

Financial Markets Lawyers Group Meeting

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

Thursday, March 1, 2012
8:30am – 10:00am (New York time)

Present: Andrew Alter, Victoria Cumings, Maria Douvas, Pamela Hutson (by phone), Emily Jelich (by phone), Emilio Jimenez, Robert Klein, Ruth Laslo (by phone), Jeff Lillien, David Miller (by phone), Michael Nelson, Jamie Pfeifer, Ricardo Salaman, Lisa Shemie, Garland Sims (by phone), Shawei Wang

Guest speakers (by phone): Chinedu Ezetah (Citigroup), Cornelia Griesheimer (Morgan Stanley), Jill Hurwitz (Deutsche Bank) and Dan Ruperto (Goldman Sachs)

Downgrade Triggers in Master Agreements

Downgrade Triggers in Master Agreements is a recurring topic for the FMLG. This issue has been brought to the attention of the FMLG because the process of closing out FX positions when credit downgrade triggers in Master Agreements are breached can be costly and disruptive to the market. It is believed the market effects could be even more pronounced in the event of multiple simultaneous counterparty downgrades. The Credit Downgrade Triggers Working Group of the FMLG is evaluating a proposed solution to this problem – one that would standardize the close out mechanic upon counterparty downgrade, in an attempt to provide greater certainty and efficiency to the close out process.

The FMLG discussed the merits of the proposed solution, along with some concerns about the effect and implications of the proposal. While there was generally broad support for the goals of increasing the transparency of the close-out process and fostering systemic stability, it was acknowledged that implementation of the proposal could lead to some unintended consequences.

It was agreed that a list of concerns with the proposal would be drafted and circulated.

FX Clearing and Documentation

The group discussed the re-documentation that would be required in connection with Dodd-Frank-mandated clearing of certain FX products. Bob Klein and Chinedu Ezetah raised the possibility of the FMLG exploring a uniform approach to this process.

Electronic Confirmations

Electronic Confirmations is another 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. The group discussed next steps for this project.

Administrative Matters

The group approved Minutes from the February 2, 2012 meeting. A Steering Committee was created to identify Dodd-Frank-related FX issues that should be considered by the FMLG.

French Transaction Tax

Andrew Alter briefly described the contours of a financial transaction tax being proposed in France. (A similar tax is being considered in other European countries as well.) According to reports, the French Bill (the "Bill") on the taxation of financial activities would tax purchases of shares that are admitted to trading on the Paris Stock Exchange and have been issued by a French-headquartered company with a minimum market capitalization of €1 billion as of January 1st of the taxation year. The Bill provides that the tax would apply to purchasers whether they are located in France or not, although exceptions are proposed for the initial issuance of securities, transactions carried out by clearing houses, market making trades, intragroup acquisitions and temporary disposals of securities. The Bill, which proposes an effective date of August 1, 2012, would also tax the notional amount of naked CDSs on sovereign bonds and high frequency trading in the same shares that are subject to the financial transaction tax and naked CDSs on sovereign bonds.

Legal Issues Raised by Recent Economic Volatility

No issues were raised on this topic.

Updates

IFEMA/FEOMA and Dodd-Frank

An update on this project was deferred to a future meeting.

FX Mutual Optional Early Termination

A final call for comments on documentation that provides for FX Mutual Optional Early Termination was issued. ISDA/EMTA/FXC plan to publish the FX Mutual Optional Early Termination documentation in mid-March.

60 Best Practices

An update on the status of the 60 Best Practices document was offered. The 60 Best Practices Working Group will continue its review of the document.

Miscellaneous

The status of 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 next FMLG Meeting is scheduled for Thursday, April 5, 2012.