

Meeting Minutes

By Teleconference

Thursday, April 2, 2020

9:00 a.m. – 10:00 a.m.

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

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

Other participants: Amelia Kaufman (Deutsche Bank) and Jeffrey Lillien (Wells Fargo)

ISDA IBOR fallback protocol

Maria Douvas reviewed work by the International Swaps and Derivatives Association (“ISDA”) to include master agreements published by the Foreign Exchange Committee in a protocol that addresses the forecasted end of LIBOR. Members discussed, in addition to the draft protocol, possible amendments to 2006 ISDA Definitions to include IBOR fallbacks and a draft list of non-ISDA documents for inclusion in the IBOR fallback protocol, which include the FXC master agreements.

Members then continued a discussion from their March 19 teleconference about contingency planning for the deliverable FX market in the event of a major payment system outage—specifically, how a market participant would determine whether a barrier had been breached. Members noted that “next business day” conventions are not aligned across jurisdictions. They discussed possible outcomes depending on the duration of the outage (one day versus multiple days), which could affect the tenor and value of an option, and depending on which master agreement was used: and FXC master agreement, a 1992 ISDA master agreement, or a 2002 master agreement. Members agreed that it would be helpful to hold follow-up discussions with ISDA.

Coronavirus impact on FX contracts

FMLG Chair Michael Nelson asked members for their observations on how the COVID-19 pandemic has affected FX contracts. Members discussed, among other issues, emergency orders affecting credit agreements and derivatives, variation in force majeure provisions, the validity of e-signatures and variations across jurisdictions, virtual notarizations in the United States and Europe, and delivery of notice if an office specified in a contract is closed. Members suggested that the FMLG hold follow-up discussions with its sister organizations: the Financial Markets Law Committee, the European Financial Markets Lawyers Group, and the Financial Law Board.

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