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Benchmark reform – NDF rate sources and fallbacks

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Non-deliverable forward FX transactions (NDFs): EMTA Architecture

- EMTA periodically issues template terms which reflect a market consensus for NDFs in respect of certain currency pairs.
- The “**EMTA Templates**” set forth, among other terms, the **primary rate source** applicable in respect of an NDF, and the **fallback rate sources** which apply in the event that the primary rate source is not available due to the occurrence of certain defined disruption events.
- In the case of most of the currencies in respect of which EMTA Templates are issued, such EMTA Templates provide that the fallback rates be determined via surveys of EMTA members conducted by EMTA pursuant to a published process.
- In the case of a small number of currencies in respect of which EMTA Templates are issued, such as the Russian Ruble (RUB), the primary rate source is also determined via an EMTA survey.

Short-term issue: Effect of exchange controls on FX Forwards and NDFs

- Russia exchange controls – effect on deliverable RUB FX forward transactions (“FX Forwards”) versus cross-currency swaps?
- Would the institution of exchange controls constitute a Disruption Event under the EMTA Template terms?
- Could additional provisions, including fallbacks mirroring those in the EMTA Templates, be added to FX Forwards to eliminate a mismatch between them and cross-currency swaps?
- Would the addition of such provisions change the characterization of FX Forwards; would such changes result in their being characterized as “swaps” under the Commodities Exchange Act?
- What could the effect of such recharacterization be?
 - SEF trading?
 - Uncleared margin rules?
 - Pricing?
 - Trade reporting?
 - Cross-border/EMIR implications?

Long-term issue: Overhaul of benchmark fallback structure in NDF market

- Given current regulatory and market environment around benchmarks, is an overhaul of the EMTA Templates, in particular the survey rates, warranted?
- Would EMTA members continue to participate in EMTA surveys? If so, under what parameters?
- What could a reasonable, efficient and effective alternative to this structure look like?