Global Foreign Exchange Division
St Michael's House
1 George Yard
London
EC3V 9DH

TO:
Alberta Securities Committee
Autorité des marchés financiers
British Columbia Securities Committee
Manitoba Securities Committee
New Brunswick Securities Committee
Nova Scotia Securities Committee
Ontario Securities Committee

John Stevenson, Secretary
Ontario Securities Committee
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

4 February 2013

Re: Canadian Securities Administrators
CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to comment on behalf of its members on the consultation paper issued by the Canadian Securities Administrators (CSA, or, the Committee). 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

[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

committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators. The GFXD welcomes the opportunity to set out its views in response to your consultation paper.

****

Model Provincial Rules

The FX market presents some unique challenges for reporting when compared with other asset classes: notably the high volume of transactions and the wide universe of participants, given that FX forms the basis of the global payments system. These present practical challenges to ensuring that all relevant reporting participants are able to report and, given the cross-border nature of the FX market, ensuring that they are able efficiently to report in multiple jurisdictions.

We broadly support the proposed approach outlined in the Model Rules and, given the above, we welcome the recognition and allowances made for parties and transactions covered by the Model Rules to be reported to foreign-based trade repositories. Likewise we welcome the efforts to harmonise reporting requirements under the TR Rules with those that will apply internationally and the ability to apply for exemptions on the grounds of equivalency.

Model Provincial Rule (and Explanatory Guidance) – Derivatives: Product Determination

With respect section 2(c), we welcome the exclusion of spot transactions from the TR Rules and wish to draw your attention to the following areas relevant to the FX market:

1. *Two valid banking days.* The general market practice is for an FX spot transaction to settle within two valid *banking* days in the two currencies being exchanged in the transaction.

2. *Security conversion transactions.* We urge the CSA to consider an FX transaction that is entered into solely to effect the purchase or sale of a foreign security to be a bona fide spot transaction in situations where the settlement period for the security is greater than two days (i.e., > T+2). We note that this approach has been adopted by the CFTC and SEC in the final product definitions issued last year pursuant to the US Dodd-Frank Act.[3]

   Many of our members act as custodian for the securities of, in the case of broker-dealers, their customers and, in the case of banks, for their customers and those of their affiliated broker-dealers. Due to the increased access and investor interest in foreign markets, growing numbers of these customers are invested in foreign securities. To facilitate the purchase or sale of these foreign securities, bank custodians and broker-dealers, as part of their duties, often enter into a FX transaction that is incidental to and for the sole purpose of effecting the foreign securities transaction.

   For example, when a customer wishes to purchase a Euro-denominated security, the broker-dealer or bank custodian will enter into a corresponding FX transaction to have Euros on hand to effect the securities transaction. These FX transactions are an integral part of the settlement process. Typically, the settlement cycle for most non-US denominated securities is trade date plus three days ("T+3"). Accordingly, the bank custodian or broker-dealer would enter into a FX transaction on a T+3 basis, as well. In some securities markets, for example in South Africa, the settlement cycle can take up to seven days.

3. *Payment netting.* We urge the CSA to clarify that the well-established and long-standing practice of payment (or obligation) netting in the FX market should not be interpreted as requiring each FX spot transaction to be settled independently in order to be characterized

[3] *See* http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-18003a.pdf (pages 48256-48258).

as an "excluded derivative". According to the Basel Committee on Banking Supervision (BCBS), bilateral payment netting is "[a] form of netting where two counterparties agree (via a legally-enforceable netting agreement) to settle transactions by making or receiving a **single** payment in **each** of the currencies (i.e. each counterparty has an obligation to pay a single amount in those currencies in which it is a bilateral net seller).[4] This reduces the value at risk by replacing multiple gross obligations (that would, otherwise, be settled on a trade-by-trade basis) with one netted obligation [in each currency]". (emphasis added)[5]

For well over a decade, payment netting has been, and continues to be, encouraged by prudential regulators in the FX market as a tool for reducing the size of principal risk exposures, and is part of best practices for the market.[6] These arrangements are entirely distinguishable from agreements between two counterparties to net cash settle in a single currency, i.e., to settle one or more FX transactions by netting all obligations (in multiple currencies) to a single currency.

