

# LEGAL INITIATIVES OF THE FOREIGN EXCHANGE COMMITTEE

**T**he Foreign Exchange Committee's legal initiatives seek to promote greater understanding of the laws and statutes that govern foreign exchange trading, and to enhance the integrity of the foreign exchange market by encouraging the adoption of sound business practices. In conjunction with the Financial Markets Lawyers Group (FMLG), the Committee pursued the following initiatives in 1997:

- As part of its ongoing efforts to develop standardized documentation for foreign exchange transactions, in February 1997 the Committee endorsed revisions to a series of master agreements, including the International Foreign Exchange Master Agreement (IFEMA), the International Foreign Currency Options Master Agreement (ICOM), and the Foreign Exchange and Options Master Agreement (FEOMA). Work on the revised master agreements was performed by the FMLG in concert with the British Bankers' Association, the Canadian Foreign Exchange Committee, and the Tokyo Foreign Exchange Market Practices Committee. During the balance of the year, the FMLG obtained legal opinions from multiple jurisdictions establishing the enforceability of settlement and close-out netting provisions under local laws; the FMLG intends to solicit opinions for additional jurisdictions in 1998.
- The FMLG, in a joint endeavor with the International Swap and Derivatives Association (ISDA) and the Emerging Markets Traders Association, developed a set of FX and Currency Option Definitions to standardize foreign exchange trading documentation related to non-deliverable forwards. Reflecting the rapid evolution of the foreign exchange market since the original version of the definitions was published in 1992, the scope of the revised definitions was expanded to include transactions involving major market and emerging market currencies, and deliverable and nondeliverable (cash-settled) transactions. The 1998 version also revises the definitions of foreign exchange spot, forward, and options transactions. Given the nature of market practices in the emerging markets, the definitions pay particular attention to confirmations for transactions in emerging market currencies, defining disruption events and disruption fallbacks from which counterparties can establish an agreed method for settlement upon the occurrence of enumerated events. The definitions and supporting documentation can also be used with both IFEMA- and ISDA-style master agreements.
- The prospect of European and Economic and Monetary Union (EMU) has tremendous legal implications for U.S. participants in European financial markets. In anticipation of the euro's introduction on January 1, 1999, the FMLG supported legislative initiatives to ensure the continuity of U.S. contracts involving the currencies of participating EMU countries. By stipulating that the euro will serve as a commercially reasonable substitute for the currencies of participating countries, the legislation addresses potential complications in

contracts involving a participating member's currency and another currency, or two participating members' currencies, among others. The legislation passed in New York state and was signed into law by Governor George Pataki in July 1997. Separately, in an effort to educate U.S. participants on the legal and operational challenges posed by monetary union, the Committee served as a joint sponsor, with ISDA and the New York State Bar Association, of a June forum on the impact of EMU on U.S. financial markets.

- As part of ongoing efforts to help market participants reduce foreign exchange settlement risk, the FMLG, in conjunction with the British Bankers' Association (BBA), began work on a form of cross-product master agreement that nets amounts due at settlement under separate master agreements. The FMLG and the BBA are targeting 1998 as a date for finalization of the cross-product master agreement.
- The FMLG, in conjunction with outside counsel, continued to advance the Committee's views with respect to proposed revisions to the Treasury Amendment of the Commodity Exchange Act (CEA). On two separate occasions, the Committee submitted statements before the United States Congress in strong support of the proposed modifications, particularly the clarification that transactions in or

involving foreign currency are covered by the Treasury Amendment and, therefore, excluded from CEA coverage. The proposed revisions would provide important legal certainty regarding the enforceability of foreign exchange transactions involving U.S. market participants.

Apart from these initiatives, one of the most significant developments of the year was the U.S. Supreme Court's decision in the case of William C. Dunn v. The Commodity Futures Trading Commission. The opinion expressed by the Court, confirming the exclusion of over-the-counter foreign exchange transactions from coverage under the CEA by the Treasury Amendment, validated many of the positions advanced by the Committee in its 1996 amicus brief on the subject. The Committee will continue to monitor ongoing legislative initiatives related to the Treasury Amendment in an effort to ensure that proposed modifications provide all types of foreign exchange transactions with the broadest exclusion from CEA coverage.

Committee endorsed master agreements and other publications may be viewed and downloaded from the Foreign Exchange Committee's World Wide Web site at [www.ny.frb.org/fxc/fxc.html](http://www.ny.frb.org/fxc/fxc.html). Copies may also be obtained by contacting the Committee's Executive Assistant at (212) 720-6651.