

## **Financial Markets Lawyers Group Meeting**

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

Thursday, October 4, 2012  
8:30am – 10:00am (New York time)

*Present:* Victoria Cumings, Darek Defreece (by phone), Maria Douvas, Robert Klein, Ruth Laslo (by phone), Jeff Lillien, David Miller (by phone), Michael Nelson, Sherine El-Sayed for Joanna Perkins (by phone), Jamie Pfeifer, Nancy Schnabel, Lisa Shemie, Shawei Wang

### **Dodd-Frank Operational/Implementation Issues: CFTC Meetings**

The group received a summary of meetings that certain members of the FMLG had with the staff, Commissioners and Chairman of the CFTC on July 31, 2012. The meetings were an opportunity for the FMLG to discuss the following issues with the CFTC: (1) Application of the External Business Conduct Rule (EBCR) to FX prime brokerage (“FX PB”) transactions, (2) Application of the Dodd-Frank reporting rules to FX prime brokerage, (3) Delivery of pre-trade mid-market quotes and (4) Treatment of non-U.S. commodity pool participants in FX Transactions. (see FMLG Talking Points, dated July 31, 2012) In addition to discussion of these topics, the meetings also served to establish a framework for future dialogue; the FMLG’s Dodd-Frank Operational/Implementation Issues Working Group is continuing to work on follow-up from the meetings.

In terms of takeaways, based on the July 31<sup>st</sup> meetings, and in some cases on follow-up calls, FMLG members reported that the CFTC indicated that the second issue, regarding application of the Dodd-Frank reporting rules to FX PB, should be pursued through the ISDA Data Working Group.

On the third issue, regarding the External Business Conduct Rule (“EBCR”) requirement to deliver a pre-trade mid-market quote, the CFTC asked the FMLG to come back with a specific proposal, supported by FX firm data. The FMLG has done this and hopes to meet with the CFTC shortly to discuss its proposal, which is attached to these minutes. Essentially, the FMLG’s proposal regarding the requirement to provide a pre-trade mid-market quote is that FX Dealers should not be required to provide a pre-trade mid-market quote pursuant to CFTC Regulation § 23.431(a)(3)(i) for a specific subset of FX transactions – those that involve highly-liquid currencies and exhibit narrow FX Dealer bid-ask spreads that are closely correlated to publicly available information. The CFTC had indicated that the same staff team will address both EBCR

issues: the pre-trade mid-market quote requirement and the application of EBCR to FX PB transactions.

After the July 31<sup>st</sup> meetings, FMLG members explained that industry groups have agreed that the FMLG would liaise with the CFTC regarding the pre-trade mid-market quote requirement for FX transactions and SIFMA would address the pre-trade mid-market quote requirement in connection with electronic trading platforms.

### **US Treasury FX Exemption**

The Treasury Department's proposal to exempt foreign exchange swaps and forwards from the definition of "swap" for most Dodd-Frank Act purposes was discussed. The timing of possible finalization of the Treasury determination and market effects of a failure to finalize the Treasury determination were raised.

### **FXC Update**

A summary of the Foreign Exchange Committee's October meeting was provided. It was reported that, in an effort to better understand the current landscape, the FXC, which now includes buy-side participation, discussed benchmarks and benchmark fixes that are used for FX transactions. Best practices for benchmarks and benchmark principles were also topics considered by the group. It was also mentioned that the New York Fed has received a request from Congress to produce certain internal documents relating to LIBOR.

### **Legal Issues Raised by Recent Economic Volatility**

No issues were raised on this topic.

### **Quadrilateral Review**

A Quadrilateral Meeting of the European Financial Markets Lawyers Group, the Financial Markets Law Committee ("FMLC"), the Financial Law Board and the Financial Markets Lawyers Group was held in Munich, Germany from September 12-14, 2012. Members of the groups gave presentations on Recovery and Resolution, Regulatory Regime Update Including Extraterritoriality Effects and Other Regulatory Developments. FMLG participants found the Quadrilateral to be a productive exchange and look forward to next year's meeting, which is scheduled to be hosted by the FMLC in London in 2013.

*The next meeting of the FMLG will be held on Thursday, November 1, 2012.*