

Legal Initiatives

INTRODUCTION TO THE FMLG

The Financial Markets Lawyers Group (FMLG) is a key legal and policy advisory group for the Foreign Exchange Committee. It consists of about twenty lawyers from a variety of commercial and investment banks that are active in foreign exchange and other financial markets in the United States and Canada, as well as senior staff members from the Legal Department of the Federal Reserve Bank of New York (FRBNY). A senior FRBNY legal officer chairs the group. The group meets approximately once a month, and most meetings are held at the FRBNY. Like the Foreign Exchange Committee, the FMLG is sponsored by, but independent of, the FRBNY.

The FMLG was established in the early 1990s to provide ongoing counsel to the Foreign Exchange Committee on issues related to netting documentation. The FMLG provided support to the Foreign Exchange Committee in the development and publication in 1997 of widely used master netting agreements for foreign exchange transactions—the International Foreign Exchange and Options Master Agreement (FEOMA), the International Foreign Exchange Master Agreement (IFEMA), and the International Currency Options Market Master Agreement (ICOM). 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. FMLG

attorneys possess a broad knowledge of financial markets, especially foreign exchange.

In its advisory role to the Committee, the FMLG gives the Committee advice on new documentation and best practice recommendations and alerts the Committee to legislative, regulatory, and judicial developments pertinent to the foreign exchange market. The FMLG also seeks to raise awareness of—and to diminish—legal risks in financial markets. It serves as a channel of communication between the financial markets and other industry associations and official institutions in the United States and abroad. In addition, the FMLG interacts frequently with other industry groups, including EMTA, the International Swaps and Derivatives Association (ISDA), and the Bond Market Association (BMA), on foreign exchange matters.

The FMLG appreciates the importance of global cooperation and has developed a strong association with the European Financial Markets Lawyers Group (EFMLG) and the London-based Financial Markets Law Committee (FMLC). These three groups held a joint meeting in London in June 2004, and their next annual meeting will take place in June 2005 in New York. The EFMLG, FMLC, and FMLG advise one another of matters of mutual interest and coordinate their efforts on certain projects of global importance. The FMLG also looks forward to forming a strong relationship with the recently established legal subgroup of the London Foreign Exchange Joint Standing Committee.



PROJECTS DURING 2004

Many of the FMLG's projects in 2004 underscore the strong bond between the FMLG and the Committee. Other efforts reflect the FMLG's policymaking initiatives and the cohesive relationship that has evolved among various legal-oriented industry groups within the global community.

NON-DELIVERABLE FOREIGN EXCHANGE DOCUMENTATION

This past year, an FMLG member representing the Committee coordinated a successful effort to develop and launch new documentation for six non-deliverable Asian currencies in cosponsorship with the Singapore Foreign Exchange Market Committee and EMTA. The Tokyo Foreign Exchange Market Committee and the Treasury Markets Forum of Hong Kong also supported publication of the documentation for the benefit of market participants. The participation of Diane Virzera of the FMLG was crucial to the success of the effort given the technical legal issues embedded in non-deliverable foreign exchange trade documentation. Market participants have used the revised documentation, which is expected to promote efficient settlements in the market for non-deliverable foreign exchange transactions in the event of a long-term disruption in a local market.

IFXCO

Gary Sims of the FMLG took the lead in developing a revised international foreign exchange and currency option master agreement, under the name of "IFXCO," which will be recommended to the Committee for a 2005 publication. IFXCO is based on the 1997 FEOMA Agreement but is updated to reflect changes in market practices and to address the recommendations of the Global

Documentation Steering Committee. One novel feature is that IFXCO consists of two parts: (1) the International FX and Currency Option (IFXCO) 2004 Master Agreement Terms, which is a printed document containing standard terms, and (2) a short "Terms Agreement," to be signed by the parties, which incorporates the Terms document and also specifies variable provisions that previously appeared in the Schedule to FEOMA. IFXCO should prove useful to parties that wish to update their master netting agreements and, at the same time, should streamline the execution process.

FMLC/FMLG ENRON AUSTRALIA FINANCE V. TXU WORKING GROUP

The FMLG joined the FMLC this past year to form a working group to review the 2004 decision of an Australian bankruptcy court on the operation of the "conditionality" clause in a close-out master netting agreement in Enron Australia's insolvency. The decision attracted significant attention in the financial markets because of its potential commercial and regulatory capital implications. FMLC and FMLG members, together with outside law firms, began their collaboration on this project to research and consider the issues raised by the court's decision.

MONITORING AND INFLUENCING LEGISLATIVE, REGULATORY, AND JUDICIAL ACTION

Throughout 2004, the FMLG closely followed pending legislation and regulation that could potentially affect the foreign exchange and financial markets. The FMLG provided its expertise to the U.S. Department of the Treasury as the department considered how the customer due diligence requirements of the USA Patriot Act should apply in the foreign exchange



prime brokerage context. The FMLG continued to update the Committee on developments related to bankruptcy reform legislation and regulation of the commodities markets. In addition, on the FMLG's recommendation, the Committee joined ISDA in filing an *amicus* brief in an appeal of the important *Jugobanka A.D. and Beogradska Banka A.D. v. Superintendent of Banks* bankruptcy case in the Second District of New York. The brief appraises the appellate court of the significant adverse impact that the lower court's decision could have on close-out netting of foreign exchange and derivatives transactions entered with U.S. offices of foreign banks that become insolvent.

THE OPERATIONS MANAGERS WORKING GROUP

The FMLG worked closely with the Operations Managers Working Group this

year on updates to *Foreign Exchange Transaction Processing: Execution-to-Settlement Recommendations for Nondealer Participants* and *Management of Operational Risk in Foreign Exchange*, or the *Sixty Best Practices*, to address foreign exchange trading issues experienced at the National Australia Bank.

OPINIONS

The FMLG continued its long-term efforts to coordinate the annual compilation and updating of legal opinions on IFEMA, ICOM, and FEOMA. This year, David Miller of the FMLG solicited updated opinions from more than thirty jurisdictions in which member firms are active. The updated opinions cover the new IFXCO.

