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23 January 2014

**Re: Joint Public Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives**

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 Joint Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives issued by the Securities Commission Malaysia (SC), Bank Negara Malaysia (BNM) and Perbadanan Insurans Deposit Malaysia (PIDM) (collectively the 'Regulatory Agencies') on November 20, 2013. The GFXD was formed in cooperation 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 23 global FX market participants,<sup>1</sup> collectively representing more than 90% of the FX inter-dealer market.<sup>2</sup> Both the

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<sup>1</sup> 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 Wells Fargo and Westpac.

<sup>2</sup> According to Euromoney league tables

GFXD and its members are 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 joint consultation paper.

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## **Introduction**

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 to efficiently report in multiple jurisdictions.

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.

We are supportive of the approach outlined in the joint consultation paper and provide below specific comments with respect to the requirements and your questions.

We particularly welcome your efforts to harmonise reporting requirements under the regime with those that will apply internationally.

## **Response to Proposals**

### **Range of OTC derivatives products to be reported to the trade repository**

***Please provide your comments on the proposed range of products that are subject to mandatory reporting obligation.***

In the consultation paper, we note that reference is made under paragraph 2.2 that FX spot transactions are not deemed to be an OTC derivative contract, and will thus not be reportable to a trade repository.

We would request more clarity on what is included under the definition of FX spot. Whilst FX spot is traditionally understood as either settling in the later of T+2, or the period generally accepted as the standard delivery period for that currency, we would like to draw additional reference to those transactions that are used to fund securities transactions and may settle in a time-frame greater than T+2.

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, as well as to convert dividend payments and other payments received through corporate actions of the foreign issuer into local currency, 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.

Such transactions are a critical part of the securities settlement process. If for instance a market participant entered into a foreign securities transaction that had a settlement cycle of T+3, then the bank custodian, or broker-dealer would also enter into a FX transaction on a T+3 basis too.

We are concerned that should such transactions be included within derivatives regulation, then there is a risk that market participants would be exposed to additional risks, such as operational, price,

credit and other risks. Such additional risks may lead to market participants restricting their FX security transactions to the more traditional T+2 settlement cycle, and could be exposed to additional FX risk – it is key to note that this would disrupt the long-standing and well-functioning settlement process in existence today.

To date, regulatory authorities in each of the US<sup>3</sup> and Canada<sup>4</sup> have defined transactions used solely to fund the purchase or sale of a foreign security where the settlement period is greater than T+2 days as a spot transaction and are thus outside the scope of derivatives regulation within those jurisdictions. For the purpose of derivatives regulation, we urge regulatory authorities in Malaysia to apply the same treatment to these transactions.

In order to promote further global harmonisation, we would also like to make specific reference to the ISDA Product Taxonomies<sup>5</sup>. These taxonomies assist with consistent reporting initiatives allowing a more transparent risk aggregation for regulators. We recommend that such taxonomy is used for regulatory deliverables in Malaysia. We also seek definition of the term structured products as referred to in paragraph 2.3 and guidance on how to interpret the text included in paragraph 2.3.

Finally we would like to seek clarification on the treatment of block transactions and trade allocations as these are not yet to be considered in the joint consultation paper.

***Range of OTC derivatives products to be reported to the trade repository***

***In relation to paragraph 2.4, please also provide your comments on whether the proposed reporting requirements as described in Annex 1 (including the reporting of Purpose of transaction) are appropriate given the operating model that your organisation adopts. Where relevant, please give clear reasons why specific requirements are inappropriate in the context of the operating model adopted by your organisation.***

We have commented further in this paper on the fields illustrated in Annex 1.

***Reporting entities***

***Please provide your comments on the proposed scope of reporting entities that are subject to mandatory trade reporting obligation.***

The GFXD supports regulatory trade reporting and we believe that any reporting requirements should be applied in accordance with other global regulatory obligations. Such an approach will prevent duplication of reporting, and will ensure that the global regulators are able to effect accurate risk monitoring. The GFXD would also like to support the submission made by the International Swaps and Derivatives Association, Inc (ISDA).

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.

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<sup>3</sup> See <http://www.cfc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-18003a.pdf> (pages 48256-48258).

<sup>4</sup> See Canadian Securities Administrators (CSA) CSA Staff Notice 91-302 Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting available at [http://www.bsc.bc.ca/uploadedFiles/securitieslaw/policy9/91-302\\_%5BMultilateral\\_CSA\\_Staff\\_Notice%5D.pdf](http://www.bsc.bc.ca/uploadedFiles/securitieslaw/policy9/91-302_%5BMultilateral_CSA_Staff_Notice%5D.pdf); and equivalent from the Ontario Securities Commission (OSC) at [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_rule\\_20130606\\_91-506\\_91-507\\_rfc-derivatives.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20130606_91-506_91-507_rfc-derivatives.htm).

<sup>5</sup> [http://www2.isda.org/attachment/NTQzOQ--/ISDA\\_OTC\\_Derivatives\\_Taxonomies\\_0\\_version2012-10-22.xls](http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls)

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 counterparty group.

