



FINANCIAL MARKETS LAW COMMITTEE

Videoconference

Date: 25 March 2021

Time: 4.30pm to 6.00pm

Attendees:

Lord Thomas (Chair)	FMLC Chairman
David Greenwald (Deputy Chairman)	Fried, Frank, Harris, Shriver & Jacobson LLP
Andrew Bagley	Goldman Sachs
Sir William Blair	Queen Mary University of London
Claude Brown	Reed Smith LLP
Michael Duncan	Allen & Overy LLP
Paul Double	City of London Corporation
Simon Firth	Linklaters LLP
Kate Gibbons	Clifford Chance LLP
Carolyn Jackson	Katten Muchin Rosenman LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Peter King	HM Treasury
Sir Robin Knowles	Royal Courts of Justice
Ida Levine	Impact Investing Institute
Karen Levinge	Financial Conduct Authority
Rob Price	Bank of England
Jan Putnis	Slaughter and May
Sanjev Warna-kula-suriya	Latham & Watkins LLP
Venessa Parekh	FMLC Research Manager
Chhavi Sinha	FMLC Acting Manager
Katja Trela-Larsen	FMLC Forums Coordinator

Registered Charity Number: 1164902.

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MINUTES

CHAIRMAN'S COMMENTS

The Chairman announced that FMLC CEO Joanna Perkins has decided to leave the Financial Markets Law Committee. He thanked her for her contributions to the FMLC's work and wished her the best for the future. He informed Members that the Board was putting into place interim arrangements.

The Chairman stated that the webinars organised by the FMLC on market manipulation arising from the GameStop events and on retained law after Brexit had been immensely successful. He noted that a seminar would also be held the following week for members of the senior judiciary on LIBOR transition. Next, he said that the first of the three planned meetings of the Quadrilateral Conference had been held successfully earlier in the month. He expressed the hope that virtual meetings could be held more frequently. Finally, he updated Members on a meeting held between the relevant team at the Law Commission and some Members of the FMLC at which Members had recommended topics for the Law Commission's research programme.

ACTIVE PROJECTS

LIBOR Transition

The Secretariat reported that a [letter](#) had been sent jointly with the EFMLG to to relevant authorities (IOSCO, the FSB and local authorities in the U.S., U.K., E.U. and Japan) asking for increased coordination to avoid unintended consequences linked to legislative initiatives in relation to LIBOR transition.

The Chairman suggested that the Secretariat continue to monitor developments in this area.

Good faith in English law

Following an event organised by the London Shipping Law Centre and Linklaters on the relevance of good faith in disputes triggered by the Covid-19 crisis (at which Simon Firth was a panellist and which was attended by the Chief Executive), Members had considered the possibility of expressing a nuanced view on this issue, under the FMLC's educational remit. The Secretariat had prepared a briefing note on the basis of these resources to help define the

questions a project might address. At the last meeting, the Chairman had asked Simon Firth and Sir William Blair who had been involved in the Secretariat's discussion with the experts, to advise the Committee on how it should proceed. In the meanwhile, the Secretariat has forwarded the briefing note to the experts who have continued to express support for the FMLC's project.

Mr Firth and Sir William reported that they agreed that it would be helpful to reach out to an academic who might provide input into this project. They agreed to consider whom the Secretariat might approach. They also recommended that any such project should take into account the position under New York law.

Negative oil prices

The Secretariat had drafted a paper exploring the nature of the legal uncertainties arising in financial markets as a result of negative oil prices. Further comments were received from Committee Members after the last meeting, which the Secretariat had incorporated.

A Member noted that the Committee should review this paper carefully since it had not been drafted by a Working Group and did not represent market consensus. He suggested that the paper might be published elsewhere if the Committee was unable to agree on its publication. Another Member urged the FMLC to publish the paper under its imprimatur because it considers an important event in the financial markets (the price of oil going negative) which, although a rare occurrence, would constitute a key reference point in the future. A Member noted that the market had taken great interest in the events around negative oil prices and that ISDA has now published additional clauses to enable the market to adapt to negative oil prices.

Members agreed to review the updated paper and return to the question of its publication at the next meeting.

RADAR AND SCOPING

The Future of Financial Services Regulation in the U.K.

Members had resolved that the FMLC should monitor issues of uncertainty arising in the context of the U.K.'s post-Brexit financial services framework. To that end, Members' attention was

drawn to the publication by the House of Commons Treasury Committee of the [FCA's written evidence](#) in response to its inquiry into the future of financial services post-Brexit.

Members agreed that this was an area that the Secretariat should continue monitoring because there were likely to be new developments over coming months. A Member noted that the FMLC would have to be careful in making any comments because the uncertainties that are likely to arise will not simply be legal. The Chairman asked the Secretariat to prepare a short note of the developments so far and possible areas on which the Committee might focus.

ANY OTHER BUSINESS

Other

The following matters were also discussed. No resolution was passed.

- U.K. Bank Ring-Fencing Legislation: Members had resolved to establish a Working Group to examine legal uncertainties in the context of the U.K.'s ring-fencing regime. The Secretariat had established a Working Group and would appoint a Chair and schedule a first meeting shortly. Members briefly discussed a possible Chair for this Working Group.
- Section 3 of the RAO—Definition of contract of insurance: The Secretariat, together with the Working Group, has compiled a draft paper examining the uncertainties in relation to the definition of "contract of general insurance" set out in the Regulated Activities Order. The draft paper had been sent to the Working Group for its review. The Chairman noted that, once the paper was finalised, he would like the Committee to conduct a thorough review.