

Financial Markets Law Committee (“FMLC”)

Infrastructure Scoping Forum

Date: Monday 18 September 2017

Time: 9.00am to 10.30am

Location: Bank of England, Threadneedle Street, London, EC2R 8AH



In Attendance:

Adam Eades (Chair)	BATS Chi-X Europe
Antony Beaves	Bank of England
Nick Carew Hunt	
Mark Evans	Travers Smith LLP
John Ewan	
Anouk Gauthier	The London Metal Exchange
Iona Levine	Minerva Chambers
Bob Penn	Cleary Gottlieb Steen & Hamilton LLP
Barnabas Reynolds	Shearman & Sterling (London) LLP
Alex Rutter	Tradeweb Europe Limited
Mitja Siraj	FIA
Christopher Twemlow	Euroclear SA/NV London
Paul Watkins	Blue Nile Clearing Advisory
Rachel Toon	FMLC
Thomas Willett	FMLC

Guest Speakers:

Will Parry	Bank of England
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Observers:

David Bunting	Deutsche Bank AG
Mark Campbell	Clifford Chance LLP
Tim Taylor	Bank of England

Registered Charity Number: 1164902

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Regrets:

Emma Dwyer

Allen & Overy LLP

Nathaniel Lalone

Katten Muchin Rosenman UK LLP

Matina Papadopoulou

CHAPS Co

Arun Srivastava

Baker McKenzie LLP

Paul Vine

Norton Rose Fulbright LLP

Minutes:

1. Introduction

1.1. Adam Eades opened the meeting and gave a brief introduction.

2. Administration:

a. a short presentation on key FMLC statistics (Rachel Toon);¹

2.1. Rachel Toon presented a selection of FMLC statistics covering the legal uncertainties analysed by the FMLC since 2003, FMLC publications, FMLC events, the international connections the FMLC have forged, and a glance at funding and expenditure.

b. present the draft 218 Forward Schedule;²

2.2. The draft 2018 Forward Schedule was presented to the Forum members. In order to ensure that as many diverse views are presented at the Forum meetings as possible, the Secretariat would like the opportunity to invite guest speakers and Forum members from around the world to attend the meetings. In order accommodate the inclusion of participants from the U.S.; the Secretariat has tentatively proposed holding the 2018 Scoping Forum meetings in the afternoon.³

2.3. The 2018 Forward Schedule will be confirmed at the Q4 meeting on Monday 11 December.

¹ Please see Appendix I below.

² *Ibid.*, slide 10.

³ If you have any suggestions or queries regarding the draft 2018 Forward Schedule, please contact Thomas Willett at forums@fmlc.org.

c. suggestions for the 2018 Forward Agenda.⁴

2.4. The Secretariat invited members to suggest items for the 2018 Forward Agenda.

3. The transition from London Interbank Offered Rate (“LIBOR”) to Sterling Over Night Index Average (“SONIA”) (Will Parry, facilitated by John Ewan).

3.1. Will Parry began his talk by citing a speech delivered by Andrew Bailey, Chief Executive of the Financial Conduct Authority (“FCA”), on 27 July 2017⁵ and how it had focused attention on the need for markets to transition away from LIBOR to alternative reference rates that are firmly based on transactions by the end of 2021.

3.2. Mr Parry went on to provide a brief background to the interest rate benchmark reform agenda. He described how cases of manipulation and false reporting of reference rates, including LIBOR, had undermined confidence in existing benchmarks. In 2013, the G20 approached the Financial Stability Board (“FSB”) to undertake a review of major interest rate benchmarks and in July 2014 the FSB published recommendations for reform.⁶ This set out two broad objectives:

- i. To strengthen existing interbank offered rates (“IBORs”) by underpinning them to the greatest extent possible with transaction data; and
- ii. To develop alternative, transaction-based nearly risk-free, reference rates (“RFRs”).

3.3. Mr Parry focused his comments on the second objective. He noted the premise was that for many transactions – in particular for use in derivative products – risk-free rates would be more appropriate for users.

