**SUMMARY MINUTES**

**Teleconference: FMLC, EFMLG, FMLG, HKMA, FLB, MAS and SNB**

**Thursday, 5 November 2015, 8-10 pm Singapore Time**

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| **1.** | **EFMLG initiatives - update** | **European Financial Markets Lawyers Group (European Central Bank)**  Iñigo Arruga Oleaga, Adrienn Petrovics, Gyorgy Varhelyi  The EFMLG presented two matters which it considered of interest to all groups. One has to do with the impact of the crisis/G-20-triggered EU’s financial legislation, a big question which may also lead to some thinking in other jurisdictions. The other, with the confirmation by the European Union’s federal court (the Court of Justice of the EU) of the powers exercised by the ECB during the crisis, which helps to provide some additional certainty and trust in the EU’s instruments to fight the still on-going crisis. |
| a. | European Commission consultation on the cumulative impact of financial services reforms | On 30 September the European Commission (COM) issued a “Call for evidence on the cumulative impact of financial services reforms”. The intention is to provide the COM with a clearer understanding of such impact. a report on the main findings and next steps is envisaged to be published in mid-2016. The intention in principle is not to roll-back legislation but COM may use the feedback received in the upcoming reviews of existing legislation where there is clear (empirical) evidence of an issue. These are the four blocks identified by the COM:   1. **rules affecting the ability of the European economy to finance itself and growth,**  – to ensure that rules to provide financial stability and investor protection do not unduly discourage long-term investment and sustainable economic growth; 2. **unnecessary regulatory burdens** – to ensure that new rules are not overly complex or duplicative, or disproportionate when the associated policy objectives are considered; 3. **interactions, inconsistencies and gaps** – to ensure that rules, when taken together, do not result in, for example, duplications, inconsistencies, regulatory gaps or loopholes; 4. **rules giving rise to unintended consequences.**   The ECB will contribute to the Call for evidence. |
| b. | Benchmark Reforms Two recent cases of the Court of Justice of the European Union on the exercise by the ECB of its powers in the context of the financial crisis | Two recent cases of the Court of Justice of the European Union were presented with respect to the exercise by the European Central Bank ("ECB") of its powers in the context of the financial crisis.  In a judgment handed down on 16 June 2015, in **Peter Gauweiler and Others v Deutscher Bundestag (Case C-62/14)**, the Court of Justice has held that the outright monetary transactions ("OMT") programme announced by the ECB in September 2012 for the purchase of government bonds on secondary markets does not exceed the powers of the ECB in relation to monetary policy and does not contravene the prohibition of monetary financing of Member States set out in the Treaty (Treaty on the Functioning of the European Union (TFEU)).  In a further judgement handed down on 7 October 2015 in case **Alessandro Accorinti and Others v ECB (Case T-79/13)**, the General Court of the European Union held that the loss suffered in 2012 by the private holders of Greek debt instruments in connection with the restructuring of the public debt of the Greek State is not attributable to the ECB, but to the economic risks ordinarily inherent in financial sector activities. The protection from restructuring granted to the Greek securities held by national central banks and by the ECB does not alter the above findings. The case can be subject to an appeal before the Court of Justice (highest court within the Court of Justice of the EU). |
| **2.** | **FLB initiatives – update** | **Financial Law Board (Bank of Japan)**  Mr. Masayasu Yano, Mr. Masaru Itatani |
| a. | Full launch of the new BOJ-Net system | 1. In October 2015, full services of the new BOJ-Net system were launched.  2. The new BOJ-Net system’s main features  The new BOJ-Net system has three main features. (1) It uses the latest Information Technology. (2) It has high flexibility to adapt to changes in financial services and various needs. And (3), it enhances accessibility, such as extension of operating hours, to cope with changes in the financial environment.  3. Extension of operating hours  In the new BOJ-Net system, after February 2016, the operating hours will be extended for two and a half hours as to the Funds transfer service, and be extended for five hours as to JGB settlement service, compared with old BOJ-Net system. The extension of operating hours will shorten time lag between two legs of cross-border transactions and speed-up for cross-border customer transfer. These improvements may support following needs.  (1) Since Japanese companies are expanding their business in Asia and other regions, there is a growing need for such companies to transfer funds to/from overseas promptly. The extension of operating hours contributes to speedy settlement in Japanese Yen of the cross-border transactions.  (2) Since Japanese financial institutions increase overseas lending and other assets denominated in foreign currency, there is a growing need for such institutions to have a stable source of funding in foreign currency. The extension of operating hours enables them to fund in foreign currency by means of cross-currency repos and foreign exchange swaps which use the abundant domestic financial assets denominated in Japanese Yen.  (3) Since the implementation of various international regulations, such as LCR (Liquidity Coverage Ratio), regulations for OTC (over-the-counter) derivatives (mandatory central clearing of standardized OTC derivatives transactions), and margin requirements for non-centrally cleared derivatives is forthcoming, there is a growing need for high-quality collateral assets. The extension of operating hours enables the greater use of JGBs as high-quality collateral asset, which benefits not only financial institutions in Japan but also financial institutions abroad and ultimately global financial systems. |
| b. | IPO of Japan Post Group companies (Japan Post Holdings co., Japan Post Bank co., and Japan Post Insurance co.) | 1. November 4, this year, Japan Post Holdings Co. and its banking and insurance arms were listed to Tokyo Stock Exchanges. The initial public offering raise \1.4 trillion ($12 billion) as total. That is the biggest IPO in Japan since telecommunications provider NTT docomo Inc, in 1998.  2. Japan Post Holdings was fully owned by the government, and the other companies were fully owned by Japan Post Holdings. So, substantially, these companies were all owned by the government before the IPO.  3. In this IPO, it has been drawn considerable attentions that Parent company (Japan Post Holdings) and subsidiary company (two financial companies) are listed at the same time. In Japan, Being listed parent company and subsidiary company at the same time is not prohibited legally. However, this scheme of listing would cause conflict of interests between parent company and miner shareholders of subsidiary company. To remove such harmful results, shareholder’s effective monitoring based on adequate information secured by efficient disclosure and effective internal governance of each company are necessary. These are forthcoming challenges for the three companies to run as listed company. |
| c. | Introducing the "Bond Market Group" Meeting | 1. What is the “Bond Market Group” meeting?  The group is a new forum for discussion among the BoJ and major JGB market participants. Last June, we held the first series of meetings with three different sub-groups: “buy-side group,” “commercial banks group” and “securities firms group.” These three groups largely corresponded to major sectors of the JGB market participants. Meeting agenda included recent market developments, current liquidity conditions and interest rate outlook.  2. Why did we start the meeting?  The BoJ established this forum for the purpose of enhancing dialogue between the BoJ and market participants. Since the inception of QQE (quantitative and qualitative monetary easing) in April 2013, the BoJ committed to the enhanced dialogue, since the JGB market is the primary venue for the large scale asset purchase, and the cooperation with market participants is vital to facilitate the QQE.  \* The minutes of the meetings were published in the BoJ’s web site on June 22.  3. Some related items  During those meetings, we shared with participants the summary of the recent “bond market survey.” We expected this to be a catalyst for the orderly discussion.  The “Bond Market Survey” is also a new product. We started this in early 2015 on quarterly basis. Survey respondents are counterparties of the BoJ’s JGB market operations. Respondents provide views on recent market developments, liquidity conditions and interest rate outlook.  In addition, we prepared the “liquidity indicators in the JGB markets,” which was essentially “a chart-pack” for major liquidity matrices. The liquidity indicators are by-product of the recent working paper that our colleagues published in May. They examined the liquidity conditions of the JGB market, using various statistical measures. We are going to update these numbers quarterly.  \* These survey results and indicators are also available in our web site. |
| **3.** | **FMLC initiatives – update** | **Financial Markets Law Committee**  Joanna Perkins, Sherine El-Sayed and Jennifer Enwezor |
