



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

Cboe Global Markets

17 State Street

31th Floor

Thursday, October 4, 2018

8:30 a.m. – 10:00 a.m. (New York time)

Present: Syed Riaz Ali, Sarah Ashkenazi (by phone), James Brown, David Buchalter, Martha Burke, Maria Douvas-Orme, Terence Filewych, Jill Hurwitz, Glade Jacobsen (by phone), Robert Klein, Matthew Lillvis, Nancy Rigby, Jeffrey Saxon, Lisa Shemie, David Trapani, Frank Weigand (by phone), and Bryan Woodard

Federal Reserve Bank of New York (“FRBNY”) participants: Caren Cox, Christina Getz, Michael Nelson, Thomas Noone, Janine Tramontana

Other participants: Victoria Cumings (GFMA, by phone), Chinedu Ezetah (Citigroup, by phone), David Felsenthal (Clifford Chance), Daniel Silver (Clifford Chance), Benjamin Peacock (Clifford Chance), Fiona Willis (GFMA, by phone)

Briefing on *United States v. Johnson*

David Felsenthal, Daniel Silver, and Benjamin Peacock from Clifford Chance US LLP presented a summary of the key legal issues in *United States v. Johnson*, currently on appeal to the United States Court of Appeals for the Second Circuit, and the potential impact of that case on the FX market—especially in contracts that reference a “fix” price. The members then discussed a number of related issues, including the efficacy of the disclaimer of a fiduciary relationship in the master ISDA agreement, the impact of the FX Global Code on communications with prospective clients about hedging and pre-hedging, the future of principal transactions versus fee-based (agent) transactions, and changes to the culture of trading in the FX market.

EU benchmark regulation and administrator registration

Continuing a discussion from the last several FMLG meetings, Victoria Cumings and Fiona Willis from the Global Financial Markets Association (“GFMA”) updated the members on the effects of EU benchmark regulations on the rate sources for certain currencies that are

published by local administrators. Among other issues, members discussed the possibility of an extension of the benchmark regulation's effective date, a perceived lack of awareness on the part of corporate customers trading in affected currencies, outreach by other trade associations, and preparations for a potential decrease in liquidity in the markets for affected currencies. Ms. Cumings and Ms. Willis highlighted several issues that would benefit from greater clarity, including whether certain rate sources qualified as "benchmarks," the willingness of local administrators to engage with the EU, and political factors that may diminish the chances of an EU parliamentary solution.

Revisions to the Articles of Association

The revised Articles of Association, circulated for consideration ahead of the September meeting, were approved without objection.

Update on Foreign Exchange Committee ("FXC") best practices review

FXC Secretary Christina Getz updated the members on that committee's review of best practices that the FXC and FMLG issued prior to the publication of the FX Global Code. All statements that predate the FX Global Code will be moved to an on-line library accessible through the FXC's public website. FXC members are considering which statements should be updated, and may seek assistance from the FMLG with revisions.

Statement on ISDA universal stay protocol

FMLG Secretary Thomas Noone reported that the FMLG's proposed statement on the ISDA universal stay protocol was under review at the Federal Reserve. Ms. Getz reported that the FXC would consider adding its name to the proposed statement.

ISDA FX novation protocol

Mr. Noone told FMLG members that, at a recent meeting of the FXC's Operations Managers Working Group, participants had reported that the ISDA FX novation protocol was underutilized by market participants and that email novation procedures had become burdensome. FMLG Chair Michael Nelson encouraged members to contact operations managers at their firms.

Opinion project update

David Buchalter, Chair of the FMLG Documentation and Legal Opinions Working Group ("Opinions Working Group"), provided the group with an update on the status of the

opinion project. Twenty-five opinions are final; three remain under review. Members indicated they would like to have the final opinions distributed promptly.

Administrative matters

Ms. Burke gave a brief update on the group's finances.

Mr. Nelson asked the members to recommend candidates for FMLG membership.

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