**SUMMARY MINUTES** √ DRAFT as of 2/13/17

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

**Thursday, 15 December 2016**

**FMLG**

**Global FX Code**

The Foreign Exchange Working Group (FXWG) has continued its work on the FX Global Code following the publication of an interim update in May 2016.

By way of background, the Global Code is a common set of guidelines to promote the integrity and effective functioning of the wholesale foreign exchange market. It is intended to promote a robust, fair, liquid, open and appropriately transparent market in which a diverse set of market participants, supported by resilient infrastructure, are able to confidently and effectively transact at competitive prices that reflect available market information and in a manner that conforms to acceptable standards of behavior. The Global Code does not impose legal or regulatory obligations on market participants. It is intended to serve as a supplement to any local laws and regulation by identifying global good practices and processes.

As a reminder, the FXWG was formed under the auspices of the BIS Markets Committee and is chaired by Guy Debelle of the Reserve Bank of Australia. The FXWG is composed of representatives from central banks, and it works in conjunction with a Market Participants Group (MPG), which is composed of over 40 representatives from various portions of the private sector. The finalized Code will be published in May 2017.

Work on the Code text since the May 2016 interim publication has focused on the following topics: (1) Governance; (2) Risk Management & Compliance; (3) Prime Brokerage; (4) Interdealer Brokers; and (5) Electronic Trading. There has also been a work group dedicated to developing positive and negative examples illustrating the principles in the Code. The most recent draft of the Code was distributed to foreign exchange committees earlier this month, and the next turn of the document is expected to be the “fatal flaw” document. Work on the Code text continues to be led by Simon Potter of the Federal Reserve Bank of New York.

Work since May 2016 has also focused a great deal on developing tools to promote adherence to the Code, which were outlined in a May 2016 Public Update on Adherence. The FXWG, in consultation with members from the MPG, has developed a proposal for a “Statement of Commitment” in connection with tools outlined in the May 2016 update and as a template that market participants could use in other situations on a voluntary basis. The current draft of the Statement of Commitment has been distributed for comment along with the latest draft of the Code text. Work on promoting adherence continues to be led by Chris Salmon of the Bank of England. A subset of the MPG has also been considering adherence related topics that could be led by market participants.

**Cybersecurity**

On October 19, 2016, in response to expanding cyber risks, the Board of Governors of the Federal Reserve System, the FDIC and the OCC issued an advanced notice of proposed rulemaking (the “ANPR”) inviting comment on a set of potential enhanced cybersecurity risk-management and resilience standards that would apply to large and interconnected entities under their supervision.

Under the proposal, the enhanced standards would apply to depository institutions and depository institution holding companies with total consolidated assets of $50 billion or more, the U.S. operations of foreign banking organizations with total U.S. assets of $50 billion or more, and financial market infrastructure companies and nonbank financial companies supervised by the Board. The proposed enhanced standards would not apply to community banks and invites comment on whether to apply the enhanced standards to services provided by third parties to covered companies.

The enhanced cyber standards are intended to increase the operational resilience of covered companies and reduce the potential impact on the financial system in the event of a failure, cyberattack or the failure to implement appropriate cyber risk management. They raise expectations for covered companies by requiring them to establish and implement an enterprise-wide cyber risk management strategy that is integrated into their overall business strategy and risk governance structures.

The enhanced standards are proposed to be tiered, with an additional set of higher standards for systems that provide key functionality to the financial sector. “Sector-critical systems” are defined in the proposal as those that support the clearing or settlement of at least five percent of the value of transactions (on a consistent basis) in one or more of the markets for federal funds, foreign exchange, commercial paper, U.S. Government and agency securities, and corporate debt and equity securities.

The standards would be organized into 5 categories: (1) Cyber risk governance; (2) Cyber risk management; (3) Internal dependency management; (4) External dependency management and (5) Incident response, cyber resilience, and situational awareness.

The ANPR also invites comment on potential methodologies for measuring cyber risk consistently within covered companies and across the banking sector.

The comment period ends on January 17, 2017.

