

Annual Survey of LC Law & Practice

15-16 March 2018



Charlotte, NC

**WELLS
FARGO**



The Institute
of International
Banking Law & Practice

Americas Annual Survey of LC Law & Practice

The Learning Center at 3 Wells Fargo Center
401 S Tryon St. • Charlotte, NC • 28202

8:30-9:00

Registration and Check-In

9:00-10:45

Digitization and the Future of LCs

- **Unlocking Blockchain for Trade**
 - What are the current issues for implementation?
 - What is the likely impact?
 - Who is pushing for it?
- **Fintech:** What is it? What impact will it have for trade?
- **Revision of the eUCP:** who wants it? Is this an end run around revision of UCP600? Does the ICC's "NO" really mean "no"?
- **URBPO:** Can a revision of the rules breathe life into BPO?
- **TT Reimbursement:** Is it a bank to bank reimbursement? *Deutsche Bank*

10:45-11:15

Networking Break

11:15-1:00

LC Practice Issues

- **Factoring & Trade:** Its impact on LC operations and issues for LC banks
- **Notices: "Send" or "Received":** Is there a real difference?
 - Dishonour
 - Change of Address
 - Non Extension
 - Other Notices
- **Is an agreement in advance to pay funds a transfer a letter of credit?** *Banco del Austro*
- **Fax Presentments under Direct Pay Standby LCs:** Should fax presentments be allowed?

1:00-2:00

Lunch

2:00-3:30

ICC Opinions

Reviewing 2017 Final Opinions and Previewing 2018 Draft Opinions -- Are they sound? Analyzing the most significant and controversial, including:

- **Dishonour** of electronically generated custom's export declaration because not authenticated: TA865 (Nov. 2017)
- **Calculation of maturity date:** TA 871 (Nov. 2017)

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- Tolerance and total: TA875 (Nov. 2017)
 - Government required certificate of origin: TA864 (Nov. 2017)
 - Short shipment in 8 containers: TA869 (April 2017)

3:30-4:00

Networking Break

4:00-4:45

"Conflict" in UCP600, ISBP, and in the ICC Opinions

- What does UCP600 say about conflict and inconsistency? See the issues in *Swanhill*: Name of Beneficiary; Number of Guarantee; and Invoice Number.
- What do the recent ICC Opinions say about "conflict"? Do they conflict with one another?
- Do the ICC Opinions reflect practice on technical discrepancies?
- What weight are ICC Opinions given regarding conflict by banks? By judges?

4:45-5:30

LC Case Study: Oral Statement by Confirmer that Documents "in order" after Cure & Re-Presentation

- What are the issues?
- Does the beneficiary have any rights?

5:30-6:00

Summary of Critical Issues

Critical issues regarding law and practice will be summarized and final comments solicited.

6:00

Cocktail Reception

Americas Annual Survey of LC Law & Practice

- Day 2 -

9:00- 10:00

Global Survey

- *DCW*: The Top Issues Impacting Commercial LCs in 2017 and a Status Report
- SWIFT Update: Preparing for “Go Live” MT 700 changes in November 2018

10:00-10:30

Networking Break

10:30-12:15

Trade Based Financial Crime Compliance

- TBFCC Certification: What you should know
- BAFT’s TBML Report & Wolfsberg Group Paper: Key Findings & Reactions
- Bank Refusals due to names appearing on Internal Proprietary Lists (so-called “Hot Lists”), although they are not OFAC sanctioned parties
- Correspondent Banks: Reviewed
- Is Import Financing an issue for Trade?
- **What documents matter?** Examination under TBFCC vs. UCP600? Should the examinations be done by the same person?
- *Wing Fai*: LCs used to pay but no goods delivered: What should an issuer do to check?
- What are customers doing to circumvent Compliance?
- False B/Ls issued by NVOCCs
- What tools are banks using?

12:15-1:15

Lunch

1:15-1:45

Standby & Independent Guarantee Briefing

- **The 2017 cases**: What explains the significant increase in litigation? An Overview of the Issues
- *ISP98 Official Commentary 2nd Edition* – Analyzing 20 Years of ISP98 Use

1:45-2:45

Revitalizing the LC

- **The Problem:** Too many discrepancies are causing users to abandon LCs for open account.
- **The Features and Viability of two Potential Solutions will be discussed**
- **The Expedited LC (XLC) and the Digital LC**

