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TO:
European Securities and Markets Authority
103 Rue de Grenelle
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19 March 2012

Re: Discussion Paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association welcomes the opportunity to comment on behalf of its members on ESMA's discussion document. The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 22 global FX market participants[1], collectively representing more than 90% of the FX market[2]. Both the GFXD and its members are committed to ensuring a robust, open and fair market place and welcome the opportunity for continued dialogue with European regulators.

The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Corporations and investors regularly participate in the market for operational needs: to reduce risk by hedging currency exposures; to convert their returns from international investments into domestic currencies; and to make cross-border investments and raise finance outside home markets.

Many of the current legislative and regulatory reforms will have a significant impact upon the operation of the global FX market and we feel it is vital that the potential consequences are fully understood and that new regulation improves efficiency and reduces risk, not vice versa. The GFXD is committed to ensuring a robust, open and fair market place and welcomes the opportunity to set out its views in response to your discussion document.

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[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays Capital, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State St., UBS, and Westpac
[2] According to Euromoney league tables

1. *In your views, how should ESMA specify contracts that are considered to have a direct, substantial and foreseeable effect within the EU?*

   No comment.

2. *In your views, how should ESMA specify cases where it is necessary or appropriate to prevent the evasion of any provision of EMIR for contracts entered into between counterparties located in a third country?*

   We propose that, in line with recital 12b/c, that ESMA seek to ensure international convergence in relation to FX products, notably FX forwards and FX swaps, where a number of jurisdictions have already proposed to exempt these products from clearing. This has been highlighted in the recent IOSCO paper "Requirements for Mandatory Clearing" issued in Feb 2012[3]. International convergence on this particular issue will remove the regulatory arbitrage concern for these products where there is broad consensus that the predominant risk associated with these products is settlement risk, which is effectively managed today.

3. *In your views, what should be the characteristics of these indirect contractual arrangements?*

   No comment.

4. *What are your views on the required information? Do you have specific recommendations of specific information useful for any of the criteria? Would you recommend considering other information?*

   International convergence accepting that CCP clearing may not be the optimal solution. As stated in recital 12b/c, ESMA should specifically identify and take into consideration the predominant risks for the products and, in this context, international convergence:

   > *"In determining the subjection to the clearing obligation of classes of derivatives, due account should be taken of the specific nature of the relevant classes of OTC derivatives. The predominant risk for transactions in some classes of OTC derivatives may relate to settlement risk, which is addressed through separate infrastructure arrangements, and may distinguish certain classes (e.g. foreign exchanges) of OTC derivatives from other classes. CCP clearing specifically addresses counterparty risk, and may not be the optimal solution for dealing with settlement risk. The regime for such contracts should rely notably on preliminary international convergence and mutual recognition of the relevant infrastructure."*

   International convergence is paramount for FX forwards and FX swaps where the predominant risk is settlement risk. Following extensive study of settlement risk by the central banks as a source of systemic risk for the FX market and therefore the global financial markets, the FX market went to considerable lengths to address this risk, ultimately leading to the creation of CLS Bank (CLS) in 2002. CLS' settlement system today eliminates virtually all settlement risk to its participants. Additionally, CLS' activities are subject to a cooperative oversight protocol arrangement among 22 central banks whose currencies are settled.

[3] IOSCO Technical Committee of the International Organization of Securities Commissions OR05/12 February 2012

Systemic relevance of the market and its distinguishing characteristics. ESMA should take into account the systemic relevance of the relevant market in order to help ensure that the application of a clearing obligation would not result in undue risk being assumed by the market and overall financial system. Size should be measured not only in terms of volume, but also values. Unique characteristics of the derivative product, e.g., the physically delivery aspect to FX forwards and FX swaps, must also be taken into consideration.

- **FX is at the heart of all international commerce.** Corporations and investors regularly participate in the market for real operational needs: to reduce risk by hedging currency exposures; to convert their returns from international investments into domestic currencies; and to make cross-border investments and raise finance outside home markets. The FX market, which is the world's largest financial market, is a central component of the global payment system. It also underpins other financial markets and the global economy generally. The Bank for International Settlements estimated that average daily market turnover in FX increased to $4 trillion in April 2010, up from $3.3 trillion in April 2007.[4]
- **FX markets are different from other derivative markets.** The majority of FX trades are simple exchanges of currency. There are no contingent outcomes for FX forwards and swaps (cash flows are known at the outset of the trade) and they are overwhelmingly short-term in nature. For example, latest analysis conducted by Oliver Wyman of the BIS 2010 survey and the FXJSC/FXC figures (both collected in April 2010), estimates the following global maturity profile for FX forward and swap trades:

  Up to 7 days maturity = 68.0% of daily traded volumes;
  7 days – 1 month = 13.3%; and
  1 month – 6 month = 16.2%

  This evidences a global FX forwards and swaps daily traded market total of 81.3% under 1 month maturity and 97.5% under 6 months, with 1.5% maturity between 6 months and 1 year and only 1% over 1 year. And unlike other OTC derivatives which are typically settled on a net, cash-settled basis, FX forwards and FX swaps are typically physically settled by delivery of the underlying currency.
- **FX faces different and specific risks when considering counterparty credit risk as addressed by EMIR**. In FX forward and swaps, the main counterparty risk is settlement risk, not mark-to-market risk (settlement risk is the risk that one counterparty does not deliver their side of the currency exchange while the other counterparty has delivered their side). Unlike most derivatives markets where trades are settled financially, the FX market is currently predominantly physical, i.e. trades settle via exchange of currencies. For FX instruments with maturity less than 6 months: 94% of max loss exposure is settlement risk; mark-to-market risk is only a residual risk (6%)[5].

