

Financial Markets Lawyers Group Meeting

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

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

Present: Victoria Cumings, Maria Douvas, Joyce Hansen, Pamela Hutson (by phone), Emily Jelic (by phone), Emilio Jimenez, Robert Klein, Jeff Lillien, David Miller (by phone), Michael Nelson, Jamie Pfeifer, Ricardo Salaman, Lisa Shemie, Roland Susman (for Joanna Perkins, by phone), Janine Tramontana, Shawei Wang

Amendment to FMLG Charter

Joyce Hansen explained that the New York Fed will be implementing a new policy with regard to committees sponsored by the New York Fed that have private sector members, such as the FMLG. Effective today, the New York Fed will post to its website: (1) the FMLG Charter, (2) FMLG Meeting Agendas, at the time they are sent to committee participants and (3) FMLG Committee Minutes, within 30 days after each meeting.

As part of this initiative, it was proposed that the FMLG Charter be amended to include a paragraph regarding Confidentiality, which states the existing practice that FRBNY staff members are prohibited from discussing material non-public or confidential supervisory information with members of the FMLG. Given the lack of objection to the charter amendment, the new charter was deemed approved by the members.

Legal Issues Raised by Recent Economic Volatility

The group talked about recent industry discussions on the topic of current events in Europe. At this time, it appears discussions concerning Euro-related legal issues have been at a high level, given the lack of specifics to respond to.

It was noted that the President of the New York Fed, William Dudley, testified before Congress in December 2011 at a House hearing entitled “What the Euro Crisis Means for Taxpayers and the U.S. Economy” and that more law firms and banks have published papers on the future of Europe.

Information reported in the press regarding contingency planning was also discussed.

Post-MF Global Issues

On a no-names basis, the group discussed trends in counterparty demands in light of customer fund issues that have surfaced during MF Global's bankruptcy. Members generally reported that counterparties have expressed an increased interest in obtaining further assurances that customer funds are being segregated as required.

Possible reforms to the current system were discussed, but it was also noted that proposals to alter segregation requirements do not appear to address the effects of actual malfeasance and that the facts in the MF Global case are not yet fully known.

Update on Industry Meetings

Maria Douvas reported on recent industry meetings with the SEC and FINRA concerning retail FX rules and the definition of Eligible Contract Participants under the Commodity Exchange Act. Mention was made that a number of letters have been sent to regulators to explain the unintended consequences the proposed rules seem to cause and the potential impact the proposed rules could have on buy-side firms and dealers. The industry is awaiting the CFTC's final rule on this issue, which is expected later this month.

FXPB and Trade Give Up Timing

This topic was deferred to a future date.

Status of Opinion Update Project

David Miller reported that the 2011 ICOM, IFEMA, FEOMA and IFXCO legal opinion update project is proceeding on track. Opinions from 32 of 34 jurisdictions have been finalized. It is expected that a CD of 2011 opinions will be distributed at our next meeting in February, at which time Mr. Miller will highlight certain legal developments of the past year.

Miscellaneous

Some past initiatives were raised: comments on FX Mutual Optional Early Termination documentation were solicited and a working group to discuss Credit Downgrade Triggers in Documentation was formed. It was reported that drafting of the 60 Best Practices document is continuing.

The next FMLG Meeting is scheduled for Thursday, February 2, 2012.