**73rd meeting of the european financial markets lawyers group**

AGENDA

**12 February 2021**

**9:15 AM – 12:30 PM**

**Venue:** WebEx Videoconference

1. **Introduction by the Chair 09:15 – 09:20**
2. **Post-Brexit negotiations on financial services09:20 – 10:00**

**Presenter**: Ward Möhlmann – European Commission -Task Force for Relations with the United Kingdom

**Background**: The UK is - as of 1 January 2021 - not part of the Single market anymore and will thus be treated as a third country. The EU–UK Trade and Cooperation Agreement (TCA) covers financial services. In addition, in a Joint Declaration, the EU and the UK agreed to establish structured regulatory cooperation on financial services and will by March 2021 agree a Memorandum of Understanding establishing the framework for this cooperation. Finally, there is the issue of equivalence. Ward Möhlmann from the Task Force for Relations with the United Kingdom, will talk on how the post Brexit negotiations in relation to financial services are progressing and what further actions are planned.

**Action point:** No immediate action point on the Brexit negotiations was discussed during the meeting although some participants indicated that they may approach the Commission with a list of points that should be taken into account in discussions on regulatory cooperation.

**Documentation**: *None*

1. **MiFID/MiFIR Reform 10:00**  **– 10:30**

**Presenter:** Ignacio Ollero García – Agulló (BBVA)

**Background:** The European Commission presented in July 2020 its Capital Markets Recovery Package, which included proposals for urgent amendments of MiFID II in view of the Covid-19 crisis. On 16 December 2020 the Council agreed on this package of amendments, the so-called MiFID Quick Fix aimed at resolving the most pressing issues. The MiFID Quick Fix should be published in the Official Journal soon. On this basis Ignacio will present on the following aspects of the reform:

Main changes in MiFID Quick Fix

* Which relevant items have been left outside this MiFID Quick Fix and could be interesting to pursue in the future?
* Implementation: may investment firms start applying these improvements before national transposition (in view notably of the fact that MiFID Quick FIX reduces administrative burdens and increases flexibility)?
* Apart from MiFID Quick Fix changes, what analysis ESMA is carrying out to assess whether certain MIFIR obligations should be eliminated or reduced?

**Action point:** It was decided to address ESMA and the European Commission and ask them for a public statement on the implementation issues arising from the recent Quick Fix MiFID reform (along the lines of the points contained in Ignacio’s presentation, including raising some new issues that are so far missing from the proposal in the consultation papers or the ESMA report. Ignacio kindly agreed to prepare a first draft. *First draft of the letter to be prepared by Ignacio (?)*.

**Documentation:** Presentation

1. **Global legislative initiatives on IBORs transition – common action with the FMLC to call for increased coordination of these initiatives 10:30-10:40**

 **Presenter:** Otto Heinz (ECB) and Igancio Ollero Garcia-Agullo (BBVA)

**Background**: At the last EFMLG meeting in November, Ignacio presented the UK proposed amendment to the Benchmark Regulation and put forward a proposal for coordinated action among EFMLG sister groups. Whilst the FMLG and the BoJ refrained from action, the FMLC expressed strong support. Otto and Ignacio will update the members on the matter.

**Action point:** The EFMLG will write a joint letter with the FMLC. Comments were sought by cob on Tuesday, 16 February:

* on the draft FMLC/EFMLG letter;
* the addressees of the letter (it is currently proposed to send it to the Commission, the FCA and after consulting the Fed and the BoJ to the relevant US and Japanese authorities), and
* the scope of involvement (it is proposed to offer active help).

**Documentation:** 1)Draft joint EFMLG/FMLC letter offering assistance in cross-border coordination.

2) A letter from the GFMA and other market associations to the FSB on benchmark coordination

3) [A recent FMLC response to an FCA consultation, which also highlights the need for global cordination](http://fmlc.org/wp-content/uploads/2021/01/FMLC_UP_11709975_v_1_FMLC-Response-to-FCA-Consultation-on-new-LIBOR-transition-powers.pdf).

