Financial Markets Law Committee ("FMLC")

ESG Scoping Forum

Date: Wednesday 9 December 2020

Time: 2.00pm to 3.30pm

Virtual meeting

Attendees:

Claude Brown (Moderator)	Reed Smith LLP
Sarah Brungs	Goldman Sachs International
Lauren Butchart	J.P. Morgan
Dickson Chin	Jones Day
Tamara Cizeika	Allen & Overy LLP
Paul Double	City of London
Stuart Doxford	Simmons & Simmons LLP
Imogen Garner	Norton Rose Fulbright LLP
Leland Goss	International Capital Market Association
Selmin Hakki	Slaughter and May
Mindy Hauman	White & Case LLP
Laura Houet	CMS Cameron McKenna Nabarro Olswang LLP
Lorraine Johnston	Ashurst LLP
Ida Levine	Impact Investing Institute
Caitlin McErlane	Baker McKenzie LLP
Daniel Nevzat	Norton Rose Fulbright LLP
Benedetta Pacifico	Sidley Austin LLP
Neil Robson	Katten Muchin Rosenman UK LLP
Joanna Treacy	K&L Gates LLP
Simon Witney	Travers Smith LLP
Peter Werner	International Swaps and Derivatives Association
Simon Wright	Dechert LLP
Ezra Zahabi	Akin Gump Strauss Hauer & Feld
Venessa Parekh	FMLC Secretariat
Chhavi Sinha	FMLC Secretariat

Katja Trela-Larsen	FMLC Secretariat

Regrets:

Gregg Beechey	Fried, Frank, Harris, Shriver & Jacobson (London) LLP
Katy Hyams	The London Metal Exchange
Leonard Ng	Sidley Austin LLP
Ferdisha Snagg	Cleary Gottlieb Steen & Hamilton LLP
Matthew Townsend	Allen & Overy LLP

Minutes:

1. Introductions

1.1. Mr Brown opened the meeting.

2. The implications of Brexit for the FMLC (Venessa Parekh)[1]

2.1. Ms Parekh informed members that on 31 December 2020, the Brexit transition period will come to an end and it remains uncertain whether the U.K. will continue to incorporate E.U. law in the changed circumstances. Ms Parekh explained that the FMLC Brexit Advisory Group, which was established by the FMLC to give direction to the Committee's work relating to Brexit, recently considered if the FMLC's research ambit should be altered in the changed circumstances. Members of the Advisory Group unanimously recommended that the FMLC should continue to engage with E.U. law. This recommendation was communicated to the FMLC. The FMLC will continue to monitor E.U. legislative developments in relation to financial services through Scoping Forums which may then recommend further engagement. The FMLC will determine how and whether to engage with specific proposals in the context of its apolitical remit and constrain imposed by Secretariat resources.

2.2. Mr Brown observed that a continued engagement with E.U. is essential, particularly in the context of developments in relation to sustainable finance, which is the focus of this Scoping Forum.

1 Please see Appendix I

3. European Commission Consultation on a draft delegated act regarding the criteria defining environmentally sustainable activities under the Taxonomy Regulation (Imogen Garner and Daniel Nevzat)

3.1. Ms Garner opened her remarks by stating that the European Commission in November 2020, published its consultation on a draft delegated regulation (the "**Draft Delegated Regulation**") to supplement Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (the "**Taxonomy Regulation**").[2] She commented that the Draft Delegated Regulation contains technical screening criteria, set out in Annex I and II, for determining which economic activities can qualify as environmentally sustainable, under the Taxonomy Regulation and for ensuring that the economic activity causes no significant harm to other environmental objectives. Ms Garner explained that nine categories of economic activities are listed under Annex I. Additional categories such as arts, entertainment, recreation, education, and human resources are set out in Annex II. Ms Garner added that nuclear power is not included in any of the annexures and certain groups are considering the possibility of its inclusion. She noted that the Draft Delegated Regulations reflect recommendations from technical experts and an impact assessment carried out by the European Commission to inform and accompany it.

3.2. Mr Nevzat explained that the position on natural gas has been controversial. He added that the consultation closes on 18 December, thereafter, the European Commission would adopt a delegated act within a period of four months. He noted that the scope of the Taxonomy Regulation is wide which means it has implications for many projects. Determining which projects would be included is the E.U,'s priority. An attendee asked if Member States have defined the criteria on the basis of which projects related to Covid-19 may be considered. Mr Nevzat explained that a general consensus on building an internal support system has been agreed among E.U. Member States. He added that sustainability is a high priority for the European Commission.

4. Sustainable Bonds (Claude Brown)

4.1. Mr Brown introduced the topic of sustainable bonds by explaining that they benefit from a particularly wide and varied range of funding sources. These sources include supranational entities such as the World Bank, sovereign states and private entities. Mr Brown added that the funding provided by the supranational entities can sometimes produce uneven structures

[2] European Commission, Consultation on a draft delegated act under the Taxonomy Regulation (22 November 2020), available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12302-Climate-change-mitigation-and-adaptation-taxonomy#ISC_WORKFLOW

for ESG products. States provide funding through agencies founded under local law which often constraint what these agencies are allowed to do. Mr Brown stated that there are a variety of private funding sources, including commercial and philanthropic organisations and that it is important to make a distinction between commercial and partnership entities. Mr Brown also discussed the regulatory impact of sustainable bonds on the derivatives market. He noted that additional requirements, such as ESG disclosures and listing requirements are seen in the context of sustainable bonds.