2:45-3:15

Networking Break

3:15-5:30

LC Cases: Key Issues Litigated in 2017

- *ACR*: How choice of law can affect the **limitations/prescription period**
- *China Construction Bank*: **the Impact of LC Fraud** on a negotiating bank discounting accepted bills of exchange under LCs
- *Deutsche Bank*: Must a confirming bank demonstrate payment on a **TT Reimbursement Clause?**
- *Indofric*: a report as to why a bank would litigate a case where the **limitations period** had run.
- *Jiangsu*: **Lessons from an unworkable LC**
- *Kolmar*: **Enforcement of a Singapore judgment** by a Chinese court
- *Sincore*: **When forged documents do not matter**
- *So Sau*: Does the issuer have an **obligation to counsel applicant?** What if it does so? What does a bank need to know (or not know) about **trade terms?**
- *Taurus Petroleum*: arbitration and **assignment of proceeds**
- *Toyota Tsusho*: Post Honour **Remedies for a forged signature**

5:30-6:00

Summary of Critical Issues

Critical issues regarding law and practice will be summarized and final comments solicited.

Invited Panelists

Mike AVIDON is a partner in Moses & Singer LLP, a New York City law firm, where he co-chairs the Banking and Finance Group.

Buddy BAKER is VP of the Investment Banking Division at Goldman, Sachs & Co.

Jim BARNES practices law in the Chicago office of Baker & McKenzie LLC.

James BYRNE is the Director of the Institute of International Banking Law & Practice, Inc.

Christopher BYRNES is Executive Editor of the LC industry's monthly journal publication, *Documentary Credit World*.

Peter CARSON is a partner in the Finance & Bankruptcy Practice Group at Sheppard Mullin's San Francisco office.

Lisa CHIN is SVP and US FCC Head of GTRF – Wholesale of Financial Crime Compliance at HSBC Bank USA, N.A, in Chicago, IL.

John CITROLA is VP of Trade Services Risk Management with Wells Fargo Bank NA in Charlotte.

David CLEMENTS is president of Quality Letters of Credit, Inc.

Paula GREAVES, CDCS, is SVP & Global Policies & Procedures Technical Consultant, Global Trade Operations, at BAML in Seattle.

Saibo JIN is a lawyer, litigator, and arbitrator of the PRC, and is an attorney with the Jincheng Tongda & Neal Law Firm of Beijing.

Carter KLEIN is a partner at Jenner & Block LLP where he has practiced for the past 42 years in the areas of financial services, Uniform Commercial Code, credit enhancements and commercial law.

Walt LEWANDOWSKI is a Director overseeing the North America Trade Services Products, and Global Product Manager of Global Trade Services at Citi.

Robert MARCHAL is a Standards/Business Analyst at SWIFT responsible for development and maintenance of Trade Finance Standards:

Rick MARTINEZ is a Partner at Hogan Lovells LLP in New York.

Vincent M. MAULELLA has over 30 years experience in banking, specializing in operations, risk, product and project management of businesses dedicated to facilitating and financing international trade.

Dennis NOAH is a retired senior international banking officer and was employed by three different banks during his 39-year career.

Paul M. RODER is a partner in the Banking and Finance practice group of Moses & Singer LLP, a New York City law firm.

Glenn RANSIER is SVP Head of Documentary Trade and Standby Letters of Credit at Wells Fargo.

Rita RICCI is Global Head of the Trade Expertise Desk of BNP Paribas with over 35 years of experience in trade finance operations.

Invited Panelists

Mary ROSEN is Senior Counsel (Capital Markets International) in the law department at Wells Fargo Bank.

Donald R. SMITH is President of Global Trade Advisory, Ltd., providing services to firms involved in international trade, typically importing and exporting companies and banks.

Heather VOGEL, CSGP, is an officer and department lead of Trade Operations, at Fifth Third Bank, Cincinnati, OH.

Charnell C. WILLIAMS is a Director and Citi's Global Transactions Services Product Manager, responsible for global risks, controls, and deployment of AML processes.

Dan TAYLOR is principal of DLTAYLOR Consulting, LLC, and Senior Advisor to the ICC Banking Commission Executive Committee.

Participants are subject to change. No endorsements of any sort by organizations are made or implied.

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The firm is proud that one of our partners, Michael Evan Avidon, is at the forefront of letter of credit law and was a leader in the most recent revision of the Uniform Commercial Code's letter of credit provisions (UCC Article 5) and the drafting of the International Standby Practices (rules for standby letters of credit) as well as serving on the Consultative Group for the International Chamber of Commerce's Uniform Rules on Bank Payment Obligations (URBPO).

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DCW is linked to the most important players in the industry to bring its readers valuable information and the latest news of developments affecting their LC operations and business. From its focus on new rules and regulations involving commercial and standby LC practice to its regular discussion of recent court cases, *DCW* covers a host of topics and is essential for industry professionals. In addition to individual subscriptions, licenses for groups are available. To view our latest issue's Table of Contents visit www.doccreditworld.com or for more information, contact *DCW* at info@doccreditworld.com



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