**Congressional Update**

As you know, the U.S. will have a new President in January 2017. With the inauguration of Donald Trump, the political landscape will change dramatically. For example, House bills on financial reform have more of a chance of passing. This may change various financial regulations and oversight of the central bank (both our monetary policy and supervisory functions). Some proposals for central bank reforms include increased oversight over monetary policy decisions (including a proposal that the Fed follow the Taylor Rule and report to Congress when deviating from the rule) and funding constraints for bank supervision.

**FMLC**

**ICI Videoconference Minutes, FMLC submission**

**Brexit**

The FMLC provided a short account of recent developments in relation to the U.K.’s withdrawal from the E.U.

* At the Conservative Party Conference, Prime Minister Theresa May presaged a “Great Repeal Bill” (“GRB”) intended both to repeal the European Communities Act (“ECA”) 1972, the legislation which gave effect to the supremacy of E.U. law in the U.K, and to transpose all E.U. law into U.K. law. The Department for Exiting the E.U. commented that the GRB would also end the jurisdiction of the European Court of Justice (“ECJ”) and provide ministers with powers to alter secondary legislation. These public statements arguably beg as many questions as they answer for financial markets participants.
* Newspaper reports speculating on HM Government’s strategy for “Brexit” negotiations have focused on two alternatives: (i) a hard Brexit in which the U.K. will leave the single market, lose Passporting rights and so become a “third country” for the purposes of the application of E.U. financial services regulation; or (ii) a soft Brexit in which the UK will adopt something akin to the Norwegian model, possibly remaining in the European Economic Area (“EEA”) or accepting similar restrictions under a bespoke treaty, in order to achieve Passporting rights.
* A recent focus of debate has been the prospect for putting transitional arrangements in place, pending the coming into force of new legal or treaty arrangements for the U.K.-E.U. post-Brexit relationship. The Prudential Regulation Authority has suggested that a reasonable implementation phase is needed, to allow the financial industry time to adapt to any changes to the regulatory regimes that may arise.

**Virtual Currencies**

In July 2016, the FMLC published a paper analysing the legal aspect of virtual currencies and the legal uncertainty regarding their development as a medium of exchange.

It was noted in the paper that virtual currencies which have achieved status as a medium of exchange within a significant user community have a good claim to be regarded as money. This does not sit easily with the traditional distinctions between choses in possession and choses in action, giving rise to an argument for extending the traditional legal categories.

The FMLC is looking into other areas of finance and technology that may give rise to legal uncertainty, including: (i) virtual sovereign currencies, e.g. the CAD-coin scheme currently being piloted by Canada; and (ii) the legal situs of financial instruments which rely on blockchain applications to establish the rights of users.

**Data Protection**

The FMLC published a paper on the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the “MMoU”) established by the International Organisation of Securities Commissions (“IOSCO”) addressing whether it is compatible with local (i.e. national or regional) data protection laws. The FMLC took the view that the MMoU is compatible with local data protection laws, noting that the MMoU is not legally binding and permits the requested authority to refuse a request on the grounds that to comply would involve a breach of local law, including data protection law. The paper also includes a recommendation for text to be included in a possible side-letter or appendix to the MMoU, which might help address concerns expressed by data protection regulators about safeguards for the protection of personal data.

**FLB**

a) Recent Discussions on Japan’s Stewardship Code

1. The panel of experts (The Council of Experts the Follow-up of Japan’s Stewardship Code and Japan’s Corporate Governance Code) had been discussed some issues regarding the Japan’s Stewardship Code, and on November 30th, the panel disclosed the opinion paper.

2. The points of the paper are as following.

(1) Effective stewardship activities by the investment managers

To carry out effective stewardship activities, investment managers are required to enhance their governance further, particularly management of “conflicts of interest” that exists, for example, when voting on matters affecting both the interests of their parent company and that of their customers. The paper proposes that, (a) each investment manager should establish “Independent Committee”, which has the right of decision making of vote in the shareholders meeting or the right of supervision toward vote in that, and (b) the investment managers should specify the cases in “conflicts of interest” in advance and publicly disclose a clear management policy toward such cases.