[4] BIS, Monetary and Economic Department, *Triennial Central Bank Survey: Report on global foreign exchange market activity in 2010* (Dec 2010).
[5] According to analysis conducted by Oliver Wyman.

- **CCPs are designed to mitigate "mark-to-market" risk – not settlement risk.** In FX markets, the residual mark-to market risk is today mitigated through credit support annexes (CSAs) and will be in future subject to EMIR risk mitigation requirements.
- **Mandatory clearing in FX markets could have unintended consequences whilst addressing a disproportionately low residual credit risk exposure.** While EMIR doesn't currently provide for a differentiated treatment for FX – implying that all FX transactions could be subject to a mandatory clearing requirement, recital 12b/c affirmatively recognizes that in some classes of OTC derivatives, such as FX, the CCP clearing mandate/solution may not be the optimal solution for dealing with the predominant risk for that market, such as settlement risk. Key unintended consequences of mandating clearing for FX forwards and FX swaps include potentially undermining the efforts that have been made in addressing settlement risk to date; creating a single point of failure where none exists today; and increasing costs and risk for corporate and buy-side end-users of FX.

In addition, it is worth noting that the US Treasury has issued a Proposed Determination to exempt FX forwards and swaps from the definition of a 'swap'. The proposed determination recognises the different characteristics of FX products and the way the market functions at present. Following a study and consultation over many months the US Treasury:

- Acknowledges the **high levels of transparency and liquidity** existing in the FX markets as a result of the heavy trading on electronic platforms and the diverse availability of market pricing information.
- Points to **additional transparency through trade reporting to a trade repository**, the requirements of which are already being addressed with GFXD members.
- **Recognises the unique factors limiting risks in the FX forwards and swaps market,** pointing to the fixed terms (i.e. non-contingent outcomes), the physical exchange of currencies, the well-functioning settlement process and the shorter duration of contracts.
- **Highlights the existing strong, comprehensive and internationally coordinated oversight framework prevalent in the FX markets.**
- Notes the **complexities around introducing CCP clearing** into the FX market – specifically:
    - The large currency and capital needs that would arise if CCPs were also responsible for guaranteeing settlement given the sheer size and volume of trades in the FX (forwards and swaps) market.
    - The operational challenges and potentially disruptive effects that arise from introducing a layer of clearing between trade execution and settlement – concluding that these significantly outweigh the marginal benefits from central clearing.

In respect of the issues around guaranteeing settlement, current proposals for financial market infrastructures as issued by the BIS in conjunction with CPSS/IOSCO in March 2011[6] outline a number of key principles that need to be considered for CCPs in the FX market. The industry has been focused on these principles over the past twelve months in the context of FX Options. Notable are Principle 7 – Liquidity Risk, Principle 8 – Settlement Finality, and Principle 12 – Exchange-of-Value settlement systems. Taken as a whole, and confirmed through our conversations with key regulatory oversight groups, it is our understanding[7] that these principles require any CCP looking to clear FX products to meet fully the following requirements:

- An FX CCP will need to guarantee the full settlement of currencies of the trade[8];
- An FX CCP must be able to deliver required currency at the latest by the end of the settlement day; and
- An FX CCP must be covered against Settlement Halt Risk[9].

The FX industry has been working with regulators and CCPs and is acutely aware that to meet these requirements for the mainstream FX market a CCP would face significant challenges. This is especially true in light of the need for immediate access to sufficient liquidity in all currencies to be able to meet in full the settlement obligations of a defaulting member, and in a manner that does not put the CCP itself at significant risk during stressed market conditions. The specific settlement characteristics of the FX market make this issue significantly more acute than in other asset classes. This is a formidable challenge for which, to date, no satisfactory solution has been found.

Introducing CCPs into the FX market without ensuring that they only bear risks that they can properly manage would clearly increase, rather than decrease, potential systemic risk, especially in times of crisis.

More granular grouping of OTC derivatives within product types. With respect to "class of OTC derivatives", we support the recognition that "grouping" of swaps needs careful consideration and believe that a one size fits all approach is inappropriate for determining whether swaps should be mandatorily cleared. ESMA should have the ability to subdivide a CCP's submission for review. We firmly believe that appropriateness for mandatory clearing is likely to depend on the characteristics of each of the different underlying products. FX products are not homogenous, and the possibility of different trade features requires that each currency pair should be reviewed and separately approved. In particular, liquidity by currency pair varies significantly. We believe that clearing is only warranted for the most liquid currencies that offer a material reduction in replacement risk across the market. As CCP's launch additional products, we believe that ESMA should give each new product due and careful consideration to ensure that any mandatory clearing is warranted. Approving FX

[6] CPSS Technical Committee of the International Organization of Securities Commissions, "Principles for financial market infrastructures", Bank for International Settlement IOSCO, Consultative Report March 2011.

