



**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**

Federal Reserve Bank of New York

33 Liberty Street

13<sup>th</sup> Floor

Thursday, December 13, 2018

4:30 p.m. – 6:00 p.m. (New York time)

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

*Federal Reserve Bank of New York (“FRBNY”) participants:* Christina Getz, Michael Nelson, and Thomas Noone

*Other participants:* James Andrews (JPMorgan Chase, by phone), Chinedu Ezetah (Citigroup), Daniel Lennon (CLS), Juna Nashi (Goldman Sachs, by phone), and James Wallin (Alliance Bernstein)

**LIBOR transition**

Jill Hurwitz recapped the status of industry efforts to move away from LIBOR in light of concerns about its continuation and validity beyond 2021, highlighting communications by the Bank of England and Board of Governors of the Federal Reserve System. Maria Douvas-Orme provided a summary of discussions on the topic at the recent semi-annual meeting of the Global Foreign Exchange Committee (“GFXC”). Members discussed potential collateral consequences to the FX market from changes affecting other asset classes, focusing in particular on legacy contracts and margin requirements. Members again expressed an interest in continuing to follow the issue at subsequent meetings, and to seek briefings about work undertaken in the United Kingdom and Europe to establish reference rates linked to their respective currencies.

**ISDA novation protocol**

FMLG Secretary Thomas Noone opened a discussion of possible improvements to ISDA’s novation protocol, and welcomed four guests from the Operations Managers Working Group (“OMWG”) of the Foreign Exchange Committee (“FXC”) to the discussion: James

Andrews, Daniel Lennon, Juna Nashi, and James Wallin. The guests reported on concerns raised in a recent meeting of the OMWG, in which Ms. Hurwitz and Chinedu Exetah also participated, about low “buy side” interest in the protocol. Among other points, the group observed that the ISDA novation protocol offers efficiency to large dealers, but provides no apparent benefit to smaller, buy-side firms over simply executing a new trade. The group also discussed the lack of generally accepted automation solutions, the risk of significant market events occurring before settlement, the importance of agreement on the timing of certain contractual events, and the possible increase in Brexit-related novations. FMLG Chair Michael Nelson asked for volunteers to gather information on automated solutions.

### **FMSB standards and the FX Global Code**

Lisa Shemie and Syed Ali began a discussion of potential overlap and conflict between standards promulgated by the FICC Market Standards Board (“FMSB”) and the FX Global Code. FXC Secretary Christina Getz reported that GFXC was in contact with the FMSB and would work to preserve the FX Global Code’s primacy in the global foreign exchange market. Members questioned the scope of adherence to FMSB standards, the relevance of standards published before the FX Global Code took effect, and whether foreign regulators would see to enforce FMSB standards through supervisory programs. Mr. Nelson suggested that FRBNY staff confer about potential overlap and report back to the FMLG in early 2019.

### **Prime broker external business conduct obligations and SEF trading**

Ms. Shemie proposed that the FMLG request interpretive guidance from the Commodity Futures Trading Commission (“CFTC”) on the applicability of an exception to a disclosure rule for certain offsetting transactions that mirror transactions occurring on a swap execution facility (“SEF”), particularly as such exclusion may apply in the context of foreign exchange prime brokerage. Following a discussion, in which members formed a consensus that a definitive interpretation would benefit the broader market, Mr. Nelson requested a volunteer from a prime broker to work with Ms. Shemie on a draft letter from the private sector members of the FMLG to the CFTC. He also recommended that the members seek input from other industry groups

### **FinTech and foreign exchange**

Terence Filewych and Mr. Noone reported on a number of sources that provided useful information on “FinTech” developments affecting the foreign exchange market, highlighting in particular materials published by the Bank for International Settlements and the Bank of Canada. Mr. Nelson asked members to consider how a central bank would intervene in the foreign exchange market through a digital currency.

## **GFXC update**

Ms. Getz thanked the members for their feedback on two draft reports addressing “cover-and-deal” and disclosure provisions in the FX Global Code. The GFXC discussed the feedback at their recent meeting in Paris and plans to publish revised papers in early 2019. Ms. Getz noted that the cover-and-deal paper would be closely tied the Principle 17 of the FX Global Code, and that the paper on disclosure would emphasize proportionality. Ms. Getz also reported that results of a recent survey on adherence to the Code had been published, and that the GFXC would begin a buy-side outreach initiative in 2019. Mr. Nelson asked Ms. Getz for an update on the status of reclassifying the FXC’s prior statements in light of the FX Global Code. Ms. Getz reported that website improvements were planned for 2019 and would include a new library of prior statements.

## ***United States v. Johnson***

Mr. Noone called the members’ attention to an appellee’s brief filed by the United States.

## **Opinion project update**

Mr. Nelson reported news from David Buchalter, Chair of the FMLG Documentation and Legal Opinions Working Group, that all of the netting enforceability opinions were final.

## **Administrative matters**

Ms. Burke gave a brief update on the group’s finances, including the recent closure and reopening of the FMLG’s account. Ms. Burke and Mr. Noone expressed their keen disappointment about the poor customer service provided to the FMLG.

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