TO:
European Securities and Markets Authority
103, rue de Grenelle
75007 Paris
France

1 August 2014

Re: ESMA’s Discussion/Consultation Papers on MiFID II and MiFIR

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 MiFID II/MiFIR Discussion/Consultation Papers issued by ESMA on the 22 May 2014.

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 Foreign Exchange (FX) market participants, collectively representing more than 90% of the FX inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

Introduction

The FX market is the world’s largest financial market. Effective and efficient exchange of currencies underpins the world’s entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market.

The GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation, especially for transparency and trading obligations, which we believe will be of benefit to both regulators and market participants alike.

FX transactions are often executed across jurisdictional boundaries and as such it is highly likely that each individual trade will be subject to the regulatory obligations from one or more jurisdictions. Any significant differences in the application of these regulatory obligations could ultimately cause liquidity fragmentation, as recently seen post the go live of the SEF trading rules in the US and as subsequently discussed by the International Swaps and Derivatives Association, Inc (ISDA) in their analysis on the cross-border fragmentation of the global OTC derivative market. Such regulatory differences could result in market participants making commercial decisions on where they conduct business as well as who they trade with otherwise market participants could be at risk of being non-compliant in one jurisdiction. The expected impact on the end-user being that the range of financial products available could be reduced, or that the costs of doing business could increase, both of which will impact the ability of the

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2 According to Euromoney league tables
3 http://www.financialstabilityboard.org/publications/r_140715.pdf Pages 5-7, Section 1
end-user to effectively manage their growth agendas and associated financial risks.

FX forms the basis of the global payments system and as such both the number of market participants and the volume of transactions are high with a daily notional turnover, as recently reported by the Bank of International Settlements of US$5.3 trillion/day. The high number of market participants within the global FX market presents unique challenges with respect to the implementation of regulatory obligations when compared with other asset classes, especially as the level of technical sophistication is varied.

The GFXD requests that regulators, during the level 2 discussions, consider the expected challenges with the implementation of MiFID/R and act accordingly to prevent an over-complicated regulatory environment where the costs of implementation far outweigh the expected benefits. The technical sophistication of participants in the FX market varies considerably and some of the expected future implementation challenges have manifested themselves following the go-live of trade reporting under the European Markets Infrastructure Regulation (EMIR). Of specific note:

- market participants have been unaware of their regulatory obligations
- due to the incredibly narrow time-frames in which to implement, market participants have been unable to implement technology solutions in time to ensure compliance, and
- market participants have lacked consistency in their interpretation of the regulations

Given the wide number of market participants included in the European regulations, we would expect similar outcomes following the implementation of MiFID/R.

The GFXD is also concerned with the implications on the global FX markets should the current ‘read across’ from the equity markets continue through from the level 1 text into the level 2 text. As evidenced in the recent FSB Consultative Document on FX Benchmarks the FX markets are different to the cash equity markets and have a number of unique characteristics compared to other large markets, such as:

- The foreign exchange market is primarily a quote driven market, in marked contrast to the equity market which can be characterised as an order driven market.
- In the FX market, money is traded for money, and the price is relative, whereas in the equity market, the price is an absolute price with money being exchanged for equities. Also, there is “real economy” demand in the foreign exchange market. That is, foreign exchange is traded not only as an asset in itself, but also because of underlying global trade and capital flows.
- FX is geographically dispersed and decentralised, primarily being OTC, whereas equities is primarily traded on regulated exchanges
- FX is global, operating from 5am Sydney time on a Monday morning until 5pm New York time the following Friday, whereas equity markets are country-specific with a fixed (and finite) trading day. Hence there is no equivalent concept in the foreign exchange market to the closing price in the equity market
- ...there is no single market place for foreign exchange as there is no dominant venue. Rather, prices are quoted on a number of different trading platforms

Finally, unless the GFXD has submitted a specific response for FX, the GFXD supports the submissions made by the Association for Financial Markets in Europe (AFME) and ISDA in response to ESMAs request for responses to its Discussion and Consultation Papers on MiFID II and MiFIR.

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6 https://www.bis.org/publ/rpfx13fx.pdf
7 Regulation (EU) No 648/2012
8 http://www.financialstabilityboard.org/publications/r_140715.pdf pages 5-7
Executive Summary

- **FX is a global market**
  - The FX market operates globally, on a cross jurisdictional basis, is open 24 hours a day, for 5.5 days of the week and forms the basis of the global payments system.
  - It is likely that each of the 2 participants of a transaction will reside in differing jurisdictions and that 2 or more different regulatory obligations could apply to each trade.
  - Conflicting regulatory obligations for the same trade could result in one participant being non-compliant, or be faced with a decision on whether to execute or not.
  - Efforts are underway to globally align key pieces of regulation, such as the Path-Forward agreement and the recent FSB consultation on data aggregation.
  - If regulations are not aligned, then the key concerns for FX are:
    - the publication of trading positions in one market before the other
    - the publication of client details could breach confidentiality laws
    - a trading obligation in one market but not the other
    - micro-structural (HFT) obligations in one market but not the other

- **MiFID/R ‘read across’ from the cash equity markets**
  - Each asset class has its own specific characteristics that have evolved and been shaped by regulation over time. The FX market is already highly electronic and transparent in nature, as demonstrated by the market accommodating the significant growth seen over the last 15 years:
    - Bloomberg, Reuters, NetDania, Yahoo Finance, Google Finance all offer market data and are available to all.
  - The inappropriate application of cash equity principles to the non-equity markets, rather than specific asset class requirements, is of concern - the FX market is not defined with specifically domiciled underlyers and does not execute on specifically defined venues within specified trading hours.

- **FX Financial Instruments**
  - As previous referenced by the European Commission, the GFXD considers that FX spot is not a MiFID Financial Instrument and is excluded from the obligations defined in MiFID and MiFIR.
    - we note that there is an ongoing consultation between the European Commission, ESMA and member states on FX Financial Instruments, specifically on clarifying what constitutes a FX spot transaction as well as ensuring consistent treatment of MiFID Financial Instruments across European member states.

- **Liquidity calculations**
  - The GFXD supports the view that all 4 of the parameters in the MiFIR text need to be met in order to define if a financial instrument is liquid.
  - Suspension - There needs to be an ability to manage the impacts of real-world developments on regulatory obligations. The FX market is subject to influence from geo-political/ environmental issues that could occur at any-time and could have an instantaneous impact on liquidity.

- **Size specific and transparency obligations**
  - With respect to price discovery, the GFXD considers size specific to the instrument thresholds to be more relevant to less sophisticated market participants and suggests that these are established at low notional thresholds (e.g. EUR 10,000.00).
  - Substantial delays are needed to prevent the notional of large-in-scale transactions being released to the public before trading practices e.g. hedging, can be completed. This is of considerable importance when considering trades that are also impacted by US regulations where currently caps are applied for trades over USD 250 million. Also of key importance for large transactions that are used to fund mergers and acquisitions.
**Discussion Paper**

101. Do you agree with ESMA’s proposal that for transparency purposes market operators and investment firms operating a trading venue should assume responsibility for determining to which MiFIR category the non-equity financial instruments which they intend to introduce on their trading venue belong and for providing their competent authorities and the market with this information before trading begins?

The Global Foreign Exchange Division (GFXD, its members comprise 23 global Foreign Exchange (FX) market participants, collectively representing more than 90% of the FX inter-dealer market) of the Global Financial Markets Association (GFMA) has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory transparency and trading obligations. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.

The global FX market presents unique challenges with respect to implementing global regulatory requirements, primarily due to the vast number of market participants, the global nature of the FX market place and the wide variety of execution methods. FX forms the basis of the global payments system and as such the volume of transactions is high and notified turnover, (as reported by the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013 (http://www.bis.org/publ/rpfx13fx.pdf) is US$5.3 trillion/day, with 41% of this being conducted from London.

The primary step in determining globally consistent transparency policies and globally consistent trading obligations is to define the instruments that are to be impacted by such regulation. For FX, the GFXD supports the existing International Swaps and Derivatives Association. Inc (ISDA) product taxonomies, (http://www2.isda.org/attachment/NTQzQQ-/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls). A consistent framework allows harmonization on a regional and global basis, providing consistency and certainty to market participants and allows an effective regulatory outcome. Specifically for FX, the FX table included within Annex 3.6.1 (Financial instruments taxonomy and metrics for the calculation of the liquidity criteria (average size of transaction) on page 134 of the Discussion Paper includes similar taxonomy to that included within the ISDA product taxonomy and the GFXD recommends that this should be used by trading venues and market participants alike to determine the categorization of the FX instruments they are trading. The GFXD believes that any additional changes to this categorization should be made through a consultative process with market participants, with the final approval for any changes being made by ESMA and the European National Competent Authority (NCA) community.

Whilst we agree that a trading venue, utilizing the above categorization, should take responsibility for informing the market on the instruments they intend to introduce, we would expect that either ESMA or the NCA community ensures that when an instrument is available on multiple venues that it is being consistently categorized, and validated in an independent fashion, especially given that each trading venue will be operating in a commercial capacity.

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, the GFXD would like to state that the reference to ‘cash settled forwards’ be replaced with physically (deliverable) settling FX forward transactions because cash settled forwards are non-deliverable forward transactions. A non-deliverable forward is an FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e. cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency. We also suggest that the ‘FX Swap’ product type should be broken down at the sub-product type to ‘Deliverable Swaps’ and ‘Non-Deliverable Swaps’. Finally, we would like to state, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments. Table 1 below shows a representative illustration of how Annex 3.6.1 could look for FX.
Table 1: Suggested Annex 3.6.1 for FX

<table>
<thead>
<tr>
<th>Financial Instrument</th>
<th>Product Types</th>
<th>Sub-Product Types</th>
<th>Recommended Liquidity sub-categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Exchange Derivatives</td>
<td>Futures</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Options</td>
<td>Non-Deliverable Option - NDO (only European type options are NDO - not any other FX options settled in non-deliverable currency)</td>
<td>Currency Pair</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vanilla Option (European and American)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Forwards</td>
<td>Deliverable Forward</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>NDF</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FX Swaps</td>
<td>Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Others</td>
<td>Simple exotic (Barrier &amp; Digital)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complex Exotic</td>
<td></td>
</tr>
</tbody>
</table>

102. Do you agree with the definitions listed and proposed by ESMA? If not, please provide alternatives.

For FX, the GFXD understands that the definitions proposed in relation to question 102 concerns the Structured Finance and cash Fixed Income markets.

Specifically for FX, as referenced in our response to question 101, we would like to support the definitions referenced in Annex 3.6.1 on page 134 of the Discussion Paper, themselves derived from the ISDA product taxonomies (http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls).

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, the GFXD would like to state that the reference to ‘cash settled forwards’ be replaced with physically (deliverable) settling FX forward transactions, because cash settled forwards are non-deliverable forward transactions. A non-deliverable forward is an FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e. cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency. We also suggest that the ‘FX Swap’ product type should be broken down at the sub-product type to ‘Deliverable Swaps’ and ‘Non-Deliverable Swaps’. Finally, we would like to state, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments. Table 2 below shows a representative illustration of how Annex 3.6.1 could look for FX.
Table 2: Suggested Annex 3.6.1 for FX

<table>
<thead>
<tr>
<th>Financial Instrument</th>
<th>Product Types</th>
<th>Sub-Product Types</th>
<th>Recommended Liquidity sub-categories</th>
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<tr>
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<td>Currency Pair</td>
</tr>
<tr>
<td>Options</td>
<td></td>
<td>Vanilla Option (European and American)</td>
<td>Maturity</td>
</tr>
<tr>
<td>Foreign Exchange Derivatives</td>
<td></td>
<td>Deliverable Forward</td>
<td></td>
</tr>
<tr>
<td>Forwards</td>
<td></td>
<td>NDF</td>
<td></td>
</tr>
<tr>
<td>FX Swaps</td>
<td></td>
<td>Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-Deliverable FX Swap</td>
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</tr>
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<td>Others</td>
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<td>Simple exotic (Barrier &amp; Digital)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complex Exotic</td>
<td></td>
</tr>
</tbody>
</table>

103. Do you agree with the proposed approach? If you do not agree please provide reasons for your answers. Could you provide for an alternative approach?

For FX, the GFXD partially agrees with ESMA and supports Option 3 as being the most preferable option in calculating the average frequency of transactions. We suggest that it would be preferable to calculate the ‘average frequency’ using the number of transactions over a consecutive time period, the period being of sufficient time to allow the collated data to be normalized, considering disruption events or other events that cause unusual trading patterns.

The GFXD believes that throughout its drafting of Regulatory Technical Standards, ESMA should give due consideration to the application of the various requirements to instruments traded as part of a package. By a Package Transaction we mean the following (1) the Packaged Transaction has two or more components that are priced as a package with simultaneous execution of all components and (2) the execution of each component is contingent on the execution of the other components. A package is designed to provide desired risk-return characteristics effectively in the form of a single transaction with efficiencies in execution cost and reduction in risk (market and operational) achieved through concurrent execution.

Simultaneous execution of a package with a single counterparty using a single execution method alleviates the timing and mechanical risks and lowers bid/offer costs to those of the intended risk of the package. Inappropriate application of certain requirements, particularly Pre- and Post-Trade Transparency requirements and the Derivatives Trading Obligation, will jeopardise the ability of market participants to execute the entire package (primarily because exposure of an order in one transaction gives rise to the possibility of another party unrelated to the intended package trading that component transaction).

Particular consideration should be given by ESMA to whether a sufficiently broad range of venues can adequately process Package Transactions, both in terms of the execution of such transactions and the post-trade processing, even where such venues offer trading in the component instruments on a standalone basis. To date, it has proven more complex for venues and central
counterparties to implement processing of Package Transactions compared to the processing of standalone transactions. The technical build required to support electronic execution beyond a limited range of Package Transactions, given the number of conceivable permutations of Packages, will be very challenging to market participants and venues alike, and could prove impossible for certain permutations.

The inability to execute packages will result in significantly increased costs and risks to market participants. These costs and risks arise primarily from three sources: (1) separately trading the components of a Packaged Transaction incurs the possibility of the market moving between executions of each component because such executions cannot be precisely time-matched, (2) there are likely to be differences in contract specifications, mode of execution, clearing/settlement workflows and relative liquidity when components of a Packaged Transaction are executed separately and/or on different venues, and (3) accessing different sources of liquidity for the various components when traded across different venues or over-the-counter incurs additional bid/offer spreads.

The GFXD recommends that the application of the various requirements of MiFID II / MiFIR to the trading of components as a Package Transaction should be considered separately from the application of the requirements to those same instruments when traded on a standalone basis. This is particularly important for the application of the Pre- and Post-Trade Transparency requirements, and the Derivatives Trading Obligation. Generally, we recommend that each transaction comprising a package must be considered liquid in order for the package to be subject to the transparency rules or the Derivatives Trading Obligation. The presence of illiquid instruments in the package should permit the package to benefit from waivers for Pre-Trade Transparency, Deferrals for Post-Trade Transparency, and not be subject to the Derivatives Trading Obligation.

However, for the purposes of counting frequency and volumes of transactions within the test of liquidity, we recommend that ESMA adopt a much simpler approach. Where a trade arises as part of a package, each transaction should be considered on a standalone basis. Other approaches would likely be unfeasible for ESMA; for instance, in order to consider the liquidity of Package Transactions, ESMA would have to collect data on trading in each Package permutation, which would prove technically challenging if not impossible given the number of conceivable permutations.

On the understanding that ESMA, with respect to Package Transactions gives appropriate consideration to the application of Pre- and Post-Trade Transparency obligations, and the Derivatives Trading Obligation then a simplistic assessment of transaction frequency for the purposes of assessment of liquidity of the component transactions is acceptable.

104. Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

For FX, the GFXD proposes that Option 1 would give a better representation of the average size of transactions, namely the total turnover over a period divided by the number of transactions in that period (i.e. the average turnover of transactions or AVT).

Given the unique role that FX performs as the basis of the global payments system, the market is typified as consisting of a high number of low notional transactions. We believe that Option 2 (total turnover divided by the number of trading days) would give an artificially high representation of what could constitute an average transaction size and if implemented could unintentionally classify illiquid trades as being liquid.

105. Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

For FX, the GFXD partially supports Option 2 as being the most preferable method in assessing data related to market participants and we consider number of liquidity providers on a trading venue to be a good reflection of the market’s ability to provide liquidity in a particular financial instrument. The FX market does not typically require contractual arrangements to provide liquidity, but we would suggest the number of market participants who are authorized to respond to (not request) an RFQ or voice request (thereby providing liquidity) is a good proxy. This number could easily be obtained from the venues.