[7] See Global FX Division Discussion Document at http://www.afme.eu/AFME/What_We_Do/FX%20Clearing%20Settlement%20Challenges%20Discussion%20Document%201%203.pdf

[8] This applies to the vast majority of FX trades where settlement is via exchange of principal; clearly it does not apply to the small proportion of FX trades involving non-deliverable contracts, e.g. NDFs.

[9] This is the potential risk of mark to market loss on settlement day if settlement is halted intra-day and therefore not all trades settle (NB: this is different from FX settlement risk).

derivatives (e.g., FX non-deliverable forwards (NDFs)) by currency will also enable consideration of the pace of development at competing CCPs to ensure market participants have a choice of venues to ameliorate systemic risk and encourage competition.

Specific documentation / additional information requirements for CCPs to assist ESMA. To assist in ESMA's review of a class of an OTC derivative for mandatory clearing, we urge ESMA to require specific information from the CCP on the end-to-end testing conducted with its clearing members for that market. For example, in the case of FX derivatives, specific information should be required on:

(1) the scenario analyses / stress testing performed by the CCP, the default management processes for the CCP and resulting impact on the underlying liquidity in the FX Product(s) that the CCP clears or plans to clear, and the arrangements in place to address management of sovereign risk events (e.g., suspension of trading, sovereign default, unexpected bank holiday or other significant disruption to valuation, payment or settlement processes; and

(2) a description of the manner in which the CCP has provided information to the central banks of the relevant currencies on its clearing of FX Products, including but not limited to (1) above, and a summary of any views expressed by the central banks to this information.

Because the FX market is a central component of the global payment system, central banks have expressed a need to understand and evaluate the impact of clearing by CCPs, individually and collectively, on the FX market from a broad policy perspective.

5. *For a reasonable assessment by ESMA on the basis of the information provided in the notification, what period of time should historical data cover?*

   We believe that the greater the relevance of the market, the longer the period of time the historical data should cover. The more critical the market is the overall financial system and liquidity in particular, the more rigorous the assessment of mandatory clearing should be to ensure the CCPs' clearing activities for the relevant class of derivatives does not become a source of systemic risk.

6. *What are your views on the review process following a negative assessment?*

   No comment.

7. *What are your views regarding the specifications for assessing standardisation, volume and liquidity, availability of pricing information?*

   No comment.

8. *What are your views, regarding the details to be included in ESMA Register of classes of derivatives subject to the clearing obligation (Article 4b)?*

Please refer to our response to question 4 above, specifically with respect to the grouping of OTC derivatives within product types.

9. *Do you consider that the data above sufficiently identify a class of derivatives subject to the clearing obligation and the CCPs authorised or recognised to clear the classes of derivatives subject to the clearing obligation?*

   Paragraph 19 of the draft technical standards indicates that the public register will include effective date of clearing obligation, and possible phasing-in by categories of counterparties. We urge ESMA to consider the interaction of this regulatory review / determination process with the infrastructure arrangements needed to allow markets to continue to function in an orderly manner. In determining an appropriate timeframe for applying any mandatory clearing determination, ESMA should also consider how to minimise the operational risks involved in moving to cleared markets:

   - We believe that CCPs must develop a track record of safe and sound clearing processes for any given swap, group, category, type or class of swaps during the voluntary clearing phase before clearing is made mandatory. E.g., CCPs are presently rolling out different FX NDF currencies in phases. This suggests that each currency requires substantial development and end-to-end testing with the CCP's clearing firms and, thereafter, that sufficient experience with market participants with respect to each individual currency pair must be gained during a voluntary clearing phase to identify and address any operational issues.

   - Market participants will also be required to set up new cleared currencies in their internal risk management processes and must be given sufficient time between a CCP formally launching a new currency pair and a mandatory determination.

   Please also refer to our comments in response to question 4 regarding the physical settlement of FX contracts and the potential issues surrounding this for the FX market.

10. *In your view, does the above definition appropriately capture the derivative contracts that are objectively measurable as reducing risk directly related to the commercial or treasury financing activity?*

    No comment.

11. *In your views, do the above considerations allow an appropriate setting of the clearing threshold or should other criteria be considered? In particular, do you agree that the broad definition of the activity directly reducing commercial risks or treasury financing activity balances a clearing threshold set at a low level?*

    No comment.

12. *What are your views regarding the timing for the confirmation and the differentiating criteria? Is a transaction that is electronically executed, electronically processed or electronically confirmed generally able to be confirmed more quickly than one that is not?*

Current market best practice for electronic trades sets a two hour service level agreement (SLA) for the issuance of confirmation messages. The G14 market participants have been actively engaging with regulators as part of the industry supervisory commitments letter process to agree such confirmation targets across both electronically and non-electronically confirmable trades. This process has yielded continued improvements in confirmation procedures over the past few years. It also aims to increase greatly the number of products confirmed electronically and commits to several process improvements. Regulators involved in this process include the primary supervisors of the G14 banks, including the Federal Reserve Bank of New York, the French Prudential Supervisory Authority (Autorité de Contrôle Prudentiel - ACP), the German Federal Financial Supervisory Authority and the UK Financials Services Authority amongst others. These improvements to market practices should not be compromised by implementing a potentially conflicting process.

