



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, April 1, 2021

8:30 a.m. – 10:00 a.m.

Members present: Sarah Ashkenazi, James Brown, Martha Burke, Maria Douvas-Orme, Chinedu Ezetah, Terence Filewych, Jill Hurwitz, Amelia Kaufman, Robert Klein, Matthew Lillvis, Nancy Rigby, Jeffrey Saxon, Lisa Shemie, David Trapani, James Wallin, and Frank Weigand

Federal Reserve Bank of New York (“New York Fed”) participants: Michael Ahn, Daniel Kuhn, Thomas Noone, Sanja Peros, Joseph Torregrossa, Janine Tramontana, and Shawei Wang

Other participants: Mary Breslin (Deutsche Bank), Jeffrey Lillien (Wells Fargo), Annette Maluenda (Barclays)

In re Citibank August 11, 2020 Wire Transfers

FMLG Treasurer Jill Hurwitz began a discussion about the possible effects within the foreign exchange market of a recent decision from the United States District Court for the Southern District of New York in a case captioned *In re Citibank August 11, 2020 Wire Transfers*. A copy of the decision is available on the [FMLG’s public website](#). The facts of this case have been widely reported in the news media. *See, e.g.*, Stacey Cowley, “Citi loses its bid to reclaim cash from a \$900 million mistake,” *New York Times* (Feb. 16, 2021); Andrew Scurria *et al.*, “Judge Lets Revlon Lenders Keep Citi’s Botched \$500 Million Payment,” *Wall Street Journal* (Feb. 16, 2021).

Participants discussed, among other issues, whether the “discharge-for-value” doctrine would apply to standard agreements used in the foreign exchange market; whether a court would treat foreign exchange payments as “goods” with rights of retrieval under Article II of the Uniform Commercial Code; whether standard agreements used outside of the lending market need to be revised to require the return of erroneous payments; improvements to internal controls around large payments; the applicability of Principles 34 (Technology Risk) and 44 (Straight-through Automatic Processing) of the FX Global Code; and how trading platforms account for “fat finger” and other errors.

March 2021 GFXC meeting and FX Global Code adherence

Foreign Exchange Committee (“FXC”) Secretary Sanja Peros and Shawei Wang, a New York Fed attorney who supports work on the GFXC, provided a high-level summary of [a meeting of the Global Foreign Exchange Committee \(“GFXC”\) held on March 29, 2021](#). They reported, among other news, that revisions to the Code will be published for public comment in April, with feedback due at the end of the month. Updated versions of several working papers will be circulated among local foreign exchange committees in May. “Fatal flaw” reviews of both sets of documents will follow in May and June.

Participants discussed the purpose of the working papers and how they relate to the Code. Several members raised concerns that, even though the papers were not formally part of the Code, and therefore not subject to a market participant’s Statement of Commitment, the papers could nonetheless be seen as authoritative commentary on relevant principles, and therefore expose market participants to unanticipated legal risk. Members also questioned what the purpose of the papers was, if not to provide authoritative commentary on relevant principles.

In addition, participants also discussed the process of re-adherence to the Code following the revisions. Some members raised questions about how public registries will report updates to statements of adherence. Finally, several members recommended that any revisions to the Code be published in both clean and red-lined formats, so that market participants could be certain what the proposed changes are.

Antitrust counsel

FMLG Secretary Thomas Noone proposed that the FMLG retain antitrust counsel to advise it and the FXC on antitrust matters related to the revisions to the FX Global Code and the new working papers. To promote efficiency, members agreed to seek representation from counsel who previously advised the FMLG on similar matters.

2021 Quadrilateral planning

Mr. Noone reported on initial plans for the second session of the 2021 Quadrilateral, which will take place on Thursday, June 3 in lieu of the monthly FMLG meeting. Members agreed that the IBOR transition should be on the agenda again, and further agreed to address environmental, social, and governance (“ESG”) issues on a second panel. Finally, members agreed to solicit input from the FMLG’s three sister organizations—the European Financial Markets Lawyers Group, the Financial Markets Lawyers Committee, and the Financial Law Board (Japan)—on the subject of a third panel.

LIBOR transition

Maria Douvas shared several developments concerning the transition away from LIBOR, including a bill that recently passed the New York State legislature to reform contracts that include references to LIBOR, but lack fallback provisions and remain unamended after LIBOR ceases to be published. [The bill was initially drafted by and received support from the New York Fed’s Alternative Reference Rate Committee \(“ARRC”\).](#) Depending on certain features of the contract, the bill would automatically replace LIBOR with a recommended benchmark replacement—expected to be the [Secured Overnight Financing Rate \(“SOFR”\).](#)

Administrative matters

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

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