106. Do you agree with the proposed approach? If you do not agree please provide reasons. Could you provide an alternative approach?

For FX, the GFXD partially agrees with the proposed ESMA approach and considers that there are certain characteristics of the FX market that should additionally be considered as these are different to some of the other derivative asset classes.
Due to the size of the FX market, the proliferation of trading venues and number of market participants, the market itself operates 24 hours a day, for 5.5 days in the week. Whilst it could be observed that the liquidity of certain currencies changes as their specific sovereign markets are open, it is generally considered that for liquid products, market participants seek an executable price at any time 24 hours/day for 5.5 days of the week.

To accommodate this, most market makers operate global risk management positions, whilst many trading venues or single dealer electronic platforms operate on a 24 hour basis. It is therefore not relevant to state for the FX market that an end-of-day bid/ask spread can be used in the calculation of liquidity as the concept of end-of-day does not exist.

The FX market primarily operates on a request-for-quote (RFQ) basis and therefore we believe that it is inappropriate to consider for the FX market the text in #27.i, page 121 of the Discussion Paper.

ESMA’s proposal fails to take into account both that liquidity at end of day may be unrepresentative of liquidity throughout the day, and that many markets do not have a defined “end of day” concept. Instead, we recommend that ESMA obtain spread data from venues that is based on repeated polling of market interests at intervals (e.g. hourly) throughout the day.

We strongly recommend that ESMA should not ignore those days where spread data is not available or incomplete. Instead, ESMA should take these into account. The total or partial absence of spread data may be a good indication that the market in a particular instrument is not liquid.

We would also agree with ESMA and suggest that consideration needs to be taken to accommodate transactional variances, such as the instrument class (e.g. FX v Equity), notional size and maturity, as these will ultimately impact the bid-ask spread.

107. Should different thresholds be applied for different (classes of) financial instruments? Please provide proposals and reasons.

For FX, the GFXD has performed additional analysis on the data collated in 2012 as part of the Financial Markets Lawyers Group (FMLG) analysis as part of The Foreign Exchange Committee and Financial Markets Lawyers Group Request for Interpretative Relief Regarding the Obligation to Provide Pre-Trade Mid-Market Quote under the CFTCs part 23 obligations. This data was based on a represented executable pricing data for select currencies (in order of market share EUR, AUD, MXN, TRY, TWD, ILS) supplied by major FX banks who participate on the FMLG based on ranking in the Bank for International Settlements (BIS) 31 CCYs compared to publicly available data published the same time on Bloomberg for the month of November 2012. Results for these currencies are illustrated in the tables below.

As a point of reference, according to the BIS Triennial Central Bank Survey Foreign exchange turnover in April 2013: preliminary global results report (http://www.bis.org/publ/rpfy13fx.pdf), the market share for the top 5 BIS currencies is: USD is (87%), EUR (33.4%), JPY (23%), GBP (11.8%) and AUD (8.6%).

In order to make the Bid-Ask spread more tangible, they have been converted into a dollar amount (per million USD of traded notional). The GFXD believes that by taking the Bid-Ask spread and converting it to a USD amount is more meaningful as this directly measures the economic impact of the Bid-Ask spreads.

Conclusions:

- **Bid-Ask Spreads** in USD terms: the dollar value of the Bid-Ask spread for the instrument, per million dollars notional and provides an indication of liquidity in the market. For instance, a 2Y ILS Forwards has a Bid-Ask of over USD 5,000, while a EUR/USD 6M forward has a Bid-Ask of less than USD 100 (50 times less). One of them is clearly very liquid, the other is not. This data is illustrated in Table 3.

- **The ratio of Bid-Ask spread to mid**, ([Ask-Bid] / ([Ask+Bid]/2): In FX, unlike some other asset classes, the relative size of the mid price compared to the Bid-Ask spread can distort the ratio and therefore provide an inaccurate representation of liquidity. This is illustrated in Table 4, we can see that by using this approach, USD/MXN appears to be more liquid than EUR/USD, due to the fact that the USD/MXN mid-point is circa 16 times larger than the EUR/USD mid, which is not reflected in the relative size of the Bid-Ask spreads. Consequently, the ratio proposed by ESMA is not a valid determination of relative liquidity in the FX market.

The GFXD recommended indicator of liquidity would therefore be to use a USD equivalent of the bid-ask.
Table 3: Results for the USD equivalent of the Bid-Ask spread, as defined in the previous section, both for forwards and options, and for 6m, 1Y and 2Y tenors.

<table>
<thead>
<tr>
<th>Tenor</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
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<tbody>
<tr>
<td>6M</td>
<td>$84</td>
<td>$99</td>
<td>$373</td>
<td>$1,432</td>
<td>$846</td>
<td>$768</td>
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<tr>
<td>1Y</td>
<td>$214</td>
<td>$328</td>
<td>$397</td>
<td>$2,479</td>
<td>$1,003</td>
<td>$1,537</td>
</tr>
<tr>
<td>2Y</td>
<td>$741</td>
<td>$1,145</td>
<td>$2,139</td>
<td>$5,063</td>
<td>$1,850</td>
<td>$5,869</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tenor</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
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<tbody>
<tr>
<td>6M</td>
<td>$1,753</td>
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<td>$3,758</td>
<td>$5,420</td>
<td>$5,316</td>
<td>$3,673</td>
</tr>
<tr>
<td>1Y</td>
<td>$2,437</td>
<td>$2,558</td>
<td>$5,180</td>
<td>$4,530</td>
<td>$7,201</td>
<td>$5,166</td>
</tr>
<tr>
<td>2Y</td>
<td>$4,610</td>
<td>$4,896</td>
<td>$12,417</td>
<td>$9,218</td>
<td>$12,638</td>
<td>$6,537</td>
</tr>
</tbody>
</table>

Table 4: the ratio of Bid-Ask spread to mid as defined in the previous section, both for forwards and options, and for 6m, 1Y and 2Y tenors.

### Ratio of Bid-Ask spread to mid of Forwards

<table>
<thead>
<tr>
<th>Tenor/Currency Pair</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>6M</td>
<td>4%</td>
<td>1%</td>
<td>2%</td>
<td>6%</td>
<td>10%</td>
<td>13%</td>
</tr>
<tr>
<td>1Y</td>
<td>5%</td>
<td>1%</td>
<td>1%</td>
<td>5%</td>
<td>7%</td>
<td>14%</td>
</tr>
<tr>
<td>2Y</td>
<td>8%</td>
<td>2%</td>
<td>3%</td>
<td>5%</td>
<td>9%</td>
<td>27%</td>
</tr>
</tbody>
</table>

### Ratio of Bid-Ask spread to mid of Options

<table>
<thead>
<tr>
<th>Tenor/Currency Pair</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>6M</td>
<td>4%</td>
<td>4%</td>
<td>7%</td>
<td>12%</td>
<td>24%</td>
<td>9%</td>
</tr>
<tr>
<td>1Y</td>
<td>3%</td>
<td>3%</td>
<td>6%</td>
<td>10%</td>
<td>21%</td>
<td>8%</td>
</tr>
<tr>
<td>2Y</td>
<td>4%</td>
<td>4%</td>
<td>8%</td>
<td>7%</td>
<td>21%</td>
<td>11%</td>
</tr>
</tbody>
</table>

109. How could the data necessary for computing the average spreads be obtained?

For FX, the GFXD proposes that data should be obtained from trading venues.

110. Do you agree with the proposed approach? If you do not agree please provide reasons for your answer. Could you provide an alternative approach?

For FX, the GFXD agrees with ESMA and that Option 1 is most relevant in helping to determine if a financial instrument is liquid and agrees that for FX all 4 factors are generally available.

111. Overall, could you think of an alternative approach on how to assess whether a market is liquid bearing in mind the various elements of the liquid market definition in MiFIR?

For FX, the GFXD does not have an alternative approach to defining liquidity.
113. Should the concept of liquid market be applied to financial instruments (IBIA) or to classes of financial instruments (COFIA)? Would be appropriate to apply IBIA for certain asset classes and COFIA to other asset classes? Please provide reasons for your answers.

Specifically for FX, rather than using either of the models, the GFXD believes that a more granular COFIA model is more relevant and would allow sufficient aggregating of transactions in-line with how the market currently trades such products. Our recommendation is that the liquidity determination should be applied at the level of sub-product, currency pair and maturity of a transaction (e.g. a 3 month EUR/USD Vanilla Option).

The GFXD also suggests that maturities should be aggregated in the following categories: less than one week; 1 week to 1 month; 1 month to 6 months; 6 months to 1 year; greater than 1 year. Table 5 illustrates the breakdown of FX instruments by tenor, demonstrating that unlike other OTC derivatives, the FX market is short-dated in nature, with only 1% of trading volume having a greater than 1 year tenor, and thus we would expect that the vast majority of liquid transactions to be short dated in nature.

Table 5: Breakdown of FX instruments and tenor (Oliver Wyman)

<table>
<thead>
<tr>
<th>Instrument</th>
<th>&lt;1wk</th>
<th>1wk – 1mn</th>
<th>1–6mn</th>
<th>6 mn – 1 yr</th>
<th>&gt;1yr</th>
<th>% of ADV</th>
</tr>
</thead>
<tbody>
<tr>
<td>FX Swaps</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
<td>80%</td>
<td>100%</td>
<td>$1.77N</td>
</tr>
<tr>
<td>Spot</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
<td>80%</td>
<td>100%</td>
<td>$1.07N</td>
</tr>
<tr>
<td>Forwards</td>
<td>20%</td>
<td>40%</td>
<td>60%</td>
<td>80%</td>
<td>100%</td>
<td>$0.47N</td>
</tr>
<tr>
<td>Options</td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$0.27N</td>
</tr>
</tbody>
</table>

114. Do you have any (alternative) proposals how to take the ‘range of market conditions and the life-cycle’ of (classes of) financial instruments into account – other than the periodic reviews described in the sections periodic review of the liquidity threshold and periodic assessment of the liquidity of the instrument class, above?

For FX, the GFXD suggests that any periodic review exercises are consistently applied across all regulatory parameters that require assessment, such as liquidity measures and large in scale thresholds. Such a consistent approach will allow for a suitable quantity of data to be collated, preferably from the trade repositories, and that the data is complete and representative in nature. In-line with the assessment of other thresholds, the GFXD agrees that an assessment every 2 years would be sufficient.

The GFXD believes that a cyclical 2 year assessment of market data collated from the trade repositories will include transactions executed over a wide range of market conditions (liquidity spikes, default events, change in currency specific trading patterns), as
well as enabling a suitable period for all market participants to improve the quality of the data they are reporting to the trade repositories.

If such an approach is adopted, then the GFXD also believes that there needs to exist mechanisms where market participants can submit requests to ESMA (or their local National Competent Authority) asking for the re-assessment of the liquidity of a specific financial instrument. It is likely that the liquidity profile of a specific currency will change during the 2 year process (for instance due to a change in trading patterns), which whilst not triggering a suspension event, could result in a requirement to re-assess the liquidity of a specific financial instrument.

The GFXD also believes that the converse should apply, and if an instrument becomes more liquid, then the same rationale should apply, and that instrument should be re-evaluated before having its liquidity categorization updated from illiquid to liquid.

We also consider that a suitable migration period should be built into the liquidity assessment process to allow additional technology builds that may be required by market participants to modify their treatment of a financial instrument. Once the liquidity-classification of an instrument has changed, then we believe this new classification should not apply to existing ‘open’ transactions, but should only be applied to new transactions entered after the re-classification.

115. Do you have any proposals on how to form homogenous and relevant classes of financial instruments? Which specifics do you consider relevant for that purpose? Please distinguish between bonds, SFPs and (different types of) derivatives and across qualitative criteria (please refer to Annex 3.6.1).

For FX, the FX table included within Annex 3.6.1 (Financial instruments taxonomy and metrics for the calculation of the liquidity criteria (average size of transaction) on page 134 of the Discussion Paper references similar taxonomy to that which is included within the ISDA product taxonomy (http://www2.isda.org/attachment/NTQzOQ-/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls) and should be used by trading venues and market participants alike to harmonize classification across the FX asset class.

As described previously, the GFXD believes that the FX asset class should be categorized to the sub-product, currency pair level and maturity (e.g. a 3 month EUR/USD Vanilla Option).

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, the GFXD would like to state that the reference to ‘cash settled forwards’ be replaced with physically (deliverable) settling FX forward transactions, because cash settled forwards are non-deliverable forward transactions. A non-deliverable forward is an FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e. cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency. We also suggest that the ‘FX Swap’ product type should be broken down at the sub-product type to ‘Deliverable Swaps’ and ‘Non-Deliverable Swaps’. Finally, we would like to state, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments. Table 6 below shows a representative illustration of how Annex 3.6.1 could look for FX.
Table 6: Suggested Annex 3.6.1 for FX

<table>
<thead>
<tr>
<th>Financial Instrument</th>
<th>Product Types</th>
<th>Sub-Product Types</th>
<th>Recommended Liquidity sub-categories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Futures</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Options</td>
<td>Non-Deliverable Option - NDO (only European type options are NDO - not any other FX options settled in non-deliverable currency)</td>
<td></td>
</tr>
<tr>
<td>Foreign Exchange Derivatives</td>
<td></td>
<td>Vanilla Option (European and American)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Forwards</td>
<td>Deliverable Forward</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>NDF</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FX Swaps</td>
<td>Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Others</td>
<td>Simple exotic (Barrier &amp; Digital)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complex Exotic</td>
<td></td>
</tr>
</tbody>
</table>

116. Do you think that, in the context of the liquidity thresholds to be calculated under MiFID II, the classification in Annex 3.6.1 is relevant? Which product types or sub-product types would you be inclined to create or merge? Please provide reasons for your answers.

For FX, the GFXD would not support any additional merging or the creation of new product/sub product types. The FX table included within Annex 3.6.1 (Financial instruments taxonomy and metrics for the calculation of the liquidity criteria (average size of transaction) on page 134 of the Discussion Paper references similar taxonomy to that which is included within the ISDA product taxonomy (http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls) and should be used by trading venues and market participants alike to harmonize classification across the FX asset class.

As described previously, the GFXD believes that the FX asset class should be categorized to the sub-product, currency pair level and maturity (e.g. a 3 month EUR/USD Vanilla Option).

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, the GFXD would like to state that the reference to ‘cash settled forwards’ be replaced with physically (deliverable) settling FX forward transactions, because cash settled forwards are non-deliverable forward transactions. A non-deliverable forward is an FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e. cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency. We also suggest that the ‘FX Swap’ product type should be broken down at the sub-product type to ‘Deliverable Swaps’ and ‘Non-Deliverable Swaps’. Finally, we would like to state, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments. Table 7 below shows a representative illustration of how Annex 3.6.1 could look for FX.
Table 7: Suggested Annex 3.6.1 for FX

<table>
<thead>
<tr>
<th>Financial Instrument</th>
<th>Product Types</th>
<th>Sub-Product Types</th>
<th>Recommended Liquidity sub-categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Futures</td>
<td>N/A</td>
<td>Non-Deliverable Option</td>
<td>Currency Pair</td>
</tr>
<tr>
<td>Options</td>
<td></td>
<td>Non-Deliverable Option - NDO (only European type options are NDO - not any other FX options settled in non-deliverable currency)</td>
<td></td>
</tr>
<tr>
<td>Foreign Exchange Derivatives</td>
<td></td>
<td>Vanilla Option (European and American)</td>
<td>Maturity</td>
</tr>
<tr>
<td>Forwards</td>
<td>Deliverable Forward</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NDF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FX Swaps</td>
<td>Deliverable FX Swap</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-Deliverable FX Swap</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>Simple exotic (Barrier &amp; Digital)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Complex Exotic</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

117. Do you agree with the proposed approach? If not, please provide rationales and alternatives.

For FX, the GFXD partially supports the proposed approach and would like to state that there needs to be a consistent application of any temporary suspension of liquidity across all NCAs in Europe and not in one jurisdiction only. FX transactions are executed across borders and any divergence in approach could lead to a bifurcated market.

As the FX market operates globally 24 hours a day, for 5.5 days of the week, and that currencies are generally more liquid when their sovereign markets are open, ESMA and National Competent Authorities also require the tools to intervene and suspend a specific financial instrument intra-day should the need arise. The FX markets are often impacted by ad-hoc disruption events (geo-political or environmental in nature) and market participants may require regulatory intervention should such an event occur.