While the FX industry has developed specialized and bespoke infrastructure to support its differing underlying client bases, these systems have generally not been developed for the purposes of supporting confirmations as in certain other asset classes. Accordingly, the specification of many of the rules is more inappropriate for the FX market than for, say, credit or rates, where such infrastructure does presently exist.

As such, we believe that the proposed confirmation timelines are significantly too short and are not consistent with current market capabilities. They would have a large impact on existing processes in the administration of derivative contracts, increasing risk and impacting accuracy. For example, a typical turnaround time to confirm a SWIFT trade with a market counterparty would fall within the agreed market two-hour SLA. Paper confirms would be turned around next day at the earliest. Neither of these meets the proposed requirements in paragraph 38. Likewise where the counterparty is not a counterparty mentioned in para. 38 there is a requirement to ensure confirmation the day after execution. For FX, these would typically consist of paper confirmations with turnaround times being commensurately higher.

In addition, there are different levels of complexity attached to different FX products, particularly to options, and the confirmation periods should take these into account. For example, whilst it may be feasible to implement a shorter execution period for vanilla options e.g. same day, it would not be practical to demand that a basket option be subject to same requirements.

Accordingly, we believe that the proposed execution periods should take into account not only the method of confirmation (electronic / paper) but the complexity of the underlying transaction, including the trade type, counterparty types and locations (e.g. cross-border) and time of execution (e.g. close to close of business).

Finally, we would point out that whilst market participants have control over the generation of confirmations, execution is dependent upon both parties complying with the proposed rules. A counterparty cannot control execution by its counterparty.

As a general point, definitions used for confirmation (and indeed other terms such as affirmation or execution) need to reflect the underlying conventions that are prevalent in each different asset class as these may differ.

13. *What period of time should we consider for reporting unconfirmed OTC derivatives to the competent authorities?*

    The current industry standard for reporting unconfirmed trades is 30 days after trade date and relates to a trade count of unexecuted confirmations aged greater than 30 days. Provided that the proposed reporting requirement relates to the number of trades only and does not require any additional information relating to confirmation content or specifics then it would be appropriate to retain the 30 day threshold initially with intent to review and adjust over time. However, if more granularity around trade attributes and or other classification and criteria relating to the outstanding confirmation is required then further analysis around timelines would be required. Such analysis would need to be informed by the exact requirements and content related to the reporting requirement.

14. *In your views, is the definition of market conditions preventing marking-to market complete? How should European accounting rules be used for this purpose?*

    No comment.

15. *Do you think additional criteria for marking-to-model should be added?*

    No comment.

16. *What are your views regarding the frequency of the reconciliation? What should be the size of the portfolio for each reconciliation frequency?*

    The requirements as set out in the proposed rules are likely to be onerous and require significant investment in infrastructure. In addition, the shorter dated nature of FX portfolios may reduce the benefits to be derived from portfolio reconciliation as proposed. We believe that the approach should be cognisant of, and focus on improving, existing market practices. As an example, at present a typical bank and broker/dealer population reconciliation might occur on a weekly basis with the resolution of reconciling items often taking longer. Discrepancies with offshore clients that are located in other trading regions might take a period of days simply to communicate an issue, even longer for resolution. The standards should take these issues into account.

    We believe ESMA should also focus on leveraging existing market infrastructure for the purposes of improving reconciliation practices. As an example, major dealers currently use TriOptima to match interdealer portfolios and reconcile margin calls. Although this is designed to show differences in valuations on portfolios, it will not identify and reconcile discrepancies in trade specifics. However, provided that the swap confirmation process is itself robust, specific trade discrepancies should be avoided or identified through that process.

17. *What are your views regarding the threshold to mandate portfolio compression and the frequency for performing portfolio compression?*

We believe that foreign exchange should be excluded from the portfolio compression requirements. The benefits that accrue from compression are limited at best and given the costs to implement, are likely to be disproportionate.

The average tenor of an FX portfolio is three to six months as a result of the shorter-dated nature of the market, and around one month for option trades. Latest analysis conducted by Oliver Wyman of the BIS April 2010 survey and the JSC/FXC figures of the same period show the following maturity profile for FX forward, swap and option trades:

- Up to 7 days maturity = 64% of daily traded volumes;
- 7 days – 1 month = 14%;
- 1 month – 6 month = 18%; and
- Over 6 months = 4%

It would therefore be unusual to have two long-dated equal and offsetting trades residing on a dealer’s books. This stands in contrast to other asset classes e.g. rates and credit where tenor is generally significantly longer. Given the short tenor of these trades, their non-standardized, bilateral nature and the considerable preparation time associated with the compression process, there is minimal benefit to be gained from compression in this context as a significant number of trades would have matured by the time compression occurs.

18. *What are your views regarding the procedure counterparties shall have in place for resolving disputes?*

    No comment.

19. *Do you consider that legal settlement, third party arbitration and/or a market polling mechanism are sufficient to manage disputes?*

    No comment.

