

**SUMMARY MINUTES**

**FINAL**

**Video conference: EFMLG, FLB, FMLG, FMLC, HKMA, MAS and SNB**

**Friday, 30 May 2008, 1-3 pm GMT**

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| 1. | <b>FLB initiatives – update</b>   | <b>Financial Law Board (FLB)</b><br>Mr. Massao Okawa, Mr Hiroyuki Kanno, Mr Hiroyuki Takano, Mr. Toshihisa Hirano, Mr. Haruhiro Takahashi   |
| a. | Financial Instruments and Exchange Law (FIEL) and Trust Law at about one year | The FLB has been discussing a number of issues related to the recent important legislation including FIEL and Trust Law in order to remove legal uncertainties to the extent possible, although the discussion is still at early stage (brainstorming phase).   |
| b. | Update on the Hague Securities Convention                                     | In February 2008, the Legislative Council, advisory committee to the Minister of Justice, has advised that the Japanese government should proceed toward ratification of the Hague Securities Convention, as deemed appropriate, as the discussion in EU makes progress.  |
| c. | Recent developments related to legal issues on payment systems                | The Financial Services Agency has set up in mid-May a working group under Financial System Council to discuss legal issues on payment systems, especially on retail payments including electronic money.  |
| 2. | <b>FMLG initiatives – update</b>  | <b>Financial Markets Lawyers Group</b><br>Ms Joyce Hansen, Mr Michael Nelson, Ms Michelle Meertens  |
| a. | Bear Stearns  | The Federal Reserve Bank of New York has played a very public role during the recent market turmoil. From the perspective of an attorney supporting the activities of the Bank, the work has been interesting and challenging. For instance, in order to establish the various new lending facilities being offered (i.e., the Primary Dealer Credit Facility and the Term Securities Lending Facility), the FRBNY has had to rely on legal authority |

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|           |   | <p>that it has not used in decades. One aspect of this authority is the determination that circumstances are “unusual and exigent,” which poses the additional challenge of determining when such circumstances will cease to exist. In addition, the FRBNY recently provided term financing in the amount of \$29 billion to JPMorgan Chase to facilitate its purchase of Bear Stearns. This required creating and establishing an independent limited liability company to control a portfolio of assets from Bear Stearns, which would serve as collateral for the loan. Although the merger has already closed, the loan is still in the process of being made. The FRBNY’s attorneys are currently working diligently to ensure that all of the legal documentation is exact, the collateral is appropriately secured, and the rights and interests of the FRBNY are properly protected.</p>  |
| <p>b.</p> | <p>Regulatory Restructuring</p>                               | <p>The Treasury Department recently issued a “Blueprint for a Modernized Financial Regulatory Structure.” (Document available at: <a href="http://www.treas.gov/offices/domestic-finance/regulatory-blueprint/">http://www.treas.gov/offices/domestic-finance/regulatory-blueprint/</a> ). Although the proposals are thought provoking, they are quite ambitious and it is unlikely that any action will be taken on them this year due to the imminent change set to take place in the Administration and the United States Congress.</p>  |
| <p>c.</p> | <p>FXC Guidelines on FX Trading Activities 2008 Revisions</p> | <p>The Foreign Exchange Committee recently revised its Guidelines for Foreign Exchange Trading Activities. The most significant changes were the following:</p> <ol style="list-style-type: none"> <li>1) the addition of new language to emphasize the critical role of informed and actively involved senior management;</li> <li>2) new provisions dealing with risk management, including the need to be aware of and mitigate reputational risk, systemic risk, and the concentration effects of Prime Brokerage;</li> <li>3) new language addressing controls such as legal documentation, internal audit, information security, and legal compliance, particularly anti-money laundering provisions and the regulations of the Office of Foreign Assets Control; and</li> <li>4) new provisions addressing Human Resources and Management, such as “know your employee,” sound vacation policies, and the need for annual ethics training.</li> </ol> |