4.2. Mr Brown then turned to the Philippines parametric catastrophe risk protection plan and explained that the Philippines has been prone to natural risks like earthquakes, flooding, and cyclones. In this context, the Philippines Government Insurance Services adopted parametric insurance backed by swaps. The insurance covers 25 provinces by providing emergency funds and contingent credit lines. He added that in November 2019, World Bank issued a $225 million, three year catastrophe bond listed in Singapore covering quake and typhoon risk in the Philippines.

4.3. Mr Brown drew members' attention to marine sustainability financing and explained that arrangements such as the global fund for coral reefs funds, debt-for-nature conversions and swaps, blue bonds and blue carbon are becoming increasingly popular. He noted that there is scope for developing a derivative contract in the context of these bonds which could be attractive to investors. He turned to Seychelles' debt restructuring for marine conservation and climate adaptation. Mr Brown added that Seychelles is a large oceanic developing state ("**LODS**") and half of its gross domestic product comes from fishing and oceanic tourism. Reefs and mangroves protect from adverse weather conditions. He added that fifty-six LODS have a combined population of over 65 million, so these products were likely to increase in popularity.

4.4. Mr Brown stated that a Seychelles Conservation and Climate Adaptation Trust (the "**SeyCCAT**") with the assistance of The Nature Conservancy (the "**TNC**") has been established to fund the Seychelles debt restructuring for marine conservation and climate adaptation.

5. Plenary discussion on recent developments (Claude Brown)

5.1 Members briefly discussed the European Central Bank's guide and report on climate-related and environmental risks and disclosure for banks (the "**ECB report**")[3] and the Financial Stability Board's report on implications of climate change for financial stability (the "**FSB report**").[4] A member noted that companies have raised concerns and faced challenges in complying with ECB's expectation of banks to prudently manage and transparently disclose risks under current prudential rules.

5.2 With respect to the FSB report, members observed that the FSB rightly understands that financial institutions may face difficulties in managing their exposure to climate-related risks. The efficacy of actions taken by financial firms to reduce climate-related risks may be hampered by a lack of data with which to assess clients' exposures to climate-related risks, or the magnitude of climate-related effects. Members agreed that a robust risk management might be supported by initiatives to enhance information with which to assess climate-related risk.

6. 2021 Forward Schedule (Katja Trela-Larsen)

6.1 Ms Trela-Larsen shared dates for meetings for the ESG Scoping Forum to be held next year and encouraged members to send the Secretariat any feedback.

7. Any other business

7.1. No further business was raised.

---

[3] ECB, Guide and Report on climate-related and environmental risks and disclosure for banks (27 November 2020), available at: https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr201127~5642b6e68d.en.html

[4] FSB, Report on implications of climate change for financial stability (23 November 2020), available at: https://www.fsb.org/wp-content/uploads/R231120.pdf

The implications of Brexit for the FMLC

FINANCIAL MARKETS LAW COMMITTEE

Venessa Parekh Research Manager

Brexit

- On 31 December 2020, the Brexit Transition Period—also known in the U.K. as the Implementation Period—will come to an end.
- The shape of the relationship between the U.K. and E.U. after the end of the Transition Period remains unknown. Negotiations continue.
- During the Transition Period, the U.K. has continued to receive E.U. law. Any legislation passed during this time will be "onshored" in the U.K. under the European Union (Withdrawal) Act 2018.
- After the Transition Period, it is uncertain whether the U.K. will continue to incorporate E.U. law

Brexit Advisory Group

- In the week following the referendum result, the FMLC established an Advisory Group of experts from the fields of law to give direction to the Committee's work relating to Brexit. The Brexit Advisory Group meets quarterly and meetings are usually chaired by FMLC CEO Joanna Perkins.
- At a recent meeting of the Brexit Advisory Group, Joanna asked attendees for their views on the FMLC's continued engagement with E.U. law after Brexit.
- Members of the Advisory Group unanimously recommended that the FMLC should continue to engage with E.U. law. This recommendation was communicated to the FMLC.

This would not be unusual …

As per the FMLC's Remit:

"Although the legal and regulatory frameworks governing wholesale financial markets in the E.U. and the U.K. are highly developed and robust, an element of legal uncertainty is inevitable in such international, competitive and innovative spheres.

"New practices frequently give rise to uncertainties as to the application of existing laws or regulations. Proposals for new laws or regulations—whether as part of domestic or international initiatives—can give rise to uncertainties or misunderstandings when specific features of wholesale markets practice have not been fully or accurately considered in the drafting by a legislator or other public authority."

International Coordination

- The FMLC has always monitored and responded to legislative developments and proposals in key financial services jurisdictions. In relation to such topics as LIBOR transition or the regulation of cryptoassets, its work would be incomplete if it did not take an international perspective.
- The FMLC has enduring connections with sister organisations around the world with which it participates regularly in information-exchange activities.
- Given that a great proportion of the U.K.'s financial services legislation comprises "onshored" / "retained" E.U. law, it would be remiss not to monitor developments in the E.U.

In Conclusion

- As an impartial and independent body with access to a significant breadth and depth of financial markets expertise, the FMLC provides an invaluable link between the international financial markets and the government, the regulators and the judiciary.
- The FMLC will continue to monitor E.U. legislative developments in relation to financial services through Scoping Forums which may then recommend further engagement
- The FMLC will determine how and whether to engage with specific proposals in the context of its apolitical remit and constraints imposed by Secretariat resources.

contact@fmlc.org
+44 (0)20 7601 5118