

SUMMARY MINUTES**Teleconference: EFMLG, FLB, FMLC, FMLG, HKMA, MAS and SNB****Monday, 20 October 2008, 1-3 pm GMT**

1.	EFMLG initiatives – update	European Financial Markets Lawyers Group Mr Stéphane Kerjean, Mr Daniel Gluch
a.	European Legislative Developments relating to the Financial Turmoil	<p>The EFMLG reported on some recent on-going legislative developments relating to the financial turmoil both at the EU and Member States level. On 7 October 2008, the EU Economic and Financial Affairs Council (ECOFIN) pointed out that the priority was to restore confidence and proper functioning of the financial sector and agreed to support systemic financial institutions, to take all necessary measures to enhance the soundness and stability of our banking system and to protect the deposits of individual savers. The ECOFIN agreed that public intervention should be decided at national level in a coordinated framework. To protect the depositors' interests and the stability of the system, the ECOFIN stressed the appropriateness of an approach including, among other means, recapitalisation of vulnerable systemically relevant financial institutions according to the following EU common principles</p> <p>(http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/103250.pdf):</p> <ul style="list-style-type: none"> – interventions should be timely and the support should in principle be temporary; – Member States will be watchful regarding the interests of taxpayers; – existing shareholders should bear the due consequences of the intervention; – the government should be in a position to bring about a change of management; – the management should not retain undue benefits – governments may have inter alia the power to intervene in remuneration; – legitimate interest of competitors must be protected, in particular through the State aid rules; – negative spillover effects should be avoided. <p>On 12 October 2008, the euro area countries summit agreed on a Declaration on a concerted European action plan of the euro area countries</p>

	<p>(http://www.ue2008.fr/PFUE/site/PFUE/lang/en/sommet_pays_zone_euro_declaration_plan_action_concertee) which requires European Union and Euro area governments, central banks and supervisors to agree to a coordinated approach aiming inter alia at ensuring appropriate liquidity conditions for financial institutions, facilitating the funding of banks, which is currently constrained; providing financial institutions with additional capital resources so as to continue to ensure the proper financing of the economy and allowing for an efficient recapitalisation of distressed banks. On 15-16 October 2008, the European Council</p> <p>(http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/103441.pdf) welcomed the above concerted action plan of the euro area countries, of which it endorsed the principles. It also welcomed the measures adopted by the Member States, whether or not they belong to the euro area, in conformity with the principles of that plan and in compliance with the Treaty. The European Council noted that the national measures already approved by the Commission continue to be applicable and called on the Member States to ensure that their future national measures also respect those principles, and to take account of the possible effect of their decisions on the other Member States. In the current exceptional circumstances, the European Council pointed out that European rules must continue to be implemented in a way that meets the need for speedy and flexible action. The Commission has implemented, in this spirit, the rules on competition policy and recently issued in particular a guidance on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (http://ec.europa.eu/competition/state_aid/legislation/horizontal.html).</p> <p>In the context of the financial turmoil, a number of initiatives have been taken or accelerated at the EU level, for instance (1) the discussion on the proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC (known jointly as the 'Capital Requirements Directive') (http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm) which contains provisions on (i) large exposures (including inter-bank exposures), (ii) capital requirements and risk management for securitisation positions, (iii) own funds and hybrid capital instruments, and aims inter alia at further strengthening the mechanisms of information</p>
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2.	FLB initiatives – update	<p>Financial Law Board Mr Masao Okawa, Mr Takashi Hamano</p>
a.	Sovereign Immunity Legislation	Japan has signed the United Nations Convention on Jurisdictional Immunities of States and