Model Provincial Rule – Trade Repositories and Derivatives Data Reporting

Part 3 – Data Reporting

1. Pre-existing derivatives

   We welcome the 365 day period for the backloading of live trades as at the compliance date the TR Rule comes into force and, additionally, that reporting does not apply to live trades that mature within 365 days of the TR Rule coming into force.

2. Reporting counterparty

   27(1) - We agree that derivatives dealers should have primary responsibility for reporting transactions with non-dealer counterparties. However, we would suggest that where transactions occur between dealers and between non-dealers, that such parties should not be required to agree in writing but simply to place an obligation on the parties to agree who should report. We note that this approach has been adopted under the CFTC's Part 45 reporting rules and that many participants will be adopting industry suggested protocols for determining which party should report and which depend on the type of trade and its characteristics – see for example the protocol developed for the FX industry[7].

   27(2) – We understand the need to apply the ultimate reporting obligation on a local counterparty. However, we note that certain local counterparties may find monitoring compliance difficult, and in cases where they are required to correct reporting omissions, may find this operationally challenging (if not reporting on a regular basis). We suggest that the local counterparty be given a limited time period within which to verify non-compliance

[4] See BCBS "Supervisory Guidance for managing risks associated with the settlement of foreign exchange transactions", consultative document (August 2012). http://www.bis.org/publ/bcbs229.pdf

[5] This can also be achieved by a group of counterparties in a multilateral setting, as recognized by the US Treasury in its final determination to exempt FX swaps and forwards from most requirements of the Dodd-Frank Act. *See* *http://www.gpo.gov/fdsys/pkg/FR-2012-11-20/pdf/2012-28319.pdf* (page 69704): "Applying appropriate mechanisms during the settlement process to net qualifying foreign exchange swap and forward transactions conducted by a group of parties should satisfy the limitations under the CEA because the essential elements of each of those transactions—namely, an exchange of two different currencies at a predefined, fixed rate—are left intact."

[6] See *Guidelines for Foreign Exchange Trading Activities* and *Management of Operational Risk in Foreign Exchange*, each revised in November 2010 by The Foreign Exchange Committee (FXC) and published at http://www.ny.frb.org/fxc/about.html. The FXC is an industry group that has been providing guidance and leadership to the global FX market since its founding in 1978, and includes representatives of major financial institutions engaged in foreign currency trading in the United States and is sponsored by the Federal Reserve Bank of New York.

[7] http://www.gfma.org/uploadedfiles/initiatives/foreign_exchange_(fx)/determiningreportingpartyunderdoddfrank.pdf - this protocol was developed for Dodd-Frank reporting but could equally apply for Canadian reporting amongst counterparties of the same classification.

and to report the relevant trade and suggest this be within T+2 of the trade execution, excluding any non-business days.

3. Legal entity identifiers (LEIs)

30(3) – We respectfully suggest that in such cases where a global LEI has yet to be agreed, that the Committee allow participants to utilise other existing industry identifiers, such as the BIC code, prior to utilising a repository assigned identifier. This would be consistent with other jurisdictions' approaches e.g. ESMA and HKMA and would assist in both harmonising reporting standards and reducing the costs of implementing a further set of identifiers across market participants for each trade repository that exists.

4. Unique transaction identifiers (UTIs)

31(2) – In the interests of harmonising global reporting and assisting transparency across jurisdictions, we would suggest that reporting parties be able to submit trades utilising a UTI used in reporting for other jurisdictions where one is available (and accordingly for the rule, that trade repositories may accept such a USI rather than having to assign one itself). To the extent that the Committee wishes to determine the specifications of such a UTI, we would request that this be a field of up to 42 alphanumeric digits to enable this. We note that these are the specifications that have been adopted by both the CFTC and ESMA.

5. Unique product identifiers (UPIs)

As regards UPIs we suggest that until such time as an internationally agreed UPI is introduced, the Committee should utilise existing industry work in respect of taxonomies. The FX industry has proposed a taxonomy to apply for FX transactions that would cover forwards, non deliverable forwards, non deliverable options, simple exotics and complex exotics. This has been published by ISDA, along with proposed taxonomies for the other asset classes[8]. We believe that these taxonomy fields are appropriate for foreign exchange and that it would be sensible to harmonise the taxonomy used by the Committee with other jurisdictions to enable consistent data analysis and grouping. A common reference to the taxonomy would also allow it to evolve over time in the same way for different jurisdictions.