| a. | Bank Resolution | The FMLC’s focus has been on the domestic implementation of the European Bank Recovery and Resolution Directive (“BRRD”). In this regard, the FMLC has made three contributions:   * Contractual stays in financial contracts governed by third country laws: the FMLC welcomed the measure proposed by the Prudential Regulation Authority which would prohibit specific firms from creating new obligations or materially amending an existing obligation under financial contracts governed by third country law unless the counterparty has agreed in writing to be subject to similar restrictions on early termination and close-out as would apply were the contract governed by English law or the law of an EU Member State. The proposed measure would contribute towards increasing legal certainty for the markets. The FMLC noted, however, that further clarity was required in respect of the (i) financial arrangements to which the proposed rule would apply and (ii) the excluded persons. * Bail-in regime: the FMLC sought clarification from HM Treasury on the treatment of set-off under the Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 (the "2014 Order") and in the Banking Act 2009: special resolution regime code of practice published in 2015 (the "Code of Practice"). * Appointment of temporary administrators: the FML highlighted in a letter to HM Treasury the negative impact which the appointment of temporary administrators, an early intervention measure under the BRRD, would have on the markets absent consequential amendments to the Banking Act 2009 as amended. |
| b. | Financial Markets Infrastructure | In a recent paper published jointly by the FMLC and the U.S. Committee on Capital Markets Regulation, legal uncertainties regarding the current impasse between the European Commission and the Commodity Futures Trading Commission in the U.S. regarding the mutual recognition of U.S. and E.U. central counterparties (“CCPs”) were considered.  It was noted that the post-financial crisis reforms to derivatives markets in the E.U. and U.S. accomplish their goal of materially reducing systemic risk. In the paper attention is drawn to that fact that neither the E.U. nor US. regulators have demonstrated that either regime’s initial margin requirements fail to meet this goal. From the perspective of concern with systemic risk reduction, E.U. and U.S. margin requirements for CCPs result in broadly equivalent margin levels. Therefore, the existing differences between the regimes in the U.S. and E.U. should not preclude mutual recognition. Adopting appropriate structures for the joint supervision of CCPs by the U.S. and E.U. regulators would avoid overlapping supervisory efforts and potential conflicts which are engendered by the current regime of parallel authorisation/registration and supervision. |
| c. | Benchmarks | The FMLC published a letter in October 2015 on the scope and application an EU Parliamentary text of the Proposed EU Regulation on Benchmarks May in the context of foreign exchange rate sources, with particular reference to non-deliverable forward (“NDF”) contracts referencing emerging markets currencies. The legal uncertainties set out in the letter were highlighted. These include:   1. where primary FX rate sources are central bank rates, uncertainty arises as to whether they would fall within the scope of the proposed Regulation; and      1. published industry and indicative survey rates which are usually non-primary or fall-back rates in NDF contracts, will *prima facie* fall within the scope of the Proposed Regulation. There may be little or no choice as to the published rate sources available for emerging markets currencies particularly in the case of relatively illiquid currencies. Owing to this lack of optionality, NDFs for some emerging markets currencies may reference rates which are methodologically less robust than others.   It was noted that if the May Compromise Text is adopted without further amendment and supervised entities are prohibited from using FX rate sources, there will have to be a significant realignment of market practice with possible disruption to a large number of outstanding FX contracts. |
| **4.** | **HKMA initiatives – update** | **Hong Kong Monetary Authority**  Steven Parker, Etelka Bogardi, Elizabeth Mo |