(2) Disclosure in specific voting records

The present version of the code asks investment managers to aggregate the voting records into each major kind of proposal and to publicly disclose them. The paper proposes that institutional investors should publicly disclose the records of voting not only aggregate base but also on the individual base in order to enhance accountability for their clients.

(3) Constructive engagement in passive investment

The paper states that institutional investors conducting "passive investment" should deal with constructive engagement and should conduct voting rights more actively. The paper also states that to narrow the investee companies with which institutional investors intend to engage with more in-depth dialogue might be one of the solutions for the efficient and effective engagement in passive investment.

 (4) Asset owner’s stewardship activities

The paper states that asset owner, including pension funds, should also carry out stewardship activities more actively. In particular, institutional investors as asset owner should publicly disclose principles and specific elements which asset managers as their trustee must obey, and also asset owner should monitor whether these asset managers’ activities are in line with the standard established and disclosed by asset owners.

 b) Introduction of margin requirements for non-centrally cleared derivatives in Japan

1. Introduction of the requirement in September 2016 as agreed in the BIS-IOSCO paper.

Starting with the financial groups with average notional transaction amount of four hundred and twenty (420) trillion Japanese Yen (equivalent to 3 trillion EURO), the requirement will phases in as scheduled in the above paper. Currently, derivatives transactions subject to the requirement are mostly cross-border transactions.

1. The important aspect of the requirement is the introduction of initial margin requirement.

Japan’s margin requirement is consistent with the international agreement.

1. Initial margin should be held in such a way as to ensure (i) the margin collected is immediately available to the collecting party in the event of the counterparty’s default; and (ii) the collected margin must be subject to arrangements that fully protect the posting party in the event that the collecting party enters bankruptcy.
2. In order to protect the posted margin from the bankruptcy of the collecting party, Japan’s requirement offers two options. One is the use of custodian bank and the other is the use of trust arrangement.
3. At this moment, custodian arrangement is more prevalent, as there has been a tri-party setup between the Japanese big banks and overseas counterparties for quite a while.
4. On the other hand, trust arrangement is still in the drafting process among the parties.
5. Re-hypothecation and reuse of initial margin are restricted in the international agreement. Under Japanese trust arrangement, re-hypothecation is made possible when cash is used as initial margin, AS LONG AS it is done in a manner consistent with the safe investment criteria for trust assets.
6. Market participants internationally have voiced a concern that the restriction of re-hypothecation would affect market liquidity.
7. At this moment, market participants in Japan prefer securities to cash as a type of collateral, because, when cash is used, posting party has to on-balance the exposure during the life of the transaction, while custodian banks also have balance-sheet concerns. In addition, there is difficulty in managing the cash under the current interest rate environment.
8. Still, there is currently no sign of deteriorated liquidity in the domestic market.

**HKMA**

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|  | HKMA initiatives - update | Hong Kong Monetary AuthorityEtelka Bogardi, Tim Chung, Kin-son Yip  |
| a. | The HKMA’s new Infrastructure Financing Facilitation Office | 1. In July 2016, the Hong Kong Monetary Authority (“HKMA”) launched the Infrastructure Financing Facilitation Office (“IFFO”) to promote development of Hong Kong as an infrastructure financing hub.2. Hong Kong is an international financial centre with well-developed capital markets. The opening up of Mainland China is accelerating and Hong Kong has seized the opportunity to develop into the largest centre for offshore renminbi (“RMB”) business.  Hong Kong is also the springboard for many Chinese companies expanding overseas, and similarly, an attractive destination for overseas corporations wanting to gain a foothold in the Mainland market.  In recent years, a growing number of these companies have been looking into investments in infrastructure and related projects.  This has been given further impetus by the Belt and Road Initiative, a strategy by the Chinese Government to promote connectivity and long-term development in the region spanning Asia, Africa and Europe.  For these reasons, Hong Kong is uniquely positioned to facilitate infrastructure investments and their financing.3. By establishing IFFO, the HKMA can play a valuable role as a catalyst in this development with its mandate to promote Hong Kong as an international financial centre.  Another advantage is the HKMA’s strong relationship with major players in infrastructure investment and their financing, whose engagement and support is crucial to achieving success.4. IFFO is an integral part of the HKMA. Its mission is to facilitate infrastructure investments and their financing by working with a cluster of key stakeholders. The functions of IFFO are:* providing a platform for information exchange and experience sharing;
* building capacity and knowledge on infrastructure investments and financing;
* promoting market and product development; and
* facilitating infrastructure investment and financing flows.