### **Reporting entities**

***What are the operational issues, legal impediments or challenges that your organisation may face in reporting the OTC derivatives transactions originated, negotiated, arranged or booked by overseas branches? How frequent does your organisation consolidate these transactions for purposes of internal risk management monitoring?***

We would like to reference the submission made by the International Swaps and Derivatives Association, Inc (ISDA) as any scope for reporting entities will impact cross-asset and should be considered as such.

### **Reporting arrangements**

***The proposed reporting requirements do not currently contemplate allowing either one party to a transaction to report to the trade repository as an alternative to each reporting party separately reporting the transaction. This is in view of the objectives for reporting as set out in paragraphs 1.2 and 1.3, in particular the relevance of information for resolution purposes. Please provide your comments, if any, on this.***

Paragraph 4.1 makes specific reference to each party to a transaction having an obligation to report to a trade repository, understood by the GFXD to mean dual sided reporting. Dual sided reporting presents specific challenges compared to single sided reporting, many of which may result a delay in the reporting of data to the trade repository, counter to regulatory objectives.

We respectfully suggest that the Regulatory Agencies consider single sided reporting.

As the number of market participants in the FX market is greater compared to other asset classes, and that the FX market is largely proprietary in its technology, the exchange of information between parties to the transaction is reliant on either the execution method, or more likely the bilateral confirmation process. The large number of market participants compounds this problem.

One such piece of information that is fundamental to the trade reporting process is the unique trade identifier (UTI); the exchange of which enables both submissions to the trade repository to be reconciled and for the regulator to monitor the market and counterparty risk.

In the interests of harmonising global reporting requirements and assisting transparency across jurisdictions, we would suggest that where one is available, reporting parties be able to submit trades utilising a UTI that has been used in reporting for other jurisdictions. To the extent that the Regulatory Agencies wish to determine the specifications of such a UTI, we would request that this be a field of up to 42 alphanumeric digits (adopted by the CFTC) or 52 alphanumeric digits (adopted by ESMA).

In order for an effective UTI exchange to occur within the required time frame, one party will need to generate the UTI and one party will need to consume the UTI. To identify the UTI generating party, a bilateral agreement, or an industry standardised approach will need to be proposed, agreed and technically implemented.

Once the UTI generating party has been determined, then the method of UTI communication will need to be agreed and implemented with any UTI exchange occurring in good time to allow for both sides to be reported before any deadlines. Whilst such processes should be more straight-forward to implement for the more sophisticated market participants, such processes will provide significant

challenges for less sophisticated market participants, especially those that do not confirm trades electronically. For example, UTI exchange via paper-confirmation would not occur within the time-frame required to meet reporting requirements.

Whilst challenges also exist in the single sided model, we support the view that these are less onerous than those experienced in the dual sided reporting model. The number of breaks expected will be significantly less and reconciliations could be performed via the bilateral confirmation process.

An additional benefit of single sided reporting is the ability to correctly report complex and bespoke products. Such transactions are usually represented in different ways in individual firms systems; any bi-lateral matching at the trade repository likely result in breaks due to the differing booking models at each firm. Single sided reporting would avoid such a situation.

The GFXD also believes that alternative reporting regimes are helpful in assisting market participants to meet their reporting obligations, particularly given the global nature of the FX market.

Whilst the principles behind alternative reporting and the conditions for accessing such reporting seem sensible, clearly the practicalities around (i) assessing what is a substantially equivalent regime (we believe this should include reporting in jurisdictions where only single-sided reporting is required) (ii) concluding appropriate cooperation agreements and (iii) being able readily to access data from third-country trade repositories will all impact the success of alternative reporting.

Our members have always been of the view that, given the global nature of the market, internationally consistent regulations that permit participants to report once to a repository to satisfy multiple regulators is preferable on the grounds of efficiency.

**Using a reporting agent**

***Please provide your comments on the proposed scope of and conditions for the use of reporting agents.***

***What are the potential operational, organisational or legal issues that your organisation may face in appointing a third party reporting agent to assist in discharging your organisation's compliance obligations?***

***What control mechanisms would your organisation put in place (or already exists within your organisation) to meet the conditions specified in paragraph 4.6 and 4.7?***

We would like to reference the submission made by the International Swaps and Derivatives Association, Inc (ISDA).

**Data requirements and reporting frequency**

***Please provide your organisation's comments on the proposed data set provided in Annex 1 and reporting frequency for the reporting transaction-level data and collateral information. Please highlight the specific operational or data issues that your organisation may face to fully comply with the proposed reporting requirements.***

We would like to support the submission made by the International Swaps and Derivatives Association, Inc (ISDA) with respect to the data fields listed in Annex 1 - additional commentary specifically for FX is also provided at the end of this document.

The GFXD would also like to request clarity on the text in paragraph 4.16, specifically on the reconciliation of data prior to submission to the trade repository. In order to prevent duplication of operational processes, we would like to suggest that any transaction matching takes place at the trade repository, initiating with the UTI field.

We suggest that data fields are established in accordance with trade reporting obligations in other global jurisdictions. We welcome the approach to adopting, where available, internationally agreed standards in respect of identifiers such as the Unique Product Identifier (UPI). We believe it is in the interests of regulators and participants alike to harmonise standards for UPI and other common definitions.