		<p>Their Property (hereinafter referred to as the “UN Convention.”) in January 2007. In September 2008, the Legislative Council (an advisory body to the Minister of Justice) has set up a WG on sovereign immunity legislation to transpose the UN Convention into national law. The WG will deliver a report around mid-January 2009. If the report is approved by the Legislative Council, it will become a recommendation to the Minister of Justice and will become the basis of a bill for sovereign immunity legislation.</p>
3.	FMLC initiatives – update	<p>Financial Markets Law Committee Ms Joanna Perkins, Mr Antony Beaves</p>
a.	UK Tripartite Consultation Paper on Banking Reform	<p>In July 2008, the Tripartite Authorities published their third paper on banking reform, focusing exclusively on the proposal for a special resolution regime in respect of failing banks, and setting out the draft legislation. The FMLC published a response to the paper, highlighting the risks that the proposed legislation would cause for financial market transaction, e.g. it would be impossible for lawyers to issue clean legal opinions: opinions would have to be qualified to allow for the legal possibility that their client’s counterparty could be subject to a special resolution. The FMLC response sets out the protective safeguards that the FMLC consider would be necessary in any such regime to ensure the efficiency of financial markets. The legislative proposal has now entered Parliament. The Bank of England has proposed a meeting with the FMLC Working Group to discuss specific clauses in the legislation.</p>
b.	Unsettled OTC Cash-Equity Trades in Euroclear UK & Ireland	<p>In the wake of Lehman’s collapse, a large number of OTC trades remained unsettled and suspended within the EUI system after they had been matched and entered the system for settlement, when Lehman’s account was suspended and no funds were made available for settlement. Cash-equity exchange trades would, in this scenario be lifted out of the settlement system or cancelled under exchange rules but there is no corresponding default procedure for OTC trades. Legal uncertainty arises in respect of the correct interpretation of the Settlement Finality Directive and the CREST rules. The FMLC is in the process of establishing a Working Group to look at this issue in detail.</p>

c.	The Landsbanki Freezing Order	This order has caused concern in relation to the ordinary processes on which banks rely to close out their positions against a defaulting counterparty under market standard derivatives trades - by imposing criminal penalties on those attempting to do so. After the Freezing Order came into force, the Treasury swiftly issued a licence to allow close-out in this situation. However, the use of a licence implies at law that the original intention of this legislation was to prevent exactly the actions covered by the Licence and that those who acted to close out their positions ahead of the Licence coming in to force have, de jure, committed a criminal act. The licence also gives rise to other concerns - parties with security interests over Landsbanki assets are still blocked from accessing that security - notwithstanding the statutory privileges provided for in the Financial Collateral Regulations (No. 2). There remains, therefore, uncertainty about the interaction of the two pieces of legislation. The FMLC is in the process of establishing a Working Group to look at this issue in detail. Details of the original and subsequent orders are available on the Treasury website.
d.	Other Credit Crunch-related Issues	This includes matters such as the ban on short-selling and the European Commission's proposals to regulate credit rating agencies.
4.	FMLG initiatives – update	Financial Markets Lawyers Group Ms Joyce Hansen, Mr Michael Nelson, Ms Sandra Lee
a.	Actions, including New Legislation, Taken in response to the Global Economic Crisis	<ol style="list-style-type: none"> 1. <u>Legislation</u>: A few key highlights of the Emergency Economic Stabilization Act of 2008 (passed on 3 October 2008) (“EESA”) were discussed, including: <ol style="list-style-type: none"> a. The provision of \$700 billion to the Secretary of the Treasury to establish a Troubled Asset Relief Program (“TARP”) to purchase troubled assets from financial institutions. b. A grant of broad authority to the Treasury, along with the Federal Reserve System, to define what constitutes the troubled assets that will be purchased. c. The establishment of a Financial Stability Oversight Board.