20. *What are your views regarding the thresholds to report a dispute to the competent authority?*

    No comment.

21. *In your views, what are the details of the intragroup transactions that should be included in the notifications to the competent authority?*

    No comment.

22. *In your views what details of the intragroup transactions should be included in the information to be publicly disclosed by counterparty of exempted intragroup transactions?*

    No comment.

CCP Requirements

39. *Do you believe that the elements outlined above would rightly outline the framework for managing CCPs' liquidity risk?*

    Please refer to our comments in response to question 4 in respect of the liquidity and capital requirements and risk as they relate to clearing of FX products.

Trade Reporting

69. *What is your view on the need to ensure consistency between different transaction reporting mechanisms and the best ways to address it, having in mind any specific items to be reported where particular challenges could be anticipated?*

We believe it is of paramount importance to ensure consistency between different transaction reporting mechanisms in order to eliminate potential duplicate reporting.

This should be addressed by:

- Ensuring consistency in the data fields to be required for trade reporting under EMIR and transaction reporting under MiFID.
- Failing that, providing as early sight as possible of additional requirements to assist (i) any trade repository provider that is presently building out a solution and (ii) participants required to report who may be conducting internal builds to meet other global regulatory requirements (particularly an issue for FX).
- Removing or addressing any issues regarding data protection and client confidentiality requirements that would preclude a trade repository being able to be used for transaction reporting.
- Removing any requirement for a trade repository registered under EMIR to also be registered as an Approved Reporting Mechanism (ARM) for the purposes of transaction reporting under MiFID

All trades in FX instruments within the scope of MiFID must be reported to a trade repository under EMIR. The introduction of reporting under EMIR places a significant burden on FX industry participants. The universe of participants in the FX market is significantly wider than for other asset classes given that FX forms the basis of the global payments system. This raises the practical issue of ensuring that all relevant counterparties are able to report. Additionally, there is a significantly higher proportion of FX trades as compared with other asset classes.

The MiFIR transaction reporting requirements (as currently proposed) apply to a subset of these instruments broadly classified as being traded or linked to instruments traded on an multilateral trading facility (MTF) or organised trading facility (OTF). Nonetheless, the potential duplication of reporting is likely to be significant and so we welcome efforts to ensure consistency between different transaction reporting mechanisms and, in particular, the proposals under MiFID to enable the obligation to transaction report to be fulfilled through reporting to trade repositories under EMIR, subject to certain conditions being fulfilled – principally, the ability to meet the data requirements.

Given that the data format for transaction reporting under MiFID for non-equities has not been yet been specified other than at a high level, we cannot comment on the required data fields. However, the duplicate reporting obligation highlights the need to ensure, as far as possible, that the underlying trade data that is required for EMIR and MiFID is consistent. Failing that, early sight of additional data fields will assist any TR or market participant that is presently building its solution.

As a final point, the dual reporting proposals are not entirely clear and should be clarified. We assume that one counterparty can act as an appointed reporting entity for the other counterparty. Accordingly, in the case of a trade between a major dealer and small market counterparty, the latter may appoint the dealer to report all relevant trade data on its behalf. This would be consistent with the requirements of the EMIR (article 7) regarding the reporting obligation which states that: "A counterparty or a CCP which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract."

International consistency

The theme of consistency also applies at a macro level between different jurisdictions.

Given the cross-border nature of the FX market and the likely need for participants to report to multiple jurisdictions, we believe it is in the interests of regulators and participants alike to harmonise the data requirements on a global scale. Whilst we appreciate that regulators may have specific additional data requirements, as with consistency between transaction reporting in the EU, agreed global data formats and standards for LEIs and product and trade identifiers will promote significant benefits for all users.

Where local repositories prevail, regulators will need to be able to interpret and aggregate data across a number of differently formatted outputs, which can be inefficient at best. Timely access to and interpretation of a comprehensive data set will be important in times of market crisis; this will be enhanced where regulators have access to consistent data sets if required to seek trade and position data from a number of repositories.

Harmonisation should extend to common definitions for each of the data items between regulators. This will help avoid confusion and allow for an international, standard reporting language (FPML) to be used. Otherwise participants may be required to persist and transmit two different elements for the same data field e.g. price.

70. *Are the possible fields included in the attached table, under Parties to the Contract, sufficient to accurately identify counterparties for the purposes listed above? What other fields or formats could be considered?*

We believe the fields are sufficient to identify the counterparties for the purposes listed. However, we believe that fields for 'Domicile of C/P' and 'Corporate Sector of C/P' should be removed, whilst further clarity should be provided regarding the ID of clearing member, as discussed below.

We expect that most non-bank entities will likely appoint their bank counterparty as an agent to report on their behalf. This will significantly reduce the burden on such counterparties to report trades, particularly given the breadth of participants in the FX market.

In respect of the 'Domicile of C/P' given the large number of participants in the FX market there may be a significant tail of smaller market participants that may take time to register for an LEI. Requiring such information to be identified and delivered for each trade report will add additional reporting burden for market participants. We believe that this requirement should be removed in line with the proposed fields set out in the 'IOSCO-CPSS

Report on OTC derivatives data reporting and aggregation requirements' (IOSCO-CPSS Data Reporting Requirements). We note that other jurisdictions (US and Hong Kong) are not proposing to collect this data.