3.4. He then turned to the work of the Working Group on Sterling Risk-Free Reference Rates (“**the Working Group**”), a private sector group comprising senior experts from major sterling swap dealers initiated by the Bank of England in March 2015. He explained how the key aims of the Working Group were to identify the appropriate sterling RFR and to develop a market-wide adoption plan.

⁴ If you have any suggestions for the 2018 Forward Agenda, please contact Thomas Willett at forums@fmlc.org.

⁵ Andrew Bailey’s full speech can be found at <https://www.fca.org.uk/news/speeches/the-future-of-libor>.

⁶ The Financial Stability Board, ‘Reforming Major Interest Rate Benchmarks’ (22 July 2014), available at: http://www.fsb.org/wp-content/uploads/r_140722.pdf.

- 3.5. In April 2017 the group announced its recommendation that the market should adopt SONIA, the unsecured overnight benchmark currently being reformed by the Bank of England. A key deciding factor for many members was speed of implementation. Aligning the swap reference rate with the benchmark underpinning the discount curve used to value swaps was seen as a necessary step to promote broader adoption. By choosing SONIA, no transition of the OIS market to a new basis was required.
- 3.6. In June 2017, the Working Group published a White Paper⁷ to explain the rationale for its recommendation of SONIA as sterling RFR and to seek feedback on approaches to adoption from a broad set of stakeholders. Mr Parry noted that responses to the White Paper, which are due at the end of September 2017, would help inform the Working Group's next steps.
- 3.7. Mr Parry explained how the Working Group is now liaising with infrastructure providers to put in place the so-called building blocks for the adoption of SONIA in derivatives markets: developing on-exchange SONIA referencing futures contracts; and extending the maturity of cleared OIS trades to 50 years from 30 years currently.
- 3.8. The original FSB mandate for the RFR work had focused on the derivatives market. But the UK authorities have been holding discussions with the cash markets trade bodies to understand the issues they face. Mr Parry noted an emerging priority for the cash markets is to what extent the standard documentation can be updated to facilitate changes in reference rate.
- 3.9. John Ewan, the facilitator of this discussion, highlighted that Mr Bailey's speech did not announce the end of LIBOR by 2021, but that in his personal view, LIBOR would not survive past 2021 in its current form. Mr Ewan also stressed how this is not a sterling issue alone, but has global consequences.
- 3.10. When opened to the participants for questions, one Forum member asked that if the Working Group were looking at SONIA as the sterling reference rate, were they liaising with other central banks. Mr Parry responded by stating that the private sector chairs of the groups were in regular contact, and that the authorities in the five LIBOR currencies were also liaising closely on this issue.

⁷ The Working Group on Sterling Risk-Free Reference Rates, 'SONIA as the RFR and approaches to adoption' (June 2017), available at: <http://www.bankofengland.co.uk/markets/Documents/sterlingoperations/rfr/rfrwgwhitepaper0617.pdf>.

- 3.11. Another participant queried if the reformed SONIA would be using the same administrator as LIBOR. Mr Parry clarified that the reformed SONIA would be administered by the Bank of England, noting that the decision of the Bank of England to reform SONIA was independent of the Working Group's choice of RFR, given the criticality of SONIA's existing role in sterling markets.
- 3.12. One Forum member raised concerns over the liquidity of benchmark instruments being affected if the transition process from LIBOR to the reformed SONIA becomes drawn out. Mr Parry stated the intention of the White Paper was to get the input of market participants from across all uses of LIBOR to assist in developing adoption plans and to ensure a timely transition.
- 3.13. Issues concerning the cut-off date for regulatory support for LIBOR were also articulated by the participants, highlighting that SONIA is a much more volatile benchmark and asking if there were any economic reasons why the cut-off date might be pushed back. Mr Parry queried whether SONIA was more in fact more volatile than LIBOR, but noted that SONIA is often used as a compounded rate, and when used as such was less volatile.
- 3.14. To conclude, Mr Parry invited the Forum members to submit comments on the Working Group's White Paper. The FMLC Secretariat offered to circulate the details on how to submit comments to the Forum members after the meeting.
- 4. Update on drawing a distinction between bilateral and multilateral trading activities (Nathaniel Lalone).**
- 4.1. Owing to the absence of the speaker this agenda topic was deferred until the next Infrastructure Scoping Forum meeting.
- 5. The legal uncertainties arising from the E.U. [report](#) and [consultation](#) on post-trade in a Capital Markets Union.**
- 5.1. Although initial concerns with equivalence, conflict of laws and the time frame of Brexit were raised by Forum members, it was agreed that it was too early to identify areas of legal uncertainty surrounding post-trade in a Capital Markets Union.
- 5.2. The participants emphasised that the consultation paper was too wide in scope and that this agenda topic could be revisited once the responses to the consultation have been published to identify areas of legal uncertainty.