		<ul style="list-style-type: none">d. The establishment of a Special Inspector General to oversee the TARP (separate from the existing Inspector General at Treasury).e. The creation of strict reporting requirements to the U.S. Congress and the public by the Treasury Department.f. The acceleration of the timetable allowing the Federal Reserve System to pay interest on reserves.g. The imposition of certain limitations on executive compensation at those financial institutions that are beneficiaries of EESA programs, including elimination of “golden parachutes” and loss of certain tax benefits associated with write offs of executive compensation.h. The requirement that Treasury implement a plan to mitigate foreclosures for mortgages and mortgage-backed securities acquired through TARP. <p>Website with legislation: www.house.gov/apps/list/press/financialsvcs_dem/essabill.pdf</p> <p>Since the last conference call, the Treasury, Federal Deposit Insurance Corporation and the Federal Reserve System announced three additional programs to address the economic crisis:</p> <ol style="list-style-type: none">1. <u>Voluntary Capital Purchase Program</u> <p>On 14 October 2008, the U.S. Treasury announced its voluntary Capital Purchase Program, which allows it to buy stakes in certain financial institutions in order to build capital to increase the flow of financing. The U.S. Treasury will purchase up to \$250 billion in senior preferred shares of eligible financial institutions, e.g., qualifying U.S. controlled banks, savings associations and certain banks and savings and loan</p>
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b.	Reactions in the FX Market to Problems Settling FX Trades involving Iceland	The FMLG deferred to the FMLC’s presentation of this issue.
5.	HKMA initiatives – update	Hong Kong Monetary Authority Ms Feliciana Cheung, Mr Stephen Law
a.	5 Temporary Measures to Provide Liquidity Assistance to Licensed Banks in Hong Kong	<p>With effect from 2 October 2008 for a period of six months until the end of March 2009, the HKMA will provide liquidity assistance, on request from licensed banks, through the following 5 measures:</p> <ol style="list-style-type: none"> 1. the list of eligible securities for access by individual licensed banks to liquidity assistance through the Discount Window will be expanded to include US dollar assets of credit quality acceptable to the HKMA; 2. the duration of liquidity assistance provided to individual licensed banks through the Discount Window will be extended, at the request of individual licensed banks and on a case-by-case basis, from overnight money to maturities of up to three months;

		<ol style="list-style-type: none"> 3. the 50% threshold for the use of Exchange Fund paper as collateral for borrowing through the Discount Window at the HKMA Base Rate will be raised to 100%. In other words, the 5% premium (or penalty) over the Base Rate for the use of Exchange Fund paper beyond the 50% threshold, as collateral for borrowing through the Discount Window, will be waived; 4. the HKMA will, in response to requests from individual licensed banks and when it considers necessary, conduct USD/HKD swaps of various durations with licensed banks; and 5. the HKMA will, in response to requests from individual licensed banks and when it considers necessary, lend term money of up to one month to individual licensed banks against collateral of credit quality acceptable to the HKMA. <p>When providing liquidity assistance through these five temporary measures, the HKMA will, as has been the case with the existing measures, ensure that the Currency Board Rule of 100% backing for the Monetary Base by US dollars – the important characteristic of the Linked Exchange Rate system – is strictly observed. Before the six-month period expires, the HKMA will review the position to determine whether extension of these five measures is necessary having regard to the prevailing domestic and international financial situations.</p>
b.	2 Measures to Safeguard Banking Stability in Hong Kong	<p>The two precautionary and pre-emptive measures announced on 14 October 2008 are as follows:</p> <ol style="list-style-type: none"> 1. the use of the Exchange Fund to guarantee the repayment of all customer deposits held with all authorized institutions in Hong Kong following the principles of the existing Deposit Protection Scheme, but including Restricted-Licence Banks and Deposit-Taking Companies as well as Licensed Banks; and 2. the establishment of a Contingent Bank Capital Facility for the purpose of making

		<p>available additional capital to locally incorporated licensed banks on request.</p> <p>Both measures will remain in force until the end of 2010, when a decision will be taken in the light of international financial conditions on whether they should be extended.</p>
6.	MAS initiatives – update	<p>Monetary Authority Singapore Mr Ng Heng Fatt, Ms Denise Wong, Ms Dawn Chew</p>
a.	Update on Amendments to the Securities and Futures Act and Financial Advisers Act	<p>MAS updated on amendments to the Securities and Futures Act and Financial Advisers Act, which were read in Parliament for the 1st time on 15 September 2008. MAS highlighted the following 2 major amendments:</p> <p>(a) a disgorgement regime for market misconduct offences where innocent third parties who benefit from trades conducted illegally by another party will be liable to disgorge the gains to aggrieved investors; and</p> <p>(b) a new recognition regime for foreign business trusts. Foreign business trusts will be recognised if the laws and practices of the jurisdiction under which they are constituted and regulated offer protection to Singapore investors that are at least equivalent to that afforded under the Business Trusts Act. Such recognised foreign business trusts may offer their units to retail investors in Singapore.</p>
b.	Ministerial Statement on Government Guarantee on Deposits	<p>MAS also informed that the Singapore Government announced on 16 October 2008 a Government Guarantee on deposits with banks, finance companies and merchant banks up to 31 December 2010. The Minister for Trade & Industry and Deputy Chairman, MAS had on 20 October 2008 made a Ministerial Statement in Parliament in respect of the Government Guarantee. He explained that the purposes of the Government Guarantee are -</p> <p>(a) to contribute to restore confidence in the international financial system;</p> <p>(b) to bolster the confidence that the public has in Singapore's financial system; and</p>

