

Financial Markets Lawyers Group Meeting

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

Thursday, May 3, 2012
8:30am – 10:00am (New York time)

Present: Andrew Alter, Victoria Cumings, Darek Defreece (by phone), Maria Douvas (by phone), Joyce Hansen, Pamela Hutson (by phone), Emily Jelich (by phone), Robert Klein, Ruth Laslo (by phone), Jeff Lillien, David Miller (by phone), Michael Nelson, Laura Bentham for Joanna Perkins (by phone), Jamie Pfeifer, Ricardo Salaman, Lisa Shemie, Garland Sims, David Parkinson for Shawei Wang

Trade Reporting

The group was briefed on the work of the Dodd-Frank Operational/Implementation Issues Working Group's latest discussion on issues surrounding trade reporting requirements for FX Prime Brokerage. The group noted that the external business conduct rules go into effect on October 14, 2012 so implementation issues will have to be resolved over the coming months.

US Treasury Exemption

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.

Enforceability of Netting Against a Federal Reserve Bank

A question was raised about whether the various netting opinions on industry group master agreements covered central banks. Gary Sims stated that he did not believe the opinions covered the Fed. However, he believed that the opinions of some non-US jurisdictions did cover the relevant central banks. Mr. Sims agreed to do a survey of Netalytics ISDA opinion analysis application and report back.

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. 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. The FMLG Dodd-Frank Operational/Implementation Issues Working Group is continuing to discuss ways of addressing this topic.

Electronic Confirmation

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. The group discussed the importance of electronic confirmation if Swap Execution Facilities (SEFs) are going to be viable marketplaces. The group also discussed adding more information about electronic confirmation to the Best Practices document currently being developed.

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.

Group members said that a majority of institutions support a standardized solution but think there might be practical impediments to implementation.

Quadrilateral Agenda

A quadrilateral meeting, hosted by the European Financial Markets Lawyers Group, will be held in Munich in Fall 2012. The group briefly discussed a possible agenda.

Updates

60 Best Practices

The 60 Best Practices Working group is continuing its revisions of the 60 Best Practices document. A joint call between the FMLG and OMWG 60 Best Practices Working Groups has been set up and will occur before the next FMLG meeting.

IFEMA/FEOMA and Dodd-Frank

Due to time constraints, no update was presented.

Miscellaneous

The next FMLG Meeting is scheduled for Thursday, June 21, 2012.