 5. IFFO seeks to facilitate infrastructure investments and their financing through building and working with a cluster of key stakeholders who are invited to become business partners. To date, over 50 organisations from Mainland China, Hong Kong and overseas have joined as partners. They include multilateral financial agencies and development banks, public sector investors, private sector investors/asset managers, banks, insurers, project developers and operators, professional service firms and international business council.6. As a neutral platform, IFFO is well positioned to advance capacity building including sharing of information, experience and best practices. It will organise conferences, seminars and workshops to enhance knowledge on infrastructure investment and their financing.7. IFFO will collaborate with its partners on product and market development, such as promoting the advantages of Hong Kong as an infrastructure financing centre. Through this work, it will identify any impediments to attracting infrastructure investments and their financing and where appropriate, recommend ways to address these issues to help make relevant projects more feasible. IFFO is not an investor and will not do deal matching, instead it will put in place a platform for interested partners to collaborate in identifying infrastructure investment and their financing opportunities. In this role, it will have a demonstration effect which should in turn attract more capital into this field of investment and financing. |
| b. | Hong Kong’s e-cheque service | 1. Cheque is an established and common payment instrument in Hong Kong. In view of the popularity of internet banking, the HKMA and the banking sector introduced e-cheques as an alternative payment method in 2015. An e-cheque is an electronic counterpart of a paper cheque. It is in PDF format and has a similar layout of a paper cheque with the display of a standardized e-cheque logo on the face of the e-cheque.2. It is issued by a paying bank according to a payer’s instruction, and presented in the format and manner specified in the Clearing House Rules of Hong Kong Interbank Clearing Limited (“HKICL”). HKICL is the clearing house for processing interbank clearing and settlement in Hong Kong. E-cheques can be presented either through the internet banking platform of the payee bank or the centralized presentment portal operated by HKICL for free.3. An e-cheque is not negotiable nor transferable. It must be addressed to a payee and deposited to the payee’s bank account only. It has the same legal status as paper cheque and can be used to make Hong Kong dollar, US dollar and RMB payments.4. In comparison with other e-payment methods, an e-cheque does not require the payee to provide particulars of his or her bank account to the payer. It can be issued anytime anywhere and removes the need for physical delivery and deposit. Further, it carries enhanced security features and the use of a recognized digital certificate will ensure the authenticity, integrity and non-repudiation of an e-cheque. The payer may consider encrypting an e-cheque before delivery to further improve security. The use of e-cheques will reduce the time needed for delivery and is more environmentally friendly as compared to paper cheques.5. The HKMA continues to explore ways of expanding the application of e-cheques in two areas: * The first one is cross-border transactions. In July 2016, the HKMA, the Guangzhou branch and Shenzhen central sub-branch of the People’s Bank of China jointly launched an e-cheque clearing service between the Guangdong province (including Shenzhen) and Hong Kong. Under the arrangement, e-cheques issued by banks in Hong Kong and deposited with banks in the Guangdong province (including Shenzhen) will be settled on the next business day.
* The second application is the development of e-commerce. In this regard, the HKMA will explore with the banking industry the use of e-cheques in supporting online payment and shopping portals.
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**SNB**

