

**Meeting Minutes**

Federal Reserve Bank of New York

33 Liberty Street

13<sup>th</sup> Floor

Thursday, March 7, 2019

8:30 a.m. – 10:00 a.m.

*Present:* Syed Riaz Ali, Martha Burke, Chinedu Ezetah (by phone), Terence Filewych, Jill Hurwitz, Glade Jacobsen, Robert Klein, Matthew Lillvis, Nancy Rigby, Jeffrey Saxon, Lisa Shemie, David Trapani, James Wallin (by phone), and Bryan Woodard

*Federal Reserve Bank of New York (“FRBNY”) participants:* Christina Getz, Michael Nelson, Thomas Noone, Janine Tramontana, Shawei Wang

*Other participants:* Robert Houck (Clifford Chance), Amelia Kaufman (Deutsche Bank), Benjamin Peacock (Clifford Chance), Greg Todd (Bank of America), Michael Wirgin (HSBC)

***United States v. Bogucki***

FMLG Chair Michael Nelson introduced Benjamin Peacock and Robert Houck from the law firm Clifford Chance, who reported on the recent acquittal of a foreign exchange trader on charges of wire fraud. Unusual for a criminal case, the trial court granted the defendant’s motion for acquittal under Rule 29 of the Federal Rules of Criminal Procedure before submitting the evidence to a jury. The court concluded that the government had failed to present evidence that allegedly false statements to a customer were material. Mr. Peacock highlighted three reasons for that decision, including testimony that false statements by principals in an arms-length transaction were features of expected market conduct at the time. The statements alleged to be false by the government were not material because, based on the testimony, a reasonable market participant would not have been influenced by them. Mr. Peacock further observed that the lack of any confidentiality agreement or other evidence establishing a duty of trust and confidence may distinguish the case from *United States v. Johnson*, which Mr. Peacock and his colleagues had previously discussed with the FMLG.

Members asked questions about a variety of issues, including the statute of limitations, the sufficiency of the indictment, the use of general fraud statutes to police financial market conduct, and the relevance of the FX Global Code and intervening regulatory changes. The members also discussed the need to clarify principal and agent relationships, progress on improving conduct and culture in the industry, and concerns about the propriety of sharing confidential trading information during the course of foreign exchange transactions.

### **CFTC external business conduct obligations**

Lisa Shemie updated members on the status of a letter to staff at the Commodities Futures Trading Commission (“CFTC”) requesting, on behalf of the FMLG’s private sector members, “no action” relief regarding the applicability of an exception to a disclosure rule for certain offsetting transactions that mirror transactions occurring on a swap execution facility, particularly in the context of foreign exchange prime brokerage. The letter is available on the FMLG’s public website.

Members also discussed, as a general matter, official sector policies that treat foreign branches of U.S. firms differently from foreign subsidiaries. One regulator may favor branches over subsidiaries, while the policies of another encourage firms to organize subsidiaries instead of branches.

### **Joint statement on continuity of derivatives trading and clearing post-Brexit**

Chinedu Ezetah briefed the members on a February 2019 joint statement by the CFTC, the Bank of England, the Prudential Regulation Authority, and the Financial Conduct Authority, which summarized efforts to avoid disruption in derivatives trading and clearing between the United Kingdom and the United States after the former’s withdrawal from the European Union. Among other things, the agencies highlighted (i) their work on updating a 2009 memorandum of understanding on clearing activity; (ii) continued equivalence for U.S. trading venues, firms, and central counterparties with operations in the United Kingdom; and (iii) the extension of CFTC “no-action” relief and comparability determinations for U.K. firms, which will replicate existing measures directed at market participants in the European Union.

### **2019 ISDA interest rate definitions**

Terence Filewych continued a previous discussion of a proposed update to the deliverable currency disruption event provisions in the International Swaps and Derivatives Association’s (“ISDA”) interest rate definitions. Members discussed the utility of including those provisions in the interest rate definitions, as opposed to relocating them to the foreign exchange definitions. Mr. Nelson asked the members if there was a need for the FMLG to engage ISDA about the

location of the definition. Several members responded that the draft definitions did not contain any apparent legal error. There was, however, a prudential concern about creating practices for one asset class that rely on definitions that apply squarely to another asset class. The scenario was not fatal, but not ideal. The discussion then turned to the need for a broad review and revision of the foreign exchange definitions. Members stated that the larger project could benefit from FMLG participation.

### **Working group on anonymous trading platforms**

Foreign Exchange Committee Secretary Christina Getz announced that Ms. Shemie would co-chair a Global Foreign Exchange Committee (“GFXC”) working group anonymous trading platforms. The group will draft a proposal on mapping information flows within trading platforms for discussion at the May 2019 GFXC meeting. Ms. Getz said that the GFXC welcomed additional participation in the working group by dealers and platforms.

### **FMSB standards and the FX Global Code**

FMLG Secretary Thomas Noone distributed a chart listing public statements issued by the UK’s FICC Market Standards Board (“FMSB”) and corresponding principles in the FX Global Code. He asked members to identify any conflicts between the two bodies of work. Members commented that, in general, the FMSB materials were, in general, more detailed than the principles, explanations, and examples in the Global Code. This reflected a difference in approach, but did not necessarily create any conflict over substance. Members discussed the extent to which FMSB materials could be used to establish supervisory or counterparty expectations, especially over firms or market participants that are not members of the FMSB. Mr. Nelson invited members to revisit the topic at a future meeting if they identified a substantive conflict between an FMSB publication and the FX Global Code.

### **Quadrilateral presentations**

Mr. Noone asked members to suggest topics for discussion at the upcoming Quadrilateral meeting to be held on July 11 and 12 in Tokyo. The Quadrilateral is an annual meeting of the FMLG and three sister organizations: the UK’s Financial Markets Law Committee, the European Financial Markets Lawyers Group, which is hosted by the European Central Bank, and the Financial Law Board, for which the Bank of Japan supplies the secretariat. Among other topics, members suggested a general update on U.S. regulatory reform; uncleared margin rules; cross-border and equivalence issues relating to central counterparties; and recent prosecutions against foreign exchange traders. Members also suggested that the Quadrilateral organizers include regulatory perspectives from significant Asian markets beyond Japan, including Singapore, Hong Kong, and India.

## **Administrative matters**

Ms. Burke gave a brief update on the group's finances.

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