

Legal Initiatives

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. It 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 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 FMLG, and senior staff of the Bank's Legal Department are members.

The FMLG 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 the International Foreign Exchange and Currency Option Master Agreement (IFXCO). Recent accomplishments include the introduction with cosponsors of the industry's first Master Confirmation Agreement for Non-Deliverable Forward Foreign Exchange Transactions. The FMLG also introduced the industry's first Foreign Exchange Master Give-Up Agreement and cosponsored the *1998 FX and Currency Option Definitions (1998 Definitions)*. Members have participated in a number of global initiatives, including the Global Documentation Steering Committee, the Hague Convention on collateral accounts, and industry preparation for Y2K and conversion to the euro. The FMLG continues to draft new trade documentation, best practice recommendations, legal briefs, comment letters, and policy papers associated with OTC market developments.

The FMLG has relationships with OTC industry associations and official institutions worldwide to

maintain channels of communication and cooperation on issues of importance to the foreign exchange and OTC markets. Among the groups that it enjoys close ties with are EMTA, Inc., the International Swaps and Derivatives Association, Inc., and the Securities Industry and Financial Markets Association 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 participated in a successful trilateral meeting of representatives of the Financial Markets Law Committee and the European Financial Markets Lawyers Group.

FMLG Initiatives during 2006

Many of the FMLG's projects in 2006 underscore its strong bond with the Foreign Exchange Committee. Other efforts reflect the FMLG's policy interests and the coherent relationship that has evolved among legal-oriented industry groups within the global community.

NDF Master Confirmation Agreement

This year, the FMLG played a key role in assisting the Committee and coordinating with the Foreign Exchange Joint Standing Committee and EMTA, Inc., in the development of the industry's first Master Confirmation Agreement for Non-Deliverable Forward Foreign Exchange Transactions (NDFs). The Master Confirmation Agreement was published in December 2006 to provide market documentation for NDFs that would streamline confirmation processes by automatically incorporating terms of currency-specific NDF confirmation templates published by EMTA, Inc. The Agreement also allows parties to confirm their NDFs in a variety of ways, including by electronic messaging on electronic trading, messaging, or settlement systems. The FMLG is working with CLS Bank and will work with other electronic systems interested in developing and implementing a multilateral form of the Master Confirmation Agreement.

FMLG-CLS Working Group

The FMLG established a working group, with the participation of representatives from CLS Bank, to lend expertise in CLS Bank's plans to initiate settlement services for NDFs and currency option premiums. The FMLG provided input on CLS Bank's documentation associated with this initiative, which is expected to be implemented in July 2007.

Prime Brokerage

The FMLG continues its work in the prime brokerage arena, forming working groups that have undertaken studies of reverse give-up FX prime brokerage relationships and fixed-income prime brokerage principal letters. The working groups intend to provide industry guidance on related legal and operational issues.

Monitoring and Influencing Legislative, Regulatory, and Judicial Action

Throughout 2006, the FMLG closely followed pending legislation and regulation that could potentially affect the foreign exchange and financial markets. It joined with other industry groups in commenting on and endorsing the enactment of netting-friendly legislation in Canada. The FMLG also continues to share its expertise with regulators on how the customer due diligence requirements of the USA Patriot Act should apply in the foreign exchange prime brokerage context.

Opinions

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