We believe this principle of harmonisation should extend to 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.

Such an exercise to establish the required data fields for trade reporting, we believe, would be better served if addressed as a separate exercise, rather than being concluded during the rule setting process. This approach will allow for a more comprehensive study of required data fields and will enable any technological enhancements to be accurately assessed.

With respect to the frequency of reporting, the GFXD would like to suggest T+2 (instead of T + 1), and would also be grateful if the time-zone could be specified.

A T+2 trade reporting approach, especially when considering the implications of the proposed dual sided trade reporting requirements, would enable both market participants and trade repositories some flexibility in BAU - and during implementation - without materially affecting the value of regulatory data held at any particular point in time. This may be of particular benefit for less sophisticated market participants and will enable a more accurate representation of the data within the trade repository.

**Data requirements and reporting frequency**

***Given that collateral is usually posted to or received from a counterparty based on the marked-to-market value of total trades with the counterparty, one possible approach for the reporting of collateral information is to separate the collateral reporting from the reporting of PET and their individual marked-to-market value. What is your organisation's view on the proposed approach? What other alternative(s) would you suggest?***

The reporting of collateral presents an enormous challenge for the industry. The Collateral Information requested in Annex 1 will be incredibly difficult for the industry to produce and would require a significant build to start reporting collateral terms at an individual transaction level. Collateral is managed at the portfolio level, rather than the transactional level.

We therefore request that these fields be removed until such time as alternative reporting can be put in place; it should be noted that at this stage such information is not reported under any other global jurisdiction.

**Phase-in reporting**

***Please provide your views on the proposed phase-in approach for the reporting of trade to the trade repository.***

The GFXD supports a phased in approach for trade reporting and respectfully suggests that any phasing-in considers both the asset-class and the type of market participant. As we have previously mentioned, the FX market has a considerably higher number of market participants than other asset classes and technology solutions are more proprietary in nature. Trade reporting will require considerable technological builds, which invariably will mean that the less sophisticated market participants will require additional time to implement.

The GFXD would like to request clarity on the back-loading of transactions with a remaining maturity of 6 months, specifically if there are any trade actions that could result in a transaction with a maturity of less than 6 months becoming viable for trade reporting.

**Phase-in reporting**

***Please indicate whether the proposed 6-month transitional period prior to commencement of reporting would be adequate for your organisation to prepare in order to fully meet all reporting requirements. Please highlight any other issues (systems etc.) that may pose a challenge for your organisation to comply with the reporting requirements.***

The GFXD supports a transitional period prior to the commencement of reporting.

**Public disclosure**

***Statistical information such as outstanding notional OTC derivatives, monthly volume of OTC derivatives, by types of contracts and asset classes, average price levels of contracts may provide useful information to the public, whether used for general business or research purposes. What is your organisation's view on the notion of public disclosure of broad level data?***

The GFXD has strong reservations with respect to the unintended disclosure of, or the ability or positions to be derived from public reporting. The implication of public disclosure without the ability to protect the positional data or the trading strategies of the market participant is critical. Any unfair trading advantage must be avoided. We recommended a process of notional capping and rounding of trade sizes to help ensure the anonymity of counterparties and transaction details. We also strongly recommend that there is a considerable time delay between execution and when data is made available to the public.

**Public disclosure**

***Please identify any specific issues of concern that may need to be taken into account in making OTC derivatives data publicly available.***

In addition to the above comments, we would be concerned if any confidential client information, such as the identity of the parties executing a specific transaction, could be derived from any public reporting and all efforts should be taken to avoid such a situation.

**Public disclosure**

***What other specific market data would you suggest to be included for public disclosure? Please describe how such data would benefit the public or the derivatives industry.***

No comments.

**Annex 1 Proposed Data Set**

In addition to supporting the submission made by the International Swaps and Derivatives Association, Inc (ISDA), we would like to comment on the following:

*Counterparty Name/ Counterparty ID:* We would like to recommend that in accordance with other global reporting requirements that the Legal Entity Identifier (LEI) is used to identify the counterparties to a transaction.

*Transaction Reference Number:* In order to guarantee the uniqueness of the transaction we would like to recommend the use of the UTI for this field.

*Settlement Agent:* We would be grateful for clarification as to the purpose of the inclusion of this field. There are occasions where such information would not be known in time for reporting and situations where such information could change during the life of the transaction. We would recommend that such a field is removed from reporting requirements. Promoting global regulatory harmonization, we would like to add that this information is not currently being reported in other jurisdictions.

*Type of Contract/Asset Class:* We would like to recommend that the UPI could be used to identify the type of contract and Asset Class and as such we recommend that these fields be removed.

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We appreciate the opportunity to share our views on the joint consultation paper. Please do not hesitate to contact David Ngai (852-5699-9976, [dngai@gfma.org](mailto:dngai@gfma.org)) or Andrew Harvey ([aharvey@gfma.org](mailto:aharvey@gfma.org); 44-207-743-9312) should you wish to discuss any of the above.

Yours sincerely,



James Kemp

Managing Director

Global Foreign Exchange Division