

# Legal Initiatives

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## **INTRODUCTION TO THE FMLG**

The Financial Markets Lawyers Group (FMLG) is a committee of lawyers from leading worldwide financial institutions that supports over-the-counter (OTC) foreign exchange and other financial markets trading. The FMLG originated in the late 1980s, when a group of lawyers joined together to develop a model master netting agreement for foreign exchange trading in the United States. The FMLG advises the Foreign Exchange Committee on many of its initiatives and also pursues its own capital markets initiatives. The FMLG is sponsored by, but independent of, the Federal Reserve Bank of New York (FRBNY). A senior FRBNY legal officer chairs the group, and senior staff of the FRBNY's Legal Department are members.

The FMLG has provided support to the Foreign Exchange Committee in the development and publication in 1997 of master netting agreements for foreign exchange transactions—the International Foreign Exchange and Options Master Agreement (FEOMA), the International Foreign Exchange Master Agreement (IFEMA), the International Currency Options Market Master Agreement (ICOM), and, this year, the International Foreign Exchange and Currency Option Master Agreement (IFXCO). Recent accomplishments of the FMLG include the introduction of the first industry foreign exchange master give-up agreement and cosponsorship of the *1998 FX and Currency Option Definitions* (1998 Definitions). FMLG members have participated in a number of global initiatives, including the Global Documentation Steering Committee,

the Hague Convention on collateral accounts, industry preparation for Y2K, and the European Union's adoption of the euro. The FMLG continues to draft new trade documentation, best practice recommendations, legal briefs, comment letters, and policy papers related to OTC market developments.

The FMLG maintains links to OTC industry associations and official institutions worldwide in order to maintain channels of communication and cooperation on issues that are important to the foreign exchange and OTC markets. Among the groups with which the FMLG enjoys close ties are the Bond Market Association, EMTA, Inc. (EMTA), and the International Swaps and Derivatives Association, Inc. (ISDA), in the United States; the European Financial Markets Lawyers Group, sponsored by the European Central Bank; and the Financial Markets Law Committee and the Foreign Exchange Joint Standing Committee, sponsored by the Bank of England. This year, the FMLG hosted at the Federal Reserve Bank of New York a successful trilateral meeting of representatives from the European Financial Markets Lawyers Group and the Financial Markets Law Committee.

## **FMLG INITIATIVES DURING 2005**

Many of the FMLG's projects in 2005 underscore the Group's strong bond with the Committee. Other FMLG efforts reflect the Group's policy interests and the coherent relationship that has evolved among legal-oriented industry groups within the global community.



### **Prime Brokerage**

This year, Robert Spielman of the FMLG played a key role in assisting the Committee in the development of the industry's first Master FX Give-Up Agreement. The Master FX Give-Up Agreement was published in April 2005 to provide market documentation and specific terms and elections to address risk allocation in the give-up relationship. In addition, the FMLG contributed to the Committee's December 2005 best practice recommendations for mitigating credit, operational, and reputational risks associated with the prime brokerage service.

### **Documentation**

The Committee launched the IFXCO Master Agreement in June 2005. Garland Sims of the FMLG led this effort to update other master agreements published by the Committee by incorporating in the IFXCO Master Agreement terms from the 1998 Definitions and recommendations of the Global Documentation Steering Committee. Additionally, the IFXCO Master Agreement simplifies execution through use of an Adherence Agreement to its Terms.

This year, the Committee published the *2005 Barrier Option Supplement to the 1998 FX and Currency Option Definitions* (2005 Supplement) with the support of the FMLG and its cosponsors, ISDA and EMTA. The 2005 Supplement enables market participants to use the framework of the 1998 Definitions to readily document a variety of barrier and binary options. The 2005 Supplement sets forth common reference terms for a growing sector of the foreign exchange marketplace and offers the benefits of efficient documentation processes and enhanced legal certainty to market participants.

### **Retail Foreign Exchange**

The FMLG provided counsel to the Committee regarding the legal framework for retail and wholesale foreign exchange. This analysis informed the Committee's study of the market implications of retail aggregation and white labeling, a topic discussed in the Committee's December 2005 letter to the foreign exchange market.

### **Monitoring and Influencing Legislative, Regulatory, and Judicial Action**

Throughout 2005, the FMLG closely followed pending legislation and regulation that could potentially affect the foreign exchange and financial markets. The FMLG updated the Committee on regulation of the commodities markets and the impact of bankruptcy reform legislation.

### **FMLG-CLS Working Group**

The FMLG established a working group this year, with the participation of representatives from CLS Bank and EMTA, to lend expertise to CLS Bank's plans to initiate settlement services for non-deliverable forward transactions and currency option premiums.

### **Opinions**

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

