions; a decline in the use of cash, especially during the pandemic; the benefits that a digital currency may bring in terms of financial inclusion and cyber security in the event of an attack on a payment system; the risks that a private-sector digital currency may pose to financial stability; and the possibilities for the use of a digital currency as a monetary policy tool. The report raises questions about the appropriate regulatory framework for a digital currency, the role of supervised intermediaries, liability for a technology failure, competition among central banks, counterfeiting, and cyber risk. Mr. Nelson asked members to continue to monitor the ECB's project and to continue the discussion at a future FMLG meeting.

## **2021 agenda**

Mr. Noone distributed a draft calendar for the FMLG's meetings in 2021 and asked members for their feedback on meeting dates and discussion topics.

## **Quadrilateral update**

Mr. Noone distributed a draft proposal for the 2021 Quadrilateral and invited feedback from FMLG members. In particular, he asked members to confirm their availability on the proposed dates and their willingness to participate as a panelist or moderator. He also asked members to report back on the video conference platforms that are most easily accessible in their firms.

## **Administrative matters**

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

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