

Financial Markets Lawyers Group Meeting

Federal Reserve Bank of New York
33 Liberty Street
7th Floor, Main Conference Room

Monday, December 3, 2012
4:30pm – 6 pm (New York time)

Present: Victoria Cumings, Darek Defreece, Maria Douvas, Joyce Hansen, Robert Klein (by phone), Ruth Laslo, Jeff Lillien (by phone), David Miller (by phone), Michael Nelson, David Parkinson, Ricardo Salaman, Nancy Schnabel, Lisa Shemie, Garland Sims, Janine Tramontana, Shawei Wang (by phone), Bryan Woodard (by phone), Oda Wydpor (by phone)

Argentina Bondholder Litigation

This topic was tabled to a future meeting.

Dodd-Frank Operational/Implementation Issues

The group discussed the various letters the FMLG has recently submitted to the CFTC, including:

- November 16, 2012: The FXC and FMLG -- Request for Interpretive Relief Regarding Obligation to Provide Pre-Trade Mid-Market Quote
- November 21, 2012: FMLG - Request for Interpretive Letter for Swap Dealers in Connection with Foreign Exchange Prime Brokerage, regarding application of the rules relating to reporting of FX Transactions and real-time reporting of FX Transactions
- November 21, 2012: FMLG - Request for Interpretive Letter for Swap Dealers in Connection with Foreign Exchange Prime Brokerage, regarding application of the external business conduct standards
- November 28, 2012: FMLG - Request for Extension of the Implementation of the Look-Through Rule and Related Verification and Recordkeeping Requirements

These letters are available at: http://www.ny.frb.org/fmlg/activities/fmlg_correspondence.html

FX Treasury Exemption

Rosario Chiarenza of ISDA joined the call for this topic. The group discussed the question of whether FX forwards and swaps that were exempted from the definition of “swap” by the Department of the Treasury’s November 17, 2012 Determination of Foreign Exchange Swaps and Foreign Exchange Forwards under the Commodity Exchange Act (“Exempt FX”) are subject to certain internal business conduct rules, namely the CFTC’s September 11, 2012 regulation regarding Confirmation, Portfolio

Reconciliation, Portfolio Compression and Swap Trading Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904.

Documentation of FX trades -- Basel guidance

The group discussed the Basel Committee on Banking Supervision's "Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions", which was issued in August 2012 for comment by 12 October 2012, and includes guidelines that a bank "should, at a minimum, use legally enforceable bilateral netting agreements with all counterparties, and where practicable, master netting agreements with all counterparties" and "[w]here practicable, a bank should use collateral arrangements (eg ISDA credit support annexes) to mitigate its replacement cost risk." See <http://www.bis.org/publ/bcbs229.pdf>.

Legal Issues Raised by Recent Economic Volatility

There were no developments to report on this topic.

Legal Opinion Update

David Miller reported that, as Chair of the Opinions Subcommittee of the FMLG, he has kicked off the FMLG's annual effort to collect updated opinions with respect to the enforceability of the netting provisions of the International Currency Options Market (ICOM) Master Agreement, the International Foreign Exchange Master Agreement, the Foreign Exchange and Options Master Agreement and the International FX and Currency Option 2004 Master Agreement Terms and Terms Agreement from 34 jurisdictions around the world. As of the December 3, 2012 FMLG meeting, three update opinions had been finalized and seven drafts received. A further update on this project will be provided in January 2013.

Quadrilateral 2013

This topic was tabled to a future meeting.

FMLG 2013 Dates

It was announced that FMLG meetings will be held on the following dates in 2013: January 10, February 7, March 7, April 4, May 2, June 6, September 12, October 3, November 7 and December 9.

The next meeting of the FMLG will be held on Thursday, January 10, 2013.