118. Do you agree with the proposed thresholds? If not, please provide rationales and alternatives.

For FX, the GFXD requests further information on the proposed thresholds of 80% for liquid instruments and 60% for illiquid instruments. The GFXD suggests that as part of wider threshold assessments, that data is analysed, based on a 2 year cycle, to validate any thresholds. Such data should be collated to reflect the global nature of the FX market, and any thresholds should be set in collaboration with other global regulators and market participants. The GFXD has long supported a globally harmonized regulatory agenda and any regional variance from this could cause unintended consequences such as the fragmentation of liquidity to the detriment of the end-user.

We would also be concerned that for a global market such as FX, any European regional specific suspensions of a financial instrument could cause significant issues for participants within that specific area. For instance, should a product be deemed
illiquid in one specific region, market participants in that region could be shut off from accessing liquidity in that specific financial instrument, whilst other participants residing in unaffected European regions could carry on trading as before. Impacted participants would be at increased risk of default, un-hedged positions and increased financing costs.

The GFXD suggests that a mechanism exists to allow market participants to request temporary suspension of a financial instrument in conditions where a suspension threshold has not been met, but that market conditions or unintended regulatory consequences result in the unwarranted changes in the trading patterns of the market, or in increased risks occurred by market participants.

119. Do you agree with the description of request-for-quote system? If not, how would you describe a request-for-quote system? Please give reasons to support your answer.

For FX, the GFXD suggests that text should be added to the definition of a request-for-quote system to clarify that the quote provided is for the requesting party only as referenced Section 3.7 ‘Pre-trade transparency requirements for non-equity instruments’ # 10 of the Discussion Paper, page 149:

10. The requesting participant is the only counterparty to which the quote is disclosed, and the only counterparty entitled to trade against it.

Also, for clarity we would like to re-iterate that we understand the term ‘system’ with respect to this definition to be used only in the context of multi-lateral trading practices, and not those employed for bi-lateral trading.

120. Do you agree with the inclusion of request-for-stream systems in the definition of request-for-quote system? Please give reasons to support your answer.

For FX, the GFXD believes that trading protocols should not be exclusively grouped into an ESMA trading system. The ESMA trading system notations should be determined for trading protocols on a case-by-case basis based on the core characteristics. The trading venue or investment firm should declare the type of ESMA trading system notation the protocol falls under. There are a broad array of trading protocols that are appropriate for the highly heterogeneous FX market and, as such, it is inappropriate to attempt to categorise specific trading protocols.

With regards to request-for-stream systems, if the stream provided is indicative, the request-for-stream should not fall under the RFQ trading system notation. This is because, the firm is not responding to the client with quotes but indicative prices. If the firm responds to the client with quotes, which are indicated as such (for a predefined period of time), the system would fall under the request for quote system notation.

121. Do you think that – apart from request-for-stream systems – other functionalities should be included in the definition of request-for-quote system? If yes, please provide a description of this functionality and give reasons to support your answer.

For FX, the GFXD does not believe that other functionalities should be included in the definition of a request-for-quote system.

122. Do you agree with the description of voice trading system? If not, how would you describe a voice trading system?

For FX, the GFXD does not agree with the current description of a voice trading system. The current definition proposed by ESMA is: “A trading system where transactions between members are arranged through voice negotiation”.

This definition suggests that the venue can be passive in the voice negotiation. If this is the case, a telephone company or another type of telecommunications company (e.g. providing instant messaging) providing the dealers and clients with the communication systems to bilaterally trade would be classified as a voice trading venue and would need to register as an RM, MTF and OTF. This cannot be correct. The trading venue providing the voice trading system needs to take an active role in the arrangement of the trade.

Further, the term voice trading should be consistent with the current evolution of market technologies that mimic voice execution. In our view, voice trading should include hybrid execution methodologies for which there are multiple means of communication. Further, we note that in the US under Dodd-Frank, voice covers forms of electronic communication other than those involving spoken word, such as, instant messaging and email under the term “any means of interstate commerce”. We recommend ESMA to also adopt such an approach. Therefore, we recommend the following definition:
“A trading system where transactions between members are arranged actively by the operator of trading venue through voice negotiation”

123. Do you agree with the proposed table setting out different types of trading systems for non-equity instruments?

For FX, the GFXD recommends that the voice trading system text is updated to include reference to the multi-lateral nature of a voice trading system (as per our response to question 122) and that the request for quote text is updated to include reference that the quote is provided for the requesting party only (as per our response to question 119).

Also, for clarity we would like to re-iterate that we understand the term ‘system’ to be used only in the context of multi-lateral trading practices, and not those employed for bi-lateral trading.

Otherwise, the GFXD agrees with the content of the proposed table.

124. Do you think that the information to be made public for each type of trading system provides adequate transparency for each trading system?

For FX, the GFXD believes that the ESMA’s proposed transparency requirements for RFQ trading could lead to issues that adversely impact market liquidity. It is of critical importance to the wellbeing of the market that the positions of liquidity providers are not publically exposed, nor that their positions be calculated or implied. The exposure of a liquidity providers position to the market will have the following impacts: i) the provider may be unable to effectively hedge their position; ii) the costs of executing will be increased and these costs will be reflected in wider spreads to the client; iii) the provider may decide to stop offering quotes in certain instrument should they be unable to effectively manage their subsequent position.

The GFXD suggests that a suitable mechanism should be implemented to either defer the information being publically reported or to sufficiently mask the information so that global market participants are not able to calculate the positional impacts of the transaction, and we are happy to further discuss this with ESMA.

125. Besides the trading systems mentioned above, are there additional trading models that need to be considered for pre-trade transparency requirements in the non-equity market space?

For FX, the GFXD believes that the proposed table covers the multi-lateral trading venues available in the non-equity markets.

126. If you think that additional trading systems should be considered, what information do you think should be made public for each additional type of trading model?

For FX, the GFXD believes that the proposed table covers the multilateral trading venues available in the non-equity markets.

127. Based on your experience, what are the different types of voice trading systems in the market currently? What specific characteristics do these systems have?

For FX, the GFXD believes that the following are the key voice trading systems available in the non-equity markets:

- ‘Voice on voice’ trading: whereby one or more brokers speak to one or more clients or counterparties either through spoken or through email or instant messaging.
- ‘Voice on electronic’ trading: whereby the trader asks the broker to act on his/her behalf through voice means following which the broker acts on his/her behalf via non-voice electronic means.

128. How do these voice trading systems currently make information public or known to interested parties at the pre-trade stage?

For FX, the GFXD considers that in addition to other factors, trades executed via voice trading systems are normally incorporated into the market makers pricing engines to determine their bid-offer prices. These prices are then displayed as part of the wider FX prices publically available, such as those streamed to other public venues, such as Bloomberg.
129. Do you agree with ESMA’s approach in relation to the content, method and timing of pre-trade information being made available to the wider public?

For FX, the GFXD believes that the ESMA’s proposed transparency requirements for RFQ trading could lead to issues that adversely impact market liquidity. It is of critical importance to the wellbeing of the market that the positions of liquidity providers are not publically exposed, nor that their positions be calculated or implied. The exposure of a liquidity providers position to the market will have the following impacts: i) the provider may be unable to effectively hedge their position; ii) the costs of executing will be increased and these costs will be reflected in wider spreads to the client; iii) the provider may decide to stop offering quotes in certain instrument should they be unable to effectively manage their subsequent position.

The GFXD suggests that a suitable mechanism should be implemented to either defer the information being publically reported or to sufficiently mask the information so that global market participants are not able to calculate the positional impacts of the transaction, and we are happy to further discuss this with ESMA.

The global FX market is already typified as being highly transparent with a large percentage of the market executed electronically and as we state above it is critical that additional transparency requirements do not cause market disruption. Existing electronic trading channels provide market participants the ability to compare prices across various dealers as well as providing access to analytical tools, such as historic price charts and opening positions.

Table 8 illustrates the Electronic Trading splits per FX instrument type, split between multi dealer platforms and single dealer platforms. Less sophisticated market participants are also able to obtain data from non dealer platforms, such as Google Finance and Yahoo Finance, as well as from providers such as Bloomberg and Reuters. As can be seen, over 70% of the FX forward market and over 40% of the FX swap market is executed electronically, with the more complex instruments such as FX options being manually traded, primarily due to the high level of customization required by the end-user. Table 9 illustrates the significant impact such electronic trading practices have had on the global FX market, mirroring the data published in Table 8. Table 10 illustrates the numerous channels available to the market in accessing FX trade information.

Table 8: Electronic Trading uptake by FX Instrument

<table>
<thead>
<tr>
<th>Percentage of electronic trading volume per instrument type</th>
<th>Multi Dealer Platforms</th>
<th>Single Dealer Platforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spots</td>
<td>89%</td>
<td>10%</td>
</tr>
<tr>
<td>Forwards</td>
<td>72%</td>
<td>20%</td>
</tr>
<tr>
<td>FX Swaps</td>
<td>41%</td>
<td>30%</td>
</tr>
<tr>
<td>Options</td>
<td>14%</td>
<td>6%</td>
</tr>
</tbody>
</table>

The majority of the e-trading are between dealers, Customers prefer to transact over the phone.

Market volumes in 2013:
- Spots: 38%
- Forwards: 13%
- FX Swaps: 42%
- Options: 6%

Source: BIS, Greenwich Associates, Oliver Wyman analysis, GFXD estimates. Note BIS estimates of spot e-trading range from 64% to 95%. See BIS Quarterly Review, Dec 2013, page 34 footnote 10.
Table 9: Impact of Electronic Execution on Transparency for FX instruments (Oliver Wyman)

<table>
<thead>
<tr>
<th>FX Instrument type</th>
<th>Overall market share</th>
<th>Electronic order entry</th>
<th>Visible market price</th>
<th>Visible market depth</th>
<th>Order flexibility</th>
<th>Algo access</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spot</td>
<td>38%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forwards</td>
<td>13%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FX Swaps</td>
<td>42%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options</td>
<td>6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange Traded (member)</td>
<td>~2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange Traded (retail access)</td>
<td>~2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Dodd Frank and MiFID will see both FX options and NDFs move to new execution regimes – SEFS and MTFs – increasing transparency in these products.

Table 10: Publicly available sources for FX trade data (Oliver Wyman)

<table>
<thead>
<tr>
<th>Source</th>
<th>Examples</th>
<th>Products</th>
<th>Bid / ask</th>
<th>Charting</th>
<th>Trading access</th>
</tr>
</thead>
<tbody>
<tr>
<td>Web portal</td>
<td>Yahoo Finance</td>
<td>Spots</td>
<td>❌</td>
<td>✓</td>
<td>❌</td>
</tr>
<tr>
<td></td>
<td>Google Finance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data Vendor</td>
<td>Bloomberg</td>
<td>Spots</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reuters</td>
<td>Spots / FX swaps</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NetDania (free for personal use)</td>
<td>Vanilla options</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Retail aggregators</td>
<td>OANDA</td>
<td>Spots</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>FXCM (can open dummy accounts for price info)</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>SDP</td>
<td>Bank platforms</td>
<td>Spots</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>FXAll</td>
<td>Spots / FX swaps</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hotspot</td>
<td>Vanilla options</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MDP</td>
<td>EBS</td>
<td>Spots</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Reuters</td>
<td>Spots / FX swaps</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vanilla options</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

Pricing in FX market is as transparent as other asset classes, with the additional advantage of real time streaming with no delays due to instrument copyrighting, in comparison with exchanges.
The GFXD additionally believes that data which is made publically available by a trading venue should remain the property of the participants to the trade and does not automatically become the property of the trading venue, or even the public who consume the data. Apart from the participants to the trade, other organizations should not be able to gain commercial benefits from this data, for example collating and selling the transactional data to interested 3rd parties.

130. Do you agree with the above mentioned approach with regard to indicative pre-trade bid and offer prices which are close to the price of the trading interests? Please give reasons to support your answer.

The GFXD agrees with the proposed approach and believes that there needs to be a consistent, uniform approach across all trading venues, irrespective of the specific piece of regulation being implemented. As we have previously discussed, the FX market is global in nature and the market is able to transact across venues in multiple regions. We strongly suggest that any transparency obligations are globally consistent to prevent any unintended consequences with respect to data being made publically available.

Trading venues by their very nature are commercial enterprises and whilst each will have its own strategy and business model, this should not influence how the market complies with regulation.

132. Do you agree with the proposed content of post-trade public information? If not, please provide arguments and suggestions for an alternative.

For FX, the GFXD is concerned that if Table 17 (List of details of public information) on page 157 of the Discussion Paper is to be used for the FX markets, it is not immediately clear what data would be required to be populated in the fields to be reported. Using the previous example of a 3 month EUR/USD Vanilla Option, it is in not clear what should be included in the ‘the price at which that transaction was concluded’, ‘price notation’ and ‘quantity notation’. We again would draw reference for harmonization purposes to the data fields that are currently publically reported under the CFTCs part 43.

The FX market is the basis of the global payments system. The volume of transactions is therefore very high and these transactions are often executed across geographical borders. As reported by the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013 (http://www.bis.org/publ/rpf13fx.pdf) over 75% of the FX activity was executed in across 5 jurisdictions, hence the continued view from the GFXD that regulations should be harmonized on at the global level, or at a minimum across these 5 key jurisdictions. Cross border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated and transparent FX market.

Given that transparency obligations in Asia are going through their design/initial implementation phases, and that the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with respect to the publication of post trade data should at this stage be as consistent as possible between the US and Europe.

The GFXD is also cognizant that in interpreting the requirement to publish volume (notional) to mean an exact, rather than rounded or capped volume (notional) could infer that such an alignment with US regulations (CFTCs Part 43.4 (h.4) where large notional transactions above USD 250 million are capped and 43.4 (g) where notional amounts are rounded) is not fully possible under MiFIR. If this were to be the case then the GFXD would support an approach where the volume (notional) of a transaction, for those transactions exceeding the large in scale thresholds, should be deferred from any public reporting for a period of time that is long enough to enable the participant’s sufficient time to appropriately manage any associated risks – as illustrated in Table 11 below. Ideally the deferred publication regime should be based on the prevailing market conditions, as delays that are determined on the basis of the size of notional bear no meaningful relationship to the ability to execute such a trade and are arbitrary in nature. The GFXD also believes that there should exist a process to ensure that any subsequent updates to either US or European large notional transaction thresholds should be coordinated to ensure the continued well functioning of the cross-border, global FX markets.
The GFXD believes that the implications of applying 2 different transparency obligations to the same trade could result in the trade data being made publically available in one region before the other, and if the data that is made available is different in both jurisdictions, the risk is that trade data is released before the market participants are able to effectively hedge their position. For instance, if a European counterparty wanted to transact in a less liquid emerging market currency, of size (i.e. USD 1 billion v KZT) and their broker was a US Swap-Dealer, then once executed, it could transpire that the European Counterparty has to publish the full details of the trade (including volume) real-time whilst the US swap-dealer would be able to cap their (deferred) real-time publication at USD 250 million. The real-world impact to publically reporting the full notional in Europe will create considerable difficulties in hedging or covering the full 1 billion USD v KZT notional in the market.

It would be increasingly likely that the US Swap-Dealer would be less willing to enter into the transaction in the first place, and if they were to, then they would have to incur considerable costs to either hold the position on their books until they could unwind in the market, or to hedge/unwind immediately at increased costs, as the increased transparency would inform the market as to their position. Such an unintended consequence would therefore limit the ability in this instance for the European Counterparty to execute the transaction, and if that transaction was to fund a specific investment, then that investment could be at risk. On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.

133. Do you think that the current post-trade regime for shares on the systematic internaliser’s identity should be extended to non-equity instruments or that the systematic internaliser’s identity is relevant information which should be published without exception?

The GFXD strongly supports the view that the identity of the systematic internaliser (SI) should not be publically made available and we question the benefit to the market of doing so. In our response to question 132 we discussed the impacts on a global market should different regulations apply to the same trade, i.e. a trade between a US and a European person, each having different regulatory transparency requirements, the result being that transaction/positional data is published that impacts the ability of one or both participants to hedge their positions.

The GFXD understands the regulatory intent in publishing post-trade data and the wider benefits in providing more transparency to the whole market on where the market is pricing certain transactions. We do not understand the benefits of publishing the identity of the SI. Clients of a particular SI will already have transparency to the transactions that that SI has executed/quoted via the MiFIR pre-trade transparency obligations. Market participants which are not clients of that SI will not be able to enter into transactions with that SI as new accounts, know-your-client assessments and other business conduct obligations will need to be completed before a trading relationship can commence, and these will not be completed before a quote becomes stale and is updated.