Similarly, we believe the requirement for 'Corporate Sector of C/P' should be removed – or only reported if linked to the LEI. This information is not standardised in the market and will reduce the value of aggregating data by sector. We note that the IOSCO-CPSS Data Reporting Requirements do not propose collecting this data. Likewise, other jurisdictions that have published their data formats so far have not proposed to capture this.

ID of clearing member – Whilst we assume this covers the case for transactions that are cleared at a CCP, we would welcome clarity as to whether this also covers credit intermediation for prime brokerage trades.

71. *How should beneficiaries be identified for the purpose of reporting to a TR, notably in the case of long chains of beneficiaries?*

As the discussion paper notes, the identification of the beneficiaries in certain structure could prove difficult, if not impossible. This is likely to be the case for prime brokerage, block clearing and various allocation schemes. We recommend using the beneficiary information provided as part of the LEI for regular reporting.

72. *What are the main challenges and possible solutions associated to counterparty codes? Do you consider that a better identifier than a client code could be used for the purpose of identifying individuals?*

We are pleased to note that ESMA's paper recognises the importance of developing globally accepted LEI. The industry strongly supports the use of LEI for the identification of counterparties and is awaiting approval from the global regulatory community under the auspices of the FSB. In order to provide transparency and allow for monitoring of systemic risk on a global basis, it is imperative that a standard is designed for global use.

We fully support the Financial Stability Board's (FSB) current LEI process and are actively involved through the Industry Advisory Panel. While we fully recognize and support that the FSB yet has to make recommendations on a global LEI standard and its implementation, we respectfully would like to draw your attention to the efforts of a coalition of global financial services trade associations and organizations (the 'Trade Asociations') which have made the following recommendations for the LEI Solution Providers, which was originally released in July 2011:

- Standards body – The International Organization for Standardization, i.e., ISO's new standard, ISO 17442, is recommended for use as the new, authoritative legal entity identification standard.
- Core Issuing and Facilities Manager – The Depository Trust & Clearing Corporation (DTCC) and the Society for Worldwide Interbank Financial Telecommunications (SWIFT), along with DTCC's wholly-owned subsidiary AVOX Limited, are recommended as key partners to operate the core LEI utility as the central point for data collection, data maintenance, LEI assignment, and quality assurance.

- Federated Registration – ANNA, through its network of local national numbering agencies (NNAs), is recommended as a key partner in the solution for registering, validating and maintaining LEIs for issuers, obligors, and other relevant parties in their home markets. The NNAs are envisioned to serve as the "face" of the LEI Utility to those markets.

The Trade Associations believe that the LEI standard, and the issuance capability and management solution recommended by the industry can be implemented and available for use before January 2013, such that the EU and the other G20 countries can meet their G-20 commitments. We hope that this will allow ESMA to recommend the use of the global LEI standard in its final report and submission of draft technical standards to the EU Commission. If, however, the use of another code is required as an interim step, as a precautionary measure we would suggest providing for a 20 digit field identifier in the report formats to be able to accommodate the ISO LEI at a later date.

A timely approval by the regulatory community, which allows for sufficient implementation time, is one of the key challenges for the implementation of LEI.

Notwithstanding that the industry is looking to implement a solution for LEI by January 2013, the implementation presents some issues, particularly for FX given the breadth of market participants. It may take some time for all participants in the market to register, particularly smaller corporates. There is also likely to be a significant cost associated in registering all users of FX transactions. We believe that until such time as an appropriate LEI database is up and running and market participants have registered, ESMA should allow participants to use a substitute counterparty identifier. The mandatory use of the LEI should be phased in by market participant within the FX industry type to support this, for example by large financial counterparties, other financial counterparties, non-financial counterparties.

As regards natural persons, at present we are unaware of a unique identifier system for identifying such people. Given the complexities around registering natural persons, and the low proportion of trade volumes that are likely to occur, the costs of requiring unique identification may well outweigh the benefits. We would suggest that the current MiFID protocol be maintained and / or that a single LEI that is used to capture and bucket trades against that type of counterparty be used, in the absence of an individual LEI.

73. *What taxonomy and codes should be used for identifying derivatives products when reporting to TRs, particularly as regards commodities or other assets for which ISIN cannot be used? In which circumstances should baskets be flagged as such, or should their composition be identified as well and how? Is there any particular aspect to be considered as regards a possible UPI?*

With regard to taxonomies and product codes, we support ESMA's proposal to follow market developments. The GFMA Global FX Division is working closely with ISDA to develop approaches across asset classes for the industry. To the extent possible, we would urge consistency in approach and to that end would welcome early review by ESMA in order to provide feedback and guidance to support global adoption.

74. *How complex would be for counterparties to agree on a trade ID to be communicated to the TR for bilaterally executed transactions? If such a procedure is unfeasible, what would the best solution be to generate the trade ID?*

    We agree that the reporting of unique transaction identifiers is important in supporting the regulatory objectives. The operational work flows associated with communicating trade IDs for bilateral trades are complex but workable.