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| <b>3.</b> | <b>FMLC initiatives – update</b>  | <b>Financial Markets Law Committee</b><br>Ms Joanna Perkins   |
| a.        | Market Liquidity Issues   | The sub-prime crisis affected the UK primarily via structured investment vehicles ('SIVs') and conduits, which have invested in mortgage backed securities. To date there has been litigation about the interpretation of the terms and conditions of SIVs, which have to be wound up in a technical and difficult way, and there is a possibility of litigation against the ratings agencies and monolines. The FMLC is currently organising a seminar on SIVs for the judiciary.  |
| b.        | A UK proposed UNIDROIT project on Investor Classification Convergence                             | The UK has proposed a project to UNIDROIT facilitate convergence of national investor classification systems through standardisation. This proposal contemplates a project outcome in the form of soft principles or definitions. These would represent, on completion, a persuasive international authority defining the categories of client and counterparty with which regulated financial markets entities commonly contract and would be used as a template for legislation and regulation in the emerging markets. The project was put before the Governing Council in April 2008 and it was agreed that the project would be included in the 2009 – 2012 triennial programme. It is likely however that the project may have to be presented to UNIDROIT again in November 2009, when there is a new Governing Council.   |
| c.        | UK Tripartite Consultation Paper on Banking Reform – Financial Stability and Depositor Protection | As a result of the collapse of Northern Rock, the Bank of England, the Treasury and the FSA issued a consultation paper considering what changes were needed to the regulation of banks, to deal more effectively with failing banks in the future. The FMLC produced a response to that paper, as a result of which it was invited to make further comments as to what safeguards are necessary in respect of a 'special resolution regime' ('SRR') for failing banks. The primary position of the FMLC is that the SRR should be restricted to wholesale business transfers only i.e. any nationalisation or transfer of bank assets to a new owner should take place in their entirety – there should be no partial transfers. If there is to be a partial transfer, it has to be implemented in such a way as to make both the troubled bank and the bridge bank viable entities. Clear |

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|           |   | criteria for the partial transfer need to be made explicit.   |
| <b>4.</b> | <b>HKMA initiatives – update</b>                              | <b>Hong Kong Monetary Authority</b><br>Ms Joanna Wong, Mr Kinson Yip  |
| a.        | Review of the HKMA's Work on Banking Stability                | The HKMA is undergoing a review of its work in the area of banking stability and has appointed Mr. David Carse, a former Deputy Chief Executive of the HKMA, as consultant to conduct the review. The aim of the review is to make recommendations on how the HKMA can best discharge its functions in promoting the general stability and effective working of the banking system, taking into account recent and likely future developments in Hong Kong's banking system and the changing nature of the risks facing it. The review started in December 2007 and the report is expected to be completed in the next few months. The HKMA will formulate a policy response after receiving Mr. Carse's report.  |
| b.        | Public Consultation on the Rewrite of the Companies Ordinance | A comprehensive rewrite of the Companies Ordinance was launched by the Government of the Hong Kong Special Administrative Region in mid-2006. A phased approach is adopted in the rewrite exercise. The final reform proposals will be incorporated into a White Bill for further public consultation. It is expected that a new Companies Bill will be introduced into the Legislative Council in 2010. Recently, public consultation has been launched to cover issues relating to the following: <ul style="list-style-type: none"> <li>(a) company names;</li> <li>(b) directors' duties;</li> <li>(c) corporate directorship; and</li> <li>(d) registration of charges.</li> </ul> The details of the above consultation are available on the website of the Financial Services and the Treasury Bureau ( <a href="http://www.fstb.gov.hk/fsb">www.fstb.gov.hk/fsb</a> ) and the Companies Registry's website ( <a href="http://www.cr.gov.hk">www.cr.gov.hk</a> ). The consultation period will finish on 30 June 2008. |

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| <b>5.</b> | <b>MAS initiatives – update</b>  | <p><b>Monetary Authority Singapore</b><br/>Mr Ng Heng Fatt, Ms Denise Wong, Ms Dawn Chew</p>  |
| a.        | Recent Developments in Islamic Financing   | <p>MAS updated that its approach towards Islamic Banking has been to accommodate Islamic Banking within the existing regulatory framework and supervisory framework for banks.</p> <p>MAS also informed that Singapore would develop a facility to make available sovereign-rated sukuk. The facility would be different from traditional issuance on two respects:</p> <ul style="list-style-type: none"> <li>(a) the issuance would be on a reverse enquiry basis, i.e. it would be issued according to the needs of FIs conducting Islamic Finance in Singapore; and</li> <li>(b) initially, the sukuk would be priced against the liquid Singapore Government securities market. This is to provide a transparent mechanism for this new instrument in Singapore.</li> </ul>  |
| <b>6.</b> | <b>SNB initiatives – update</b>  | <p><b>Swiss National Bank</b><br/>Mr Hans Kuhn, Ms Christina Keller</p>   |
| a.        | Unidroit draft Convention on Intermediated Securities – Diplomatic Conference in Geneva, Switzerland | <p>SNB refers to the draft Unidroit Convention on Intermediated Securities adopted in May 2007 by a Committee of Governmental Experts (CGE). Switzerland has extended an invitation to host a Diplomatic Conference for the final adoption of the Convention to take place in the first two weeks of September in Geneva, Switzerland. This invitation has raised, among several Member States of the European Union and the European Commission, concerns about the coordination of the Unidroit Convention with the work done by the Legal Certainty Group. Similar concerns have been raised by the EFMLG. After discussions in the Civil Law Committee of the Council, it is understood that the EU will not request a deferral of the Conference but expects that it will not be possible to finalize and sign the Convention at the end of the 2-week-Conference. Switzerland believes that it is important to restart the negotiation process which lacked any</p> |