The GFXD is also concerned that the publication of elements of the transaction which allows the market to calculate the specifics of the trade itself, or the positional implications to either participants to the trade, would result in unfair advantages to other market participants and would not allow sufficient time for the participants to the trade to accurately manage their positions.
without incurring increased costs or risks. The GFXD does however support the suggestion of producing aggregated quarterly data no later than one month after the end of each calendar year, as long as that aggregated data consists of multiple trades so that the notional details of an individual trade cannot be determined.

134. Is there any other information that would be relevant to the market for the above mentioned asset classes?

The GFXD does not have any further information that is relevant to add.

135. Do you agree with the proposed table of identifiers for transactions executed on non-equity instruments? Please provide reasons for your answer.

As we have previously discussed, the GFXD promotes global harmonization in regulatory obligations. We suggest that in order to promote global consistency, that some of the flags identified in Table 18 (Flags proposal) on page 159 of the Discussion Paper are more relevant to FX than others. We support the inclusion of the ‘cancellation’ flag, the ‘amendment’ flag and maybe suggest that a ‘new’ flag identifying new transactions should additionally be included. The GFXD does not support the inclusion of the other flags.

136. Do you support the use of flags to identify trades which have benefitted from the use of deferrals? Should separate flags be used for each type of deferral (e.g. large in scale deferral, size specific to the instrument deferral)? Please provide reasons for your answer.

The GFXD does not support the use of flags for deferrals. The trading time is one of the fields that is required to be published and that should be sufficient for the market to calculate if a trade is deferred.

138. Do you think that give-up/give-in trades (identified with a flag) should be included in post-trade reports or not made public? Please provide reasons for your answers.

For FX, the GFXD believes specificities inherent to a prime brokerage (PB) relationship should be taken into account when considering if trades should be reported. The industry is currently actively engaged in achieving a model suitable for prime brokers as the CFTC is again consulting on PB issues. In order to avoid the similar intricate and time-consuming process engaged by the industry in the US in order to obtain the CFTC relief, we urge the regulator to consider the prime brokerage framework when finalising the rules on post trade reporting under MiFIR.

It should be noted that PBs reporting stale pricing data to the public was a key consideration in the CFTC’s decision to issue the no action relief letter #12-53 dated December 17, 2012 (http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-53.pdf) under which PBs have no real time public reporting obligation as long as that responsibility is allocated to an Executing Broker (EB) that is registered with the CFTC. Although the CFTC no action relief letter was time limited and expired a year ago, without being renewed, we believe that market participants in the U.S. who are engaged in prime brokerage transactions continue to follow the principles laid out in the letter pending a renewal of the letter or a substantive regulation to the same effect.

We explain below the 4 main FX prime brokerage structures: traditional, reverse give up, 4-way and customer to customer (C2C).

**FXPB traditional structure**

The traditional FX prime brokerage structure allows clients of a prime broker (PB) to enter into trades on behalf of a PB (within the limits set-up by the PB) with pre-approved executing brokers (EBs) that have been notified of the applicable limits per client.

Because the trades are known by the PB only once given-up to the PB (usually by the end of the same business day NY time and following notices from both the client and the EB), the PB is not able to report the trade in a real-time fashion, but certainly on the following business day. This means that the data reported by the PB would be stale, which may undermine the price discovery objectives of the MiFIR reporting regimes.

Under this structure, the EB will however have to report the trade (as it is an investment firm).

Similar concerns with PBs reporting stale pricing data led to the CFTC granting a time limited exemption waiving the real-time reporting obligations on PBs as far as the Mirror Trade is concerned (please see our general comment below).
Also, one should take into account that simultaneously to the acceptance by the PB of a give-up trade, an offsetting trade between the PB and its client is executed, the “Mirror Trade”. The issues we see here is also that the data to be reported would be stale, because the price is the one agreed under the give-up trade, it does not reflect the market conditions at the time the Mirror Trade is entered. The result would falsely indicate the occurrence of two pricing events and incorrectly suggest the presence of more trading activity in the market than actually exist. Similar concerns with PBs reporting stale pricing data led to the CFTC granting a time limited exemption, waiving the real-time reporting obligations on PBs as far as the Mirror Trade is concerned.

Reverse Give-up FXPB agreement

A reverse give-up relationship introduces a fourth party to the prime brokerage relationship (another PB). Upon the PB client’s instruction, the first PB (PB1) will reverse gives-up part or all of a Give-up trade to the second FX Prime Broker (PB2).

Whereas the traditional FXPB structure involves 2 trades, under the RGU structure there will be either 3 or 4 (in case of partial allocation) trades, as follows:

1. PB1 vs EB (Give-up trade)
2. PB1 vs PB2 (Give-in trade)
3. PB1 vs PB client – in case of partial allocation only (Mirror trade)
4. PB2 vs PB client (Mirror trade)

Comments on trades 1 and 3 are the same as under the traditional PB structure. Trades 2 and 4 will be executed only once the PB client notified PB1 of its intention of allocating the trade to another PB and after the trade 1 is given-up, so once they could be reported their price would be stale.
Four Way FXPB agreement

Under a Four Way agreement a PB client of PB1 enters into a trade directly with a PB client of PB2, and they both give-up the trade to their respective PB.

In this structure the Give-up trade cannot be real-time reported if none of the PB clients are investment firms. As to the PBs, they will be in a position to report the trade only once they receive the notification of the trade from their respective client (timing to be agreed under their respective PB agreement) and after having checked against each other that the notices match. This process will therefore imply a reporting of data that are stale.

Customer to Customer FXPB agreement

Under a customer to customer agreement two clients of the same PB enter directly into a trade, and then give-up the trade to the PB. Similarly to the Four Way agreement there are three trades involved: the Give-up trade and two Mirror trades.

140. Do you agree that for the initial application of the new transparency regime the information should be made public within five minutes after the relevant non-equity transaction? Please provide reasons for your answer.

The GFXD believes that it would be more suitable to state that information should be made public as soon as technically possible, rather than specifically within 5 minutes after execution. As FX forms the basis of the global payments system, the number of participants within the FX market is significant; it is inevitable that there will be varying levels of technical sophistication within that population. It is inevitable that there will be ad-hoc technical issues that cause some participants to report after 5 minutes.

141. Do you agree with the proposed text or would you propose an alternative option? Please provide reasons for your answer.

For FX, the GFXD would like to propose a modified version of ESMA’s proposal which is reflected in Table 12 below. The key changes we would like to suggest are:
• Liquid trades above large-in-scale should be treated similarly to illiquid trades. When determining whether a particular product is liquid for the trading obligation, MiFIR recognizes that products may only be liquid up to a certain size. Similarly liquid trades above large-in-scale are treated similarly to illiquid trades in the pre-trade transparency regime as well (i.e. they are exempt). We would propose ESMA maintains this concept for post-trade transparency as well.

• There should not be a concept of end-of-day. As discussed previously, FX is a global 24 hour * 5.5 days/week market which does not have a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behavior if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET. We would propose, for illiquid trades (including liquid above LIS), that the deferral period be 48 hours after the trade occurred. That will ensure that the time a trade is conducted does not impact its reporting timeline, and, if sufficient masking is in place, allow enough time for liquidity providers to begin to risk manage their illiquid position.

• Under MiFIR Article 11(3) (b), ESMA has been delegated to determine what the extended period of deferral should be interpreted as. For illiquid trades (including liquid above large in scale), we would propose that the actual size not reported for an extended period of deferral (e.g. 18 months). We believe that this proposal is in-line with the Level 1 text. The reasons for this are as follows:

  o Consistency with global regulation: Given the cross-border function of FX in its role of underpinning the global payments system and the high volume and value of transactions occurring on a highly frequent basis, the GFXD’s continued view is that any regulation should be harmonized at a global level where possible under the Level 1 requirements. Cross-border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated, transparent FX market. As transparency obligations in Asia are going through their initial design phases and the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with respect to the publication of post trade data should at this stage be consistent, where possible, between the US and Europe.

  o The implications of applying 2 different transparency obligations to the same trade could result in the trade data being made publically available in one region before the other and the contents inconsistent, This could lead to regulatory arbitrage and increased difficulty for market participants to hedge illiquid or large positions. For instance, if a European counterparty wanted to transact in a less liquid emerging market currency, of size (i.e. USD 1 billion v KZT) and their broker was a US Swap-Dealer, then once executed, it could transpire that the European Counterparty has to publish the full details of the trade (including volume) real-time, whilst the US swap-dealer would be able to cap their (deferred) real-time publication at USD 250 million. The real-world impact to publically reporting the full notional in Europe will create considerable difficulties in hedging or covering the full 1 billion USD v KZT notional in the market.

  o It would be increasingly likely that the US Swap-Dealer would be less willing to enter into the transaction in the first place, and if they were to, then they would have to incur increased risk and considerable costs to either hold the position on their books until they could unwind in the market or hedge immediately, as the increased transparency would inform the market as to their position. Such an unintended consequence would therefore limit the ability in this instance for the European Counterparty to execute the transaction, and if that transaction was to fund a specific investment, then that investment could be at risk.

  o On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.

  o Information relating to mergers and acquisitions: The process and execution of funding a cross-border merger or acquisition and the impact of the market having sight of the large orders or trades that are executed to facilitate and hedge deals should be considered. Given that deals can take multiple months and sometimes years to conclude, are contingent on particular terms being met through the lifecycle, it is important that any information relating to deals is kept to a minimum to prevent any chance of ‘front-running’. Size of FX orders or trades executed to hedge being published may lead to the market being able to infer the potential for, or near conclusion of, a merger or acquisition.
- TRACE Reporting: Similar deferrals of size publication are already in existence under the Financial Industry Regulatory Authority’s (FINRA) Trade Reporting and Compliance Engine (TRACE) in the US, where the publication of the actual size for large in scale trades is deferred up to 18 months from trade date.

Table 12: Proposed Deferral Periods for FX

<table>
<thead>
<tr>
<th>Size of Transaction</th>
<th>Deferral Period (if Authorised by CA)</th>
<th>Details Published During Deferral Period</th>
<th>Details Published After Deferral Period if requested by the Competent Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size below large-in-scale and size-specific thresholds</td>
<td>None</td>
<td>Publication of all details within 15 minutes</td>
<td>N/A</td>
</tr>
<tr>
<td>Size below large-in-scale but above size-specific thresholds</td>
<td>60 minutes</td>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 60 minutes</td>
<td>All details to be published after the deferral period is over</td>
</tr>
<tr>
<td>Liquid instruments above large-in-scale threshold *</td>
<td>120 minutes With 18 months volume omission</td>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
<td>Actual volume made public after 18 months</td>
</tr>
<tr>
<td>All products without a liquid market</td>
<td>48 hours With 18 months volume omission</td>
<td>All details to be published after 48 hours minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
<td>Actual size made public after 18 months</td>
</tr>
</tbody>
</table>

Finally, we would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe.

142. Do you agree that the intra-day deferral periods should range between 60 minutes and 120 minutes?

For FX, the GFXD would like to propose a modified version of ESMA’s proposal which is reflected in Table 13 below. The key changes we would like to suggest are:

- Liquid trades above large-in-scale should be treated similarly to illiquid trades. When determining whether a particular product is liquid for the trading obligation, MiFIR recognizes that products may only be liquid up to a certain size. Similarly liquid trades above large-in-scale are treated similarly to illiquid trades in the pre-trade transparency regime as well (i.e. they are exempt). We would propose ESMA maintains this concept for post-trade transparency as well.

- There should not be a concept of end-of-day. As discussed previously, FX is a global 24 hour * 5.5 days/week market which does not have a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behavior if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET. We would propose, for illiquid trades (including liquid above LIS), that the deferral period be 48 hours after the trade occurred. That will ensure that the time a trade is conducted does not impact its reporting timeline, and, if sufficient masking is in place, allow enough time for liquidity providers to begin to risk manage their illiquid position.

- Under MiFIR Article 11(3) (b), ESMA has been delegated to determine what the extended period of deferral should be interpreted as. For illiquid trades (including liquid above large in scale), we would propose that the actual size not reported for an extended period of deferral (e.g. 18 months). We believe that this proposal is in-line with the Level 1 text. The reasons for this are as follows:
  - Consistency with global regulation: Given the cross-border function of FX in its role of underpinning the global payments system and the high volume and value of transactions occurring on a highly frequent basis, the GFXD’s continued view is that any regulation should be harmonized at a global level where possible under the Level 1 requirements. Cross-border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is an unwanted fragmentation of what is an already highly automated, transparent FX market. As transparency obligations in Asia are going through their initial design phases and the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with
respect to the publication of post trade data should at this stage be consistent, where possible, between the US and Europe.

- The implications of applying 2 different transparency obligations to the same trade could result in the trade data being made publicly available in one region before the other and the contents inconsistent. This could lead to regulatory arbitrage and increased difficulty for market participants to hedge illiquid or large positions. For instance, if a European counterparty wanted to transact in a less liquid emerging market currency, of size (i.e. USD 1 billion v KZT) and their broker was a US Swap-Dealer, then once executed, it could transpire that the European Counterparty has to publish the full details of the trade (including volume) real-time, whilst the US swap-dealer would be able to cap their (deferred) real-time publication at USD 250 million. The real-world impact to publically reporting the full notional in Europe will create considerable difficulties in hedging or covering the full 1 billion USD v KZT notional in the market.

- It would be increasingly likely that the US Swap-Dealer would be less willing to enter into the transaction in the first place, and if they were to, then they would have to incur increased risk and considerable costs to either hold the position on their books until they could unwind in the market or hedge immediately, as the increased transparency would inform the market as to their position. Such an unintended consequence would therefore limit the ability of the European Counterparty to execute the transaction, and if that transaction was to fund a specific investment, then that investment could be at risk.

- On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.

- Information relating to mergers and acquisitions: The process and execution of funding a cross-border merger or acquisition and the impact of the market having sight of the large orders or trades that are executed to facilitate and hedge deals should be considered. Given that deals can take multiple months and sometimes years to conclude, are contingent on particular terms being met through the lifecycle, it is important that any information relating to deals is kept to a minimum to prevent any chance of ‘front-running’. Size of FX orders or trades executed to hedge being published may lead to the market being able to infer the potential for, or near conclusion of, a merger or acquisition.

- TRACE Reporting: Similar deferrals of size publication are already in existence under the Financial Industry Regulatory Authority’s (FINRA) Trade Reporting and Compliance Engine (TRACE) in the US, where the publication of the actual size for large in scale trades is deferred up to 18 months from trade date.

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<th>Details Published After Deferral Period if requested by the Competent Authority</th>
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<tbody>
<tr>
<td>Non-equity instruments assessed as having a liquid market</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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Finally, we would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe.

143. Do you agree that the maximum deferral period, reserved for the largest transactions, should not exceed end of day or, for transactions executed after 15.00, the opening of the following trading day? If not, could you provide alternative proposals? Please provide reasons for your answer.

For FX, the GFXD would like to propose a modified version of ESMA’s proposal which is reflected in Table 14 below. The key changes we would like to suggest are:

- Liquid trades above large-in-scale should be treated similarly to illiquid trades. When determining whether a particular product is liquid for the trading obligation, MiFIR recognizes that products may only be liquid up to a certain size. Similarly liquid trades above large-in-scale are treated similarly to illiquid trades in the pre-trade transparency regime as well (i.e. they are exempt). We would propose ESMA maintains this concept for post-trade transparency as well.

- There should not be a concept of end-of-day. As discussed previously, FX is a global 24 hour * 5.5 days/week market which does not have a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behavior if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET. We would propose, for illiquid trades (including liquid above LIS), that the deferral period be 48 hours after the trade occurred. That will ensure that the time a trade is conducted does not impact its reporting timeline, and, if sufficient masking is in place, allow enough time for liquidity providers to begin to risk manage their illiquid position.

- Under MiFIR Article 11(3) (b), ESMA has been delegated to determine what the extended period of deferral should be interpreted as. For illiquid trades (including liquid above large in scale), we would propose that the actual size not reported for an extended period of deferral (e.g. 18 months). We believe that this proposal is in-line with the Level 1 text. The reasons for this are as follows:

  - Consistency with global regulation: Given the cross-border function of FX in its role of underpinning the global payments system and the high volume and value of transactions occurring on a highly frequent basis, the GFXD’s continued view is that any regulation should be harmonized at a global level where possible under the Level 1 requirements. Cross-border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated, transparent FX market. As transparency obligations in Asia are going through their initial design phases and the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with respect to the publication of post trade data should at this stage be consistent, where possible, between the US and Europe.