6. Life cycle data

34 – The proposed reporting of lifecycle events is envisaged to occur on a real-time basis as the event occurs. In order to minimise the complexities of reporting for counterparties and to allow the market to develop the best approach over time, we would suggest that participants also be given the option of reporting life cycle events through an end-of-day snapshot data report. Under this approach, lifecycle events that occur during the day would be aggregated to show the final position as at the end of the day. Again, this choice of approach would be consistent with that adopted by the CFTC and enables both market participants and trade repositories some flexibility in implementation without materially affecting the value of regulatory data held at any particular point in time.

7. Valuation data

35(1) – the definition of valuation data is defined as data that reflects the current value of the transaction. We assume this to mean the latest valuation available to the reporting party and that this should apply as at the end of the business day in the local jurisdiction of the reporting counterparty. This recognises that many reporting parties will operate globally and be based in jurisdictions outside of Canada and typically value their books at the end of day in their home jurisdiction.

[8] http://www2.isda.org/identifiers-and-otc-taxonomies/

We the general comment here that it would be helpful if business day could refer to the close of business in the specific counterparty's home jurisdiction to recognise the global operating nature of the market.

Part 4 – Data dissemination and access to data

1. Data available to regulators

   37 - A number of jurisdictions place restrictions on the counterparty details that may be reported to a trade repository. Reporting participants may therefore face legal conflicts arising from local data protection and client confidentiality laws. Whilst obtaining client consent may mitigate these risks, there are likely to be cases where such consent is unable to be obtained or certain jurisdictions that impose additional restrictions on disclosure of counterparty details to foreign trade repositories.

   We believe the appropriate course is for relevant laws to be changed to allow disclosure of such details in specific circumstances to support data gathering by repositories. This provision is present in European legislation and work has been undertaken by the industry to identify other jurisdictions where conflicts may arise. Until such time as reporting abilities are harmonised we urge the Committee to recognise such conflicts and exempt reporting where local confidentiality laws prohibit such reporting. Alternatively, this may be approached by allowing reporting parties to mask certain trade details such as client names and identifiers, as was recently permitted under a recent CFTC industry no-action letter[9]. We note though that even under this approach, submitting firms may face legal and reputational risks.

2. Data available to the public

   39 – In making the principal economic terms available to the public within the time limits specified, we believe it important to ensure that not only the specific identities of the counterparties are protected but that their positions' should not be capable of being ascertained or derived on the basis of the terms disclosed. Such disclosure may hinder a counterparty's ability to hedge its position, impacting liquidity or increasing transaction costs to compensate for increased risk. Whilst the FX market does demonstrate high levels of liquidity, particularly in certain spot markets and areas of the forwards and swaps markets, this picture is not uniform across the regulated product space. Certain products, e.g. FX options, exhibit very low liquidity, and the adverse impact of sub-optimal public reporting on the ability to make reliable markets for end-users would be significant.

   We would suggest that, in addition to the proposed measures, the Committee implement a system of notional capping and rounding of trade sizes to help ensure counterparties' anonymity. We note that this issue is yet to be resolved in any jurisdiction.

Appendix A – Data fields

Use of industry standards and codes

We welcome the Committee's approach to adopting, where available, internationally agreed standards in respect of identifiers such as the LEI. We believe it is in the interests of regulators and participants alike to harmonise standards for LEIs and product and trade identifiers.

