

## Financial Markets Lawyers Group Meeting

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

Thursday, April 5, 2012  
8:30am – 10:00am (New York time)

*Present:* Victoria Cumings, Darek Defreece (by phone), Maria Douvas, Joyce Hansen, Pamela Hutson (by phone), Emily Jelich (by phone), Emilio Jimenez (by phone), Robert Klein, Ruth Laslo (by phone), Jill Hurwitz, Michael Nelson, Laura Bentham for Joanna Perkins (by phone), Jamie Pfeifer, Ricardo Salaman, Lisa Shemie, Garland Sims, Shawei Wang

*Guest speakers (by phone):* Niall Lenihan (European Central Bank)

### Western European Sovereign CDS Contract Issues

Niall Lenihan of the European Central Bank joined by phone to update the FMLG on three recent decisions made by the ISDA Determinations Committee regarding Greek sovereign debt. After describing the ISDA CDS credit event determination process, Mr. Lenihan described various questions that have recently been posed to the ISDA Determinations Committee (the "ISDA DC"). As publicly announced on March 1, 2012 by the ISDA DC, Mr. Lenihan noted the ISDA DC unanimously determined that questions presented to the ISDA DC on February 24, 2012 (whether the holders of Greek law bonds had been subordinated to the European Central Bank ("ECB") and certain national central banks whose bonds were acquired by the Hellenic Republic prior to the implementation of new Greek legislation such that such subordination constituted a Restructuring Credit Event) and February 29, 2012 (whether there had been any agreement between the Hellenic Republic and the holders of private Greek debt which constituted a Restructuring Credit Event) did not constitute Restructuring Credit Events under the ISDA 2003 Credit Derivatives Definitions. However, on March 9, 2012, having found that the exercise by the Greek government of collective action clauses to amend the terms of Greek law-governed bonds issued by the Greek government such that the right of all holders of the Affected Bonds to receive payments had been reduced, the ISDA Determinations Committee resolved that a Restructuring Credit Event had occurred. As a result, Mr. Lenihan explained, on March 19, 2012, ISDA conducted an auction in respect of outstanding CDS transactions relating to The Hellenic Republic.

### Dodd-Frank Operational/Implementation Issues Update

The group was briefed on the work of the Dodd-Frank Operational/Implementation Issues Working Group. Over a number of conference calls this past month, the Working Group has assembled a list of Dodd-Frank-related FX issues that the FMLG is interested in considering. At the top of the list are questions related to the application of the External Business Conduct Rules in the FX Prime Brokerage

context. The Working Group will continue to convene periodically to reach a consensus approach on this issue.

### FX Clearing and Documentation

Jill Hurwitz discussed possible documentation that could be used to effectuate Dodd-Frank-mandated clearing of certain FX products. Given factors inherent in the traditional functioning of the FX Prime Brokerage market, and in light of the CFTC's recent regulations that prohibit tri-party agreements between customers and swap dealers, major swap participants, futures commission merchants that are clearing members, and derivatives clearing organizations, the group discussed the significant uncertainty that currently exists with regard to an efficient document structure for FX clearing. This is another issue that the FMLG Dodd-Frank Operational/Implementation Issues Working Group will discuss further in coming weeks.

### Electronic Confirmations

Electronic Confirmations is a recurring topic for the FMLG. With the goal of attaining a more efficient confirmation process, the FMLG has been examining the use of electronic confirmations generated by single-dealer or multi-dealer electronic platforms in the execution of FX transactions and is considering ways to promote the use of electronic confirmations. Next steps for this project were briefly reviewed.

### Administrative Matters

Minutes from the March 1, 2012 meeting were deemed approved.

### Global FX Meeting

Jamie Pfeifer spoke about a Global FX Committee Meeting hosted by the ECB in Frankfurt on March 19, 2012. At the annual meeting of foreign exchange groups, including the Australian Foreign Exchange Committee, the Canadian Foreign Exchange Committee, the London Foreign Exchange Joint Standing Committee, the New York Foreign Exchange Committee, the Tokyo Foreign Exchange Market Committee, the Hong Kong Treasury Markets Association, the Singapore Foreign Exchange Market Committee and the Foreign Exchange Contact Group, topics discussed included observations on an exercise being conducted to compare Best Practice codes across jurisdictions, OTC derivatives reform in the European Union, US and Hong Kong, and other issues that have been discussed at previous FMLG meetings, such as opening hours for the FX market and the fixings for Japanese yen crosses.

### Updates

#### *IFEMA/FEOMA and Dodd-Frank*

Gary Sims reported on current efforts by industry organizations to update foreign exchange transaction documents to comply with Dodd-Frank Act requirements. FMLG members agreed to monitor these efforts so that FXC foreign exchange documents, such as the IFEMA and FEOMA, can be included in any update documents that are drafted.

### *FX Mutual Optional Early Termination*

It was reported that ISDA/EMTA/FXC published the 2012 Additional Provisions for Optional Early Termination to the 1998 FX and Currency Option Definitions on March 13, 2012.

### *60 Best Practices*

An update on the status of the 60 Best Practices document was offered. The 60 Best Practices Working Group has completed its initial review of the document. A joint call between the FMLG and OMWG 60 Best Practices Working Groups will be set up to discuss outstanding comments.

### Miscellaneous

The next FMLG Meeting is scheduled for Thursday, May 3, 2012.