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By Email

TO:

Capital Markets Intermediaries Department III
Monetary Authority of Singapore
10 Shenton Way
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10 July 2015

Re: Consultation Paper P009-2015 (Policy Consultation on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme)

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 Policy Consultation Paper issued by the Monetary Authority of Singapore (MAS) on 3 June 2015.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 24 global FX market participants, collectively representing more than 90% of the FX inter-dealer market.¹ 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, and the GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation which we believe will be of benefit to both regulators and market participants alike.

Policy Consultation P009-2015: GFXD Comments

In this response to the Policy Paper we have only addressed Question 8 (relating to Trade Confirmations), being a question that we consider as potentially having specific FX market implications due to the methods employed by FX market participants in confirming FX trades. We have not addressed the other questions in our response, but support the submissions made by the industry as set out in the joint letter from the International Swaps

¹ Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays Capital, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

and Derivatives Association (ISDA), Futures Industry Association (FIA) and ASIFMA in response to the Policy Paper.

In response to Questions 8(i), (ii) and (iii), we support the comments in the joint submission made by ISDA, FIA and ASIFMA.

With regard to Question 8(ii), we also respectfully request that the MAS endeavour, in its ultimate application of the trade confirmation requirements to uncleared FX transactions, to respect, and not implement requirements that might disrupt, the well-established FX market practices and trade confirmation infrastructure. These practices and this infrastructure, more fully described below, have been developed with the encouragement of international prudential regulators.

Uncleared FX transactions are typically governed by multiple documents constituting a hierarchy of agreements. At the most general level is a master agreement, typically a form agreement (e.g., an ISDA Master Agreement) that sets forth the operational and credit terms that govern the overall trading relationship between the counterparties. The counterparties can further customize their relationship terms by making certain elections under the master agreement, negotiating bespoke bilateral terms in “schedules” and agreeing to market protocols, such as an ISDA Dodd-Frank Protocol or CLS Bank Protocol. Counterparties can also agree to currency pair-specific template terms, addressing such matters as emerging market rate sources and disruption events (e.g., standard EMTA terms) in the context of a specific transaction (via a long-form confirmation) or across their overall trading relationship level (via a master confirmation agreement). Ultimately, the dynamic economic terms of each specific transaction are agreed and confirmed by the parties on an individual trade basis and are set forth in a trade-specific confirmation.

In contrast to some other asset classes, an FX trade-specific confirmation often does not include express cross-references to the other bilateral documentation governing the transaction. Instead, except when FX parties use a long-form confirmation, which is relatively less common, FX trade-specific confirmations have been streamlined to be consistent with internationally agreed electronic messaging data protocols, such as SWIFT and CLS messaging, that do not include these cross-references. **The terms contained in the bilateral documentation still apply, because that documentation states that trade-specific confirmations will be deemed to include the terms of the bilateral documentation. To the extent there is any inconsistency between the trade-specific confirmation and bilateral documentation, the trade-specific confirmation will supersede the bilateral documentation.**

FX market participants and infrastructure providers adopted this approach, with the encouragement of international prudential regulators, in order to reduce operational risk by promoting straight-through processing (STP) while at the same time maintaining the legal enforceability of all applicable documentation, including underlying bilateral documentation and trade confirmations. It is important for the fruits of the long-running efforts to enable straight-through processing in the FX market, and to implement a well-established method of achieving legal certainty for FX confirmations, to be preserved.

In the MAS’s goal (as stated in the Policy Paper) of aligning the Annex 1 confirmation terms with the data fields required to be reported under the MAS’s previously published reporting requirements and under the U.S. CFTC’s trade reporting requirements, we wish to ensure that the conceptual distinction is maintained between: (i) those terms that are required to be confirmed in order to promote legal certainty for a transaction, and (ii) those terms that are required to be reported in order to provide the MAS with sufficient information to achieve its objectives of “assessing systemic risk and financial stability, conducting market surveillance and enforcement, supervising market participants and conducting resolution activities”.² We would not want the views or approach taken with respect to trade reporting requirements to necessarily impact or require changes to the methods by which FX market participants have long been confirming FX transactions, nor do we view any changes to be necessary given that current practices produce legally binding confirmations.

² MAS June 2013 Consultation Paper P006-2103 on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts, p.1.

In this regard we note that, in the U.S., the line between determining legal certainty via trade confirmation and trade reporting has in our view become blurred. We point to the 2014 consultation performed by the U.S. CFTC on its swap data reporting and record keeping requirements, to which we responded.³ In our response, we requested that the U.S. CFTC should, rather than require reporting of “confirmation data” (which necessitates an interpretation of the contractual terms which must be included in a confirmation), help to define a globally consistent standardised minimum data set for reporting. This would allow for convergence with other global regulatory trade reporting obligations and enable more effective regulatory oversight. Additionally, this is illustrated in the U.S. in the context of swap execution facility (SEF)-executed transactions. The U.S. CFTC has indicated that transacting parties are to provide master agreements to SEFs ahead of execution, so that a SEF can provide a confirmation inclusive of master agreement provisions that are incorporated by reference in the confirmation and properly perform its trade reporting.⁴ We support the U.S. CFTC’s Division of Market Oversight’s recent no-action relief from these requirements allowing for additional time to consider questions and concerns raised by and on behalf of market participants regarding the interaction between the U.S. confirmation requirements and the U.S. trade reporting requirements.⁵ In particular, we fear that linking confirmation and reporting has potential implications for non-deliverable FX forward and non-deliverable FX option transactions that could lead to a bifurcation of U.S. confirmation processes from the rest of the globe and disruption of the already well established and legally sound confirmation processes.

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.⁶ We therefore seek to ensure that the MAS implements trade confirmation rules for uncleared FX transactions in a manner which is not disruptive to the well-established practices and infrastructure that enable STP processing while affording legal certainty for confirmation of FX transactions.

We appreciate the opportunity to share our views on this Policy Paper issued by the Monetary Authority of Singapore. Please do not hesitate to contact Victoria Cumings on +1 212 313 1141, email vcumings@gfma.org or Andrew Harvey on +44 207 743 9312, email aaharvey@gfma.org, should you wish to discuss any of the above.

Yours sincerely,



James Kemp
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³ <http://gfma.org/correspondence/item.aspx?id=598>

⁴ See 78 Fed. Reg. 33476, 33491 (June 4, 2013) at fn. 195 (“There is no reason why a SEF’s written confirmation terms cannot incorporate by reference the privately negotiated terms of a freestanding master agreement for [uncleared] transactions, provided that the master agreement is submitted to the SEF ahead of execution and the counterparties ensure that nothing in the confirmation terms contradict the standardized terms intended to be incorporated from the master agreement.”).

⁵ <http://www.cftc.gov/ucm/groups/public/@rllettergeneral/documents/letter/14-108.pdf>

⁶ Notional turnover, as recently reported by the Bank for International Settlements, is US\$5.3 trillion/day. <https://www.bis.org/publ/rpfx13fx.pdf>