    There are several options for where a trade identifier might be exchanged prior to reporting:

    - At point of execution (whether bilateral, via platform or via broker)
    - At point of trade recap or affirmation
    - At point of confirmation

    Ideally, exchange of a unique transaction identifier will occur as close to point of execution as possible. However this will depend on the method of execution and confirmation routes chosen. ESMA need not be prescriptive in how the market develops protocols to exchange identifiers as this will vary both by asset class and within those asset classes as a result of the way that trades are executed and confirmed.

    This issue has particular relevance for FX given that it has by far the greatest volume of bilaterally executed trades and, given the diverse nature of the infrastructure, which is not confirmed through a central third party. This reflects the fact that the FX industry has developed specialized and bespoke infrastructure to support its differing client bases. Meeting these requirements can and should leverage existing infrastructure. A prescriptive approach risks material and unnecessary change in the way that the market functions at present.

    With that in mind, the GFMA's Market Architecture Group has been developing a proposed protocol for the exchange of trade identifiers and is in the process of discussing this with market participants. This document is available on our website at http://www.gfma.org/initiatives/foreign-exchange-(fx)/fx-market-architecture/. We'd welcome the opportunity to discuss this, and any other relevant issues, directly with ESMA should ESMA wish.

75. *Would information about fees incorporated into pricing of trades be feasible to extract, in your view?*

    At this stage, we do not believe that additional fee information should be incorporated in reporting to trade repositories.

76. *What is your view of the granularity level of the information to be requested under these fields and in particular the format as suggested in the attached table?*

    In general, the granularity of information required seems appropriate. However, we have the following specific comments:

    Whether confirmation has taken place and, if so, whether by electronic means

Definitions used for confirmation (and indeed other terms such as affirmation or execution) need to reflect the underlying conventions that are prevalent in each different asset class as these may differ.

As discussed above, because of the way the FX market has developed, the execution and confirmation infrastructure for FX is diverse. Trades are generally confirmed by three routes: (i) subject to an exceptions-based matching process within banks where confirmation messages are exchanged, (ii) subject to a manual / paper confirmation process or (iii) matched through a third party provider.

- For trades where confirmation messages are sent bilaterally via SWIFT (predominantly the interdealer market), banks conduct exceptions-based matching in house between their trade execution details and the received SWIFT confirmation.
- Manual / paper confirmation – for a subset of trades and client (either because of the complex nature of the trade or the technological capability of the counterparty) some trades are confirmed by the completion of paper or PDF confirmation details.
- Third party matching – there exist a number of third party matching services e.g. vendor affirmation platforms which are used, particularly in client trades, to affirm trade economics. Note that CLS also provides a confirmation and matching service for trades settling through its system.

As discussed under question 12, current market best practice for electronic trades sets a two hour service level agreement (SLA) for the issuance of confirmation messages. The G14 market participants have been actively engaging with regulators as part of the industry supervisory commitments letter process to agree such confirmation targets across both electronically and non-electronically confirmable trades. This process has yielded continued improvements in confirmation procedures over the past few years. It also aims to increase greatly the number of products confirmed electronically and commits to several process improvements. Regulators involved in this process include the primary supervisors of the G14 banks, including the Federal Reserve Bank of New York, the French Prudential Supervisory Authority (Autorité de Contrôle Prudentiel - ACP), the German Federal Financial Supervisory Authority and the UK Financials Services Authority amongst others.

Confirmation status at the time of trade submission will depend in part on the deadlines set for confirmation, as discussed under paragraphs 38 and 39 of the discussion document, and the deadline for reporting trades to the repository. The level 1 text refers to reporting "no later than the working day following the conclusion, modification or termination of the contract." We assume that this means that details should be reported by close of business on the following working day although further clarification would be helpful. To the extent that any changes to confirmation status occur post trade submission, these should be updated as part of the general process of reporting modifications to the contract.

Note that an individual firm's risk capture representation of a particular trade may differ to another firm's (for example, a strip may be represented as the component underlying trades or as a single trade representing the strip). Whilst the overall risk position is no different in either case, to facilitate standardised reporting, the trade should be reported in line with how market counterparties confirm those trades, as there is common, industry standard representation at the confirmation protocol level.

Whether there is an obligation to clear, whether the trade was cleared and, if cleared, when the trade was novated for clearing and by which CCP

EMIR requires CCPs to report details of its trades to the trade repository. We believe that these fields are best reported by a CCP rather than the original counterparties to the trade as CCPs will have access to all the relevant information. Note that the reporting flows being proposed for compliance with Dodd Frank would see CCPs reporting this type of information.

77. *Are the elements in the attached table appropriate in number and scope for each of these classes? Would there be any additional class-specific elements that should be considered, particularly as regards credit, equity and commodity derivatives? As regards format, comments are welcome on the possible codes listed in the table.*

As regards overall classification, we note that FX transactions are to be reported under currency derivatives. To avoid any potential confusion, it should be noted that cross currency swaps are an interest rate product and are distinct from FX swaps and should follow the requirements for reporting interest rate derivatives. Cross currency swaps are interest rate products with multi payment schedules, traded by interest rate desks with interest rate market participants; captured and managed in interest rate systems infrastructure with interest rate conventions. FX swaps are foreign exchange products, traded by distinct FX desks with different market participants using different internal and external systems infrastructure. This fact has been acknowledged under the CFTC's reporting rules and asset classifications and we would welcome the same clarity here.