| a. | Current Development in Offshore RMB Business in Hong Kong: Shanghai-Hong Kong Stock Connect and Mainland China-Hong Kong Mutual Recognition of Funds | **Shanghai-Hong Kong Stock Connect and Mainland China-Hong Kong Mutual Recognition of Funds**   1. The Shanghai-Hong Kong Stock Connect Programme represents the first milestone of the Stock Connect, which is a mutual market access programme, through which investors in Hong Kong and Mainland China can trade and settle shares listed on the other market. 2. The Programme is open to all Hong Kong and overseas investors (including individual investors), without any approval or licence from the Hong Kong or Mainland China regulatory authorities. 3. In the initial stage, only A-shares listed on the Shanghai Stock Exchange are included in the Programme. 4. It is noted that Northbound trading (i.e. trading by Hong Kong and overseas investors of the A-shares) needs to follow the business rules of the A-share market, such as pre-trade checking. 5. Before routing sell orders to Shanghai Stock Exchange for matching and execution, Hong Kong and overseas investors have to meet the pre-trade checking requirement by pre-delivering A-shares that are to be sold from their account to their designated brokers’ account. 6. However, starting from 20 April 2015, the A-shares holding under each Special Segregated Account (the “SPSA”) opened on behalf of their clients by Custodian Participants of the Central Clearing and Settlement System of Hong Kong (the “CCASS”) will be replicated to China Stock Connect System to perform pre-trade checking and as such, A-shares from the SPSA may be transferred to its clients designated broker’s account after the execution or placing of the sell order. 7. PRC law on foreign shareholding restriction applies to Northbound trades. 8. If a Hong Kong or overseas investors’ holding in a Stock Connect security has exceeded any of the China’s prescribed foreign shareholding limits, the Hong Kong relevant regulatory body will be notified by the relevant Mainland China Stock Connect regulatory body of the same, in which circumstance, Hong Kong Securities Clearing Company Limited (“HKSCC”) will issue a forced-sale notice to the relevant Stock Connect participants requiring such participants to reduce such amount of holdings so that the applicable foreign shareholding limit will no longer be exceeded. Upon receipt of such notice, the relevant Stock Connect participants will reduce their or their clients’ holdings in the relevant Stock Connect securities. 9. According to General Rules of CCASS, HKSCC has no proprietary interest in, and is not the beneficial owner of, any Stock Connect securities held or recorded in the accounts of HKSCC. 10. Another programme was announced in May 2015 by the Hong Kong security regulator and the China security regulator for the implementation of the Mainland China-Hong Kong Mutual Recognition of Funds (the “MRF”), which provides a framework for mutual recognition by the Hong Kong and the Mainland regulators of publicly offered funds to enable these recognised funds to be offered to the public in both markets. 11. To facilitate cross-border investment fund transactions under the MRF, the MA has enhanced the Central Moneymarkets Unit Fund Order Routing and Settlement Service (the “CMU Service”) currently offered in relation to investment fund transactions in Hong Kong. 12. The HKMA carried out the enhancement by leveraging on the CMU Service through working with platform operators in Mainland China, namely: 13. the China Securities Depository and Clearing Corporation Limited (“ChinaClear”); 14. the Shenzhen Stock Exchange; and 15. the Shenzhen Securities Communication Co. Ltd (“SSCC”), which is a joint venture company of Shenzhen Stock Exchange and ChinaClear, 16. This cooperation establishes cross-border system linkages between the CMU fund platform and relevant infrastructure in Mainland China through a platform called the Financial Data Exchange Platform (“FDEP”) which is operated by SSCC. Accordingly, ChinaClear and CMU are linked to FDEP. 17. This linkage platform provides the investors in the Mainland and Hong Kong with access to Mainland funds that are recognized for MRF and Hong Kong funds that are recognized for MRF. Specifically, CMU and ChinaClear together with SSCC develop the capabilities to perform data conversion between the file templates of Hong Kong and Mainland China. As a result, the CMU members could continue to use their existing CMU templates for sending orders to, and receiving orders from, their Mainland Chinese counterparts, thus dispensing with the need to incur extra cost for making significant system changes and development. |