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|           |   | institutional underpinning since the CGE concluded its work. Whether it will be possible to solve all open issues in September remains to be seen. If issues will be unresolved an assessment of the chances to reach an agreement within a reasonable period of time will have to be made. However, SNB remains optimistic.   |
| <b>7.</b> | <b>EFMLG initiatives – update</b>   | <b>European Financial Markets Lawyers Group (EFMLG)</b><br>Mr Stéphane Kerjean, Mr Niall Lenihan, Mr Klaus Löber   |
| a.        | Financial stability and financial supervision arrangements, and amendments to the Banking Directive | On 14.5.2008, the EU Economic and Financial Affairs Council (ECOFIN) approved policy and procedures for improving the EU's arrangements for financial supervision and financial stability. In particular, the Council set out steps to be followed in developing the EU framework for financial market supervision, as regards the inclusion of a European dimension into the mandate of national supervisory authorities, the improved functioning of EU committees of supervisors and the supervision of EU-wide financial groups by means of colleges of supervisors; and EU arrangements for financial stability. Reference was also made to the recent MoU on cooperation between the financial supervisory authorities, central banks and Finance Ministries of the EU on cross-border financial stability. Furthermore, on 16.4.2008, the European Commission launched a public consultation of a working document setting out possible targeted amendments to the Banking Directive relating <i>inter alia</i> to the exchange of information between banking supervisory authorities and central banks (and also Ministries of Finance), in particular in emergency situations. |
| b.        | Amendments to the EU Collateral and Settlement Finality Directives                                  | On 24.4.2008, the European Commission published its formal proposal amending the Directive 98/26/EC on settlement finality in payment and securities settlement systems (SFD) and Directive 2002/47/EC on financial collateral arrangements (FCD) The main changes in the proposal concern, firstly, the explicit protection of the SFD as regards night-time settlement and linked systems. Secondly, the proposal seeks to broaden the scope of the protection provided by both directives by including credit claims eligible for the collateralisation of central bank credit operations in order to facilitate their use  |

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|           |  | throughout the Community. The Commission's proposal is available at <a href="http://ec.europa.eu/internal_market/financialmarkets/settlement/index_en.htm#proposal">http://ec.europa.eu/internal_market/financialmarkets/settlement/index_en.htm#proposal</a> .  |
| c.        | Netting  | On 14.4.2008, the EFMLG, in cooperation with ISDA, has expressed to the Commission its concerns over the Commission's decision not to take on to its agenda the industry's proposals for a substantial overhaul of the FCD. The EFMLG and ISDA pointed out the necessity to have a high degree of legal certainty regarding the enforceability of close-out netting arrangements and stressed that it would be feasible to provide legal certainty by enacting a new netting directive or by revising and improving substantially the FCD provisions dealing with close-out netting. The Commission believes that it is worthwhile to explore the netting issue further, and will do so, but is also of the view that this would go beyond the scope of the FCD and the current exercise. The EFMLG will continue to monitor actively this issue together with ISDA. |
| d.        | Disclosure requirements applicable to certain financial instruments/derivatives and possible extension to economic exposures | Shareholders' disclosure of major holdings is usually limited to ownership. A number of recent cases, for instance in the UK, Italy or Switzerland show that cash-settled derivatives have been used to exert influence and/or build a substantial stake in a company on an undisclosed basis. Due to these recent cases, some regulators raise the issue of the disclosure of substantial 'economic interests'. The EFMLG currently examines this issue, one concern being the fragmentation of the regulatory solutions provided on these issues across the EU Member States.  |
| <b>8.</b> | <b>Other issues</b>  |  |
| a.        | Date and organisation of next meeting  | Autumn 2008. The videoconference will be hosted by the Hong Kong Monetary Authority.   |