

Legal Initiatives

THE FINANCIAL MARKETS LAWYERS GROUP (FMLG) COORDINATES

legal projects with the Foreign Exchange Committee and provides the Committee with 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 2002

Over the course of the year, the FMLG focused on a number of issues concerning efficiency and legal certainty in the foreign exchange market. FMLG projects were both reactive and proactive with respect to global market events and those issues. The Group maintained close contact with the Foreign Exchange Committee throughout 2002 and consulted with a variety of international financial market associations to seek consensus on market practices and improvements to existing legal requirements. The global nature of the FMLG's work is highlighted below, particularly its participation in the process that led to the issuance of the Hague Convention and the continued review of documentation required in the non-deliverable forwards (NDF) market.

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. Delegates from a number of nations participated in this effort and agreed to a final treaty in December 2002. The treaty is now open for ratification by governments. Among treaty provisions is a stipulation that the law applicable to collateral accounts will be determined by reference to the governing law chosen by the parties in their agreement. In addition, this choice of law will be subject to a "reality test" to ensure that the "relevant party" is engaged in a securities business in the chosen jurisdiction.

UNNAMED COUNTERPARTIES

The FMLG continued to focus on the practice of unnamed counterparty dealing in the foreign exchange market. The FMLG provided legal advice to the Foreign Exchange Committee and aided in the drafting of the Committee's statement on dealing with unnamed counterparties. The FMLG sought to highlight this issue through contact with financial market supervisors and industry trade groups in the United States and overseas.

PRIME BROKERAGE DOCUMENTATION

During 2002, an FMLG subcommittee began to develop industry-standard master documentation for prime brokerage in foreign exchange. Representatives from

prime brokers and executing brokers made up the subcommittee and achieved considerable progress toward documentation standards. Some issues, however, remained unresolved. After consultation with responsible senior business area personnel, the FMLG decided not to publish industry standard documentation at this time. The FMLG plans to revisit the prime brokerage issue at the end of 2003 to determine if the business has developed in ways that would enable market participants to reach agreement on appropriate standard documentation.

NON-DELIVERABLE FORWARDS

Members of the FMLG were instrumental in working with the Emerging Markets Traders Association to address NDF documentation issues in Argentina and Venezuela. The FMLG monitored, and will continue to monitor, developments in emerging markets and assess their impact on published industry documentation.

OPINIONS

The FMLG provides its membership with up-to-date netting opinions for its published documentation in key jurisdictions.

COORDINATION WITH OTHER GROUPS

The FMLG continued to develop ties to other organizations with similar mandates. The FMLG believes that these contacts will help market participants coordinate responses to market disruptions and provide needed international communication links during times of significant market stress.

A representative from the European Financial Markets Lawyers Group, a legal industry association affiliated with the European Central Bank, participates in FMLG meetings. The FMLG has also forged ties with the newly organized Financial Law Committee in London.

LEGISLATION AND REGULATORY DEVELOPMENTS

The FMLG monitors important legislative and regulatory changes that could affect the foreign exchange market. During 2002, the Group closely followed the progress of the implementing regulations of the USA PATRIOT Act, focusing on the impact those regulations would have on the foreign exchange market. The Group will continue to monitor the possible impact of USA PATRIOT Act regulations.

In recent years, the Group has also followed the progress of the financial contract netting provisions contained in bankruptcy reform legislation. The Group will continue to monitor any other regulatory or legislative developments concerning derivatives and foreign exchange during 2003.