

Financial Markets Lawyers Group Meeting

Federal Reserve Bank of New York
33 Liberty Street
7th Floor, Main Conference Room

Thursday, February 2, 2012
8:30am – 10:00am (New York time)

Present: Andrew Alter, Victoria Cumings, Darek Defreece (by phone), Maria Douvas, Joyce Hansen, Pamela Hutson (by phone), Emily Jelich (by phone), Emilio Jimenez, Robert Klein, Ruth Laslo (by phone), Jeff Lillien, David Miller (by phone), Michael Nelson (by phone), Nicki Johnson (by phone, for Joanna Perkins), Jamie Pfeifer, Ricardo Salaman (by phone), Lisa Shemie, Garland Sims, Shawei Wang

Guest speakers (by phone): Katherine Tew Darras, ISDA; Shinji Imanishi and Toshio Sakudo, The Sumitomo Trust & Banking Co., Ltd.; and Dan Ruperto, Goldman Sachs

FX Market Trading Hours During Breaks

Katherine Tew Darras of ISDA and Shinji Imanishi and Toshio Sakudo of The Sumitomo Trust & Banking Co., Ltd. joined the meeting by phone to describe concerns of the Tokyo Foreign Exchange Market Committee (“Tokyo FXMC”) that the FX market may be vulnerable to distortion on dates that are holidays in many countries. It was explained that, while there are no set daily trading hours for the FX market, which operates 24 hours a day, normal trading conditions are deemed to commence from 5:00am Sydney time on a Monday morning and to close at 5:00pm New York time Friday. Since there is typically very light trading on dates that are holidays in many countries, the Tokyo FXMC wanted to raise this issue to see if others shared their concern. The Tokyo FXMC representatives proposed solutions to this problem that could include public announcement of official trading hours by various foreign exchange committees, or amendments to certain ISDA definitions.

To determine the validity of the issue, the FMLG decided to review applicable documentation and to seek greater details as to the actual circumstances surrounding FX trading on December 26, 2011 and January 2, 2012, two recent dates that were holidays for many countries.

Electronic Confirmations

Dan Ruperto led a discussion on steps the FMLG could take to promote the use of electronic confirmations generated by single-dealer or multi-dealer electronic platforms in the execution of FX transactions. It was suggested that the group could draft a synopsis of the English and US laws governing the enforceability of electronic confirmations and/or sponsor a systematic review of all electronic platforms’ rules.

Administrative Matters

The group approved Minutes from the January 5, 2012 meeting. Members volunteered for a number of new working groups: the Dodd-Frank Operational/Implementation Issues Working Group, the Credit Downgrade Triggers Working Group, the 60 Best Practices Working Group and the E-Confirms Working Group.

Opinion Update Project

David Miller announced the completion of the 2011 ICOM, IFEMA, FEOMA and IFXCO legal opinion update project, and described legal developments that have occurred in 2011 in select jurisdictions.

It was noted that, given the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Resolutions recommends that resolution authorities should have the power to temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry of a firm into resolution, we should expect additional jurisdictions to enact legislation to that effect in the coming years.

FXPB and Trade Give Up Timing under Dodd-Frank

In light of new trade reporting requirements imposed by the Dodd-Frank Act, Ruth Laslo questioned how the timing of trade give-up in the FX prime brokerage context should be coordinated with reporting obligations.

It was agreed the newly formed Dodd-Frank Operational/Implementation Issues Working Group could further explore this issue.

Fixings for JPY Crosses

Ruth Laslo summarized efforts by the Tokyo FXMC to establish a Best Practice or standardized rule for calculating Non Deliverable Forward fixing rates where Japanese Yen is involved, as a concrete trading custom does not currently exist.

The group will continue to monitor developments on this front.

Legal Issues Raised by Recent Economic Volatility

No issues were raised on this topic.

Updates

IFEMA/FEOMA and Dodd-Frank

It was reported that industry organizations have begun to update foreign exchange transaction documents to comply with Dodd-Frank Act requirements. The group will continue to follow those efforts.

FX Mutual Optional Early Termination

Members discussed the status of comments on documentation that provides for FX Mutual Optional Early Termination.

60 Best Practices

An update on the status of the 60 Best Practices document was offered. The 60 Best Practices Working Group will continue its review of the document.

Downgrade Triggers in Master Agreements

A summary of the Downgrade Triggers in Master Agreements issue has been drafted. The Working Group will convene by phone next week.

Miscellaneous

A change in the chairmanship of the Operations Managers Working Group was reported.

The next FMLG Meeting is scheduled for Thursday, March 1, 2012.