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o On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.

o Information relating to mergers and acquisitions: The process and execution of funding a cross-border merger or acquisition and the impact of the market having sight of the large orders or trades that are executed to facilitate and hedge deals should be considered. Given that deals can take multiple months and sometimes years to conclude, are contingent on particular terms being met through the lifecycle, it is important that any information relating to deals is kept to a minimum to prevent any chance of ‘front-running’. Size of FX orders or trades executed to hedge being published may lead to the market being able to infer the potential for, or near conclusion of, a merger or acquisition.

o TRACE Reporting: Similar deferrals of size publication are already in existence under the Financial Industry Regulatory Authority’s (FINRA) Trade Reporting and Compliance Engine (TRACE) in the US, where the publication of the actual size for large in scale trades is deferred up to 18 months from trade date.

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<th>Deferral Period (if Authorised by CA)</th>
<th>Details Published During Deferral Period</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Non-equity instruments assessed as having a liquid market</td>
<td>None</td>
<td>Publication of all details within 15 minutes</td>
<td>N/A</td>
</tr>
<tr>
<td>Size below large-in-scale and size-specific thresholds</td>
<td>60 minutes</td>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 60 minutes</td>
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<tr>
<td>Size below large-in-scale but above size-specific thresholds</td>
<td>120 minutes With 18 months volume omission</td>
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<td>All details except volume to be published after the deferral period is over Actual volume made public after 18 months</td>
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<tr>
<td>Liquid instruments above large-in-scale threshold *</td>
<td>48 hours With 18 months volume omission</td>
<td>All details to be published after 48 hours minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
<td>All details except volume to be published after the deferral period is over Actual size made public after 18 months</td>
</tr>
<tr>
<td>Non-equity instruments assessed as having an illiquid market</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All products without a liquid market</td>
<td>48 hours With 18 months volume omission</td>
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</table>

Finally, we would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe.

144. Do you consider there are reasons for applying different deferral periods to different asset classes, e.g. fixing specific deferral periods for sovereign bonds? Please provide arguments to support your answer.

For FX, the GFXD believes that differing deferrals could be applied for different asset classes. Each asset class has its own characteristics with respect to market conditions, liquidity profiles and trading patterns. Additionally, the GFXD would like to propose a modified version of ESMA’s proposal which is reflected in Table 15 below. The key changes we would like to suggest are:

- Liquid trades above large-in-scale should be treated similarly to illiquid trades. When determining whether a particular product is liquid for the trading obligation, MiFIR recognizes that products may only be liquid up to a certain size. Similarly liquid trades above large-in-scale are treated similarly to illiquid trades in the pre-trade transparency regime as well (i.e. they are exempt). We would propose ESMA maintains this concept for post-trade transparency as well.

- There should not be a concept of end-of-day. As discussed previously, FX is a global 24 hour * 5.5 days/week market which does not have a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behavior if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET. We would propose, for illiquid trades (including liquid above LIS), that the deferral period be 48 hours after the trade occurred. That
will ensure that the time a trade is conducted does not impact its reporting timeline, and, if sufficient masking is in place, allow enough time for liquidity providers to begin to risk manage their illiquid position.

- Under MiFIR Article 11(3) (b), ESMA has been delegated to determine what the extended period of deferral should be interpreted as. For illiquid trades (including liquid above large in scale), we would propose that the actual size not reported for an extended period of deferral (e.g. 18 months). We believe that this proposal is in-line with the Level 1 text. The reasons for this are as follows:

  o Consistency with global regulation: Given the cross-border function of FX in its role of underpinning the global payments system and the high volume and value of transactions occurring on a highly frequent basis, the GFXD’s continued view is that any regulation should be harmonized at a global level where possible under the Level 1 requirements. Cross-border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated, transparent FX market. As transparency obligations in Asia are going through their initial design phases and the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with respect to the publication of post trade data should at this stage be consistent, where possible, between the US and Europe.

  o The implications of applying 2 different transparency obligations to the same trade could result in the trade data being made publically available in one region before the other and the contents inconsistent. This could lead to regulatory arbitrage and increased difficulty for market participants to hedge illiquid or large positions. For instance, if a European counterparty wanted to transact in a less liquid emerging market currency, of size (i.e. USD 1 billion v KZT) and their broker was a US Swap-Dealer, then once executed, it could transpire that the European Counterparty has to publish the full details of the trade (including volume) real-time, whilst the US swap-dealer would be able to cap their (deferred) real-time publication at USD 250 million. The real-world impact to publically reporting the full notional in Europe will create considerable difficulties in hedging or covering the full 1 billion USD v KZT notional in the market.

  o It would be increasingly likely that the US Swap-Dealer would be less willing to enter into the transaction in the first place, and if they were to, then they would have to incur increased risk and considerable costs to either hold the position on their books until they could unwind in the market or hedge immediately, as the increased transparency would inform the market as to their position. Such an unintended consequence would therefore limit the ability in this instance for the European Counterparty to execute the transaction, and if that transaction was to fund a specific investment, then that investment could be at risk.

  o On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.

  o Information relating to mergers and acquisitions: The process and execution of funding a cross-border merger or acquisition and the impact of the market having sight of the large orders or trades that are executed to facilitate and hedge deals should be considered. Given that deals can take multiple months and sometimes years to conclude, are contingent on particular terms being met through the lifecycle, it is important that any information relating to deals is kept to a minimum to prevent any chance of 'front-running'. Size of FX orders or trades executed to hedge being published may lead to the market being able to infer the potential for, or near conclusion of, a merger or acquisition.

  o TRACE Reporting: Similar deferrals of size publication are already in existence under the Financial Industry Regulatory Authority’s (FINRA) Trade Reporting and Compliance Engine (TRACE) in the US, where the publication of the actual size for large in scale trades is deferred up to 18 months from trade date.
Table 15: Proposed Deferral Periods for FX

<table>
<thead>
<tr>
<th>Size of Transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-equity instruments assessed as having a liquid market</td>
</tr>
<tr>
<td>Size below large-in-scale but above size-specific thresholds</td>
</tr>
<tr>
<td>60 minutes</td>
</tr>
<tr>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 60 minutes</td>
</tr>
<tr>
<td>All details except volume to be published after the deferral period is over</td>
</tr>
<tr>
<td>Liquid instruments above large-in-scale threshold *</td>
</tr>
<tr>
<td>120 minutes With 18 months volume omission</td>
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</tr>
<tr>
<td>All details except volume to be published after the deferral period is over</td>
</tr>
<tr>
<td>Actual volume made public after 18 months</td>
</tr>
<tr>
<td>Non-equity instruments assessed as having an illiquid market</td>
</tr>
<tr>
<td>All products without a liquid market</td>
</tr>
<tr>
<td>48 hours With 18 months volume omission</td>
</tr>
<tr>
<td>All details to be published after 48 hours minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
</tr>
<tr>
<td>All details except volume to be published after the deferral period is over</td>
</tr>
<tr>
<td>Actual size made public after 18 months</td>
</tr>
</tbody>
</table>

Finally, we would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe.

145. Do you support the proposal that the deferral for non-equity instruments which do not have a liquid market should be until the end of day + 1? Please provide reasons for your answer.

For FX, the GFXD would like to propose a modified version of ESMA’s proposal which is reflected in Table 16 below. The key changes we would like to suggest are:

- Liquid trades above large-in-scale should be treated similarly to illiquid trades. When determining whether a particular product is liquid for the trading obligation, MiFIR recognizes that products may only be liquid up to a certain size. Similarly liquid trades above large-in-scale are treated similarly to illiquid trades in the pre-trade transparency regime as well (i.e. they are exempt). We would propose ESMA maintains this concept for post-trade transparency as well.

- There should not be a concept of end-of-day. As discussed previously, FX is a global 24 hour * 5.5 days/week market which does not have a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behavior if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET. We would propose, for illiquid trades (including liquid above LIS), that the deferral period be 48 hours after the trade occurred. That will ensure that the time a trade is conducted does not impact its reporting timeline, and, if sufficient masking is in place, allow enough time for liquidity providers to begin to risk manage their illiquid position.

- Under MiFIR Article 11(3) (b), ESMA has been delegated to determine what the extended period of deferral should be interpreted as. For illiquid trades (including liquid above large in scale), we would propose that the actual size not reported for an extended period of deferral (e.g. 18 months). We believe that this proposal is in-line with the Level 1 text. The reasons for this are as follows:

  - Consistency with global regulation: Given the cross-border function of FX in its role of underpinning the global payments system and the high volume and value of transactions occurring on a highly frequent basis, the GFXD’s continued view is that any regulation should be harmonized at a global level where possible under the Level 1 requirements. Cross-border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated, transparent FX market. As transparency obligations in Asia are going through their initial design phases and the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with respect to the publication of post trade data should at this stage be consistent, where possible, between the US and Europe.
The implications of applying 2 different transparency obligations to the same trade could result in the trade data being made publically available in one region before the other and the contents inconsistent. This could lead to regulatory arbitrage and increased difficulty for market participants to hedge illiquid or large positions. For instance, if a European counterparty wanted to transact in a less liquid emerging market currency, of size (i.e. USD 1 billion v KZT) and their broker was a US Swap-Dealer, then once executed, it could transpire that the European Counterparty has to publish the full details of the trade (including volume) real-time, whilst the US swap-dealer would be able to cap their (deferred) real-time publication at USD 250 million. The real-world impact to publically reporting the full notional in Europe will create considerable difficulties in hedging or covering the full 1 billion USD v KZT notional in the market.

It would be increasingly likely that the US Swap-Dealer would be less willing to enter into the transaction in the first place, and if they were to, then they would have to incur increased risk and considerable costs to either hold the position on their books until they could unwind in the market and hedge immediately, as the increased transparency would inform the market as to their position. Such an unintended consequence would therefore limit the ability in this instance for the European Counterparty to execute the transaction, and if that transaction was to fund a specific investment, then that investment could be at risk.

On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.

Information relating to mergers and acquisitions: The process and execution of funding a cross-border merger or acquisition and the impact of the market having sight of the large orders or trades that are executed to facilitate and hedge deals should be considered. Given that deals can take multiple months and sometimes years to conclude, are contingent on particular terms being met through the lifecycle, it is important that any information relating to deals is kept to a minimum to prevent any chance of ‘front-running’. Size of FX orders or trades executed to hedge being published may lead to the market being able to infer the potential for, or near conclusion of, a merger or acquisition.

TRACE Reporting: Similar deferrals of size publication are already in existence under the Financial Industry Regulatory Authority’s (FINRA) Trade Reporting and Compliance Engine (TRACE) in the US, where the publication of the actual size for large in scale trades is deferred up to 18 months from trade date.

The GFXD would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe. We would also like to suggest that any reporting

Table 16: Proposed Deferral Periods for FX

<table>
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<tr>
<th>Size of Transaction</th>
<th>Deferral Period (if Authorised by CA)</th>
<th>Details Published During Deferral Period</th>
<th>Details Published After Deferral Period if requested by the Competent Authority</th>
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</thead>
<tbody>
<tr>
<td>Non-equity instruments assessed as having a liquid market</td>
<td></td>
<td>Publication of all details within 15 minutes</td>
<td>N/A</td>
</tr>
<tr>
<td>Size below large-in-scale and size-specific thresholds</td>
<td>None</td>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 60 minutes</td>
<td>All details to be published after the deferral period is over</td>
</tr>
<tr>
<td>Size below large-in-scale but above size-specific thresholds</td>
<td>60 minutes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liquid instruments above large-in-scale threshold *</td>
<td>120 minutes</td>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
<td>All details except volume to be published after the deferral period is over Actual volume made public after 18 months</td>
</tr>
<tr>
<td>All products without a liquid market</td>
<td>48 hours</td>
<td>All details to be published after 48 hours minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
<td>All details except volume to be published after the deferral period is over Actual size made public after 18 months</td>
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</table>

The GFXD would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe. We would also like to suggest that any reporting
requirements should be aligned between EMIR and MiFIR to prevent any unintended consequences of trade data or market positions being made available to the market.

146. Do you think that one universal deferral period is appropriate for all non-equity instruments which do not have a liquid market or that the deferrals should be set at a more granular level, depending on asset class and even sub asset class? Please provide reasons for your answer.

For FX, the GFXD supports the view that there should be consistency across all FX sub-product groups i.e. those represented in Annex 3.6.1 on page 134 of the Discussion Paper.

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, the GFXD would like to state that the reference to ‘cash settled forwards’ be replaced with physically (deliverable) settling FX forward transactions, because cash settled forwards are non-deliverable forward transactions. A non-deliverable forward is an FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e. cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency. We also suggest that the ‘FX Swap’ product type should be broken down at the sub-product type to ‘Deliverable Swaps’ and ‘Non-Deliverable Swaps’. Finally, we would like to state, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments. Table 17 below shows a representative illustration of how Annex 3.6.1 could look for FX.

Table 17: Suggested Annex 3.6.1 for FX

<table>
<thead>
<tr>
<th>Financial Instrument</th>
<th>Product Types</th>
<th>Sub-Product Types</th>
<th>Recommended Liquidity sub-categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Exchange Derivatives</td>
<td>Futures</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Options</td>
<td>Non-Deliverable Option - NDO (only European type options are NDO - not any other FX options settled in non-deliverable currency)</td>
<td>Currency Pair</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vanilla Option (European and American)</td>
<td>Maturity</td>
<td></td>
</tr>
<tr>
<td>Forwards</td>
<td>Deliverable Forward</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NDF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FX Swaps</td>
<td>Deliverable FX Swap</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-Deliverable FX Swap</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>Simple exotic (Barrier &amp; Digital)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Complex Exotic</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

147. Do you agree with the proposal that during the deferred period for non-equity instruments which do not have a liquid market, the volume of the transaction should be omitted but all the other details of individual transactions must be published? Please provide reasons for your answer.
For FX, the GFXD would like to propose a modified version of ESMA’s proposal which is reflected in Table 18 below. The key changes we would like to suggest are:

- Liquid trades above large-in-scale should be treated similarly to illiquid trades. When determining whether a particular product is liquid for the trading obligation, MiFIR recognizes that products may only be liquid up to a certain size. Similarly liquid trades above large-in-scale are treated similarly to illiquid trades in the pre-trade transparency regime as well (i.e. they are exempt). We would propose ESMA maintains this concept for post-trade transparency as well.

- There should not be a concept of end-of-day. As discussed previously, FX is a global 24 hour * 5.5 days/week market which does not have a concept of end-of-day. An arbitrary time (e.g. 15:00 CET) could lead to adverse market behavior if trades conducted at 14:59 CET are reported up to 12-24 hours sooner than trades conducted at 15:01 CET. We would propose, for illiquid trades (including liquid above LIS), that the deferral period be 48 hours after the trade occurred. That will ensure that the time a trade is conducted does not impact its reporting timeline, and, if sufficient masking is in place, allow enough time for liquidity providers to begin to risk manage their illiquid position.

- Under MiFIR Article 11(3) (b), ESMA has been delegated to determine what the extended period of deferral should be interpreted as. For illiquid trades (including liquid above large in scale), we would propose that the actual size not reported for an extended period of deferral (e.g. 18 months). We believe that this proposal is in-line with the Level 1 text. The reasons for this are as follows:
  - Consistency with global regulation: Given the cross-border function of FX in its role of underpinning the global payments system and the high volume and value of transactions occurring on a highly frequent basis, the GFXD’s continued view is that any regulation should be harmonized at a global level where possible under the Level 1 requirements. Cross-border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated, transparent FX market. As transparency obligations in Asia are going through their initial design phases and the US is already live with its transparency requirements, the GFXD recommends that the approach in Europe with respect to the publication of post-trade data should at this stage be consistent, where possible, between the US and Europe.
  - The implications of applying 2 different transparency obligations to the same trade could result in the trade data being made publically available in one region before the other and the contents inconsistent, This could lead to regulatory arbitrage and increased difficulty for market participants to hedge illiquid or large positions. For instance, if a European counterparty wanted to transact in a less liquid emerging market currency, of size (i.e. USD 1 billion v KZT) and their broker was a US Swap-Dealer, then once executed, it could transpire that the European Counterparty has to publish the full details of the trade (including volume) real-time, whilst the US swap-dealer would be able to cap their (deferred) real-time publication at USD 250 million. The real-world impact to publically reporting the full notional in Europe will create considerable difficulties in hedging or covering the full 1 billion USD v KZT notional in the market.
  - It would be increasingly likely that the US Swap-Dealer would be less willing to enter into the transaction in the first place, and if they were to, then they would have to incur increased risk and considerable costs to either hold the position on their books until they could unwind in the market or hedge immediately, as the increased transparency would inform the market as to their position. Such an unintended consequence would therefore limit the ability in this instance for the European Counterparty to execute the transaction, and if that transaction was to fund a specific investment, then that investment could be at risk.
  - On a macro-economic level these restrictions will have negative implications for business growth agendas either at a specific firm level or country level, specifically in those situations requiring FX activity.
  - Information relating to mergers and acquisitions: The process and execution of funding a cross-border merger or acquisition and the impact of the market having sight of the large orders or trades that are executed to facilitate and hedge deals should be considered. Given that deals can take multiple months and sometimes years to conclude, are contingent on particular terms being met through the lifecycle, it is important that any information relating to deals is kept to a minimum to prevent any chance of ‘front-running’. Size of FX orders or
trades executed to hedge being published may lead to the market being able to infer the potential for, or near conclusion of, a merger or acquisition.