| b. | Update on OTC Derivative Transactions reform in Hong Kong | **Update on OTC derivative reforms in Hong Kong – Consultation Paper on introducing mandatory clearing and expanding mandatory reporting**   1. In line with global efforts, the HKMA and the Securities and Futures Commission have been working with the Hong Kong Government and stakeholders to develop a regulatory regime for the OTC derivatives market in Hong Kong. 2. The main piece of legislation was passed by the legislature in March 2014 (and came into effect in July 2015). This introduces **mandatory reporting, clearing, trading and record keeping obligations** in respect of OTC derivative transactions. 3. In line with other markets, the mandatory obligations are being implemented in phases. To that end, the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations Rules) (the **Reporting Rules**) were enacted earlier this year and came into force on 10 July 2015. The Reporting Rules mandate the reporting of certain interest rate swaps and non-deliverable forwards. 4. The most recent Consultation Paper released in September 2015 focuses on the next piece of the puzzle, which is: 5. a first phase of mandatory clearing (**phase 1 clearing**), which will focus on certain standardised interest rate swap transactions (including fixed-to-floating swaps, basis swaps and overnight index swaps) entered into between the major dealers; and 6. a second phase of mandatory reporting (**phase 2 reporting**), which will expand the mandatory reporting regime so that it covers all OTC derivative products and requires the reporting of a wider range of information and particulars about the transaction to be reported. 7. The Consultation Paper foresees that for the phase 1 clearing, only **dealer-to-dealer transactions** should be covered to focus on transactions that pose the greatest systemic risk. As such, the proposal is to use two criteria to determine if a transaction is a dealer-to-dealer transaction: 8. the counterparties to the transaction must be an **authorized institution**, an **approved money broker** or a **licensed corporation**, or the overseas equivalent thereof; and 9. both counterparties to the transaction must have outstanding OTC derivate positions that exceed certain specified thresholds. 10. The Consultation Paper proposes two exemptions to the clearing obligation – an intra-group exemption and a jurisdiction-based exemption. The Consultation Paper proposes to allow substituted compliance. Specifically, cross-border transactions that satisfy the following conditions will not need to comply with the Hong Kong mandatory clearing obligation: 11. the transaction is *required* to be centrally cleared under the laws and regulations of a “comparable jurisdiction”; and 12. the transaction *has been cleared* through a designated Central Counterparty and in accordance with the laws of that comparable jurisdiction. 13. The following jurisdictions are proposed to be designated as “comparable jurisdictions” at the outset, although this list may grow in future: Australia, Brazil, Canada, the EU member states, Japan, Singapore, Switzerland and the United States. 14. As phase 1 mandatory reporting is now in place, the proposal is to proceed with phase 2 reporting. The proposals are, in summary: 15. to expand the product scope so that *all* OTC derivatives transactions become subject to mandatory reporting; 16. to expand the scope of transaction information that is to be reported when reporting a transaction or subsequent event; and 17. to mandate the reporting of daily valuations. 18. The Consultation Paper calls for submission of comments by 31 October 2015 (and in relation to certain proposals, 30 November 2015). Further legislative changes are proposed to be introduced into the legislative process in Q1 2016. |
| **5.** | **SNB initiatives – update** | **Swiss National Bank**  Christina Kessler |
| a. | Amendment of the TBTF-provisions | On 21 October 2015 the Federal Council approved the key elements in the adjustment of the ‘too big to fail’ (TBTF) regulations. In setting the new parameters, the Federal Council based itself on the current international discussions concerning standards for the capital requirements of systemically important financial institutions. As the TBTF issue is particularly relevant in Switzerland because the two Swiss G-SIBs form such a vital part of the Swiss economy, Switzerland decided to be one of the countries with the highest capital requirements in the world.  The amendments to the current too-big-to-fail provisions cover three essential areas:  **First**, the new measures will strengthen the **going-concern capital requirements**. Systemically important banks should have sufficient capital to ensure continuation of services so that even under a stress scenario, they do not require state support or have to be restructured or wound up. The actual level of a bank’s going-concern requirements will depend on its systemic importance. The going concern requirements consist of a **basic requirement** for all systemically important banks as well as, depending on the degree of systemic importance, a **progressive component**. The latter is measured according to the market share and size criteria which already exist in the current system. When extended by the expected progressive component, this results in going concern requirements for the two Swiss G-SIBs of 5% overall for the leverage ratio and of 14.3% overall for risk-weighted assets. The leverage ratio can be fulfilled by holding a maximum of 1.5% of contingent convertible bonds (CoCos) and the risk-weighted assets by holding a maximum of 4.29% of CoCos. The remaining requirements are to be met with high-quality common equity Tier 1 capital such as paid-in share capital and disclosed reserves. Grandfathering provisions apply to existing capital instruments which can no longer be issued as eligible under the new requirements.  **Second**, for the big banks, the new measures will significantly increase the **requirements** for loss-absorbing instruments **in the case of a gone concern**. In addition to the going concern requirements, **systemically important banks operating internationally** must hold additional capital to guarantee not only the restructuring or continuation of the systemically important functions in a functioning unit, but also the wind up of the other units without recourse to public resources (gone concern). This mirrors the going concern requirements in that the two big banks must fulfil gone concern requirements of an additional 5% for the leverage ratio and an additional 14.3% for risk-weighted assets. The gone concern requirements are fulfilled in principle with bail-in instruments (i.e. bonds with conversion rights activated by the supervisory authority). Since the gone concern requirement is earmarked for resolution, measures which improve an institution’s global resolvability can be rewarded by means of discounts. However, the leverage ratio and the risk-weighted assets must not fall below 3% and 8.6%, respectively. For the two Swiss G-SIBs the new requirements lead to total loss-absorbing capital (including bail-in instruments) of 10% and a total loss absorbing capacity of 28.6% (including all buffers, except the countercyclical buffer). **Gone-concern requirements for domestically focused systemically important banks** will be strengthened at a later stage.  **Third**, mandatory deadlines will be set for systemically important banks to finalise their Swiss emergency plans. Under current law, there is no such deadline. The deadline will generally be three years from the point in time when a bank is designated as systemically important. The two Swiss G-SIBs must have fully implemented their emergency plans by 31 December 2019. Global resolvability is deemed to be the prerequisite for effective cooperation with foreign authorities in the event of a crisis. Therefore, an assessment of global resolvability will also be part of the review of the Swiss emergency plans, where this is relevant for their implementation.  As regards the **further course of action**: The Federal Council has instructed the Federal Department of Finance to make the respective amendments to the Capital Adequacy Ordinance and the Banking Ordinance, to conduct a hearing on this and to submit the texts of the ordinances to the Federal Council by the first quarter of 2016. |
| b. | Swiss Financial Market Infrastructure Act and revised National Bank Act – coming into force | In June this year the Swiss Parliament adopted the Financial Market Infrastructure Act (FMIA). In summary, the act will adjust the regulation of financial market infrastructures and derivatives trading in line with market developments and new standards developed by international bodies.  Particularly, the new act will provide provisions regarding the pre- and post-trade transparency requirements for trading venues and organised trading facilities, which will address the problem of so-called "dark pools" (i.e. trading venues that have lacked transparency until now).  The act is due to come into force on 1 January 2016. The new act will be supported by amendments in various other acts and ordinances, including the National Bank Act and the National Bank Ordinance.  One of the changes in the National Bank Act that will come into force on 1 January 2016 is a new provision dealing with the cooperation between the SNB and other central banks and the BIS. So far, the SNB was only able to exchange aggregated data with other central banks. Under the new provision the exchange of confidential information on market participants will be possible. However, the exchange is subject to certain conditions, e.g. the recipient must use the information for purposes similar to the purposes pursued by the SNB. |
| **6.** | **FMLG initiatives – update** | **Financial Markets Lawyers Group (Federal Reserve of New York)**  Shawei Wang, Michael Nelson |