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

[9] http://cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-46.pdf

1. Operational data

   a. Master agreement type and date

      The requirement to report data relating to the master agreement type and date will add additional burden to trade reporting. Such information is generally 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 not clear the additional value to be gained from such information to be included with each trade, rather than interrogated on a case by case basis as necessary. We would request that the Committee considers potentially phasing in this requirement at a later date and respectfully note that the CFTC in its final rule has dropped the requirement for these data fields.

   b. Calculation and settlement agent fields

      These fields are not available at the time of execution and, as with master agreement fields are generally held in separate data systems. One implication of having to report settlement agent changes as a lifecycle event would imply that any change of agent may have to be reported across multiple trades for a specific client, increasing the reporting overhead considerably. It is not clear what the value of such information would be to regulators and we would suggest that such information should be removed from trade by trade reporting. Again, we respectfully note that we are not aware that other jurisdictions are requiring such information.

   c. Intragroup

      We believe that trades that settle with affiliated third parties (intra-group transactions) should be out of scope of the regulation. Inter-affiliate trades represent allocation of risk within a corporate group and do not give rise to the same systemic risk issues that are raised by trades by one corporate group with another. Many millions of trades occur daily between different affiliates of the same institution which are not relevant to that institution's external market positioning. They are a common feature of international financial markets and enable clients to deal with local entities whilst providing those firms with the ability to manage risk in a consolidated way.

      Unlike other asset classes, the FX market is characterised by a high number of both trades and participants. A reporting requirement would significantly increase ticket volumes at any trade repository significantly without increasing transparency and without giving meaningful indications about the overall FX market or the overall exposure of the relevant corporate group.

      However, should the Committee require reporting of intragroup trades then we would welcome clarification of the definition of an intragroup trade.

   d. Collateral data ('custodian data' down to, and including, 'calculating variation margin fields')

      The reporting of collateral presents an enormous challenge for the industry. Firms generally do not have a tight linkage between collateral and trading systems. Forcing a tighter integration between market risk and collateral systems on a trade by trade basis would be highly disruptive to the primary architecture of most FX front offices and would require significant change to the reporting infrastructure to provide meaningful data.

Whilst the full requirement as envisaged under the model rules is difficult, the industry as a whole is working on an alternative solution to provide details of collateral held as part of a collateral repository. Given the portfolio nature of collateral, this seeks to link individual transaction records to the portfolio of collateral held. We therefore request that these fields be removed until such time as alternative reporting can be put in place.

2. Counterparty information

   a. Registration category and registering authority

      We would welcome further clarification of what is to be reported under these fields and whether under the registration category this refers to the type of registered participant e.g. in the US a swap dealer, major swap participant etc or in Europe a financial or non-financial counterparty.

   b. Branch / desk identifier

      Again, it is not clear what is required for this field. If it is the country of domicile of each counterparty then where available we believe this should rely on relevant LEI information.

3. Principal economic terms

   a. UPI

      As discussed above, we believe that this should refer to the product taxonomy until such time as an internationally agreed UPI is available.

   b. Swaps and forwards – upfront payment

      We would welcome clarification as to whether this should refer to any upfront premium to be paid or some other information requirement.

   c. Additional asset information for currency derivatives

      We would suggest that these reference the "foreign exchange <u>far</u> leg" and foreign exchange <u>near</u> leg" as applicable. Under current reporting for swaps, our members plan to include a common link ID within the trade records for a near and far leg, in order to enable the repository to identify such a transaction.

4. Event data

   a. Submission of transaction entry timestamp

      We note that this information may not be captured across participants' trading systems and are not clear what value this information provides in addition to the execution timestamp. Accordingly, we believe the Committee should consider removing this (again, we note that this is not required in other jurisdictions as far as we are aware).

   b. Confirmation timestamp

      We note that confirmation timestamps may not be common amongst the counterparties to the trade, particularly where trades are not confirmed through a central confirmation matching system (for example, due to differing internal latency

of STP systems). We suggest that this field reflect when the trade is deemed confirmed by the Reporting Party.

Model explanatory guidance

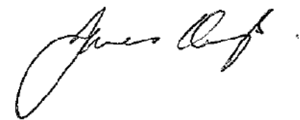
1. Definition of transaction

   2(4) - We understand that upon novation to a clearing house, two new transaction records must be created with reporting links. We assume that it is sufficient to link the UTI of a novated trade to the UTI of the original bilateral trade. Under the clearing scenario, we would be grateful for confirmation that the reporting party (and not the DCO) should retain responsibility for determining the repository to which the cleared trade is to be reported.

****

We appreciate the opportunity to share our views on this consultation paper issued by Canadian Securities Administrators. 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

Managing Director

Global Foreign Exchange Division, GFMA[10]

[10] The Global Finanical Markets Association ("GFMA") brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.