- TRACE Reporting: Similar deferrals of size publication are already in existence under the Financial Industry Regulatory Authority's (FINRA) Trade Reporting and Compliance Engine (TRACE) in the US, where the publication of the actual size for large in scale trades is deferred up to 18 months from trade date.

Table 18: Proposed Deferral Periods for FX

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<tr>
<td>Liquid instruments above large-in-scale threshold *</td>
<td>120 minutes With 18 months volume emission</td>
<td>All details to be published as close to real time as technically possible and no later than 15 minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
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<td>All products without a liquid market</td>
<td>48 hours With 18 months volume emission</td>
<td>All details to be published after 48 hours minutes except volume, which can be omitted (indicated by a flag) for 18 months</td>
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Finally, we would also like to clarify that as the text implies that each NCA within Europe can apply a deferral in their own market, that we consider this to be ineffective when trying to implement consistent regulations across European jurisdictions, and again suggest that there has to be a consistent application of deferrals across Europe.

150. In your view, could those transactions determined by other factors than the valuation of the instrument be authorised for deferred publication to the end of day? Please provide reasons for your answer.

For FX, the GFXD recommends that only those transactions which are determined by the valuation of the instrument should be subject to the post-trade transparency obligations (which includes price forming post-trade events) and would therefore be consistent with the CFTC requirements under Part 43 of the Dodd-Frank Act. Transactions whose publication will not contribute to the price forming process, such as compressions, prime brokerage (traditional, reverse give-ups, 4 way and customer-to-customer) and transactions entered into for dealer risk management purposes (i.e. internal operational reasons rather than client trades) should not be reported.

The GFXD also requests clarity on the trade reporting requirements for block v allocated trades and suggests that as with other recommendations, that any European approach is implemented in-line with the approaches used in other jurisdictions, such as the US.

151. Do you agree with the proposed option? Which option would be more suitable for the calibration of the large in scale requirements within an asset class?

For FX, the GFXD agrees with ESMA and supports Option 2 in the process to calibrate the large in scale thresholds. Specifically for FX, the GFXD believes that a more granular COFIA model is more relevant and recommends that the large in scale thresholds should be applied to the sub-product, currency pair and maturity of a transaction (e.g. a 3 month EUR/USD Vanilla Option).

152. Do you consider there are reasons for opting for different options for different asset classes? Please provide arguments.

The GFXD considers that there may be suitable reasons for each asset class to opt for different options, but suggests that it would be best placed for each asset class to comment accordingly.
153. Do you agree that the choice between the two options should be consistent with the approach adopted for the assessment of liquidity? If not, please provide arguments.

The GFXD supports the opinion that the options for determining liquidity and large in scale should be consistent and for FX this is a more granular COFIA model and recommends that the large in scale thresholds should be applied to the sub-product, currency pair and maturity of a transaction (e.g. a 3 month EUR/USD Vanilla Option).

154. Do you agree with the proposed approach? If no, which indicator would you consider more appropriate for the determination of large in scale thresholds for orders and transactions?

For FX, the GFXD considers that Option 2 would give a better representation of the average size of transactions, namely the total turnover over a period divided by the number of transactions in that period (i.e. the average turnover of transactions or AVT).

Given that the FX market forms the basis of the global payments system, the market is typified as consisting of a high number of low notional transactions. We believe that Option 1 (total turnover divided by the number of trading days) would give an artificially high representation of what could constitute an average transaction size and if implemented could unintentionally include illiquid trades in any calculations as being liquid.

155. Do you agree that the proxy used for the determining the large in scale thresholds should be the same as the one used to assess the average size of transactions in the context of the definition of liquid markets? Please provide arguments.

For FX, the GFXD agrees that the proxy used for the determining the large in scale thresholds should be the same as the one used to assess the average size of transactions in the context of the definition of liquid markets. Given that the FX market forms the basis of the global payments system, the market is typified as consisting of a high number of low notional transactions. We believe that the average daily turnover (total turnover divided by the number of trading days) would give an artificially high representation of what could constitute an average transaction size and if implemented could unintentionally classify illiquid trades as being liquid.

156. In your view, which option would be more suitable for the determination of the large in scale thresholds? Please provide arguments.

For FX, the GFXD believes that Option 2, namely setting the large in scale thresholds on the basis of a more policy orientated method would be more appropriate. As mentioned in our responses to previous questions, the GFXD would support an approach where European and US regulatory transparency obligations are aligned as closely as possible, even if the CFTC approach results in a higher threshold than a statistical measure of central tendency. Whilst there may be future updates to both jurisdictional obligations, the US transparency regulations are currently live within the market, and any deviance for a cross-jurisdictional market like FX will result in an unwarranted bifurcation of the market for the reasons discussion in our response to question 141.

158. In your view, should large in scale thresholds for orders differ from the large in scale thresholds for transactions? If yes, which thresholds should be higher: pre-trade or post-trade? Please provide reasons to support your answer.

For FX, the GFXD believes that the large in scale thresholds for post trade obligations should be higher than the large in scale thresholds for pre trade obligations, primarily due to the ability to implement waivers for pre trade obligations versus a deferral for post trade transparency obligations. It is of critical importance to the wellbeing of the market that the positions of liquidity providers are not publically exposed, nor that their positions be calculated or implied. The exposure of a liquidity providers position to the market will have the following impacts: i) the provider may be unable to effectively hedge their position; ii) the costs of executing will be increased and these costs will be reflected in wider spreads to the client; iii) the provider may decide to stop offering quotes in certain instrument should they be unable to effectively manage their subsequent position.

159. Do you agree that the large in scale thresholds should be computed only on the basis of transactions carried out on trading venues following the implementation of MiFID II? Please, provide reasons for the answer.

For FX, the GFXD supports the view that market data should be gathered from the trading venues following the implementation of MiFID II.
160. Do you think that the condition for deferred publication of large in scale transactions currently applying to shares (transaction is between an investment firm that deals on own account and a client of the investment firm) is applicable to non-equity instruments? Please provide reasons for your answer.

For FX, the GFXD does not support this approach and understands that an investment firm should benefit from the deferred publication regime whenever it assumes risk in a transaction. The FX market trades on a principal v principal basis. If transactions executed on a principal v principal basis are not included, the implications as discussed previously will apply, such as the unwillingness of market makers to enter into large transactions or their inability to accurately hedge positions.

161. Do you agree that the large in scale regime should be reviewed no earlier than two years after application of MiFIR in practice?

The GFXD suggests that ESMA adopt a similar approach to that observed by the CFTC in the US upon the publication of trade data in accordance with the CFTCs rule part 43. All transactions should be considered large in scale, until such a period that ESMA is able to sufficiently gather enough data from the trade repositories to enable the completion of a study to accurately set both the large in scale and the size specific to the instrument thresholds. We agree that this period, as consistently supported for all data gathering exercises should be no shorter than 2 years.

162. Do you agree with the above description of the applicability of the size specific to the instrument? If not please provide reasons for your answer.

For FX, the GFXD agrees with ESMAs description of the applicability of the size specific to the instrument.

163. Do you agree with the proposal that the size specific to the instrument should be set as a percentage of the large in scale size? Please provide reasons for you answer.

For FX, the GFXD believes that a size specific threshold at lower size (e.g. EUR 10,000.00) would ensure that systematic internalisers are better able to honor further requests to trade at that quote, given it will have a lower chance of breaching that systematic internalisers commercial and risk limits and therefore agrees with ESMAs proposal that the size specific to the instrument should be set as a percentage of the large in scale size. We believe that this offers the most efficient (cost and implementation) method of setting the threshold. Given the significant transparency that already exists in the FX markets today we believe the intent of the size specific threshold should be to provide investors with access to quotes that have the highest chance of resulting in a trade, especially given the reference to retail investors in MiFIR Article 9 (5) (d):

the size specific to the financial instrument referred to in paragraph 1(b) and the definition of request-for-quote and voice trading systems for which pre-trade disclosure may be waived under paragraph 1;

When determining the size specific to the financial instrument that would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors, in accordance with paragraph 1(b), ESMA shall take the following factors into account:

(i) whether, at such sizes, liquidity providers would be able to hedge their risks;

(ii) where a market in the financial instrument, or a class of financial instruments, consists in part of retail investors, the average value of transactions undertaken by those investors;

(e) the financial instruments or the classes of financial instruments for which there is not a liquid market where pre-trade disclosure may be waived under paragraph 1.

164. In your view, what methodologies would be most appropriate for measuring the undue risk in order to set the size specific threshold?

For FX, the GFXD believes that each market maker will manage (via their own risk and commercial policies) the risk they are willing to take from each client segment and each particular type of FX instrument.

The GFXD believes it is more appropriate to establish the intention behind the size specific threshold and to use that on an asset/financial instrument specific basis to help set suitable thresholds rather than trying to calibrate a very subjective and dynamic parameter such as ‘undue risk’. Given the significant transparency that already exists in the FX markets today we believe the intent of the size specific threshold should be to provide investors with access to quotes that have the highest chance of
resulting in a trade, especially given the reference to retail investors in MiFIR Article 9 (5) (d). A size specific threshold at lower size (e.g. EUR 10,000.00) would ensure that SIs are better able to honor further requests to trade at that quote, given it will have a lower chance of breaching that SI’s commercial and risk limits.

165. Would you suggest any other practical ways in which ESMA could take into account whether, at such sizes, liquidity providers would be able to hedge their risks?

The GFXD believes that each firm will manage their own market risks accordingly and that this will depend on the location and activity of each investment firm. For instance a firm located in a specific emerging market (EM) country is more likely to be able to offset any market risks in that EM currency compared to a counterparty that is long the same risk but resides in a country whose market is open at different times to the EM country. For this reason the GFXD does not believe that a standard approach should be applied to all market participants.

167. Do you agree with ESMA’s description of how the size specific to the instrument deferrals would interact with the large in scale deferrals? In particular, do you agree that the deferral periods for the size specific to the instrument and the large in scale should differ and have any specific proposals on how the deferral periods should be calibrated? Please provide reasons for your answer.

For FX, the GFXD agrees with ESMA’s description of how the size specific to the instrument deferrals would interact with the large in scale deferrals. We believe that the larger the trade (implication being the liquidity is reduced as notional increases) the longer the deferral period should be, and that given the global nature of the FX markets and as mentioned in our response to question 141 we would support an approach where European and US regulatory transparency obligations are aligned as much as possible under MiFIR. This would mean that any deferrals in Europe could be more/less that those currently referenced.

168. Do you agree that there should be consistent categories of derivatives contracts throughout MiFIR/EMIR?

For FX, the FX table included within Annex 3.6.1 (Financial instruments taxonomy and metrics for the calculation of the liquidity criteria (average size of transaction) on page 134 of the Discussion Paper references similar taxonomy to that which is included within the ISDA product taxonomy (http://www2.isda.org/attachment/NTQzOQ--\ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls) and should be used by trading venues and market participants alike to harmonize classification across the FX asset class.

As described previously, the GFXD believes that the FX asset class should be categorized to the sub-product, currency pair level and maturity (e.g. a 3 month EUR/USD Vanilla Option).

With specific reference to Annex 3.6.1 on page 134 of the Discussion Paper, the GFXD would like to state that the reference to ‘cash settled forwards’ be replaced with physically (deliverable) settling FX forward transactions, because cash settled forwards are non-deliverable forward transactions. A non-deliverable forward is an FX financial instrument that involves two transacting parties executing an FX forward contract on the basis of non-delivery (i.e. cash, not physical, settlement) which involves the fixing (i.e. valuation) of the contract and therefore settlement in single reference currency. We also suggest that the ‘FX Swap’ product type should be broken down at the sub-product type to ‘Deliverable Swaps’ and ‘Non-Deliverable Swaps’. Finally, we would like to state, with reference to the ESMA EMIR Q&A, TR Question 1, that cross-currency swaps are ‘financial instruments should be classified as interest rates, in line with current market practice’ rather than as FX instruments. Table 19 below shows a representative illustration of how Annex 3.6.1 could look for FX.
### Table 19: Suggested Annex 3.6.1 for FX

<table>
<thead>
<tr>
<th>Financial Instrument</th>
<th>Product Types</th>
<th>Sub-Product Types</th>
<th>Recommended Liquidity sub-categories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Futures</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Options</td>
<td>Non-Deliverable Option - NDO (only European type options are NDO - not any other FX options settled in non-deliverable currency)</td>
<td>Currency Pair</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vanilla Option (European and American)</td>
<td>Maturity</td>
</tr>
<tr>
<td>Foreign Exchange Derivatives</td>
<td></td>
<td>Deliverable Forward</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>NDF</td>
<td></td>
</tr>
<tr>
<td></td>
<td>FX Swaps</td>
<td>Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-Deliverable FX Swap</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Others</td>
<td>Simple exotic (Barrier &amp; Digital)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complex Exotic</td>
<td></td>
</tr>
</tbody>
</table>

169. **Do you agree with this approach to the treatment of third countries?**

For FX, the GFXD agrees with the proposed approach to third countries.

170. **Do you agree with the proposed criteria based anti-avoidance procedure?**

For FX, the GFXD agrees with the proposed criteria based anti-avoidance procedure and that alignment to EMIR is of key consideration.

171. **Do you think it would be reasonable for ESMA to consult venues with regard to which classes of derivatives contracts are traded on venue? Do you think venues would be well placed to undertake this task?**

For FX, the GFXD recommends that as per Article 32 of MiFIR, ‘Trading obligation procedure’ that ESMA should conduct as part of its assessment into the trading obligation a public consultation at which stage we would expect the market to comment on which products are traded on venues. Given that there is a commercial element to a venue stating that it is able to trade a financial instrument, we would expect any assessment of this to be performed in a non-commercial manner, independently to the venues with final approval being made the relevant NCA or ESMA, as per our response to question 101.

The GFXD also requests clarity on the requirement in Article 18.1 of MiFIR ‘Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives’ where it is required that investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue.’ Whilst the GFXD expects ESMA to publish a list of those financial instruments that are subject to a trading obligation, the GFXD requests that a similar list is maintained for those products that are offered by trading venues but are not subject to a trading obligation. As referenced in the Bank of England Semi-Annual FX Survey for October 2013, (http://www.bankofengland.co.uk/markets/Pages/forex/fxjsc/default.aspx), of the $2.58 trillion executed per day in London just over half of this was conducted on a bi-lateral basis:
• $1.31 trillion bi-lateral trading through interdealer direct, customer direct, single electronic trading systems

• $1.27 trillion multi-lateral trading through electronic broking systems, multi electronic trading systems, voice broker

When this notional data is combined with the current challenges faced by the FX markets in clearing physically settling FX products, it could be concluded that at the inception of MiFIR, there will still be a considerable percentage of the FX market that remains either traded multi-laterally and is not subject to a trading obligation, or is traded bi-laterally. It could also be concluded that there could be a considerable over-lap in the types of financial instruments that are traded via both methods. It will therefore be increasingly difficult for each SI to consult each multi-lateral trading venue each time it executes a trade as a SI in order to validate whether that financial instrument had previously been traded on a multi-lateral venue and to then determine which transparency obligations apply to that trade. This process would be more efficient (both commercially and operationally) and would result in more transparency to the market if a SI could consult a single list that has been published by ESMA containing all financial instruments that can be traded on a trading venue.

172. The discussion in section 3.6 on the liquid market for non-equity instruments around ‘average frequency’, ‘average size’, ‘number and type of active market participants’ and average size of spreads is also relevant to this chapter and we would welcome respondent’s views on any differences in how the trading obligation procedure should approach the following:

i Whether ‘average frequency’ should be understood to refer to the number of trades over a given time period, the number of days on which trading occurred over that time period or both.

