

Meeting Minutes

By Teleconference

Thursday, September 10, 2020

9:00am – 10:00am

Members present: Syed Riaz Ali, Sarah Ashkenazi, James Brown, Maria Douvas-Orme, Chinedu Ezetah, Jill Hurwitz, Robert Klein, Matthew Lillvis, Nancy Rigby, Jeffrey Saxon, Lisa Shemie, David Trapani, James Wallin, and Frank Weigand

Federal Reserve Bank of New York (“New York Fed”) participants: James Bergin, Michael Nelson, Thomas Noone, Sanja Peros, and Shawei Wang

Other participants: Jeff Lillien (Wells Fargo), Annette Maluenda (Barclays), and Alex Van Voorhees (Bank of America)

Argentina review

Maria Douvas and Chinedu Ezetah discussed plans for a presentation that afternoon to the Foreign Exchange Committee (“FXC”) about lessons learned from Argentina’s 2019 currency controls and the subsequent declaration of an exchange rate divergence according to the template for non-deliverable forward (“NDF”) contracts published by the Emerging Markets Traders Association (“EMTA”). The FXC requested this discussion with the FMLG.

The presentation will begin with an overview of antitrust law by Jon Roelke of Morgan Lewis, whom the FMLG retained to provide advice related to this discussion. Following that instruction, FMLG members will review the political and economic factors underlying Argentina’s currency controls and summarize the exchange rate diversion provision in EMTA’s Argentina template. The purpose of this background is not to debate past events, but to provide a common foundation for discussing changes to templates and best practices going forward—which would involve EMTA and other international organizations like the Global Foreign Exchange Committee (“GFXC”). Following that background, FMLG members will introduce three topics for further consideration: (1) Should the industry develop an alternative disruption fallback before resorting to a calculation agent determination? (2) Would best practices for

calculation agents reduce uncertainty when rate source disruption or exchange rate divergence provisions are invoked? and (3) What role could the FXC and/or other industry groups play?

Members discussed a number of issues related to these three questions, including the repeated failure of polling mechanisms since the LIBOR manipulation scandal, the potential use of fallback alternatives beyond the context of EMTA's Argentina template, examples of alternatives and calculation agent practices from other jurisdictions and markets, the roles that various trade organizations play in proposing standards and best practices for the global foreign exchange market, the need to manage political risks related to emerging market currencies, and possible overlap with the FX Global Code. FMLG Chair Michael Nelson asked members to keep EMTA informed about their concerns and about any work related to its emerging market NDF templates.

ISDA definitions and deliverable FX disruptions

Ms. Douvas and Jeff Lillien from Wells Fargo summarized discussions that they and other members of an informal FMLG working group had this summer following a presentation at the July 2020 FMLG meeting about ISDA's proposed updates to its 2006 interest rate definitions by Michelangelo de Marzio, Assistant Director of Market Infrastructure and Technology at the ISDA, and Rick Sandilands, Senior Counsel for Europe at ISDA. ISDA is seeking comments on revisions that relate to proposed deliverable currency disruption events and interest rate swaps referencing nondeliverable currencies. FMLG members planned to have a discussion about the ISDA definitions that afternoon with the FXC.

In the discussion that ensued, members noted that, with limited exceptions, industry documentation has refrained from specifically addressing disruption events and fallbacks for deliverable currencies. They also observed that disruption events may be more generally covered by illegality, impossibility and force majeure provisions if there is a master agreement. Members asked, among other questions, whether the ISDA proposal would create basis risk if it were implemented without contemporaneous and corresponding changes to the 1998 FX Definitions, and whether the triggers and fallbacks in ISDA's proposal reflect the economic expectations of contracting parties. Mr. Nelson asked, in light of the preceding discussion about Argentina, why trade associations had not done more work on fallback alternatives already. Members offered several possible reasons, including the lack of any apparent and easily administrable solutions.

Members discussed the possibility of sending a letter to ISDA based on the concerns identified about basis risk and other issues. In the interest of time, Mr. Nelson suggested continuing the discussion by teleconference.

United States v. Johnson

FMLG Secretary Thomas Noone called attention to the petition for a writ of certiorari filed in the U.S. Supreme Court by Mark Johnson. Members asked Mr. Noone to circulate publicly available materials for that petition.

CCP equivalence

James Wallin continued a discussion begun at the July FMLG meeting about equivalence for CCPs in the United Kingdom post-Brexit. He noted that, in August, the European Commission announced that it was considering the adoption of a time-limited equivalence decision for the U.K. CCPs of derivatives for the short term, in order to address the possible risks to financial stability. Members noted that although market participants expected that regulators would act to avoid significant market disruption, it was important to act definitively in the near term to avoid off-boarding. They also discussed related no-action relief by the U.S. Commodity Futures Trading Commission

Quadrilateral update

Mr. Noone said that planning for the 2021 Quadrilateral was underway, and asked members to recommend topics for panel discussions. Members suggested, among other issues, the LIBOR transition, legal issues related to the pandemic, Brexit, FX settlement risk, and the three-year review of the FX Global Code.

Trading and lawyering from home

Mr. Nelson asked members for an update about work-from-home arrangements at their firms. Several members reported that they were not required to work in their offices, but that colleagues were beginning to return on a rotating basis.

Forecast for the remainder of 2020

Mr. Nelson asked members to propose topics for discussion at the remaining three FMLG meetings in 2020.

Administrative matters

FMLG Treasurer Jill Hurwitz gave a brief update on the group's finances.

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