

## Financial Markets Lawyers Group Meeting

Federal Reserve Bank of New York  
33 Liberty Street  
7<sup>th</sup> Floor, Main Conference Room

Thursday, January 10, 2013

8:30am – 10:00 am (New York time)

*Present:* James Brown, Victoria Cumings, Darek Defreece (by phone), Maria Douvas (by phone), Sherine El-Sayed (for Joanna Perkins, by phone), Joyce Hansen, Jill Hurwitz (for Jeff Lillien), Pamela Hutson (by phone), Robert Klein, Ruth Laslo (by phone), David Miller (by phone), Michael Nelson, David Parkinson, Jamie Pfeifer, Ricardo Salaman, Lisa Shemie, Garland Sims, Raunuk Wahiwala (for Joanna Perkins, by phone), Shawei Wang, Bryan Woodard (by phone), Lawrence Young

### **Argentina Bondholder Litigation**

The group discussed recent developments in Argentina's bondholder litigation case, NML Capital, Ltd. v. Republic of Argentina. There has been increased activity on the case since the United States Court of Appeals for the Second Circuit issued its October 26, 2012 opinion affirming District Court Judge Griesa's ruling that Argentina violated the *pari passu* clause in its bonds by ranking its payment obligations to the plaintiffs below those of other bondholders who had accepted an exchange offer on the bonds and imposing restrictions on payments to bondholders who participated in exchange offers in order to remedy this unequal treatment. On November 21, 2012, on remand from the Second Circuit, Judge Griesa issued opinions and an order requiring Argentina to pay the plaintiffs the entirety of the unpaid principal and accrued interest owed them -- \$1.33 billion in total -- by December 15, 2012. On November 28, 2012, the Second Circuit granted Argentina's request for an emergency stay on Judge Griesa's November 21, 2012 orders pending the Second Circuit's *en banc* review.

It was noted by the group that this case may be *sui generis*, in the sense that Collective Action Clauses are now common in bonds and the *pari passu* clause at issue in the Argentina case seems to be unique.

## **Dodd-Frank Operational/Implementation Issues**

- **CFTC Correspondence and follow-up**

The group reviewed the status of various issues they have raised to the CFTC.

On November 28, 2012, the FMLG had submitted a request for extension of the ECP look-through rule and related verification and recordkeeping requirements. The group agreed to follow-up with the CFTC on the status of this request.

The group was also planning to meet with the CFTC to further discuss the allocation of external business conduct standards in FX Prime Brokerage.

- **Voice Brokers**

This topic was tabled to a future meeting.

## **FX Treasury Exemption**

The group discussed the question of whether FX forwards and swaps that were exempted from the definition of “swap” by the Department of the Treasury’s November 17, 2012 Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act (“Exempt FX”) are subject to certain internal business conduct rules, namely the CFTC’s September 11, 2012 regulation regarding Confirmation, Portfolio Reconciliation, Portfolio Compression and Swap Trading Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (the “Part 23.500 et seq rules”). After reaching out to the CFTC, FMLG members now understand that the CFTC’s position is that the Part 23.500 et seq rules are intended to apply to Exempt FX.

The group was asked what next steps are planned to achieve compliance with the Part 23.500 et seq rules. The possibility of global coordination among the FXC and its sister committees around the world was raised.

## **Legal Opinion Update**

David Miller reported that, as Chair of the Opinions Subcommittee of the FMLG, the FMLG’s annual effort to collect updated opinions with respect to the enforceability of the netting provisions of the International Currency Options Market (ICOM) Master Agreement, the International Foreign Exchange Master Agreement, the Foreign Exchange and Options Master Agreement and the International FX and Currency Option 2004 Master Agreement Terms and Terms Agreement from 34 jurisdictions around the world is proceeding well, with most opinions finalized and issued. The group

was told that CDs of the legal opinions will be available at the next FMLG meeting, when Mr. Miller will provide a summary of legal developments in the covered jurisdictions.

### **Quadrilateral 2013**

The group briefly discussed the conference agenda and social program for this year's Quadrilateral Joint Meeting of the EFMLG/FLB/FMLC/FMLG to be hosted by the Financial Markets Law Committee (FMLC) in London from July 1-3, 2013.

### **Rolling Spot**

It was reported that the FX industry has been studying the appropriate treatment of rolling FX transactions as FX spot, forward and/or swap contracts under the Commodity Exchange Act. While the group agreed this was an important issue to discuss as an industry, it was decided that additional internal conversations were necessary, and that the Global FX Division of the Global Financial Markets Association may be a more appropriate forum for the discussion given that group's work in the fall of 2012 on the "Rolling" FX transaction issue.

### **Miscellaneous**

An update on the 60 Best Practices was provided. Final comments have been requested to be submitted by early February. It was noted that this round of 60 Best Practices does not take into consideration Dodd-Frank Act reforms, so it is expected that the 60 Best Practices Working Group will be further revising the 60 Best Practices in the near future.

*The next meeting of the FMLG will be held on Thursday, February 7, 2013.*