In terms of the elements in the data fields, we have the following comments.

Currency of the notional

This is noted for FX as the currency to be delivered. For physically settled trades, two currencies will be delivered. If these fields are reported by only one counterparty, then we assume this relates to the currency sold on the FX contract for the reporting party whilst currency 2 (under section 2g) would relate to the remaining currency.

In the case of a non-deliverable forward, it is not clear whether this field relates to the settlement currency, noting the points around capture of fields relevant for NDF transactions set out below.

Trade ID

As with the taxonomy and UPI discussions, there are wider industry initiatives in train to identify an appropriate format that can be used. In order to reduce the reporting burden we ask that ESMA seek to align its requirements with industry proposals.

Price / rate / spread

It is not clear for FX what is intended to be captured here in addition to the exchange rate 1 and exchange rate 2 fields under section 2g.

Exchange rate 1 & 2

We believe there should only be one exchange rate capturing the dealt rate (contractual rate of exchange) for a trade.

Master agreement type and date

The requirement to report data relating to the master agreement type and date is likely to add significant burden. This is because such information may be stored on separate systems i.e. not those from which reporting of other trade attributes occurs. Mapping and enrichment of data would therefore be required and it is difficult to see the additional value to be gained from such information in comparison with the costs.

We note that the CFTC in its final rule has dropped the requirement for these types of data fields, commenting that "[a]fter considering relevant comments, the Commission has determined that it should not require master agreement reporting in its first swap data reporting final rule. As noted in the Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives released by the CFTC and SEC in April 2011, at present the terms of such agreements are not readily reportable in an electronic format, as the industry has not developed electronic fields representing terms of a master agreement.....The Commission may choose to revisit this issue at some point in the future, if and when industry and SDRs develop ways to represent the terms of such agreements electronically."

Additional reporting fields

There are a number of additional fields for NDFs that are not included such as settlement currency and valuation (fixing) date. Similarly for options this may include premium, premium currency, premium payment date, type, lockout period.

The market has developed standard FPML schema to capture the key terms of a trade and we would suggest that these be captured potentially under a requirement to report any further key economic terms of a trade.

78. *Given that daily mark-to-market valuations are required to be calculated by counterparties under [Article 6/8] of EMIR, how complex would it be to report data on exposures and how could this be made possible, particularly in the case of bilateral trades, and in which implementation timeline? Would the same arguments also apply to the reporting of collateral?*

Valuation reporting is complex and the issues around reporting have not yet been resolved. However, the industry is working towards a solution for this, particularly given the parallel requirement for reporting under Dodd Frank.

As noted in the document, reporting around collateral is also difficult. In general, collateral held against counterparties is done so across that counterparty's trades in all asset classes, rather than on a trade by trade basis. Whilst collateral valuation data can be split out by asset class by counterparty, this may be misleading to regulators and create unnecessary noise as margin requirements will be offset against exposure to a counterparty across all asset classes. These issues are reflected in the IOSCO-CPSS Data Reporting Requirements and the final CFTC reporting rules.

79. *Do you agree with this proposed approach? What are in your view the main challenges in third party reporting and the best ways to address them?*

    We agree with the proposal to allow reporting by third parties. There are various scenarios that would make this beneficial. Non financial intermediaries executing a low-volume of trades, for instance, may not have, or desire to build, the necessary infrastructure to fulfil the reporting requirements. Such participants may find the build-out costs to be prohibitive, or will prefer to avoid them. This will be particularly prevalent given the number of market participants in FX.

80. *Do you envisage any issues in providing the information/documentation as outlined above? In particular:*
    a. *what would the appropriate timeline over which ESMA should be requesting business plans (e.g. 1, 3, 5 years?)*
    b. *what would the appropriate and prudent length of time for which a TR must have sufficient financial resources enabling it to cover its operating costs (e.g. 6 months / 1 year)?*

    No comment.

81. *What is your view on these concerns and the ways proposed to address them? Would there be any other concerns to be addressed under the application for registration and tools that could be used?*

    No comment.

82. *What level of aggregation should be considered for data being disclosed to the public?*

    We agree with the proposal to disclose publicly only aggregate level data, rather than transaction or portfolio data. We fully support regulatory access to underlying transaction data for the purposes of market surveillance and systemic risk monitoring. Whilst provision of data to the public will provide some useful information, this must also be balanced by concerns about revealing too much information on market participants portfolios and positions. It is essential to preserve anonymity in the marketplace in order to protect liquidity in thinly traded areas of the market and minimise the potential for market manipulation.

    In terms of the process to be undertaken to determine the format and type of reports that should be made publicly available, we agree and would like to refer you to the ISDA response.

83. *What should the frequency of public disclosure be (weekly? monthly?); and should it vary depending on the class of derivatives or liquidity impact concerns; if yes, how?*

Again, we agree with the ISDA response in this regard.

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We appreciate the opportunity to share our views on the draft Technical Standards. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at jkemp@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp

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