

# Annual Survey of LC Law & Practice

15-16 March 2018



Charlotte, NC

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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*

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- 10:15

### Global Survey

- **Coastline Solutions:** Update and What's New
- **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

10:15-10:45

### Networking Break

10:45-12:30

### Trade Based Financial Crime Compliance

- **TBFCC Certification:** What you should know
- **BAFT's TBML Report & Wolfsberg Group Paper:** Key Findings & Reactions
- **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?**
- **Are you checking all B/Ls for North Korean port activities of vessels?** Why and How?

12:30-1:30

### Lunch

1:30-2:00

### 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

2:00-2:45

### The XLC Project

- **The Problem:** Too many discrepancies are causing users to abandon LCs for open account.
- **A Solution: Expedited LCs:** Its Features
- **Advantages and Disadvantages**

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

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**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.

**Amoy CHAMBERS** is Senior Counsel, Global Trade & Receivables Finance, at HSBC Bank NA in New York City.

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

**Robert L. FOUTTS** is Executive Director for JPMorgan Chase working in Global Trade Operations in Tampa, Florida.

**Paula GREAVES**, CDCS, is SVP & Global Policies & Procedures Technical Consultant, Global Trade Operations, at Bank of America Merrill Lynch in Seattle.

**Audrey IRESON** is the principle for Ireson Consultant Inc., with over 35 years of experience in international trade.

**Sam JEBAMONY** is a VP with JPMorgan Chase Bank N.A. with more than 30 years of letters of credit operations experience with various U.S. and foreign banks.

**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.

**Jacob MANNING** is a partner at the law firm of Dinsmore & Shohl, and is an Associate Fellow of the Institute of International Banking Law & Practice.

**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.

# Invited Panelists

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**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.

**Glen 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.

**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.

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

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

# Host Sponsor

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Wells Fargo is honored to once again serve as the host sponsor of the Institute of International Banking Law & Practice's Annual Survey of LC Law & Practice and support this vital industry forum for addressing key issues in the world of letters of credit.

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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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**Contact:** [www.coastlinesolutions.com](http://www.coastlinesolutions.com)

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*Documentary Credit World (DCW)* is the world's only monthly journal dedicated to the field of letter of credit law and practice. Published in partnership with BAFT,



*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](http://www.doccreditworld.com) or for more information, contact *DCW* at [info@doccreditworld.com](mailto:info@doccreditworld.com)



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