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|  | SNB initiatives – update | Swiss National BankChristina Kessler |
| a. | FinTech – recent developments in Switzerland | In November the Federal Council asked the Federal Department of Finance (FDF) to prepare a legislative draft in order to reduce the barriers to market entry for providers of innovative financial technologies (FinTech companies), and to increase legal certainty for the FinTech sector overall.Barriers to market entry identified At present, FinTech companies are affected by financial market regulation primarily in the areas of banking law (Banking Act, BankA) and anti-money laundering law. First, as regards banking law, FinTech companies that provide innovative payment services (e.g. mobile payment applications for peer-to-peer payments) under certain circumstances require a banking license. The BankA sets relatively high requirements for the granting of a banking license; as such license is aimed at the traditional core banking business (i.e. deposit-taking and lending business) that can carry a high level of potential risk from a stability and client protection perspective. Therefore, a banking license in accordance with the BankA is a considerable barrier to market entry for innovative FinTech companies that want to provide only certain elements of conventional banking services. Second, as regards anti-money laundering and terrorist financing law, the existing due diligence requirements are also barriers to market entry, however these are not FinTech-specific barriers.In view of this, the Federal Council is recommending an approach with three supplementary elements. Extension of the timeframe for settlement accounts The first element sets an extended deadline of 60 days for the holding of money in settlement accounts, which is particularly relevant for providers of crowdfunding services. Fundraising for a crowdfunding project can thereby be facilitated. Under the existing banking legislation, credit balances on client accounts of securities dealers, precious metal traders, asset managers or any similar companies that solely serve the purpose of the settlement of client transactions, and on which no interest is paid, are not considered to be deposits. The Swiss Financial Market Supervisory Authority (FINMA) in accordance with its mandate, has set a timeframe of seven days for such settlement accounts. Although this exception applies to FinTech companies also, the 7-days-timeframe is too short as crowdfunding projects usually last more than seven days.In order to create legal certainty in this area, a timeframe of 60 days should be set for settlement accounts. Because of the principle of equal treatment, such an amendment would not only apply to FinTech companies, but also to all other market participants. Consequently, crowdfunding platforms that accept client funds for the duration of that timeframe only would require neither a banking license nor a specific FinTech license.SandboxThe second element is a so-called sandbox (i.e. an innovation area). Under current banking law, funds can be accepted from a maximum of 20 depositors without a banking license being required for this business. However, business models in the FinTech sector are generally aimed at more than 20 people. A moderate extension of the existing exemption would offer market entrants the possibility to check the conceptual and economic efficiency of their business model within a limited framework before having to decide whether to apply for a license or not.In the future, service providers will thus be able to accept public funds without restriction up to a total amount of CHF 1 million. These activities do not require a banking license and are not monitored by FINMA. However, in order to ensure transparency service providers that make use of the sandbox will have to inform their clients that their company is not monitored by FINMA.Also, the current money laundering provisions will apply in the case of a sandbox.The Swiss sandbox approach differs significantly from the approach followed in other jurisdictions, as the innovation area up to a maximum of CHF 1 million is open to all companies – without supervisory authority guidance, authorisations or conditions.Fintech LicenceThe third element is a new specific FinTech license granted by FINMA. A new license type should be created for companies that do not provide traditional banking services but whose activities include only certain elements of the core banking business. As these business models might have a correspondingly lower risk profile, the license requirements and the scope of supervision can thus be less stringent than in the case of the traditional banking activity. Consequently, the new license type should be created for FinTech companies that only carry out the deposit-taking business (i.e. acceptance of public funds) but do not operate in the lending business with maturity transformation. The following restrictions would apply: The public deposits accepted may not exceed a total amount of CHF 100 million. In case the protection of the individual client is guaranteed by special arrangements, FINMA can authorise a higher threshold. The deposits must be held on one or more accounts in the name of the company holding the license and must not be invested or interest-bearing. For companies holding a FinTech license, the minimum capital requirement is 5% of the accepted public funds, but no less than CHF 300,000. The capital can be paid in cash or in kind. The 5% capital ratio not only covers for the license holder's operational risks, but also ensures moderate capital backing for liabilities. The expectation is that the new license type significantly reduces the barriers to market entry for providers in the area of cashless payment transactions, blockchain applications and crowdfunding platforms.Next stepsA draft with the legislative amendments in line with the three elements proposed by the Federal Council is expected for January 2017. In this context, it will also be examined whether and to what extent additional adjustments to the Consumer Protection law are necessary. The FDF is also planning to carry out further investigations on reducing other barriers to market entry for FinTech companies. Clarification is needed with regard to the legal treatment of currencies such as bitcoin and assets based on blockchain technology, for example. A report on that is expected by the end of 2017. |

