



**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, January 7, 2021

8:30 a.m. – 10:00 a.m.

*Members present:* Syed Riaz Ali, Sarah Ashkenazi, James Brown, Martha Burke, Maria Douvas-Orme, Chinedu Ezetah, Terence Filewych, Jill Hurwitz, Glade Jacobsen, Amelia Kaufman, 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:* Michael Ahn, Michael Nelson, Thomas Noone, Sanja Peros, Janine Tramontana, and Shawei Wang

*Other participants:* John Ball (Global Financial Markets Association (“GFMA”)), Mary Breslin (Deutsche Bank), Victoria Cumings (GFMA), Jeffrey Lillien (Wells Fargo), Annette Maluenda (Barclays), and Alex van Voorhees (Bank of America)

**GFMA: fallback alternatives and calculation agent practices**

John Ball and Victoria Cumings, representatives from the Global Foreign Exchange Division (“GFXD”) of the GFMA, discussed the GFMA’s work on two issues: (i) fallback alternatives and (ii) calculation agent practices. The GFXD created a working group in May 2020 around these issues in response to increasing concerns about reliance on calculation agent fallbacks due to legal and other risks. The working group has discussed, among other things, the possibility of fallback alternatives based on historical rates, compliance with European Union benchmark regulations (including safe harbors for participants in a dealer poll), and possible alternatives to calculation agent determinations, including auctions. To date, the working group has not identified clear answers on what the best fallback alternatives might be. If market participants will continue to rely on calculation agent determinations, however, the need to increase transparency and foreseeability will only grow.

In the discussion that followed, members discussed ways for the FMLG, GFMA, the Emerging Markets Traders Association, the Global Foreign Exchange Committee (“GFXC”), and other interested groups to avoid duplication and to ensure that interested parties are

connected. They also discussed relevant precedents for principles that should guide calculation agent determinations, and the appropriate sources of price information for those determinations. Members also asked questions about application to deliverable and non-deliverable products. FMLG Chair Michael Nelson asked members to discuss the issues of fallback alternatives and calculation practices with their colleagues, and said the discussion would continue at the February meeting.

### **Annual review of charter and antitrust guidelines**

FMLG Secretary Thomas Noone distributed copies of the FMLG's Articles of Association and the New York Fed's Antitrust Guidelines for Members of the Federal Reserve Bank of New York's Advisory and Sponsored Groups ("Guidelines"). Both documents are available on the [FMLG's public website](#). Mr. Noone instructed members to share the Guidelines with colleagues from their institutions who also work on FMLG matters and to raise any concerns about anti-competitive conduct either directly to New York Fed staff or through the Bank's integrity hotline (1-877-52-FRBNY or 1-877-523-7269). He also highlighted, as in previous years, the appropriate role of best practices and market conduct recommendations and addressed anti-competitive conduct that could cause legal or reputational harm to the FMLG and the New York Fed. Mr. Nelson emphasized the importance of compliance with the Guidelines to the New York Fed.

### **GFXC update**

Foreign Exchange Committee ("FXC") Secretary Sanja Peros and Shawei Wang, a New York Fed attorney who supports work on the GFXC, summarized a [meeting of the GFXC on December 10, 2020](#). Among other things, the GFXC nominated a new co-vice chair for a two-year term and welcomed two new associate members. The group also reviewed a timeline for completing the three-year review of the FX Global Code (the "Code"), heard a presentation on the WM/Reuters 4pm benchmark fix, and discussed the progress of working groups addressing algorithmic trading, buy-side outreach, and pre-hedging.

A discussion ensued about the likelihood of potential changes to the Code and adherence thereto. At this time, the GFXC is requesting views from the local committees about in-house processes for reviewing adherence to the Code and publishing an updated Statement of Commitment in the event that the three-year review of the Code results in material changes. Mr. Noone suggested forming an informal working group to discuss preliminary considerations. Mr. Nelson suggested a further discussion of this topic at the next FMLG meeting.

## **Pre-hedging and *United States v. Johnson***

Mr. Noone asked FMLG members for ideas on how *United States v. Johnson* could be incorporated into examples or discussions of principles in the revised FX Global Code—perhaps to illustrate the difference between permissible and illegal activity in trading ahead of a client order, or to illustrate Principles 1-3 (Ethics). A discussion ensued about the differences between legitimate pre-hedging and illegal front running. Mr. Nelson suggested revisiting this topic at future FMLG meetings.

## **Outlook for 2021**

Mr. Nelson asked members to suggest agenda items for the group’s meetings this year—in particular, any regulatory issues. A brief discussion about emerging issues ensued. Members suggested that the group continue its regular discussion of the tokens, block chain, and other developments in payment systems and of central bank digital currencies.

## **LIBOR transition**

Maria Douvas shared several developments concerning the transition away from LIBOR, including the [Intercontinental Exchange \(“ICE”\) Benchmark Administration’s \(“IBA”\) consultation clarifying the final cessation dates for all currency LIBORs](#). The IBA’s consultation closes on January 25, 2021. Thereafter, the IBA will release comments and announce the results of the consultation. Members asked about the progress of legislative solutions at the state and federal levels.

## **2021 Quadrilateral planning**

Mr. Noone circulated a draft of the agenda for the 2021 Quadrilateral and asked members to provide feedback on proposed agenda topics. Mr. Noone informed the group that each of the FMLG’s three sister organizations—the European Financial Markets Lawyers Group, the Financial Markets Lawyers Committee, and the Financial Law Board (Japan)—shared preliminary feedback and supported the concept of three separate two-hour sessions in the first, second, and third quarters of 2021. Mr. Noone proposed that each session comprise three moderated panel discussions and one presentation. The first meeting will take place on Thursday, March 4 in lieu of a regular FMLG meeting. The three discussion panels will cover (i) cross-border legal issues, including Brexit, (ii) the LIBOR transition, and (iii) central bank digital currencies. In addition, the FMLG’s working group on fallback alternatives and calculation agent practices hopes to present a summary of those issues and to invite feedback from the FMLG’s sister organizations.

Members shared initial thoughts on the proposed agenda for the group’s consideration. Mr. Nelson underscored the need for assistance with finalizing the Quadrilateral agenda for the March session.

### **BIS paper on “Project Helvetia”**

Terence Filewych summarized a recent Bank for International Settlements (“BIS”) paper, [Project Helvetia – Settling tokenized assets in central bank money](#). The paper presents a new digital currency experiment, Project Helvetia, that explores the integration of tokenized assets and central bank money on a new platform called the SIX Digital Exchange (“SDX”). Two proofs of concept for settling tokenized assets were conducted in this experiment: (i) issuing a novel wholesale central bank digital currency, and (ii) building a link between the new securities settlement platform of SDX and the existing central bank payment system. The paper assessed the benefits and challenges of these proofs of concept.

### **Administrative matters**

Mr. Noone asked members to review and update their contact information.

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

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