		(c) to ensure a level international playing field for banks in Singapore.
7.	SNB initiatives – update	Swiss National Bank Ms Christina Kessler
a.	Securities Law Reform	The new legislation on intermediated securities has now passed through Parliament and is expected to come into force on 1 January 2010. At the same time the Hague Securities Convention will be incorporated into the Swiss Private International Law Act and will then apply as autonomous law until the Convention itself becomes binding, that is when a sufficient number of states have signed and ratified the Convention which is not the case so far.
b.	Financial Market Crisis	First initiative: The SNB together with the Swiss Federal Council and the Swiss Federal Banking Commission has announced a package of measures to further stabilise the Swiss financial system. As part of this package the SNB has reached an agreement with UBS on a long-term financing and orderly liquidation of illiquid securities and other troubled assets in the amount of no more than USD 60 billion. According to the agreement with the SNB, UBS sells the securities and assets to a special purpose vehicle and provides capital in the maximum amount of USD 6 billion, which will also serve as a first protection against losses. The SNB finances the purchase of these assets by granting the SPV a secured long-term loan in an amount not exceeding USD 54 billion and obtains control over the SPV. The assets to be purchased by the SPV include mainly debt instruments backed by US-residential and commercial mortgages. Markets for most of these securities have been frozen or are illiquid since the beginning of the financial crisis. However, it is the SNB's view that these assets are of real value. By establishing the SPV, it will be possible to sell them in the medium term or hold them until maturity. UBS can thus be relieved from all relevant remaining risks stemming from problem-ridden segments of credit markets. UBS has also agreed to strengthen its capital base, by the Swiss Confederation subscribing to mandatory convertible notes in the amount of CHF 6 billion. Moreover, UBS will have to comply with best practices for compensation schemes and policies as determined in consultation with the

		<p>Swiss Federal Banking Commission. In addition to those measures the Federal Council intends to strengthen the Swiss depositor protection system by amending the existing legislation. In this context the decisions taken by the EU will serve as an important benchmark. And, finally, the SFBC, intends to introduce additional capital requirements, which should better cover the systemic risks of our big banks. This tightening of the capital requirements will go beyond the existing Swiss requirements and the planned tightening of conditions of the Basel Committee.</p> <p>Second initiative: The SNB issues its own bills (so-called SNB Bills) on a regular basis to steer money market liquidity. These bills will supplement the SNB's ordinary monetary policy instruments and ensure that liquidity in the money market can be steered more flexibly. This instrument will serve to absorb liquidity and thereby neutralising the monetary policy impact of measures to inject liquidity. The frequency, term and amount of the issues will be driven by the SNB's needs when steering the money market.</p> <p>Third initiative: The SNB and the ECB have entered into a temporary swap arrangement through which the ECB can access CHF liquidity to provide CHF funding that is allotted to banks in its jurisdiction. This measure is taken due to the increased tensions in international money markets which have also led to upward pressure on short-term CHF money market rates. Also the measure is taken as a reaction to the increased needs of banks, especially banks in the euro area, which do not have direct access to the SNB's operations. For this purpose, the SNB and the Eurosystem will conduct EUR/CHF foreign exchange swaps providing CHF against EUR with a term of 7 days at a fixed price.</p>
8.	Other issues	
a.	Date and Organisation of Next meeting	MAS kindly offers to organise and host the next conference.