**MAS**

1. **Singapore FinTech Festival**
2. The inaugural Singapore FinTech Festival, organized by MAS and the Association of Banks in Singapore (“ABS”), was held from 14 to 18 November 2016.
3. The Festival comprised of 3 components:
	1. **Global FinTech Hackcelerator –** the global FinTech community was invited to ideate and co-create solutions to specific problems or challenges solicited from the financial industry
	2. **MAS FinTech Awards** – where awards were presented for innovative FinTech solutions that have been implemented by FinTech start-ups, financial institutions, and technology companies
	3. **Conferences and Events** – where participants had the chance to share knowledge and create business opportunities through speeches, panel discussions, networking and exhibitions.

*MAS’ vision for a Smart Financial Centre*

1. Last year, MAS laid out a vision for a Smart Financial Centre, where we envisaged innovation to be pervasive and technology to be used widely.
2. MAS will partner the financial industry to work towards this vision of a Smart Financial Centre through two broad thrusts:
	1. by way of a regulatory approach that is conducive to innovation while fostering safety and security; and
	2. by development initiatives to create a vibrant ecosystem for innovation and the adoption of new technologies.

*MAS Approach to FinTech Regulation*

1. In the area of FinTech Regulation, MAS believes that regulation must not front-run innovation as introducing regulation prematurely may stifle innovation and potentially derail the adoption of useful technology. The regulator must instead run alongside innovation as it is important to keep pace with what is going on, assess what the risks might be, and continually evaluate whether it is necessary to regulate or leave things to evolve further.
2. MAS also applies a materiality and proportionality test to ensure that:
	1. regulation comes in only when the risk posed by the new technology becomes material or crosses a threshold; and
	2. the weight of regulation must be proportionate to the risk posed.
3. The focus is also kept on the balance of risks posed by new technologies or solutions which may create new risks while mitigating existing ones. The regulatory approach must thus seek to incentivize the risk mitigation aspects while restraining new risks.
4. We currently have in place a few initiatives that illustrate our approach to FinTech Regulation:
	1. activity-based regulation to keep pace with payments innovations so that entities need only meet regulations pertinent to specific payment activities;
	2. specific guidelines to promote secure cloud computing;
	3. enabling digital financial advice and insurance;
	4. regulatory sandbox to test innovative ideas - to provide an environment where if an experiment fails, it fails safely and cheaply within controlled boundaries without widespread adverse consequences.
5. We hope to foster a culture of innovation while ensuring that our systems remain safe and sound.
6. **The Credit Bureau Act 2016**
7. The Credit Bureau Act 2016 was passed in Parliament in November 2016. MAS is introducing this new legislation to enable MAS to license and supervise credit bureaus that collect customer credit information from banks and other financial institutions in Singapore and prepares credit reports based on such information.
8. The objectives of this new legislation are to ensure sound operation of licensed credit bureaus, safeguard the confidentiality, security and integrity of customer credit information, and to protect consumer interests. The Act will also allow consumers the right to access, review and rectify credit records.
9. The Act will establish a licensing framework for MAS to issue, suspend and revoke licenses to carry on consumer and corporate credit reporting business. The Act will also enable MAS to establish admission criteria for licensed credit bureaus as well as ongoing requirements for them to continue to be licensed.
10. The Act will require licensed credit bureaus to manage their business and operational risks in a safe and responsible manner by specifying the circumstances under which they can collect, use and disclose customer credit information. Licensed credit bureaus will also be required to provide periodic and ad-hoc information to MAS for monitoring and investigation purposes and notify MAS of certain events such as operational disruptions to their business. Consumers will also be provided with easy access to purchase their credit reports and facilitate timely correction of erroneous information as the Act recognizes that consumers have a fundamental right to access and review their own credit information and to dispute any inaccuracies.
11. The Act also expects licensed credit bureaus to be subjected to annual audits by auditors approved by MAS.
12. Additionally, only approved members of the licensed credit bureaus will be allowed to receive customer credit information to ensure that such information are not misused. In this regard, MAS will also be empowered under the Act to approve a financial institution to become an approved member of a licensed credit bureaus.
13. The Act also sets out circumstances under which approved members may request for customer credit information from the licensed credit bureaus or disclose the information obtained. Approved members are required to safeguard the confidentiality, security and integrity of customer credit information obtained from and disclosed to the licensed credit bureaus.
14. Other supervisory powers of MAS under the Act include the power to inspect and investigate licensed credit bureaus if there is any suspected breach of regulatory requirements. MAS is also empowered to take expedient actions in relation to a licensed credit bureau under distress situations to ensure protection of the customer credit information. The Act allows MAS to appoint a person to advise the licensed credit bureau on the proper conduct of operations or for MAS to assume control of and carry on the operations of the licensed credit bureau. MAS also has the power to require the licensed credit bureau to cease operation, to petition for the winding up of the licensed credit bureau and to require the licensed credit bureau to take any action as MAS considers necessary under such circumstances.

