

**Meeting Minutes**

Federal Reserve Bank of New York

33 Liberty Street

13<sup>th</sup> Floor

Thursday, February 7, 2019

8:30 a.m. – 10:00 a.m.

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

*Federal Reserve Bank of New York (“FRBNY”) participants:* Michael Nelson, Thomas Noone, Janine Tramontana, Shawei Wang

*Other participants:* Ludovico Cardone (European Central Bank), Victoria Cumings (Global Financial Markets Association (“GFMA”)), Amelia Kaufman (Deutsche Bank), Olivia Wang (Morgan Stanley), Fiona Willis (GFMA)

**New members**

FMLG Chair Michael Nelson announced the appointment of two new members: Chinedu Ezetah (Director and Associate General Counsel, Citigroup Global Markets Inc.) and James Wallin (Senior Vice President, AllianceBernstein). Mr. Ezetah has been a frequent contributor various projects over several years, and Mr. Wallin is a longtime member of the Operation Managers Working Group, a subcommittee of the Foreign Exchange Committee. The members joined Mr. Nelson in welcoming Mr. Ezetah and Mr. Wallin to the FMLG.

**Crypto assets in the European Union**

Ludovico Cardone (Senior Legal Counsel, European Central Bank) joined the meeting by phone to provide an overview of the legal framework governing crypto assets in the European Union (“EU”). Mr. Cardone noted the lack of a comprehensive approach to regulating these

assets, and the difficulties in applying existing regulation to them—especially given the lack of a common definition of a crypto asset. The need for a common approach to crypto assets was the focus of a recent report by the European Securities and Markets Authority (January 2019). Mr. Cardone highlighted, among other issues, differing approaches to initial coin offerings, concerns about decentralized platforms and clearing services, proposals to regulate crypto assets through revisions to the Markets in Financial Instruments Directive (“MiFID”), including its definition of “financial instrument,” the regulatory and licensing regime in Malta, and efforts to minimize regulatory arbitrage in the Netherlands. Members discussed how federal agencies have treated the clearing of crypto currencies in the United States, differences between regulating methodologies versus products, and reputational and anti-money laundering risks in trading crypto currencies on blockchain. Mr. Nelson thanked Mr. Cardone for his report and invited him to speak again about regulatory developments.

### **2019 ISDA interest rate definitions**

Terence Filewych called attention to a proposed update to the deliverable currency disruption event provisions in the International Swaps and Derivatives Association’s (“ISDA”) interest rate definitions. The provisions were written to address market disruption related to the devaluation of the Russian ruble in 2008. Mr. Filewych recommended that lawyers with expertise in foreign exchange play a greater role in the drafting group. Members discussed whether the deliverable currency disruption event provisions should be included in ISDA’s FX definitions, whether the FX definitions were due for a general revision, and the timing of general and targeted revisions. Several members suggested outreach to ISDA’s FX working group. Mr. Nelson asked for an update at the March meeting.

### **ISDA novation protocol**

Continuing a discussion from previous meetings about the underutilization of ISDA’s novation protocol, Martha Burke briefed the members on recent work conducted by the Global Foreign Exchange Division of GFMA on simplifying the protocol and assessing the automated solutions available from technology vendors. A discussion ensued on whether possible revisions and available automation addressed underlying concerns about timing and hedging.

### **EU benchmark update**

Victoria Cumings and Fiona Willis explained the GFMA’s recent efforts to raise awareness among administrators for primary rate sources that are considered at risk for non-compliance with EU benchmark regulations after January 2020. Few if any of the administrators are likely to obtain an equivalence finding before the end of the year for reasons that include a lack of initiative or interest by the administrator, local legislative delay, political turnover in EU

institutions, and devotion of resources and attention to Brexit—each of which is in addition to the weeks or months ordinarily required for an assessment of equivalence. Ms. Cumings and Ms. Willis also reported that several trade associations had jointly requested an extension of two years for third-country benchmarks. The request is part of a broader proposal for legislative relief that would also include “critical” benchmarks in the European Union and other “non-critical” benchmarks across asset classes. Mr. Nelson asked the members to consider whether a letter from the FMLG would help draw attention to potential market disruption if the primary rate sources for several Asian currencies are deemed non-compliant at the end of the year. Ms. Willis recommended that financial institutions in the EU prepare for a worst-case scenario in which the rates may not be used for new trades (including hedge positions) starting in January 2020.

### **Brexit and reference rates**

Mr. Filewych asked members to consider a risk that, following “Exit Day,” there is a lack of equivalence for benchmark administrators in the United Kingdom and the EU. Members generally saw the risk of a lack of equivalence (or endorsement or other recognition) as low. Mr. Nelson asked members to consider whether the FMLG should call attention to the issue if equivalence determinations remain elusive toward the end of March.

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

Maria Douvas and Bryan Woodard discussed their efforts to gather information on the process that the FICC Market Standards Board (“FMSB”) uses to promulgate standards. They observed a difference between early work, which tended to be asset class-specific, and more recent publications, which purport to have global applicability. During the discussion that followed, several members warned of the potential for overlap with the FX Global Code and other market standards, including the best practices published by the Treasury Markets Practices Group. Others commented that some standards may unintentionally mischaracterize legal relationships—for example, principal versus agent status. There was agreement that it would be helpful to involve lawyers with subject matter expertise in a particular asset class, as well as experience in drafting standards, early in the FMSB’s drafting process.

### **CFTC external business conduct obligations**

Lisa Shemie and Chinedu Ezetah updated members on the status of a draft letter to staff at the Commodities Futures Trading Commission (“CFTC”) requesting, on behalf of the FMLG’s private sector members, interpretative guidance on the applicability of an exception to a disclosure rule for certain offsetting transactions that mirror transactions occurring on a swap

execution facility, particularly as such exclusion may apply in the context of foreign exchange prime brokerage.

### **Golden week/Japanese holiday issues**

FMLG Treasurer Martha Burke and Shawei Wang revisited a prior meeting's discussion of the legal and market consequences to a planned banking holiday in Japan in late April and early May, corresponding to the abdication of Emperor Akihito on April 30, 2019. Members discussed a proposal circulated by the Tokyo Foreign Exchange Market Committee for a standard convention for modifying settlement dates occurring during the banking holiday. Members noted that the proposed modification conflicted with standard 1998 ISDA definitions, and so firms would have to review contracts to determine what changes would be required.

### **Quadrilateral update**

FMLG Secretary Thomas Noone requested that members propose topics for discussion at the upcoming Quadrilateral before the March meeting.

### **Administrative matters**

Ms. Burke gave a brief update on the group's finances. Mr. Noone asked for volunteers to host future FMLG meetings.

### **GFXC educational papers**

Ms. Douvas and Ms. Wang briefly discussed the status of two draft papers addressing "cover-and-deal" and disclosure provisions in the FX Global Code.

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