6. **Any other business.**

- 6.1. One Forum member asked for an update on the progress of the Forum's previous work on European Commission's proposals to amend the procedures and authorities involved for the authorisation of Central Counterparties ("CCPs") and requirements for the recognition of Third-Country CCPs. Ms Toon explained that the FMLC Committee is planning to discuss this topic at the next committee meeting to decide whether further work on this subject should be undertaken.
- 6.2. Another participant queried whether the FMLC Secretariat has had any prior engagement with HM Treasury with regards to the Infrastructure Scoping Forum. Ms Toon stated that she would check and revert to the Forum members on this question.

Did you know ..?

A quick glance at some FMLC numbers



Rachel Toon, Executive Assistant | Events Manager

Registered Charity Number: 1164902.

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Addressing legal uncertainty



Since 2003, the FMLC has analysed and made recommendations to resolve legal uncertainties in 212 disparate topics.

Solvency II
Brexit
E.U. Data Protection Reform
Market Abuse Regulation
EMIR
Emissions Allowances
Benchmarks Reform
Capital Markets Union
Sovereign Debt Collective Action Clauses
Bail-in
Rome I
Bank Reform (Ring Fencing)
International Coordination of Law and Regulation
Regulation of Credit Rating Agencies
MiFID II
Bank Recovery and Resolution
Financial Market Infrastructures
Virtual Currencies

FMLC research is conducted through:

8

Scoping Forums

- Banking
- Brexit
- Buy-side
- Infrastructure
- Insurance
- Fintech
- Sovereign Debt
- Quarterly Discussion Forum (closed)

27

Working Groups

- ... were established since the beginning of 2016:
- 7 Working Groups are still active;
 - 5 deal with matters related to Brexit; and
 - 9 have published and are anticipating further work.

FMLC Publications

22

publications were produced in 2016

69

pages in our longest paper

5

publications were on the topic of benchmarks reform

2016-Present FMLC Events



10

formal events were held

45

guest speakers across all events

4

events examined legal uncertainties arising from Brexit

176

guests attended the 2016 Spring Colloquium on the anticipated U.K. referendum. This was the FMLC's most successful event in the past 3 years

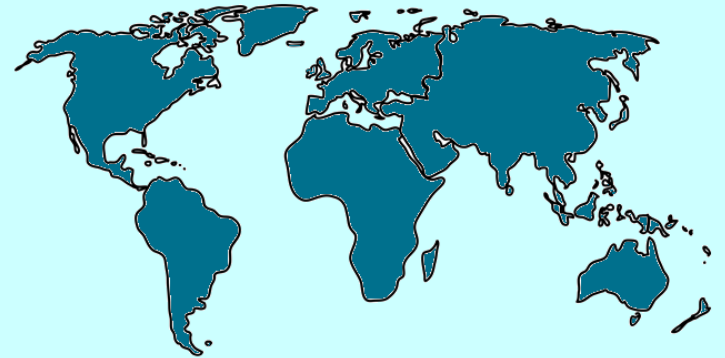
International connections

18 speeches were given by the FMLC CEO in 5 different countries

4 calls are held every year with the Financial Markets Lawyers Group ("FMLG") (New York)

3 sister organisations (associated with the Federal Reserve, the ECB and the Bank of Japan) participate in an annual conference with the FMLC

