Meeting Minutes
Federal Reserve Bank of New York
33 Liberty Street
13th Floor
Thursday, December 12, 2019
4:00 p.m. – 5:30 p.m.

Members present: Sarah Ashkenazi, James Brown, Maria Douvas-Orme, Chinedu Ezetah, Terence Filewych, Jill Hurwitz, Glade Jacobsen (by phone), Robert Klein, Matthew Lillvis (by phone), Nancy Rigby (by phone), Jeffrey Saxon, David Trapani, Frank Weigand, James Wallin, and Bryan Woodard

Federal Reserve Bank of New York ("New York Fed") participants: Michael Nelson, Thomas Noone, Sanja Peros, Katherine Ramirez, and Geza Sardi

Other participants: Amelia Kaufman (Deutsche Bank), Alex Van Voorhees (Bank of America)

ESMA market abuse regulation

FMLG Treasurer Jill Hurwitz summarized three responses to a recent consultation paper by the European Securities and Markets Authority ("ESMA"). The responses were submitted by the Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association ("GFMA"), the International Swap Dealers Association ("ISDA"), and the Financial Markets Law Committee ("FMLC"). ESMA's consultation paper requested public feedback on a number of issues, including whether foreign exchange spot transactions ("spot FX") should be covered by the European Union's Market Abuse Regulation ("MAR")—formally, Regulation 596/2014 of the European Parliament and of the Council.

All three responses urged ESMA not to extend MAR to cover spot FX, largely for reasons stated in ESMA's consultation paper. Members discussed a number of the arguments, including an industry preference to allow time to study how, if at all, the FX Global Code has changed market participant conduct before imposing new conduct regulations. Members emphasized the potential for market fragmentation owing to differences in conduct and accountability regimes, market anti-manipulation statutes, and enforcement priorities for national authorities, as well as challenges in applying MAR beyond investment products. The FMLC's response received special praise for its clear and succinct reasoning. Members expressed their desire to monitor the issue as it develops.

EU benchmarks consultation paper

Chinedu Ezetah and Terence Filewych summarized foreign exchange issues presented in the European Commission's request for public comment on the European Union's ("EU's") Benchmark Regulation—Regulation 2016/1011 of the European Parliament and of the Council. Of particular relevance to foreign exchange, the Benchmark Regulation permits EU-supervised entities to use so-called "non-critical" benchmarks provided by third-country administrators only if one of three conditions applies: (i) equivalence, (ii) recognition, or (iii) endorsement. Very briefly, "equivalence" means that the European Commission determines that a benchmark's oversight is equivalent to EU standards. "Recognition" means that a competent EU authority has certified the third-country administrator meets principles for financial benchmarks published by the International Organization of Securities Commissions ("IOSCO"). "Endorsement" means that an authorized EU-based administrator may apply on behalf of the third-country administrator if the EU administrator agrees to be held accountable for the benchmark's compliance with EU regulation. Benchmarks administered by central banks or other "public authorities" are not subject to these three conditions. Earlier this year, the European Council and Parliament extended the "transition period" for compliance with these conditions to January 1, 2022. The European Commission has requested public comment on how the third-country administrator provisions would affect non-deliverable forward ("NDF") contracts, as well as suggestions for remedies and improvements.

Members discussed, among other issues, potential clarifications and amendments to the definition of "public authority" to include rate administrators for non-convertible currencies, and the challenges in extending that definition to include administrators not affiliated with central banks. Members further discussed the costs and benefits of the three conditions and possibility of amending the Benchmark Regulation to exclude benchmarks for currencies that occupy a *de minimis* share of the global foreign exchange market. Finally, members raised questions about obtaining data on the percentage of trading of relevant currencies—in particular, currencies active in the Asian NDF market—by EU-supervised entities.

GFMA paper on wholesale FX settlement

Jeff Saxon introduced a September 2019 paper by the market architecture group of the GFXD entitled "Considerations relevant to initiatives and developments in wholesale FX settlements." The paper identified a number of risks to be considered as market participants and central banks make changes to payment and settlement systems, and organized those risks into three categories: (i) settlement (or "Herstatt") risk, (ii) liquidity risk, and (iii) disruption risk. Members discussed the relevance of these provisions for negotiations with vendors and trading platforms—in particular, the determination of which party bears these risks. There was further discussion of currencies that would benefit from standard settlement opinions available to multiple industry participants.

Following that discussion, David Trapani summarized work by CLS on settlement date and point of settlement. A discussion ensued on the costs and benefits of a global standard on settlement dates.

LIBOR in FXC master agreements

Maria Douvas reported that the International Swaps and Derivatives Association ("ISDA") had agreed to include FXC-sponsored master agreements in its protocol for interbank offered rate ("IBOR") fallbacks. Those agreements are the International Currency Options Master Agreement (1997), the International Foreign Exchange Master Agreement (1997), the Foreign Exchange and Options Master Agreement (1997), and the International Foreign Exchange and Currency Option Master Agreement (2005). Market participants using those agreements will be able to use the protocol to amend the definition of LIBOR to include industry standard fallbacks. Members expressed their gratitude to ISDA and discussed other developments on the LIBOR transition, including possible regulatory relief and legislative solutions.

Best execution and standardized time stamps

Matthew Lillvis, James Wallin, and Bryan Woodard led a discussion of a recent article on the website *FX Week* that proposed creating a standard industry protocol on time stamps so that market participants could better assess whether they were receiving "best execution." Members discussed, among other issues, whether the accuracy of time stamps was in doubt, the role of custodians, and possible models for an industry standard—for example, the time stamping protocol used by the Chicago Mercantile Exchange.

GFXC update

FMLG Secretary Thomas Noone summarized a recent meeting of the Global Foreign Exchange Committee ("GFXC") in Sydney, Australia. The GFXC will organize its work in 2020 around the following five topics: (i) buy-side outreach, (ii) anonymous trading, (iii) disclosures, (iv) algorithmic trading and transaction cost analysis, and (v) execution principles, including pre-hedging and "last look." Mr. Noone further reported that final reports on disclosure and transparency and anonymous trading platforms were expected in January 2020. A discussion ensued about buy-side outreach, especially the publication of statements of commitment by asset managers, corporate market participants, and regional banks.

Argentina: update from the FXC

Maria Douvas briefed members about a request from members of the Foreign Exchange Committee ("FXC") for a follow-up discussion about the declaration of an exchange rate divergence for the Argentine peso by five members of the Emerging Markets Traders Association ("EMTA") between September 23 and November 4, 2019. Among other issues, members discussed the need to structure the discussion to avoid antitrust risk, the need to involve representatives from EMTA, and the possible assistance of outside counsel. Possible topics for the discussion might include alternatives to calculation agent determinations, best practices for calculation agents, and improvements or alternatives to an exchange rate divergence clause that could help market participants mitigate political risk. Several members volunteered to work on the matter before the next FMLG meeting.

Digital fiat currencies

Robert Klein introduced a recent speech by Agustín Carstens, General Manager of the Bank for International Settlements ("BIS") entitled "The future of money and the payment system: what role for central banks?" Members discussed the policy considerations that underpin international payments systems and the legal issues surrounding payment finality. FMLG Chair Michael Nelson suggested inviting BIS staff to join future FMLG discussions about digital fiat currencies.

Administrative matters

Ms. Hurwitz gave a brief update on the group's finances. Mr. Noone asked members to confirm their contact information for 2020.

• • • • •