

Legal Initiatives

The Financial Markets Lawyers Group (FMLG) is a key advisory group for the Foreign Exchange Committee. It consists of approximately twenty lawyers from a variety of commercial and investment banks that are active in the foreign exchange market in the United States and Canada, their alternates, and several senior staff members from the Legal Department of the Federal Reserve Bank of New York (FRBNY). A senior FRBNY officer chairs the group. The group meets approximately once a month and most meetings are held at the FRBNY.

The FMLG was established after it was decided that the Foreign Exchange Committee required ongoing counsel on issues related to netting documentation. Since that time, the FMLG has continued to provide consultative support to the Committee while evolving into a group with an independent agenda of issues important to the wholesale financial markets.

ROLES OF THE FMLG

In its role as advisor to the Committee, the FMLG counsels the Committee on an ongoing basis by, for example, reviewing prior to publication any of the Committee's new documents or best practice recommendations and alerting the Committee to legislative developments pertinent to the foreign exchange market. The fluid interaction between the Committee and the FMLG is supported by the efforts of two FRBNY staff members. These two people are FMLG members, attend all Foreign Exchange Committee meet-

ings, and participate in the Committee's working group activities.

Like the Foreign Exchange Committee, the FMLG understands the importance of global cooperation and interacts frequently with other industry groups, including the Emerging Markets Traders Association (EMTA), the International Swaps and Derivatives Association (ISDA), and the Bond Market Association (BMA) on foreign exchange matters. In addition, the FMLG is developing a strong association with the European Financial Markets Lawyers Group and the London-based Financial Markets Law Committee. These three groups plan to meet in London in June 2004.

PROJECTS DURING 2003

The following section provides more detail on the FMLG's key projects in 2003. Many of these efforts underscore the strong bond between the FMLG and the Committee while other projects reflect the cohesive relationship that has evolved among the various legal-oriented groups within the global community.

- ✦ **Monitoring Legislative Action.** The FMLG historically and routinely keeps the Committee updated on relevant legislative initiatives. When necessary, the FMLG may suggest actions such as coordinating efforts with other interested industry groups by drafting and sending letters to Congress. Other courses of action or lobbying efforts might include providing testimony or position papers. When needed, FRBNY



legal staff and FMLG members draft these papers.

Throughout 2003, the FMLG recognized the importance of keeping close tabs on pending legislation that would expand regulatory oversight of some trading in the energy markets. On the advice of the FMLG, the Committee endorsed and signed two industry letters that were sent to Congress in May and July. (These letters are reprinted on pages 75 and 77.) In addition, the FMLG continued to update the Committee on developments related to bankruptcy reform legislation.

❖ **Unnamed Counterparties.** The FMLG stepped in on many occasions over the past two years to support the Committee's efforts in the unnamed counterparty project. The FMLG reviewed the London Foreign Exchange Joint Standing Committee's (JSC) initiatives and then helped the Committee draft its own letter and supplementary information that was sent to the financial community in January 2003. In addition, the FMLG analyzed and provided input to the JSC on its proposed confidentiality template slated for implementation in May 2004 in the London market.

❖ **Asian Non-Deliverable Forward (NDF) Documentation.** This past year, an FMLG member and expert on trade documentation represented the Foreign Exchange Committee in the Asian NDF project—a coordinated effort of the Singapore Foreign Exchange Market Committee, the Tokyo Foreign Exchange Market Practices Committee, the Hong Kong Foreign Exchange and Money Market Practices Committee, and the Emerging Markets Traders Association. The participation of

the FMLG was crucial to the success of the effort given the technical legal issues embedded in NDF trade confirmation.

As the year drew to a close, agreement was finalized on a number of issues, paving the way to the timely completion of a new confirmation template for a variety of Asian NDF currencies.

The FMLG also coordinated with EMTA on efforts to revise Brazilian NDF documentation.

❖ **Emergency Powers in the United Kingdom.** The FMLG, working with and for the Committee, commented on HM Treasury's consultative paper *The Financial System and Major Operational Disruption*. The letter, reiterating widespread industry concerns, noted the potential pitfalls of using legislative action to deal with contingencies and emphasized the need for global interaction in policy decisions (reprinted on page 73).

❖ **The Operations Managers Working Group.** Over the past two years, the FMLG worked closely with the Operations Managers Working Group on the project to update *Management of Operational Risk in Foreign Exchange*, the Committee's pivotal document. FMLG members made significant contributions to the paper, reflecting the many legal issues involved. Several members of the FMLG participated in the rollout of the document at a conference in June 2003 sponsored by the Federal Reserve Bank of New York.

Even after the publication of the new *Best Practices*, uncertainty persisted about confirmation best practices, particularly the confirmations from nonfinancial cor-



porate clients who trade less frequently and are less familiar with routine market practices. In response, the FMLG reviewed and reaffirmed the confirmation process with the Operations Managers Working Group.

FMLG members noted nonfinancial corporate clients' growing practice of submitting complex mandate or trading authorization limitation letters to trading desks. The FMLG suggested that attempts to shift internal compliance burdens by

way of these letters were not consistent with general industry-accepted best practices.

- **Opinions.** The FMLG continued its long-running efforts to coordinate the compilation and update of legal opinions on the Foreign Exchange Options Master Agreement (FEOMA) complex of netting documentation. Each year, the group solicits updated opinions from more than thirty jurisdictions in which member firms are active.

