

# Legal Initiatives

## **THE FINANCIAL MARKETS LAWYERS GROUP (FMLG) COORDINATES**

legal projects with the Foreign Exchange Committee, and provides guidance on legal matters. The FMLG is sponsored by the Federal Reserve Bank of New York and includes senior in-house legal representatives from commercial and investment banks active in the foreign exchange market. A senior member of the Federal Reserve Bank of New York's legal staff chairs the group.

The FMLG supports the Committee by:

- Reviewing new documentation and publications prior to circulation,
- Briefing the membership on pressing legal issues,
- Advising the Committee on actions, including lobbying efforts,
- Emphasizing the need for consistent industry documentation related to foreign exchange transactions and collaborating with other industry groups on documentation issues, and
- Promoting a greater understanding of the legal environment surrounding foreign exchange trading.

## **FMLG ACTIVITIES IN 2001**

After the terrorist attacks of September 11, much of the group's focus was on assessing the strength of market contingency procedures and developing new procedures to improve market functioning during crises. Improved communications among market participants and various industry groups was seen as the single most important area to address to keep markets functioning. The FMLG worked with the Operations Managers Working Group to implement procedures that would help market participants maximize contact during times of extraordinary market stress. The FMLG also provided assistance in finalizing the Foreign Exchange Committee's *Supplementary Guidance for Market Disruptions*.

In addition, throughout the year the FMLG worked on a wide variety of projects in collaboration with the Committee. Early in the year, the group met with representatives of the European Financial Markets Lawyers Group, a legal

industry association affiliated with the European Central Bank, to provide the basis for further collaboration and information sharing. By the end of the year, the group was monitoring the market situation in Argentina and assessing the impact of events there on nondeliverable forwards (NDF) documentation. Some of the most significant work of the FMLG is reviewed below:

#### **Post-9/11 Contingency Planning:**

The FMLG, along with the Committee and the Operations Managers Working Group contributed to an assessment of contingency arrangements and communication facilities in light of the 9/11 terrorist attacks. The FMLG helped draft the Committee's *Supplementary Guidance for Market Disruptions*. This guidance addressed how firms should prepare themselves for significant market-disruptive events such as terrorist attacks and sudden changes in law, regulations, or trading conditions.

#### **Hague Convention on Private International Law:**

Representatives from the FMLG contributed to efforts to create a legal framework that would provide market participants with more certainty regarding the law governing collateral accounts. Representatives from a number of nations have participated in this effort, and it is expected that a final document will be produced in late 2002. The FMLG intends to participate in that effort.

#### **Continuous Linked Settlement (CLS) Bank:**

The FMLG subcommittee on CLS Bank continued to monitor the impact that settlement through CLS Bank would have on the foreign exchange market and to identify issues for further study. CLS Bank plans to become operational during calendar year 2002, and the FMLG will continue to monitor its development during the final stages before implementation.

#### ***Bear Stearns v. Kwiatkowski:***

The FMLG participated in the preparation of the amicus brief filed by the Committee, along with the Bond Market Association, and the Futures Industry Association, in the *Kwiatkowski* case. The appeal in this case seeks to overturn a ruling that could impose duties on market intermediaries, including brokers and dealers, that exceed those defined by contract.

#### **Other initiatives:**

- The FMLG commented on the draft UNICITRAL Convention on Assignment of Receivables. The FMLG specifically addressed the treatment of certain kinds of financial contracts under the draft Convention.
- The FMLG participated, along with the Emerging Markets Traders Association and the International Swaps and Derivatives Association (ISDA), in developing the documentation for a pricing mechanism for Argentine peso NDFs. The FMLG

plans to assess the documentation on NDFs going forward in light of the lessons learned from the Argentine situation.

- The FMLG monitors important legislative and regulatory changes that could affect the foreign exchange market. During 2001, the group followed the implementation of the regulations of the *Commodity Futures Trading Modernization Act of 2000* and the progress of the financial contract netting provisions of bankruptcy reform legislation in particular. During 2002, the group will continue to monitor regulatory developments concerning derivatives and the implementation of regulations under the *U.S. Patriot Act*.
- The FMLG commented on the Financial Law Panel's (FLP) initiative on legal risk. The FMLG provided the FLP with a number of criteria that could be used to properly define legal risk for financial institutions.
- The FMLG continued to provide its membership with up-to-date netting opinions for its published documentation in key jurisdictions.