

**Meeting Minutes**

Federal Reserve Bank of New York

33 Liberty Street

13<sup>th</sup> Floor

Thursday, October 3, 2019

8:30 a.m. – 10:00 a.m.

*Members present:* Syed Riaz Ali, Sarah Ashkenazi, James Brown, Chinedu Ezetah, Maria Douvas-Orme, Terence Filewych, Jill Hurwitz, Glade Jacobsen, Robert Klein, Matthew Lillvis, Nancy Rigby, Jeffrey Saxon, Lisa Shemie, David Trapani, Frank Weigand, and Bryan Woodard

*Federal Reserve Bank of New York (“New York Fed”) participants:* James Bergin, Daphne Ha, Alex Leonard, Meghan McCurdy, Michael Nelson, Thomas Noone, Sanja Peros, Angela Sun, Janine Tramontana, and Shawei Wang

*Other participants:* Lauren Howard Elbert and Jacquelyn Kasulis (Office of the United States Attorney for the Eastern District of New York), and Carlos Fernandez-Aller (Goldman Sachs)

***United States v. Johnson***

FMLG Secretary Thomas Noone introduced two Assistant United States Attorneys from the Office of the United States Attorney for the Eastern District of New York: Jacquelyn Kasulis and Lauren Howard Elbert. Ms. Kasulis serves as Chief of the Criminal Division. She and Ms. Howard played leading roles in the successful prosecution of Marc Johnson, the former head of foreign exchange trading at HSBC. The United States Court of Appeals for the Second Circuit affirmed Mr. Johnson’s conviction for wire fraud on September 12, 2019. Ms. Elbert argued the case on appeal.

Ms. Kasulis and Ms. Elbert presented the facts of the case, highlighting the points that evidenced intent (for example, the use of coded language on internal calls and false statements about price movement caused by trading by the Central Bank of Russia); the basis for jurisdiction; and the legal arguments raised on appeal. They then took questions from FMLG members. Among the points discussed were the coordination between the Department of Justice in Washington, D.C. and local United States Attorneys’ Offices; the formation of legal duties in

principal-to-principal transactions; factors that favor prosecuting corporations and individual employees; the role of industry codes of conduct in prosecutions; changes in the culture of the financial services industry; the differences between *Johnson* and *United States v. Bogucki*; and the impact of the European Union’s General Data Protection Regulation on criminal investigations. FMLG Chair Michael Nelson thanked Ms. Kasulis and Ms. Howard for their generosity in sharing their time and views with the FMLG members and New York Fed staff.

## **Bank of International Settlements (“BIS”) Triennial Survey**

James Brown summarized the BIS’s Triennial Central Bank Survey of Foreign Exchange and Over-the-counter Derivatives Markets in 2019. Among other points, Mr. Brown noted that trading volume had risen to \$6.6 trillion per day in April 2019 (the measurement period for the survey), up from \$5.1 trillion in the 2016 survey. The volume of spot trades increased from 2016, but the more significant growth was in other products, resulting in a decline of spot trades as a percentage of the overall foreign exchange market. Foreign exchange swaps accounted for 49% of total market turnover. The U.S. dollar was the most frequently traded currency, exchanged in 88% of transactions, followed by the euro (32%) and the yen (17%). The U.S. dollar and the euro were the most traded currency pair. Emerging markets currencies accounted for 25% of overall global turnover. The renminbi remained the eighth most traded currency, with a 4.3% market share. The U.S. dollar was on the other side of 95% of renminbi trades.

## **Argentina**

Mr. Noone prefaced the discussion about Argentina’s capital controls with a reminder about the [New York Fed’s Antitrust Guidelines](#). Mr. Nelson added that the purpose of the discussion whether the peso foreign exchange market was operating properly, and that members may not disclose non-public information about their firm’s positions.

Glade Jacobsen led a discussion about recent on-shore and off-shore rate divergence, and the decision by five members of the Emerging Markets Traders Association (“EMTA”) to give notice of an “Exchange Rate Divergence” on September 23, 2019. Under EMTA’s standard template, these notices triggered a suspension of settlement valuation for up to 30 days. Mr. Jacobsen observed that only two of EMTA’s country-specific, non-deliverable forward (“NDF”) contract templates (Argentina and Brazil) included a provision for suspending settlement valuation as a result of an exchange rate divergence in addition to a price source disruption event. His colleague Carlos Fernandez-Aller provided additional background on the divergence of the designated settlement rate (published by Mercado Electronico Abierto) from a widely-used off-shore rate known as the “Blue Chip Swap Rate.” The divergence between these two rates was cited in several of the exchange rate divergence notices that EMTA published on its public website.

Several FMLG members pointed out that the exchange rate divergence provision was only added to EMTA’s standard Argentina template in 2014 at the request of EMTA members as a reflection of the risk profile for the peso. The provision allows a minority of EMTA members—five firms, or approximately 4% of the membership—to declare a disruption. The Argentina and Brazil templates differed in the number of dealers required to declare an exchange rate divergence. Other country-specific templates only allowed for a suspension of settlement valuation in the event of a price source disruption, which was a more objective provision.

