

Minutes

Foreign Exchange Joint Standing Committee Legal Sub-Committee

8th June 2020

Location: Video conference call hosted by Bank of England

Attendees: **Bank of England:** Jonathan Grant (Secretary), Paul Avanzato
Goldman Sachs: Dan Parker (Chair)
Bank of America: Jateen Shah
Barclays: Nasia Pachiti Pallikaropoulou
Citigroup: Sharon Blackman
CLS: Gaynor Wood
Deutsche Bank: Simon Goldsworthy
Financial Conduct Authority (FCA): David Harris
Freshfields: Michael Raffan, Cyrus Pocha (Guest speakers)
HSBC: Harkamal Singh Atwal
JP Morgan: Tamsin Rolls
LCH: Diane Bouwmeester
Morgan Stanley: Nimisha Kanabar
Standard Chartered: Rakesh Shah
TP ICAP: Simon Helm
XTX Markets: Sunil Samani

Apologies: **UBS:** Richard Lamb, Krisha Somaiya
RBS/Natwest Markets : Baljit Saini

Minute no. Minute

1. Introduction and Minutes

The minutes of the meeting of 11 February 2020 were approved.

2. Regulatory Update

Michael Raffan and Cyrus Pocha of Freshfields provided an update the EU's review of the Markets in Financial Instruments Directive II/Regulation (**MiFIDII /MiFIR**) and the Market Abuse Regulation (**MAR**).

The European Commission (**EC**) had conducted a public consultation into the review of the MiFIDII/MiFIR regulatory framework, closing in April 2020. It focussed on four main areas, being investor protection, research, commodity markets, and establishing an EU 'consolidated tape'. Sub-categories of focus were the derivatives trading obligation, and foreign exchange (whether spot FX transaction should fall within the scope of MiFIDII/MiFIR). It was noted that European Securities and Markets Authority (**ESMA**) had also issued its own consultation paper covering the derivatives trading obligation and pre-trade transparency for non-equity instruments under MiFIR, with a view to improving its data collection, including in relation FX derivatives.

Following a formal request from the EC for technical advice ESMA conducted a public consultation on MAR which closed in November 2019. ESMA was expected to conclude its report for the EC by end of summer 2020, following which legislative proposals may be made. The EC had asked for specific advice on key issues. These included whether spot FX transactions should fall within the scope of MAR, and whether MAR should be better aligned with the EU Benchmarks Regulation (for example in relation to treatment of MAR offences such as manipulation of a benchmark).

3. **UK insolvency law changes**

Michael Raffan of Freshfields provided an overview of the new UK Corporate Insolvency and Governance Bill, and its impact on FX contracts and counterparties. On 20 May 2020 H.M. Government published the Bill which introduced reforms to existing UK insolvency and companies legislation. It comprised a package of 'COVID-related measures' together with permanent changes to UK insolvency law. 'COVID-related measures' included suspension of directors' liability for wrongful trading, suspension of the use of statutory demands as a basis for winding up a company, and limitations on petitions and other measures where linked to COVID. Permanent changes included a new 'moratorium' providing companies with a payment holiday, protections limiting suppliers' termination rights in supply contracts, and a new 'corporate restructuring plan' allowing compromises between creditors. The Bill contained saving provisions for close-out arrangements in financial contracts, certain rules did not apply to specified categories of financial counterparty, and certain classes of financial contracts (such as financial derivatives, market contracts and FX contracts) were also excluded.

4. **Any Other Business**

The next meeting will be on 8th September 2020.