| a. | Congressional Update | Through the Bipartisan Budget Act of 2015, Congress and the President reached an agreement on the debt ceiling and budget, which should mean that there will not be any debt default or government closure threats before March 2017.  Also, there has been some criticism in Congress of US regulators’ participation in international standard-setting bodies such as the FSB. There is growing dissatisfaction that US regulators can participate in such groups and implement standards that impact the US, without consulting with Congress. It remains to be seen whether Congress will introduce legislation that would constrain such activity. |
| b. | Resolution Planning Update | Section 165(d) of the Dodd-Frank Act requires certain banking organizations with total consolidated assets of $50 billion or more and nonbank financial companies designated by the FSOC for supervision by the Fed to submit living wills to the Fed and FDIC.  The plans must describe the company's strategy under the US Bankruptcy Code for rapid and orderly resolution in the event of material financial distress or failure of the company.  In August 2014, the Fed and FDIC issued feedback to "First Wave" filers, the largest and most complex 11 banking organizations with operations in the US.  The feedback letters identified several common shortcomings, including: (1) unrealistic assumptions re: likely behavior of customers, counterparties, investors, central clearing facilities and regulators, and (2) the failure to make changes in firm structure that would be necessary to enhance the prospects for orderly resolution.  The agencies required that living wills due on July 1, 2015 should demonstrate significant progress in taking the following actions:  (i) establishing a less complex legal structure to improve the firm's resolvability (ii) developing a holding company structure that supports resolvability (iii) amending financial contracts to provide for a stay of certain early termination rights of external counterparties triggered by insolvency proceedings (iv) ensuring the continuity of shared services that support critical operations and Core Business Lines throughout the resolution process and (v) demonstrating operational capabilities for resolution preparedness.  The August 2014 press release about this feedback also noted that, based on the review of 2013 plans, the FDIC Board of Directors determined that the plans submitted by first-wave filers were no credible and do not facilitate an orderly resolution under the US Bankruptcy Code.  The Fed Board determined that the 11 banking organizations must take immediate action to improve their resolvability and reflect those improvements in their 2015 plans.  Since early July, teams here, at the Board and the FDIC have been reviewing the July 1, 2015 submissions.  The vetting process is ongoing, but this is an important year in the living will process.  You may have noticed another development in the resolution preparedness arena.  On Friday, October 30, the Fed released its Total Loss-Absorbing Capacity (TLAC) proposed rule.  The proposal would require   * the parent holding company of US GSIBs to maintain outstanding minimum levels of total loss-absorbing capacity and long-term unsecured debt, and a related buffer. * the top-tier US intermediate holding companies of foreign GSIBs would be required to maintain outstanding minimum levels of total loss-absorbing capacity and long-term unsecured debt instruments issued to their foreign parent company, and related buffer. * the operations of the parent holding companies of US GSIBs and the top-tier US IHC of foreign GSIBs would be subject to "clean holding company" limitations to further their resolvability and the resiliency of their operating subsidiaries.  Examples include a prohibition on a Covered BHC or IHC from having certain types of third-party liabilities, including short-term debt and QFCs and prohibit downstream and upstream guarantees, no grandfathering of existing liabilities and limitations on guarantees of subsidiary liabilities. * And the proposal requires certain deductions from capital for any investment in the unsecured debt of a Covered BHC by state member banks, BHCs, large savings and loan holding companies and all IHCs.   The TLAC proposal requests comments by February 1, 2016.  Also, to give you an update on the FMLG’s SEF proposal to CFTC, in mid-October, the FMLG submitted a letter to the CFTC seeking confirmation that the model SEF rules and related workflow that the group submitted to the CFTC in May 2014 form an acceptable basis for the on-SEF execution of PB transactions in uncleared foreign exchange contracts. |
| **7.** | **MAS initiatives – update** | **Monetary Authority of Singapore**  Ng Heng Fatt, Yvonne Wong, Dawn Chew |
