

# 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. The FMLG originated in the late 1980s, when a group of lawyers formed 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 as well as 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 the International Foreign Exchange and Currency Option Master Agreement (IFXCO). Recent accomplishments of the FMLG include the introduction, with cosponsors, of the industry's first multilateral master confirmation agreement for non-deliverable forward and non-deliverable options 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)*. Group 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 maintains relationships with OTC industry associations and official institutions worldwide in order to

maintain channels of communication and cooperation on issues of importance to the foreign exchange and OTC markets. Among the groups with which the FMLG enjoys close ties 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; the Financial Markets Law Committee and the Foreign Exchange Joint Standing Committee, sponsored by the Bank of England; and CLS Bank. This year, the FMLG hosted a successful quadrilateral meeting of representatives of the European Financial Markets Lawyers Group, the Financial Law Board, and the Financial Markets Law Committee. Meeting participants discussed a wide range of issues, including the market turmoil, bankruptcy law and developments, governance and controls, EU-U.S. global regulatory convergence, and netting and other documentation issues.

## **FMLG Initiatives during 2008**

Many of the FMLG's projects in 2008 underscore its strong bond with the Foreign Exchange Committee. Other efforts reflect the FMLG's policy interests and the cooperative relationship that has evolved among legal-oriented industry groups in the global community.

### *Practice Notes to the NDF Master Confirmation Agreement*

In November 2007, the FMLG, the Foreign Exchange Committee, the Foreign Exchange Joint Standing Committee, and EMTA, Inc., published the industry's first multilateral form of the Master Confirmation Agreement for Non-Deliverable Forward Foreign Exchange Transactions (NDFs). The FMLG coordinated with the same organizations to publish the Practice Notes to the NDF Master Confirmation Agreement in March 2008.

### *NDO Master Confirmation Agreement*

Following the publication of the NDF Master Confirmation Agreement, the FMLG continued to consult with the

Foreign Exchange Committee, the Foreign Exchange Joint Standing Committee, and EMTA, Inc., to develop a Master Confirmation Agreement for Non-Deliverable Currency Option Transactions (NDOs). The agreement is intended to be used bilaterally between market counterparties to confirm non-deliverable currency option transactions. The NDO Master Confirmation Agreement, published in July 2008, incorporates by reference EMTA's recommended terms for non-deliverable currency option transactions. The FMLG also coordinated with EMTA to draft fifteen currency-specific NDO Templates, which are incorporated by reference in the NDO Master Confirmation Agreement.

#### *FMLG Cross-Currency NDF and NDO Template Working Group*

The FMLG formed a working group to consider developing cross-currency templates that would provide standardized rate sources to smooth the trading and confirmation process for cross-currency NDFs and NDOs. The working group plans to develop a set of rate source definitions for hard currency pairs that would be published in Annex A to the *1998 Definitions*.

#### *FMLG-CLS Working Group*

The FMLG, with the participation of representatives from CLS Bank, established a working group to lend expertise to CLS Bank's efforts to initiate settlement services for NDFs and currency option premiums. The FMLG helped draft the CLS Bank NDF Protocol, which enables market participants to address legal and operational issues in connection with NDF transactions when NDF opening instructions are submitted to the CLS system for settlement in CLS Bank. The CLS Bank NDF Protocol was published in July 2008.

The FMLG also worked closely with CLS Bank to revise the Central Settlement Appendix to the DTCC Deriv/SERV Operating Procedures; the appendix addresses the central settlement facility for warehouse transactions.

#### *OMWG Confirmation White Paper*

The FMLG worked closely with the Operations Managers Working Group (OMWG) to begin preparing a white paper on electronic confirmations and their treatment according to each platform's rules.

#### *Foreign Exchange Novations Protocol*

The FMLG established a working group with the OMWG to develop a standard protocol for foreign exchange novations, given their increasing use in the market. The working group will collaborate with the International Swaps and Derivatives Association, Inc., to draft a protocol to reduce the incidence of settlement and collateral fails associated with foreign exchange novations.

#### *Prime Brokerage*

The FMLG continued its efforts in the prime brokerage area, forming working groups to study foreign exchange prime brokerage relationships and fixed-income prime brokerage principal letters. The FMLG, with the Foreign Exchange Committee, prepared a white paper on prime brokerage reverse give-up relationships to define for market participants the different types of relationships that have emerged and provide an overview of key legal and operational issues associated with reverse give-up trading activities.

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

Throughout 2008, the FMLG closely followed pending legislation and regulation that could affect the foreign exchange and financial markets as well as events associated with the financial crisis.

#### *Opinions*

The FMLG continued its long-term efforts to coordinate the annual compilation and updating of legal opinions on IFEMA, ICOM, FEOMA, and IFXCO. In 2008, David Miller of the FMLG solicited updated opinions from more than thirty jurisdictions in which member firms are active.