



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, February 4, 2021

8:30 a.m. – 10:00 a.m. (New York time)

Members present: Syed Riaz Ali, Sarah Ashkenazi, Martha Burke, Maria Douvas-Orme, Chinedu Ezetah, Terence Filewych, Jill Hurwitz, 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, Anna Nordstrom, Sanja Peros, and Shawei Wang

Other participants: Mary Breslin (Deutsche Bank), Jeffrey Lillien (Wells Fargo), Annette Maluenda (Barclays), David Sewell (Debevoise & Plimpton), Alex van Voorhees (Bank of America), and Amy Zhang (Debevoise & Plimpton)

FinCEN and digital currencies

David Sewell and Amy Zhang from Debevoise & Plimpton LLP discussed a recently [proposed rule from FinCEN regarding reporting and recordkeeping requirements for digital assets and virtual currencies](#). A copy of their presentation is available on the FMLG’s public website.

The proposed rule, which was published by the Financial Crimes Enforcement Network (“FinCEN”) on December 23, 2020, would require U.S. banks and money service businesses (“MSBs”) operating in the U.S. to conduct counterparty identification and verify customers for large digital currency transactions that involve unhosted wallets or wallets hosted by foreign financial institutions located in certain jurisdictions. During the 15-day comment period that followed, FinCEN received approximately 7,500 comments on the proposed rule. The comment period was subsequently extended to March 29, 2021.

The presentation and the discussion that followed the presentation covered a number of issues, including broader U.S. and international efforts to apply an anti-money laundering

framework to digital currencies; the verification, recordkeeping, counterparty verification, and reporting requirements for U.S. banks and MSBs; ambiguous terms; and unintended consequences—specifically, incentives for transactions to take place offshore or via peer-to-peer networks, which may limit the proposed rule’s policy objectives and law enforcement value.

ECB digital currency consultation

Chinedu Ezetah provided a brief update on the European Central Bank’s (“ECB’s”) [public consultation on a digital euro](#). The public consultation, which was launched in October 2020, sought feedback from the general public and interested stakeholders on a number of questions around the design of a digital euro. On January 13, 2021, [the ECB announced the end of the public consultation](#). In its press release, the ECB stated that privacy and security ranked highest among requested features of a digital euro. The ECB plans to provide a more detailed analysis of the public consultation in the spring.

2021 Quadrilateral planning

FMLG Secretary Thomas Noone circulated an updated agenda for the 2021 Quadrilateral. This year, the Quadrilateral will comprise three separate two-hour sessions in the first, second, and third quarters of 2021. The first meeting will take place on Thursday, March 4, 2021 in lieu of a regular FMLG meeting. Mr. Noone briefly reviewed moderators and panelists’ roles with regard to the three discussion panels: (i) the LIBOR transition, (ii) cross-border issues, and (iii) central bank digital currencies. He also reported that the agenda may be amended given that there was slightly higher interest in cross-border issues than in other topics. Mr. Noone thanked members for their assistance with the first session of the Quadrilateral and emphasized the need for volunteers for the next two sessions of the Quadrilateral, which are scheduled to take place in June and September.

Fallback alternatives and calculation agent practices

Terence Filewych and Maria Douvas continued a discussion from the [FMLG’s January 2021 meeting](#) of the Global Financial Markets Association’s (“GFMA’s”) work on fallback alternatives and calculation agent practices. Although there have not been any significant developments since the FMLG’s last meeting, these issues are receiving attention in the press and are on the agenda for the 2021 Quadrilateral. Members agreed that having GFXD board members work on these issues was a positive development. FMLG Chair Michael Nelson suggested continuing discussion of this topic at the next FMLG meeting.

Adherence and the FX Global Code

As mentioned at the [FMLG's January 2021 meeting](#) by Foreign Exchange Committee (“FXC”) Secretary Sanja Peros and Shawei Wang, a New York Fed attorney who supports work on the Global Foreign Exchange Committee (“GFXC”), the GFXC would like to gather views from the local committees about in-house processes for reviewing adherence to the FX Global Code (the “Code”) and publishing an updated Statement of Commitment. The group discussed the nature of potential changes to the Code and the timeframe for the GFXC to evaluate feedback. Members also discussed potential feedback to provide to the GFXC, which may include a suggestion that the GFXC supply a “red-line” version of the Code and an explanation of any changes to the Code. Mr. Nelson suggested that members continue discussion of this topic in between and at future FMLG meetings.

***United States v. Johnson* and the FX Global Code**

At the [FMLG's January 2021 meeting](#), Mr. Noone asked members to think about how, if at all, *United States v. Johnson* could be incorporated into examples or discussions of principles in the revised Code for the purpose of making a recommendation to the FXC, and through them, to the GFXC. Mr. Noone again observed that although *Johnson* may not be very useful with regard to pre-hedging principles, the case nevertheless may be useful to illustrate the ethics principles in the Code. A discussion ensued about the difficulty of writing examples that illustrate usefully the differences between legitimate and illegitimate pre-hedging, the particular behavior involved in *Johnson* that led to a conviction for wire fraud, and a sense that the case was already well-known to U.S. market participants and incorporated into the training materials at some firms. In the end, there was a consensus that the FMLG should not make any recommendations to incorporate *Johnson* into the examples section of the Code.

FMSB transparency draft of large trades

On December 15, 2020, the FICC Markets Standards Board (“FMSB”) published a [transparency draft](#) proposing standards for the execution of large trades in FICC markets. The comment period for the draft runs through March 16, 2021. Mr. Noone explained that the paper overlaps with the Code on the issue of pre-hedging. He posited that, although there may not be direct conflict between the two documents, there are differences between the two documents—especially on the level of detail contained in the principal or standard. Mr. Noone asked members for their assessment of the overlap between the two documents. A brief discussion followed. Mr. Nelson suggested that members continue a discussion about the transparency draft at a future FMLG meeting.

LIBOR transition

Maria Douvas provided a brief update concerning the transition away from LIBOR. The New York LIBOR legislation proposed by the Alternative Reference Rates Committee (the “ARRC”) was included in New York Governor Andrew Cuomo’s 2021 budget bill. Although not a guarantee that the bill will pass, the inclusion of the ARRC’s proposed legislation in the executive budget marks an important step toward having the proposal passed, and ultimately, signed into law.

Administrative matters

Mr. Noone asked members to consider an invitation from the Financial Markets Law Committee to join its Securities Markets Scoping Forum.

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

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