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Operations Managers Working Group:
Confirmation White Paper

Outline

I. Purpose of this paper
This paper discusses current confirmation practices [for foreign exchange?] and emerging trends with the intention of making a recommendation on whether counterparties should rely on electronic platforms to confirm trades without separately executing trade confirmations.

II. Background: What is a confirmation?
A transaction confirmation affirms the material terms of the transaction. Confirmations may take any number of forms: for example, confirmations may be by voice, in writing, or via electronic means (such as fax or email). A transaction confirmation in whatever form serves as evidence of the terms of an FX or currency derivative transaction.

III. Background:
a. Why issue confirmations?
First, a transaction confirmation is evidence of the terms of a transaction; it provides evidence of the *contract* between the parties to a transaction. Second, standard written confirmation documents reduce the legal risk of possible unenforceability of oral contracts under the Statute of Frauds, where, for instance, a recorded telephone conversation may be insufficient evidence of a contract. Thus, standard confirmation documents and/or practices also reduce the risk that material terms of the transaction will be disputed by either party. Third, a transaction confirmation also effectively brings the transaction under the umbrella of the master agreement entered by the parties (or a form of master agreement designated by the parties, if they have not entered a master agreement).
b. Are separate confirmations needed in an electronic trading environment? Discuss Nov. 2003 FXC statement on electronic validations and confirmation messaging.

IV. Confirmation practices today [Discussion by type of confirmation--should it be by product, by counterparty, by governing master agreement?]
a. Voice
b. Fax
c. Email
d. Proprietary systems
e. Electronic trading systems
f. Other
g. [Vanilla spot, forward FX or currency option transactions
h. [Structured and nonstandard transactions]
i. [IFEOMA, IFEMA, ICOM, ISDA]

V. Emerging trends – Electronic trading systems
a. Discuss how electronic trading systems work and focus in this section on the trade execution and confirmation processes.

   b. Give an overview of information learned from discussions with electronic platforms on important points – trade processes, trade data capture and retention, operational failures.

VI. Legal Issues
   a. Provide an overview of contract/legal issues arising from electronic system rules/procedures and terms of governing master agreements (i.e, what constitutes a confirmation between the parties?).
   b. Discuss e-signature law to the extent relevant.
   c. Discuss any other regulatory/legal issues.

VII. Key Benefits and Risks of Electronic Validation
   a. Discuss the benefits/risks of relevance in today's electronic environment, both operational and legal. Why are certain risks from the 1991 FXC statement no longer relevant?
   b. Weigh the benefits/risks and discuss what kind of compensation controls/best practices/agreements can be put in place to address the risks.

VIII. Recommendations
   a. Make a recommendation on elimination of separate confirmations, and reliance on electronic trading systems for confirmation purposes. Clearly state the conditions under which this recommendation is being made to the market. Make any separate recommendations to electronic platforms, dealers, end-users (as appropriate).
   b. Include in recommendations any clarifications/amendments to standard industry documentation (if needed).