**EFMLG**

**EFMLG contribution to the ICI minutes of 15 December 2017**

1. **Creditor hierarchy in insolvency - Proposal of the European Commission of 23 November 2017 as regards the ranking of unsecured debt instruments in insolvency hierarchy (Presenter: Niall Lenihan)**

The European Commission has proposed on 23 November 2017 a comprehensive package of reforms to further strengthen the resilience of EU banks, including a proposal for a directive as regards the ranking of unsecured debt instruments in the insolvency hierarchy. This proposal builds on existing EU banking rules and aims to complete the post-crisis regulatory agenda by making sure that the regulatory framework addresses any outstanding challenges to financial stability, while ensuring that banks can continue to support the real economy. The Commission proposal essentially requires Member States to create a new asset class of 'non-preferred' senior debt instruments that should only be bailed-in during resolution after capital instruments, but before other senior liabilities. The new 'non-preferred' senior class of debt instruments would rank lowest among senior claims but would have a higher priority ranking than the ranking of capital instruments or any other subordinated liabilities. The Commission proposal does not apply on a retroactive basis to outstanding liabilities. Given that, under the Commission proposal, the subordination is proposed to be established through the contractual terms and conditions governing the debt, and supported by creating a Union-wide legislative basis in national laws for the issuance of debt instruments which include contractual subordination arrangements, the Commission proposal appears to be more aligned with the French approach on statutory recognition of contractual subordination rather than the German approach of statutory subordination legislation.

1. **Developments on the Euribor (Presenter: Iñigo Arruga Oleaga)**

Euribor is the rate at which Euro interbank term deposits are offered by one prime bank to another prime bank within the euro zone, and is calculated at 11:00 a.m. (CET) for spot value (T+2). The choice of banks quoting for Euribor is based on market criteria. These banks (“the Euribor panel banks”) have been selected to ensure that the diversity of the euro money market is adequately reflected, thereby making Euribor an efficient and representative benchmark.

Following the recommendations outlined in the FSB’s Report “Reforming Major Interest Rate Benchmarks” published in July 2014, the Euribor and other major reference interest rates based on unsecured funding costs should be underpinned to the greatest extent possible with transactions data. In this context, the administrator of the Euribor, the European Money Market Institute (EMMI) has been working on a transaction-based determination methodology for Euribor. The EFMLG has participated to that effort notably through the Legal Working Group (LWG) set up by EMMI for that purpose. The LWG is focusing on estimating and clarifying legal aspects of the transition towards a transaction-based Euribor. Its work has been dedicated to issues relating to the transition itself (seamless transition vs other transaction paths), the regulatory backing for the transition and the liability of EMMI and the panel banks. Further, issues such as contract frustration in accordance with English law and the status of legacy contracts in the context of evaluation of financial benchmarks were discussed.

However, several outstanding issues are still to be addressed. The need to involve public authorities in the transition issues is a crucial one, as banks appear to be hesitant to commit further without a public sector backing. The necessity to enlarge the panel is also often stressed, as now there are considerably less panel members than before; and the transition can hardly be achieved unless other banks joins. The Pre-Live Verification Programme, which sets out an environment to test daily transmission of eligible data for a Euribor transaction-based methodology, is still running until February 2017 (from September 2016). The EFMLG will keep on informing on this fundamental issue.