***Coffee Break – 10 minutes***

1. **Crypto assets in derivatives, repo and deposit markets 10:50 – 11:30**

**Presenter**: Hubert de Vauplane

**Background**: The crypto market is moving fast and using more and more products from the financial markets. Following are two examples of products than are in the interest of the EFLMG and that Hubert will elaborate on:

* The repo market: compared to the traditional repo market it is still a small market compared with $5 to $50 million worth of daily transactions occurring. The market is fragmented and most of the deals are done on a bilateral basis, rather than through a clearing party. In the repo market, participants are using the so-called perpetual swaps, allowing a large institution like a miner or a broker to simultaneously swap a position in perpetual swaps for bitcoin. When user A buys repo, they are buying 1 BTC (spot) and selling 1 BTC (perp) simultaneously, at some % difference price (could be 0% or 0.01% or -0.01%). This market is not documented.
* The deposit market: there is today a large development of two kind of operations, namely crypto earn and crypto credit. Crypto earn is a product that allows users to earn interest on cryptocurrency deposits, with interest paid in either USD ‘stabilised’ cryptocurrency or in the original deposited cryptocurrency. Crypto credit is a product that allows users to obtain ‘credit’ in the form of stabilised cryptocurrency, conditional upon the deposit of approved cryptocurrencies as collateral.

In these two examples, the first question relates to the legal qualification and then the documentation. Considering the growth of this market, it should be interesting for EFMLG to have a look on the development of this market.

**Action point: No immediate action** point although it was envisaged that the EFMLG could provide assistance in the preparation of documentation to be used in the crypto assets market.

**Documentation:** Presentation

1. **The European Commission’s plans to revise the Settlement Finality Directive and the Financial Collateral Directive – opportunity to modernise the two directives. 11:30 – 12:00**

**Presenter**: Holger Hartenfels (Freshfields Bruckhaus Deringer)

**Background:** For the SFD to continue to serve its purpose, it is important to consider developments that could affect its functioning. The Commission intends to report to the European Parliament and Council, together with a legal proposal for the SFD’s revision - if appropriate - by 28 June 2021, pursuant to Article 12a of the SFD. Directive 2002/47/EC on financial collateral arrangements (FCD) is being reviewed in parallel with the SFD.

Holger will present the possible ways forward to modernize both Directives. The outstanding issues include, among others, the extension and the definition of close-out netting provisions in the FCD and its impact on the SFD; changing the legal instrument of the FCD into a directly applicable Regulation and the accompanying advantages and disadvantages and the extension of the appropriate financial collateral or the term financial instruments to include claims from derivatives, commodities, emission rights and crypto assets.

**Action point:**  A letter to the European Commission offering support in assessing the scope of amendments. Holger offered to prepare a first draft that can be discussed in the group in the next two weeks with the aim to send out the early/mid-March. Subsequent to the meeting Francesca raised the issue, that there is a public consultation by the Commission on the FCD and SFD review, and the EFMLG could consider providing input.

**Documentation:** Presentation

1. **Introducing the plans for this year’s Quadrilateral – discussing EFMLG input to the first meeting on 4 March 12:00-12:10**

**Presenter:** Inigo Arruga Oleaga (ECB)

**Background:** This year, the Quadrilateral is organised by the FMLG. The agenda is divided in 3 clusters (4 March, 3 June, 9 September). Ahead of each cluster, each EFMLG representative will share his/her draft summary messages with the EFMLG for input by members.

**Documentation:** Draft Quadrilateral agendas.

**Action point:** The EFMLG representatives in the first cluster of the Quadrilateral (4 March) will share their summary messages with the EFMLG Secretariat for distribution to the EFMLG in order to gather input from members ahead of the Quadrilateral.

1. **Directive (EU) 2019/1023 on preventive restructuring frameworks – follow-up 12:10-12:30**

**Presenter**: Holger Hartenfels (Freshfields Bruckhaus Deringer)

**Background**:The EFMLG has been involved in the legislative process that led to the Directive on preventive restructuring frameworks (Directive (EU) 2019/1023). The main concern was and continues to be the stay of individual enforcement actions in accordance with Article 6 of the Directive and the additional stay provided in Article 7(5) of the Directive, preventing creditors from withholding performance or terminating executory contracts (which would include most derivatives and all securities financing transactions).

The "opt-out" in Article 7(6) of the Directive, however, authorises Member States to exempt certain netting arrangements, including close-out netting arrangements, from such latter stay of termination rights. As the Member States must implement the Directive and thus decide on the safeguards for netting arrangements by 17 July 2021, a *tour de table* in writing is suggested on whether the Member States will use the opt-out in Article 7(6) of the Directive (a short discussion at the meeting could take place when time is left).

**Action point:** Holger offered to briefly describe what has been done in Germany regarding implementation of the Directive and invites the members of the EFMLG of other jurisdictions to do the same so this information can then be shared in the group as a basis for future actions.

**Documentation:** *None*.