| a. | Enhancement of Resolution Regime for Financial Institutions in Singapore | 1. MAS had, on 23 June 2015 issued a consultation paper on Proposed Enhancements to the Resolution Regime for Financial Institutions. The consultation has closed and MAS is reviewing the feedback received. 2. Some of the key proposals that we have consulted on include:    1. Recovery and Resolution Plans (RRP)    2. Temporary Stays    3. Ensuring Operational Continuity    4. Statutory Bail-in Powers    5. Creditor Safeguards; and    6. Resolution funding 3. Following this, MAS will need to embark on the legislative process to implement the enhancements to the resolution regime.   Link to the consultation paper: <http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/23%20Jun%202015%20Consultation%20on%20Enhancements%20to%20Resolution%20Regime%20for%20FIs%20in%20Singapore.pdf> |
| b. | Implementing Regulations for Mandatory Clearing of Derivatives Contracts | 1. On 1 July 2015 MAS issued a consultation paper on proposed regulations for central clearing of over-the-counter (OTC) derivative contracts. The consultation has closed and MAS is reviewing the feedback received. Central clearing seeks to mitigate the counterparty credit risks inherent in OTC derivatives trades. 2. MAS proposes to mandate Singapore-dollar and US-dollar interest rate swaps for central clearing as these are the most widely traded interest rate derivatives in Singapore.   For a start, the mandate will only apply to banks that book trades in excess of $20 billion worth of derivatives contracts, on a gross notional outstanding basis. Such banks will have a choice to clear through domestic or foreign Central Counterparties (CCPs), as long as they are regulated by MAS. 3. Central clearing is a key component of broader reforms to make the trading of OTC derivatives safer.  As part of this initiative, MAS amended the Securities and Futures Act in November 2012 to give MAS powers to mandate the reporting of OTC derivatives to trade repositories and to require the central clearing of OTC derivatives through regulated clearing facilities acting as CCPs.  A mandatory trade reporting regime was implemented in October 2013.   Link to the consultation paper: <http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/Consultation%20Paper%20on%20Draft%20Regulations%20for%20Mandatory%20Clearing%20of%20Derivatives%20Contracts.pdf> |
| c. | Enhancement of Regulatory Safeguards for retail investors and accredited investors | 1. MAS announced on 22 September 2015 that it will proceed with enhancements to its regulatory framework for safeguarding investors’ interests. The key changes are as follows:    1. Retail investors in non-conventional investment products will be accorded the same regulatory safeguards as investors in capital markets products.    2. Investors who meet prescribed wealth or income thresholds to qualify as accredited investors (AIs) will have the option to benefit from the full range of regulatory safeguards that are applicable for retail investors. 2. Amendments to the Securities and Futures Act (“SFA”) to implement these changes will be tabled in Parliament in 2016. Further details of these changes are as follows:    1. Stronger safeguards for investors in non-conventional investment products: MAS will extend its capital markets regulatory framework to non-conventional investment products (NCIP) that share features similar to capital markets products. NCIP are currently not subject to MAS’ regulations.  In future, NCIP such as precious metals buy-back arrangements and collectively-managed investment schemes which are in substance similar to traditional regulated investment funds but do not pool investors’ contributions, will be regulated either as debentures or investment funds, depending on their features.    2. Option for AIs to benefit from full range of safeguards applicable to retail investors: Under the current regulatory regime, investors who meet the prescribed wealth or income thresholds are classified as AIs by default.  Consequently, they are accorded a lower level of regulatory protection as they are considered to be better able to protect their own interests.  This may not be true for all investors who meet the prescribed wealth or income thresholds. MAS will refine the regulatory regime to empower AI-eligible investors to choose the level of regulatory safeguards best suited to their individual circumstances.   Link to the media release: <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2015/MAS-Enhances-Regulatory-Safeguards-for-Investors.aspx>  Link to the consultation paper: <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2014/Consultation-on-Proposals-to-Enhance-Regulatory-Safeguards-for-Investors-in-the-Capital-Markets.aspx> |
| **8.** | **Other issues** |  |
| a. | Date and organisation of next meeting | FMLC kindly offers to organise and host the next conference. |