

Meeting Minutes

Financial Markets Law Committee/Financial Markets Lawyers Group
Quarterly Discussion Forum

Friday, February 10, 2017
10:00 a.m. – 11:30 a.m. (New York time)

Financial Markets Law Committee (FMLC): Joe Kohler, Joanna Perkins, Barnabas Reynolds, Rachel Toon, Thomas Willett

Financial Markets Lawyers Group (FMLG): Syed Riaz Ali, David Buchalter, James Brown, Martha Burke, Maria Douvas-Orme, Luke Farber, Terence Filewych, Jill Hurwitz, Glade Jacobsen, Amelia Kaufman, Robert Klein, Matthew Lillvis, Tracy Ross, Jeffrey Saxon, Lisa Shemie, David Trapani, Frank Weigand

Federal Reserve Bank of New York (FRBNY): Thomas Noone

The meeting was conducted telephonically.

Fallback Mechanisms

Terence Filewych and Lisa Shemie introduced a discussion about fallback rate source mechanisms reflected in non-deliverable forward (NDF) and non-deliverable option (NDO) recommended templates published by the Emerging Markets Traders Association (EMTA). These templates are relied on by several market participants to document NDF and NDO trades involving certain emerging market currencies. Generally speaking, the relevant EMTA template specifies a mechanism by which a fallback rate source may be used to settle the relevant transaction if the primary rate source is unavailable for a specified period of time. Many of the existing fallback rate sources involve a dealer poll conducted by EMTA or another entity, but participation is voluntary. There was a recent example of a primary rate source disruption event in the case of the Ukrainian Hryvnia and a fallback poll failure because of lack of participation in the voluntary poll-based fallback. EMTA has attempted to facilitate an industry conversation to re-evaluate voluntary poll-based fallbacks with a view to exploring possible alternatives that may be less prone to failure.

Margin Rules

David Buchalter and Matthew Lillvis led a discussion about variation margin exchange rules due to take effect on March 1. They reported that multiple industry groups had concluded that more time was needed to implement compliance programs. The International Swaps and Derivatives Association (ISDA) concluded that more time was needed to avoid market disruption. Similarly, the Securities Industry and Financial Markets Association (SIFMA) projected interruptions in liquidity sources without more time to implement internal controls. Several participants observed that, from the outset, it was perhaps impractical to set a March 1

deadline to revise contracts with trading parties. Participants generally agreed with the forecasts of market disruptions absent some form of grace period or regulatory enforcement forbearance. It was noted that some officials from the Commodity Futures Trading Commission have indicated support for a period of enforcement forbearance, but that may not give relief to U.S. bank dealers. That said, neither U.S. nor E.U. prudential regulators have not indicated any transitional or grace period.

Reference Rate Reform

Joanna Perkins led a discussion of SONIA (Sterling Overnight Interbank Average) reform, which was initiated in 2014 during a search for a replacement for LIBOR (London Interbank Offered Rate). SONIA is a sterling unsecured overnight interest rate benchmark. It is administered by the Bank of England, calculated by the Wholesale Market Brokers' Association, and used as a reference rate in derivative transactions. The Bank of England has consulted in two stages on reforms—one in 2015, and the other at the end of 2016. Feedback from the Bank of England on the latter consultation is expected within the next few weeks. Changes are anticipated within 2017.

Ms. Perkins further reported on candidates to replace LIBOR, and noted the industry's preference for a secured rate (as opposed to an unsecured rate). Maria Douvas provided an update about the work of the Alternative Reference Rate Committee, which is continuing to discuss alternatives to LIBOR with a broad range of market participants.

Brexit

Ms. Perkins gave an update on Brexit, highlighting Prime Minister Teresa May's recent address. The speech was received as endorsing a "hard Brexit" strategy. Shortly thereafter, the United Kingdom's Supreme Court held that Parliament's approval, not the "royal prerogative," was required to give a notice of withdrawal under Article 50—the secession provision of the Treaty on European Union. The House of Commons has since passed a Brexit bill, which is now under review in the House of Lords. Further legislation governing the terms of withdrawal and future trade agreements is expected. Ms. Perkins highlighted several important but unresolved issues, especially Euro clearing. She concluded with some observations on the future of London as an investment banking and financial center in Europe—an arrangement that profits both the U.K. and continental Europe.

2017 Quadrilateral

Finally, Thomas Noone provided a short update on the 2017 Quadrilateral meeting between the FMLG, the FMLC, the European Financial Market Lawyers Group, and the Financial Law Board (Japan). The meeting will be held on Friday, July 14, 2017 at the FRBNY's headquarters at 33 Liberty Street. Input on topics, format, and speakers would be most welcome.

Thomas M. Noone
February 14, 2017

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