7 jurisdictions (E.U., Hong Kong, Japan, Switzerland, Singapore, U.K. and U.S.) hold a biannual information-exchange video conference



People and the FMLC

39 patron organisations

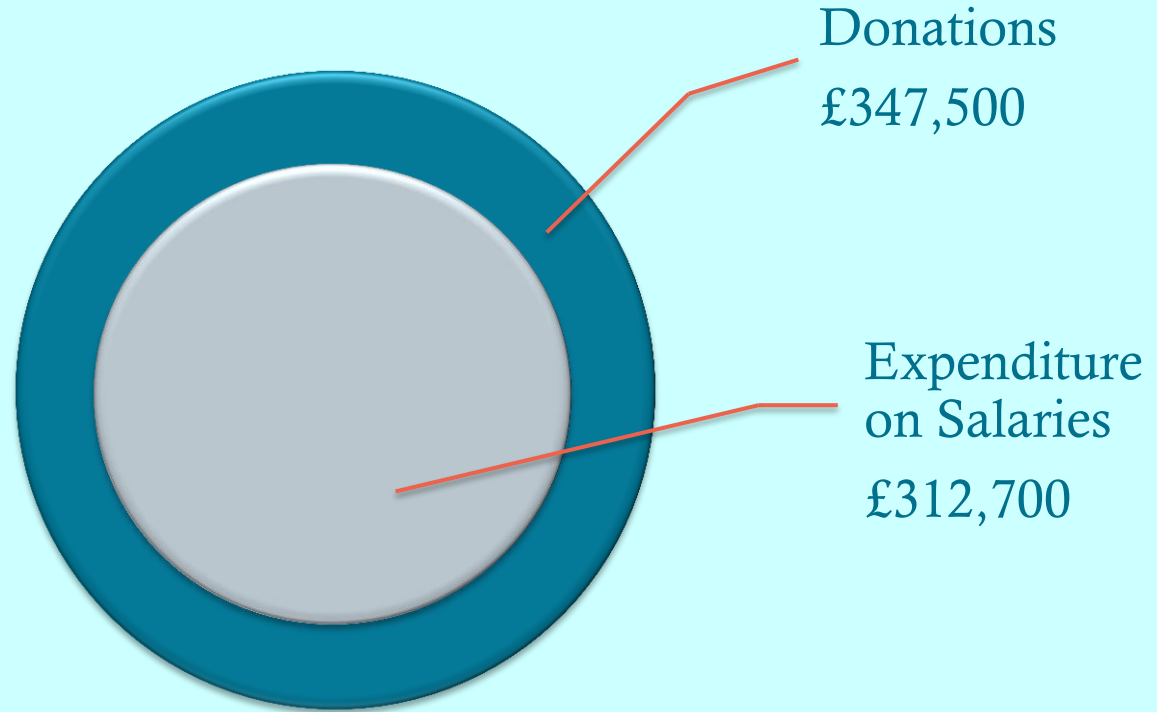
35 average number of members per Scoping Forum

26 Committee Members

15 average number of members per Working Group

11 staff at the FMLC Secretariat (plus one volunteer!)

Looking under the hood ...



89% of the FMLC's charitable income is spent on Secretariat salaries

You can get involved in the FMLC's work by becoming a:



- **patron**—for a sample Patrons' Newsletter, a copy of the FMLC donation pack and any other enquiries, please contact: Barbara Martin (patrons@fmlc.org);
- **stakeholder**—for a sample Stakeholders' Newsletter and any other enquiries, please contact: Rachel Toon (executivesupport@fmlc.org);
or
- **recipient to our general mailing list**—should you wish to receive regular notifications about new FMLC publications, please contact: Amy Shaw (secretarial@fmlc.org).

2018 Forward Schedule



Thursday 8 March

2.00pm to 3.30pm (U.K.)

Thursday 7 June

2.00pm to 3.30pm (U.K.)

Thursday 13 September

2.00pm to 3.30pm (U.K.)

Thursday 6 December

2.00pm to 3.30pm (U.K.)

Conclusion / The End



Financial Markets Law Committee

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