



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

By Teleconference

Thursday, October 1, 2020

8:30am – 10:00am

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

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

Other participants: Jeff Lillien (Wells Fargo), Annette Maluenda (Barclays), Steven Schwarcz (Duke University), and Michael Wirgin (HSBC)

Central bank digital currencies

Steven Schwarcz, the Stanley A. Star Distinguished Professor of Law & Business at Duke University and the Founding Director of Duke’s interdisciplinary Global Capital Markets Center, joined the meeting to discuss his recent paper, “[Central Bank Digital Currencies and Law](#).” Professor Schwarcz explained that the purpose of his paper was to identify issues related to central bank digital currencies that need greater legal analysis. To that end, he highlighted, among other topics, how Article 4A of the Uniform Commercial Code could provide a legal framework for the allocation or risk, and the potential role for an international organization to set best practices or other standards for retail central bank digital currencies. Members then discussed a number of issues with Professor Schwarcz, including why central bank digital currencies were needed, whether it was desirable to have commercial law at the Federal level (rather than the state level) address the various issues identified in his paper, consumer protection and privacy concerns, and practical considerations in cross-border collaboration among central banks.

FMLG Chair Michael Nelson thanked Professor Schwarcz for his time and noted that digital currencies—issued by central banks or private companies—would continue to be a standing item on FMLG agendas.

ISDA definitions

Mr. Nelson asked members for their cooperation in reviewing a draft letter that an informal working group had prepared in response to ISDA’s request for comments on revisions to its 2006 interest rate definitions that relate to proposed deliverable currency disruption events and interest rate swaps referencing nondeliverable currencies. He noted that the letter would be signed by the “private sector members of the FMLG” to further clarify that the letter did not represent the New York Fed’s views. Members discussed, among other issues, whether market participants have the infrastructure to support the consequences of the deliverable disruption event definition.

N.B.: [The letter from the FMLG’s private sector members, dated October 2, 2020, is available on the FMLG’s public website.](#)

CFTC regulatory update

Chinedu Ezetah and Robert Klein briefed the FMLG on several recent rulemakings by the Commodity Futures Trading Commission (“CFTC”). These new rules addressed swap data record-keeping, reporting, dissemination, and public reporting requirements by swap data repositories, derivatives clearing organizations (“DCOs”), swap execution facilities, and other market participants under Parts 43, 45, and 49 of the CFTC’s regulations. In addition, the CFTC issued a rule that will permit DCOs organized outside of the United States meet CFTC registration requirements by complying with core principles of the CFTC’s regulatory regime through home country regulatory regimes.

CCP equivalence

James Wallin reported that the European Securities and Markets Authority (“ESMA”) would recognize the three central counterparties (“CCPs”) established in the United Kingdom as “third-country CCPs” after the end of the Brexit transition period on December 31, 2020. This means the three UK CCPs may continue to provide their services in the European Union on January 1, 2021 and thereafter.

Quadrilateral update

FMLG Secretary Thomas Noone asked members to continue to recommend topics for panel discussions and to volunteer to speak at the 2021 Quadrilateral. He also reminded members that the Financial Markets Law Committee will host the 2020 Quadrilateral on October 21 by web conference.

United States v. Johnson

Mr. Noone summarized key points raised in the [United States's opposition to Mark Johnson's petition for a writ of certiorari](#). The government's brief focused on the Second Circuit's reasons for upholding Johnson's conviction under a "right to control" theory of fraud and the examples of material misrepresentations highlighted in that court's opinion. Mr. Noone drew attention to the government's position that the case does not criminalize legitimate hedging or pre-hedging. Rather, according to the United States, the case only applies to misrepresentations about *how* trading ahead of a fixing transaction will occur.

GFXC update

Shawei Wang, a New York Fed attorney who supports work on the Global Foreign Exchange Committee ("GFXC"), joined Foreign Exchange Committee ("FXC") Secretary Sanja Peros to give a summary of the GFXC's September meeting. Buy-side outreach received significant attention at the meeting. GFXC members debated the possibility of developing a buy-side version of the FX Global Code, but decided to continue to pursue a single code for all market participants. They also discussed further development and explanation of proportionality concept. Other topics included work by local committees—including the FXC—on disruption events and calculation agent practices, and a report on changes to the global foreign exchange market owing to the pandemic. These topics are further explained in the [GFXC's press release following the meeting](#). Finally, Ms. Wang and Ms. Peros also noted that the September meeting was the first time that the Bank of Indonesia and the Bank of Israel participated in a GFXC meeting as members.

Trading and lawyering from home

Mr. Nelson asked members to contact him if they saw any market disruptions arising from or related to work-from-home arrangements.

Culture webinar

Mr. Noone said that the New York Fed would host a public webinar on Monday, October 19 that would highlight two projects related to the Bank's culture initiative: (1) the FXC's and FMLG's work on the FX Global Code, and (2) a series of case studies published by the Education and Industry Forum. The case studies highlight ethical dilemmas faced by junior bank employees, and are designed to be used in business classes and in-house training sessions. Maria Douvas will be one of the webinar speakers.

Note: [A recording of the webinar is available on the Education and Industry Forum's public website.](#)

Administrative matters

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

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