



## Legal Initiatives

### Introduction to the FMLG

The Financial Markets Lawyers Group (FMLG) is a committee of lawyers from leading worldwide financial institutions that supports over-the-counter (OTC) foreign exchange and other financial markets trading. The FMLG originated in the late 1980s, when a group of lawyers formed to develop a model master netting agreement for foreign exchange trading in the United States. The FMLG advises the Foreign Exchange Committee on many initiatives as well as pursues its own capital markets initiatives. The FMLG is sponsored by, but independent of, the Federal Reserve Bank of New York (FRBNY). A senior FRBNY legal officer chairs the group, and senior staff of the FRBNY's Legal Department are members.

The FMLG provided support to the Foreign Exchange Committee in the development and publication in 1997 of master netting agreements for foreign exchange transactions—the International Foreign Exchange and Options Master Agreement (FEOMA), the International Foreign Exchange Master Agreement (IFEMA), the International Currency Options Market Master Agreement (ICOM), and the International Foreign Exchange and Currency Option Master Agreement (IFXCO). Recent accomplishments of the FMLG include the introduction, with cosponsors, of the industry's first multilateral master confirmation agreement for non-deliverable forward (NDF) and non-deliverable option (NDO) foreign exchange transactions. The FMLG also introduced the industry's first foreign exchange master give-up agreement and cosponsored the *1998 FX and Currency Option Definitions (1998 Definitions)*. Group members have participated in a number of global initiatives, including the Global Documentation Steering Committee, the Hague Convention on collateral accounts, and industry preparation for Y2K and conversion to the euro. The FMLG continues to draft new trade documentation, best-practice recommendations, legal briefs, comment letters, and policy papers associated with OTC market developments.

The FMLG maintains relationships with OTC industry associations and official institutions worldwide in order to maintain channels of communication and cooperation on issues of importance to the foreign exchange and OTC markets. Among the groups with which the FMLG enjoys close ties are EMTA, Inc., the International Swaps and Derivatives Association, Inc., and the Securities Industry and Financial Markets Association, in the United States; the European Financial Markets Lawyers Group (EFMLG), sponsored by the European Central Bank; the Financial Markets Law Committee and the Foreign Exchange Joint Standing Committee, sponsored by the Bank of England; and CLS Bank. In 2009, the FMLG joined representatives of the EFMLG, the Financial Law Board, and the Financial Markets Law Committee at the annual quadrilateral meeting held by the groups. Meeting participants discussed a wide range of issues, including the market turmoil, bankruptcy law and developments, governance and controls, EU-U.S. global regulatory convergence, and netting and other documentation issues. FMLG members also joined a symposium on documentation harmonization hosted by the EFMLG in September.

### FMLG Initiatives during 2009

Many of the FMLG's projects in 2009 underscore the group's strong bond with the Foreign Exchange Committee. Other efforts reflect the FMLG's policy interests and the cooperative relationship that has evolved among legal-oriented industry groups in the global community.

#### FMLG Cross-Currency NDF and NDO Template Working Group

The FMLG continued its efforts to develop cross-currency templates that would provide standardized rate sources to smooth the trading and confirmation process for cross-currency NDFs and NDOs. The working group plans to develop a set of rate source definitions for hard currency pairs.



## Foreign Exchange Novations Protocol

The FMLG continued to work with the Operations Managers Working Group (OMWG) to develop a standard protocol for foreign exchange novations, given their increasing use in the market. The working group will collaborate with the International Swaps and Derivatives Association, Inc., to draft a protocol to reduce the incidence of settlement and collateral fails associated with foreign exchange novations.

## Prime Brokerage

The FMLG, with the Foreign Exchange Committee, published its white paper on prime brokerage reverse give-up relationships, which defines for market participants the different types of relationships that have emerged and provides an overview of key legal and operational issues associated with reverse-give-up trading activities.

The FMLG also established a working group to investigate the viability of streamlining the prime brokerage designation notice process by way of an automated, single-platform electronic system to replace existing traditional media. The working group, together with the OMWG, discussed the possibility of developing an electronic platform that would be a repository of data containing information already found in designation notices.

## Electronic Confirmations

The FMLG established a working group to examine issues arising from the growing trend of electronic confirmation use. The working group anticipates reviewing Foreign Exchange Committee best-practice and other guidance on confirmations as well as examining the enforceability of electronic confirmations in major jurisdictions.

## Legislative, Regulatory, and Judicial Action

Throughout 2009, the FMLG closely followed pending legislation and regulation that could affect the foreign exchange and financial markets as well as events associated with the financial crisis.

The FMLG assisted the Foreign Exchange Committee in the publication of its paper *Overview of the OTC Foreign Exchange Market: 2009*, which provides an overview of the foreign exchange marketplace, describes certain tools available to mitigate foreign exchange risks, and recommends priorities designed to further strengthen the foreign exchange marketplace. The FMLG also drafted a comment letter for the Committee to respond to the Financial Industry Regulatory Authority's proposed Rule 2380, which would impose a leverage limitation on retail foreign exchange transactions.

## Opinions

The FMLG continued its long-term efforts to coordinate the annual compilation and updating of legal opinions on IFEMA, ICOM, FEOMA, and IFXCO. In 2009, David Miller of the FMLG solicited updated opinions from more than thirty jurisdictions in which member firms are active.