FMLG members then discussed relevant precedents from other emerging markets currencies, including the ruble; the difficulties in creating fallback alternatives to a calculation agent; the litigation risk that may accompany calculation agent determinations; and the possibility of creating best practices for calculation agents. Members suggested that EMTA engage antitrust counsel to facilitate a discussion of ways to reform the standard templates. Finally, members discussed whether Argentina’s currency controls, the exchange rate divergence, and fallback to calculation agents presented any risks to the global financial system. The consensus was that there was no significant systemic risk, but that there could be significant challenges for some market participants.

### **FX Global Code three-year review**

Terence Filewych continued a discussion from the September meeting about “caveat emptor” disclosures in foreign exchange agreements, first highlighted by Guy Debelle, Deputy Governor of the Reserve Bank of Australia and chair of the Global Foreign Exchange Committee. A “caveat emptor” disclosure is a general term for the view of some market participants that so long as a practice is disclosed, it is permissible. In Mr. Debelle’s view, a “caveat emptor” approach would work against the spirit of the FX Global Code, which aimed to raise standards across the market.

Members discussed the need to emphasize general principles in revisions to the FX Global Code, including fairness as well as transparency. To that end, members suggested inserting cross-references to other principles in examples section of the FX Global Code—especially principles setting out high-level themes like honesty, fairness, integrity and transparency—in order to be mindful of broader concepts when considering the application of specific principles. Members also discussed possible clarifications to the statement of commitment, including guidance on which officer or entity within a large firm should sign, and on whose behalf. Finally, members discussed whether to address, in light of *United States v. Johnson*, a course of dealing may alter the nature of a principal-to-principal relationship.

Foreign Exchange Committee (“FXC”) Secretary Sanja Peros reminded members that there were three channels for proposing revisions: (i) the Bank for International Settlements’ Markets Committee (including its Foreign Exchange Working Group); (ii) local foreign exchange committee input; and (iii) a survey of market participants administered by the Bank of England. The window of time for submitting feedback from local foreign exchange committee input was rather narrow, so Ms. Peros recommended that members consider the other channels as well.

### **Trade reject codes**

Matthew Lillvis introduced the possibility of creating a standard, international set of codes that identify the reason for the rejection of trades by dealers and platforms. This idea has also been discussed at the [May 2019 meeting](#) of the London Foreign Exchange Joint Standing Committee, a forum sponsored by the Bank of England. Mr. Lillvis explained a view among some buy-side market participants that the lack of standard codes inhibits internal reviews of execution quality. Mr. Nelson noted that the idea was in line with the principle of transparency espoused by the FX Global Code.

FMLG members debated the range of information that standard codes could provide, and the technical challenges in retrofitting existing systems. They also discussed differing interests of dealers, trading platforms, and end users in supplying last look trade reject data. Finally, some members noted the availability of aggregate fill rates, which may give market participants some insight. Mr. Nelson requested that the FMLG members discuss the matter with colleagues in preparation for further discussion at the November FMLG meeting.

### **LIBOR in FXC master agreements**

Maria Douvas updated members on discussions with the International Swaps and Derivatives Association (“ISDA”) to include FXC-sponsored master agreements in its protocol for interbank offered rate (“IBOR”) fallbacks. Those agreements are the International Currency Options Master Agreement (1997), the International Foreign Exchange Master Agreement (1997), the Foreign Exchange and Options Master Agreement (1997), and the International Foreign Exchange and Currency Option Master Agreement (2005). Ms. Douvas reported that ISDA is only including local master agreements in its protocol if they include ISDA’s 2006 definitions, which the FXC-sponsored master agreements do not include. Mr. Nelson asked members to consider alternative approaches to ISDA’s protocol.

## **FICC Market Standards Board transparency draft on conflicts of interest**

Mr. Noone drew attention to the FICC (Fixed Income, Currencies, and Commodities) Market Standards Board's ("FMSB") draft paper on conflicts of interest. In his view, the paper was consistent with, but more detailed than, related provisions in the FX Global Code. Members discussed a disclaimer that distinguished the FMSB's papers from the FX Global Code, and the role of central banks in developing local codes that address foreign exchange.

*N.B. The FMSB published its final [Conflict of Interest Statement of Good Practice](#) on October 14, 2019.*

## **Administrative matters**

FMLG Treasurer Jill Hurwitz gave a brief update on the group's finances.

## **Other business**

Robert Klein requested that the FMLG add a discussion of digital fiat currencies to an upcoming agenda. Mr. Nelson suggested that the group invite a guest speaker.

• • • • •

***The Financial Markets Lawyers Group comprises lawyers who support foreign exchange and other financial markets trading in leading worldwide financial institutions. It is sponsored by, but is not part of, the Federal Reserve Bank of New York. Any views expressed by the Financial Markets Lawyers Group do not necessarily represent the views of the Federal Reserve Bank of New York or the Federal Reserve System.***