172(i) Regarding ‘average frequency ’ for FX, the GFXD would like to refer to our pervious answer to question 103 of the Discussion Paper. Specifically, the GFXD agrees with ESMA in that the threshold would be set as a combination of the minimum number of transactions plus a minimum number of active trading days (i.e. a minimum number of transactions per day). A financial instrument would be considered liquid only if both requirements were met. Additionally, we suggest that it would be preferable to calculate the ‘average frequency’ using the number of transactions over a consecutive time period, the period being of sufficient time to allow the collated data to be normalized, considering disruption events or other events that cause unusual trading patterns.

ii The extent to which the given time period will need to vary by asset class.

172 (ii) For FX, the GFXD recommends that the time period will need to vary on an asset class basis (e.g. FX v Equity) due to the differing characteristics and trading patterns in each asset class. These are not homogenous.

iii Whether the ‘average size’ should be based on the notional and the number of trades in the given period, the notional and the number of trading days, or some other measure.

172 (iii) For FX, the GFXD would like to refer to our pervious answer to question 104 of the Discussion Paper in that the average size of transactions should be calculated by the total turnover over a period divided by the number of transactions in that period (i.e. the average turnover of transactions or AVT).

Given the unique nature of the FX market, in that it forms the basis of the global payments system, the market is typified as consisting of a high number of low notional transactions. We believe that the total turnover divided by the number of trading days method would give an artificially high representation of what could constitute an average transaction size and if implemented could unintentionally include illiquid trades in any calculations as being liquid.

iv The most appropriate data for calculating ‘spreads’.

172 (iv) For FX, the GFXD has performed additional analysis on the data collated in 2012 as part of the Financial Markets Lawyers Group (FMLG) analysis as part of The Foreign Exchange Committee and Financial Markets Lawyers Group Request for Interpretative Relief Regarding the Obligation to Provide Pre-Trade Mid-Market Quote under the CFTCs part 23 obligations. This data was based on a represented executable pricing data for select currencies (in order of market share EUR, AUD, MXN, TRY, TWD, ILS) supplied by major FX banks who participate on the FMLG based on ranking in the Bank for International Settlements (BIS) 31 CCYs compared to publicly available data published the same time on Bloomberg for the month of November 2012. Results for these currencies are illustrated in the tables below.
As a point of reference, according to the BIS Triennial Central Bank Survey Foreign exchange turnover in April 2013: preliminary global results report (http://www.bis.org/publ/rpfx13fx.pdf), the market share for the top 5 BIS currencies is: USD is (87%), EUR (33.4%), JPY (23%), GBP (11.8%) and AUD (8.6%).

In order to make the Bid-Ask spread more tangible, they have been converted into a dollar amount (per million USD of traded notional). The GFXD believes that by taking the Bid-Ask spread and converting it to a USD amount is more meaningful as this directly measures the economic impact of the Bid-Ask spreads.

Conclusions:

- **Bid-Ask Spreads** in USD terms: the dollar value of the Bid-Ask spread for the instrument, per million dollars notional and provides an indication of liquidity in the market. For instance, a 2Y ILS Forwards has a Bid-Ask of over USD 5,000, while a EUR/USD 6M forward has a Bid-Ask of less than USD 100 (50 times less). One of them is clearly very liquid, the other is not. This data is illustrated in Table 20.

- **The ratio of Bid-Ask spread to mid**, \([\text{Ask-Bid}] / [(\text{Ask}+\text{Bid})/2]\): In FX, unlike some other asset classes, the relative size of the mid price compared to the Bid-Ask spread can distort the ratio and therefore provide an inaccurate representation of liquidity. This is illustrated in Table 21, we can see that by using this approach, USD/MXN appears to be more liquid than EUR/USD, due to the fact that the USD/MXN mid-point is circa 16 times larger than the EUR/USD mid, which is not reflected in the relative size of the Bid-Ask spreads. Consequently, the ratio proposed by ESMA is not a valid determination of relative liquidity in the FX market.

The GFXD recommended indicator of liquidity would therefore be to use a US dollar equivalent of the bid-ask.

Table 20: Results for the USD equivalent of the Bid-Ask spread, as defined in the previous section, both for forwards and options, and for 6m, 1Y and 2Y tenors.

<table>
<thead>
<tr>
<th>Forwards</th>
<th>6M</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid-Ask Spread</td>
<td>$84</td>
<td>$99</td>
<td>$373</td>
<td>$1,432</td>
<td>$846</td>
<td>$768</td>
<td></td>
</tr>
<tr>
<td>1Y</td>
<td>EUR/USD</td>
<td>AUD/USD</td>
<td>USD/MXN</td>
<td>USD/TRY</td>
<td>USD/TWD</td>
<td>USD/ILS</td>
<td></td>
</tr>
<tr>
<td>Bid-Ask Spread</td>
<td>$214</td>
<td>$328</td>
<td>$397</td>
<td>$2,479</td>
<td>$1,003</td>
<td>$1,537</td>
<td></td>
</tr>
<tr>
<td>2Y</td>
<td>EUR/USD</td>
<td>AUD/USD</td>
<td>USD/MXN</td>
<td>USD/TRY</td>
<td>USD/TWD</td>
<td>USD/ILS</td>
<td></td>
</tr>
<tr>
<td>Bid-Ask Spread</td>
<td>$741</td>
<td>$1,145</td>
<td>$2,139</td>
<td>$5,063</td>
<td>$1,850</td>
<td>$5,869</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Options</th>
<th>6M</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid-Ask Spread</td>
<td>$1,753</td>
<td>$1,798</td>
<td>$3,758</td>
<td>$5,420</td>
<td>$5,316</td>
<td>$3,673</td>
<td></td>
</tr>
<tr>
<td>1Y</td>
<td>EUR/USD</td>
<td>AUD/USD</td>
<td>USD/MXN</td>
<td>USD/TRY</td>
<td>USD/TWD</td>
<td>USD/ILS</td>
<td></td>
</tr>
<tr>
<td>Bid-Ask Spread</td>
<td>$2,437</td>
<td>$2,558</td>
<td>$5,180</td>
<td>$4,530</td>
<td>$7,201</td>
<td>$5,166</td>
<td></td>
</tr>
<tr>
<td>2Y</td>
<td>EUR/USD</td>
<td>AUD/USD</td>
<td>USD/MXN</td>
<td>USD/TRY</td>
<td>USD/TWD</td>
<td>USD/ILS</td>
<td></td>
</tr>
<tr>
<td>Bid-Ask Spread</td>
<td>$4,610</td>
<td>$4,896</td>
<td>$12,417</td>
<td>$9,218</td>
<td>$12,638</td>
<td>$6,537</td>
<td></td>
</tr>
</tbody>
</table>
Table 21: the ratio of Bid-Ask spread to mid as defined in the previous section, both for forwards and options, and for 6m, 1Y and 2Y tenors.

<table>
<thead>
<tr>
<th>Tenor/Currency Pair</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>6M</td>
<td>4%</td>
<td>1%</td>
<td>2%</td>
<td>6%</td>
<td>10%</td>
<td>13%</td>
</tr>
<tr>
<td>1Y</td>
<td>5%</td>
<td>1%</td>
<td>1%</td>
<td>5%</td>
<td>7%</td>
<td>14%</td>
</tr>
<tr>
<td>2Y</td>
<td>8%</td>
<td>2%</td>
<td>3%</td>
<td>5%</td>
<td>9%</td>
<td>27%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tenor/Currency Pair</th>
<th>EUR/USD</th>
<th>AUD/USD</th>
<th>USD/MXN</th>
<th>USD/TRY</th>
<th>USD/TWD</th>
<th>USD/ILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>6M</td>
<td>4%</td>
<td>4%</td>
<td>7%</td>
<td>12%</td>
<td>24%</td>
<td>9%</td>
</tr>
<tr>
<td>1Y</td>
<td>3%</td>
<td>3%</td>
<td>6%</td>
<td>10%</td>
<td>21%</td>
<td>8%</td>
</tr>
<tr>
<td>2Y</td>
<td>4%</td>
<td>4%</td>
<td>8%</td>
<td>7%</td>
<td>21%</td>
<td>11%</td>
</tr>
</tbody>
</table>

173. Do you have a view on how ESMA should approach data gathering about a product’s life cycle, and how a dynamic calibration across that life cycle might work? How frequently should ESMA revisit its assumptions? What factors might lead the reduction of the liquidity of a contract currently traded on venue? Are you able to share with ESMA any analysis related to product lifecycles?

For FX, the GFXD has no view on how ESMA should approach data gathering about a product’s life cycle and suggests that life cycle data is not relevant to FX.

174. Do you have any suggestions on how ESMA should consider the anticipated effects of the trading obligation on end users and on future market behaviour?

For FX, the GFXD recommends that ESMA studies the impact that the CFTCs trading obligation has had on the global FX markets, as well as the wider derivatives markets. ISDA have produced numerous reports which describe these impacts (http://www2.isda.org/news/isda-publishes-research-note-analyzing-impact-of-mat-regulation-on-market-fragmentation).

As discussed in our previous answers, the FX market forms the basis of the global payments system, it is characterized by a high number of market participants, is global in nature and executes across borders using many different execution venues. The GFXD strongly believes that financial regulations need to consider such factors and that global harmonization is required to prevent any unintended consequences, such as the fragmentation of market liquidity.

The GFXD also suggests that ESMA considers the financial implications that the regulatory agendas in both Europe and the rest of the world are having on market participants. Considering market turnover and the composition of market participants it is highly likely that a transaction will be exposed to the regulations of at least 2 separate jurisdictions:

- **Market turnover:** As mentioned previously, the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013 (http://www.bis.org/publ/rpfx13fx.pdf) reported that 41% of the global FX market is executed in London, and collectively over 75% is executed from 5 global centres. The same report states that the US dollar was on one side of 87% of all transactions, and the euro on 33% of transactions.

- **Composition of the market:** Examining the market participants, and if we only consider the 23 global banks that the GFXD represents (as per Euromoney collectively they represent over 90% of the Inter-dealer market), then as each of these is registered as a US Swap Dealer they will have joint obligations in both Europe and the US.

Each regulatory obligation will incur a separate cost to market participants, and any difference in the same obligation will increase that cost, be it for pre/post trade reporting, a trading obligation or any other regulatory deliverable. These increased costs will be ultimately funded by one participant to the trade and it is likely that any ‘available’ funds will be required to be spent on
implementing regulatory obligations, rather than funding growth activities – ultimately impacting the wider growth agenda in Europe.

The GFXD commissioned Oliver Wyman to write a report (published in January 2012) on the impact of the proposed Financial Transaction Tax (FTT) in Europe (http://gfma.org/correspondence/item.aspx?id=198). Within that paper, reference is made to the attractiveness to doing business in Europe should transaction costs rise due to regulatory obligations. We feel that such analysis is applicable when considering the application of any European regulatory deliverables and the behavioural changes in the paper were characterized as follows:

- **Relocation:** The ability of organization to trade in different countries is of course dependant on the characteristics of the counterparty. Global dealer flows are portable, and could be estimated to be moved to the more favourable region, financial counterparties are again expected to be portable, whilst corporate and other non-financials are unlikely to be able to move

- **Substitution:** If market participants are not able to relocate, then there exists the possibility that they could trade different products that are not exposed to the same regulatory demands

- **Reduction in speculative trading:** The market may reduce its appetite for speculative trading and therefore reduce liquidity for end users such as corporates and other non-financials

Whilst this study focuses on the impact of a proposed FTT on the FX markets, we believe that the ‘attractiveness to business’ argument is portable across other regulatory deliverables that could increase costs to the end-user (such as a trading obligation). The report stated that for the FX markets in Europe, volume, by notional is split:

- 40% is dealer-to-dealer and it is estimated that 60-80% of this volume could be portable to regions outside of the EU
- 12% is dealer-to-hedge fund and it is estimated that 70% of such transactions could be portable
- 35% is remaining financial institutional trading, it is expected that 30-35% of such business could be portable
- 13% is dealer-to-corporate and it is estimated that 30-35% of such flow could move outside of the EU

This data suggests that a large % of FX activity currently executed in Europe could be portable to other jurisdictions outside of Europe. To try and size this number, the report also looks at the potential reduction in USD average daily volume. Again, this data was specifically used to demonstrate the impact of the FTT, but we feel that such information is portable to other regulatory deliverables that could have an increased financial cost on the end-user, illustrated below in Figure 1.

![Figure 1: Post FTT relocation and reduction of average daily volume of FX products by counterparty type (European tax zone)](image)
Finally, it should be reflected that any such shift in the trading practices of FX market participants could impact the oversight and control that central banks have on their respective currencies and market participants.

175. Do you have any other comments on our overall approach?

The GFXD does not have any further comments.

189. Do you agree with the definition of “trading system” for investment firms?

For FX, the GFXD agrees with the above definition for instruments in scope as defined in MiFID Annex C4. Where instruments fall out of scope of the definition of financial instruments these requirements will not apply.

Finally, for the Microstructural Issues section of the Discussion Paper, unless the GFXD has submitted a specific response for FX, the GFXD supports the submissions made by the Association for Financial Markets in Europe (AFME).

190. Do you agree with the definition of ‘real time’ in relation to market monitoring of algorithmic trading activity by investment firms?

For FX the GFXD agrees with the above definition for instruments in scope. Generally, Investment firms already have existing policies, procedures and controls in place to monitor algorithmic trading across all instruments.

Q191: Is the requirement that real time monitoring should take place with a delay of maximum 5 seconds appropriate for the risks inherent to algorithmic trading and from an operational perspective? Should the time frame be longer or shorter? Please state your reasons.

For FX the GFXD agrees with the above requirements for instruments in scope. Generally, Investment firms already have existing policies, procedures and controls in place to monitor algorithmic trading across all instruments.

192. Do you agree with the definition of ‘t+1’ in relation to market monitoring of algo-rithmic trading activity by investment firms?

For FX, the GFXD does not agree with this definition and would like to reference that specifically for FX that the FX market operates globally, on a cross jurisdictional basis, is open 24 hours a day, for 5.5 days of the week. The market does not operate to pre-determined open/close times and it is not appropriate to apply a T+1 rule based on ‘before market opening’.

Q193: Do you agree with the parameters to be considered to define situations of ‘severe market stress’ and ‘disorderly trading conditions’?

For FX, the GFXD does not agree with the text and believes that the definition of ‘severe market stress’ as currently stated in the proposal as “...increase in the number of messages being sent to and received from systems of one trading venue causing a risk to the systems performance” is limited and cannot be only a quantitative measure.

FX is a highly electronic and global market. Market Stress can be triggered by external or economic distress events that can lead to drop in liquidity leading to “severe market stress” and “disorderly trading conditions”. GFXD recommends the use of both qualitative and quantitative factors to measure such conditions and should not be limited to the measures defined in the proposal.

199. Do you agree with a restricted deployment of algorithms in a live environment? Please elaborate.

For FX, the GFXD does not agree with a prescriptive deployment of algorithms in a live environment. The FX marketplace is global and highly electronic operating 24 hours a day for 5.5 days of the week and due to the large number of market participants and their varied nature has resulted in the establishment of multiple smaller platforms that offer niche services and help dissipate concentration risks within the FX markets. Such smaller platforms are not as well suited as the larger platforms (such as the LSE in the equity markets) and as such are not resourced to provide the suitable resources required to enable live testing.
The GFXD is concerned that the support required at both the ECN and the investment firm is significant, as new processes and increased operational risks will need additional support and suggests that ESMA considers this in its assessment of what testing is required. The GFXD suggests that any testing requirements take into account the special features of the venues in a proportionate manner.

201. Do you agree with the proposed testing scenarios outlined above? Would you propose any alternative or additional testing scenarios? Please elaborate.

For FX, the GFXD would like to additionally add, specifically for the FX markets, that as FX is a global market, operating on a cross jurisdictional basis that any algo pre-trade controls or additional testing requirements should be applied consistently across global jurisdictions to prevent any market fragmentation, essentially favoring market participants that operate in regions with less stringent regulatory requirements. Additionally, complexity and different requirements set out by each regulatory authority could potentially add operational risk to the environment.

215. Are there any elements that have not been considered and/or need to be further clarified here?

For FX, the GFXD would like to state that as FX is a global market, operating on a cross jurisdictional basis that DEA participants that reside in different jurisdictions will result in challenges in implementing the DEA obligations under MiFID. The GFXD has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory obligations concerning Microstructural issues. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.

216. What is your opinion of the elements that the DEA provider should take into account when performing the due diligence assessment? In your opinion, should any elements be added or removed? If so, which?

For FX, the GFXD would like to state that as FX is a global market, operating on a cross jurisdictional basis that DEA participants that reside in different jurisdictions will result in challenges in implementing the DEA obligations under MiFID. The GFXD has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory obligations concerning Microstructural issues. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.

217. Do you agree that for assessing the adequacy of the systems and controls of a prospective DEA user, the DEA provider should use the systems and controls requirements applied by trading venues for members as a benchmark?

For FX, the GFXD would like to state that as FX is a global market, operating on a cross jurisdictional basis that DEA participants that reside in different jurisdictions will result in challenges in implementing the DEA obligations under MiFID. The GFXD has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory obligations concerning Microstructural issues. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.
246. Could alternative means of testing substitute testing scenarios provided by trading venues to avoid disorderly trading conditions? Do you consider that a certificate from an external IT audit would be also sufficient for these purposes?

For FX, the GFXD would like to state that as FX is a global market, operating on a cross jurisdictional basis that any testing obligations that unfairly disadvantage firms residing in the EU should be carefully validated especially when these are applied in cross-jurisdictional, global markets like FX. We believe that it would be impractical, given the large number of technology solutions deployed within the market to expect an external IT resource to be able to audit and sufficiently test such scenarios.

The GFXD has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory obligations concerning Microstructural issues. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.

247. What are the minimum capabilities that testing environments should meet to avoid disorderly trading conditions?

For FX, the GFXD would like to state that as FX is a global market, operating on a cross jurisdictional basis that any testing obligations that unfairly disadvantage firms residing in the EU should be carefully validated especially when these are applied in cross-jurisdictional, global markets like FX. The GFXD has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory obligations concerning Microstructural issues. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.

258. Do you agree with the previous assessment? If not, please elaborate.

For FX, the GFXD would like to state that as FX is a global market, operating on a cross jurisdictional basis that any market making obligations imposed on an investment firms that reside within the EU will unfairly disadvantage such investment firms, especially when transacting in global markets like the FX market. The GFXD has continually supported the view that regulatory deliverables should be aligned on a global basis. Such an approach offers regulators the ability to accurately consolidate data across jurisdictional boundaries, allows market participants to transact on a consistent basis and prevents market fragmentation as well as exposing market participants to any undue, increased costs due to jurisdictional specific deliverables.

The GFXD therefore proposes that for FX there is a globally consistent implementation of regulatory obligations concerning Microstructural issues. We believe that, due to the cross border nature of the FX market, market participants should not be disadvantaged by inconsistent application.

Finally the GFXD agrees that in the context of ‘market making’ and ‘market making strategy’ requirements are only applicable to instruments in scope that are defined in MiFID annex C4.

271. Please provide views, with reasons, on what would be an adequate presence of market making strategies during trading hours?

For FX, the GFXD would like to reference that the FX market operates globally, on a cross jurisdictional basis, is open 24 hours a day, for 5.5 days of the week with regular trading occurring continuously during this period. Trading hours can also vary by global platform or individual instances of platforms in the regions serving the needs for the local market. Due to the extensive and varied nature of the trading hours and regions covered, any market making presence requirements should be determined in the accordance with the business operating day of the platform.
546. Do you agree with ESMA’s proposal for what constitutes a ‘transaction’ and ‘execution of a transaction’ for the purposes of Article 26 of MiFIR? If not, please provide reasons.

For the Market Data Reporting section of the Discussion Paper, unless the GFXD has submitted a specific response for FX, the GFXD supports the submissions made by the Association for Financial Markets in Europe (AFME) and the International Swaps and Derivatives Association, Inc (ISDA).

Consultation Paper

128. For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.

For FX, the GFXD partially agrees with ESMA’s opinion that any thresholds should be established on an asset class by asset class basis (i.e. FX v Equity) as each asset class has its own characteristics with respect to market conditions, liquidity profiles and trading patterns.

Additionally for FX, the GFXD believes that thresholds should be set at a more granular level as per our responses to the transparency questions in the Discussion Paper. The FX table included within Annex 3.6.1 (Financial instruments taxonomy and metrics for the calculation of the liquidity criteria (average size of transaction) on page 134 of the Discussion Paper references the same taxonomy that is included within the ISDA product taxonomy (http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls) and should be used by market participants to harmonize classification across the FX asset class.

The GFXD believes that an investment firm trading FX should be specifically categorized as a Systematic Internaliser (SI) depending on its activity at the FX sub-product, currency pair level and maturity (e.g. a 3 month EUR/USD Vanilla Option). Each SI will be active in different financial instruments and should not be classified as a SI in a financial instrument in which they are traditionally not an active market participant.

129. With regard to the ‘substantial basis’ criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

For FX, the GFXD supports a notional based assessment (i.e. total notional as a percentage of the firms total trading activity). An example of this, using the more granular level described in our response to question 128 of the Consultation Paper, would be:

- An investment firms trading volume in 3 month EUR/USD Vanilla Option, versus
- Europe Union wide trading volume in 3 month EUR/USD Vanilla Option

The GFXD also believes that with respect to the definition of total trading, it would be more appropriate to use the total notional rather than turnover. We believe this would give a more accurate representation of the trading activity of an investment firm rather than turnover (turnover interpreted to mean notional*price).

131. For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.

For FX, the GFXD agrees that there should be aggregation to allow the application of the systematic internaliser definition. For FX, we recommend that aggregation is performed to the same level as referenced in the FX table included within Annex 3.6.1 (Financial instruments taxonomy and metrics for the calculation of the liquidity criteria (average size of transaction) on page 134 of the Discussion Paper references the same taxonomy that is included within the ISDA product taxonomy (http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls). The GFXD believes
that the FX asset class should be categorized to the sub-product, currency pair level and maturity (e.g. a 3 month EUR/USD Vanilla Option).

132. Do you agree with ESMA’s proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?

For FX, the GFXD agrees with ESMAs proposal that a threshold is required for liquid derivatives and agrees that there will be scenarios where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply.

133. Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?

For FX, the GFXD believes that data should be provided by ESMA to help an investment firm validate its activity in a specific financial instrument. The GFXD suggests that ESMA should publish the total notional traded in a particular financial instrument, which would easily allow an investment firm to assess their level of activity.

The GFXD believes that a quarterly assessment of activity is too short to allow ESMA sufficient time to gather and analyze data and to subsequently report the total notional data on their website. Additionally, the GFXD believes it is unrealistic to expect a SI to update their technology systems to accommodate such frequent calibrations. The GFXD suggests that a very minimum ESMA produces updated data every 6 months (and potentially should be in line with other data collation exercises and be every 2 years) and we support the text referenced in on page 197, #23 the Consultation Paper:

An important aspect of the application of the frequent and systematic criterion and the substantial criterion is the relevant period for calculating the thresholds. As for the equity systematic internaliser regime, ESMA is of the view that the relevant thresholds should be calculated over a period long enough to minimise the risk of capturing episodic internalisation and to give legal certainty to investment firms. For that reason ESMA proposes that investment firms should take into account the activity within each calendar quarter when calculating the relevant thresholds.

Finally, the GFXD believes that it is also necessary to implement mechanisms that allow investment firms to submit requests to ESMA (or to their local National Competent Authority) asking for the re-assessment of their classification as a SI in a particular financial instrument. It is likely that the trading profiles of a specific financial instrument will change during the assessment process (for instance due to a change in liquidity), which would result in an investment firm being incorrectly classified. The GFXD believes measures should also exist to ensure that any re-classification process is controlled and objective rather than self-defining, and should be applied on a rules based approach for all investment firms.

134. Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.

The GFXD recommends that before any thresholds are set, a liquidity study should be performed using data collated over a period of time long enough to ensure that a wide range of market events are captured. We also believe it is inappropriate to apply a consistent threshold across all asset classes, especially when comparing markets that trade less frequently than FX, estimated to be $5.3 trillion/day as reported by the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013 (http://www.bis.org/publ/rpf13fx.pdf). In the absence of data regarding the total size of trading in the European Union, members cannot suggest appropriate thresholds, hence the observation to perform a liquidity study.

The GFXD would like to suggest that ESMA considers the impact of any final decisions on the future commercial landscape of the markets for example, regardless of how high or low the SI thresholds are set, they should be set such that there are no cliff edges which allow market makers with a similar market shares to be treated differently.

As an observation, the ESMA analysis for liquidity thresholds for bonds would reveal inconsistencies with the suggested SI thresholds. According to the DP, an instrument could be deemed liquid if it trades just 240 times per year. According to the CP, an investment firm could be an SI trading just 2-3% of transactions. Therefore, for an instrument that only just qualifies as liquid, an investment firm could qualify as an SI trading that instrument just 4.8 times per year, or less than once every two months on average, which seems far too low.
135. Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.

The GFXD recommends that before any thresholds are set, a liquidity study should be performed using data collated over a period of time long enough to ensure that a wide range of market events are captured. We also believe it is inappropriate to apply a consistent threshold across all asset classes, especially when comparing markets that trade less frequently than FX, estimated to be $5.3 trillion/day as reported by the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013 (http://www.bis.org/publ/rpx13fx.pdf). In the absence of data regarding the total size of trading in the European Union, members cannot suggest appropriate thresholds, hence the observation to perform a liquidity study.

The GFXD would like to suggest that ESMA considers the impact of any final decisions on the future commercial landscape of the markets for example, regardless of how high or low the SI thresholds are set, they should be set such that there are no cliff edges which allow market makers with a similar market shares to be treated differently.

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140. Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.

For FX, the GFXD believes that any price within the bid/offer spread should fall within a range close to market conditions. The FX markets already benefit from high levels of transparency with data being available to the public via numerous sources, such as Google Finance, Yahoo Finance, Bloomberg and Reuters.

141. Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?

For FX, the GFXD agrees that the risks faced by a SI are similar to that of a liquidity provider.

167. Which would be your preferred option and why?

For the Microstructural Issues section of the Consultation Paper, unless the GFXD has submitted a specific response for FX, the GFXD supports the submissions made by the Association for Financial Markets in Europe (AFME).

244. What are your views on the proposed approach for legal documentation and portfolio compression criteria?

For FX, the GFXD understands that the FX market does not currently leverage compressions services during the normal course of business. Whilst this may change during the future development of the markets and concurrent establishment of regulatory obligations, the global nature of the FX business, the short dated nature of the FX products and the high volume of market participants/transaction executed means that there are many operational challenges that will need to be addressed to ensure that the smooth running of the market, including the wide spread use of CLS in the settlement process do not become disrupted.

Methods of portfolio compression

Today there are robust solutions for multilateral compression operating in the market outside of the FX asset class. In this regard, generally speaking the criteria for compression outlined in the consultation paper are in line with the services offered by compression service providers today in the other derivative asset classes. However, we would note that as compression services have evolved it has become apparent that certain steps in the process are not necessarily required for all compression cycles. For example it is not always necessary to have a dress rehearsal, particularly in bilateral or unilateral compression cycles where the risk parameters are set.

Compression is not a price forming event and therefore, we request that the technical advice ESMA provides to the commission is not overly prescriptive. Rather we would suggest that the advice should set out a high level framework which provides participants with sufficient flexibility. Furthermore, it is important that counterparties retain control over their own risk profiles.
Having prescriptive methodology and rules may not work for all counterparties and we would note that it is important that post trade risk reductions services should not be subject to other regulatory requirements that are designed for price forming transactions.

There is currently no standard industry process for bilateral compression direct between two parties, although we do acknowledge that compression services providers may, in the future, intend to support compression exercises between just two participants. While we suggest that the criteria and steps for direct bilateral compression activity should be aligned with those for multilateral compressions in existence in Credit and Rates adjusted as necessary to reflect the absence of a compression service provider, it should be recognised that bilateral compression exercises will often involve bespoke manual processes which are negotiated and established between the parties. Therefore, we would recommend that ESMA advises the Commission that any requirements should be sufficiently high level and should not undermine parties' ability to enter into bespoke arrangements.

Finally, we note that unilateral compression may also be offered in the future. This allows counterparties to reduce notional values on their books against a CCP. It is important that ESMA advises the Commission of the existence of such unilateral compression methods and advises the Commissions to include it as a suitable form of portfolio compression.

**Legal Documentation**

We agree that it is imperative that relevant legal documentation should be in place between the parties to a compression exercise and that such documentation should adequately cover the activities such as reduction, termination and replacement of derivative transactions as will be caused by the compression process. In our view it is not necessary that the form of that documentation should be prescribed in the rules rather that firms participating in any form of compression exercise should satisfy themselves that the documentation in place is suitable for its purpose. We would also note that while compression can result in some derivative transactions being reduced and terminated or terminated and replaced, compression can also (i) result in fewer transactions, without any reduction in notional amounts (e.g. in the case of a compression recouponing exercise) or (ii) involve the addition of new trades with the effect of the risk, notional and/or number of trades is/are reduced overall.

**Criteria and process steps:**

As noted above we would suggest that any post trade compression service, be it multilateral, bilateral or unilateral, should comply with a set of framework criteria enshrined in legislation. We would suggest the following criteria:

1. the exercise is designed to be overall market risk neutral for each participant;
2. the participants of the exercise do not submit bids and offers to enter into a specific position;
3. the exercise is cycle-based and must be accepted in full by all participants or it will not be executed;
4. the exercise is designed to reduce secondary risks emerging from existing derivatives transactions, such as counterparty credit risk and operational risk.

In terms of process steps we would suggest the following high level description:

1. identifying participants for the relevant compression exercise;
2. derivative transactions submission – directly by participants or indirectly via a third party such as a clearing house;
3. proven methodology for identifying transactions eligible for compression, e.g. transaction linking;
4. compression proposal generation; and
5. compression execution.

As discussed above, we do not believe more prescriptive requirements as described in paragraphs 8 to 16 of Section 8.6 of the Discussion Paper are required.
What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?

For FX, the GFXD understands that the FX market does not currently leverage compressions services during the normal course of business. Whilst this may change during the future development of the markets and concurrent establishment of regulatory obligations, the global nature of the FX business, the short dated nature of the FX products and the high volume of market participants/transaction executed means that there are many operational challenges that will need to be addressed to ensure that the smooth running of the market, including the widespread use of CLS in the settlement process do not become disrupted.

As explained above, compressions (in which ever form) are not a price forming events. As such, we question the value of reporting such information although we note that at an aggregate level, such published information (combined with other metrics of turnover) may convey information to market participants Regardless of the objective, it is important to note that the approach for publishing information related to a compression exercise needs to recognise differences between multilateral, bilateral and unilateral processes. The primary concern of our members is that any information published should not disclose identities of firms and any actual positions. We are aware that on occasion there may only be one firm from a particular participant category participating in a multi-lateral compression exercise and therefore we would suggest that reporting by participant type should not be required by the regulation. Similarly, by their nature, direct bilateral compression exercises could disclose information that is attributable to a participating firm. We would therefore caution against requirements to publish this information for these types of compression processes until further consideration has been given to how this can be achieved without unduly disclosing sensitive information.

Regarding the actual information that needs to be reported we suggest that the critical information relates to the notional amount of transactions compressed. We therefore suggest that the information published is restricted to i) the notional amount of transactions submitted (and accepted) to be part of the compression exercise, and ii) the notional amount of transactions terminated as a result of the exercise. This information should include all transactions in the compression cycle irrespective of whether the participant is in scope for EMIR and be published at an aggregated market level by product type and currency for each compression cycle. In the case of product type we suggest that this should be interpreted as per asset class only. In our view, a more granular designation will be more challenging to implement and provide limited added value. To the extent that ESMA is inclined to advise the Commission to adopt a more granular approach, for the interests of certainty and avoidance of confusion, such granular approach should be consistent with the ISDA taxonomy.

In the context of APA reporting and the time at which transactions subject to portfolio compression were concluded we suggest that this should be the time at which the compression service provider communicates to all participants that the compression exercise proposal has become legally binding. However, it should be noted that the compression exercise can have taken legal effect at another point in time in accordance with the compression contract between the compression participants.

As close to real time as possible

As explained above there are differences between bilateral, multilateral and unilateral compression techniques and the infrastructure around the compressions exercises. Such differences involve timing constraints.

In respect of multilateral or unilateral compression services and provided the safeguards in relation to sensitive information we have proposed above are adopted, in our view information can be reported almost immediately.

By contrast, there is currently no developed infrastructure for bilateral compression services and they rely on bespoke arrangements. In our view it will not be possible for bilateral services to report within the same time frame as multilateral and/or unilateral services. To ensure consistency and avoid duplicative requirements, we would therefore recommend that ESMA advises the Commission that, in the context of bilateral compression services, the reporting deadlines should align with the reporting requirements under EMIR (i.e. by close of business on the day following the conclusion of the compression exercise).
We appreciate the opportunity to share our views on the Discussion and Consultation Papers. Please do not hesitate to contact, Andrew Harvey at +44 (0) 207 743 9312 / aharvey@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp
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