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TO:

European Securities and Markets Authority
103, rue de Grenelle
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13 February 2015

Re: Consultation Paper on the Review of the technical standards on reporting under Article 9 of EMIR

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to comment on behalf of its members on the Consultation Paper issued by the European Securities and Markets Authority (ESMA) on 10 November 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 24 global Foreign Exchange (FX) market participants,[1] collectively representing more than 90% of the FX inter-dealer market.[2] 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.

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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.

The global FX market presents some unique challenges for trade reporting when compared with other asset classes. 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. Notional

1 Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi UFJ, Barclays, BNP Paribas, Citigroup, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho Bank, Morgan Stanley, Nomura, Royal Bank of Canada, Royal Bank of Scotland, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac

2 According to Euromoney league tables

turnover, as recently reported by the Bank of International Settlements, is US$5.3 trillion/day.[3]

The high number and diversity within the participants of the global FX market presents many practical challenges in ensuring that those that are required to report actually can do so. As the FX market is global in nature, the reporting of a transaction will often be required to multiple jurisdictions, and any variation in the trade reporting requirements will be required to be adopted by either one, or both, parties to the transaction usually resulting in increased costs and increased operational risks.

The GFXD has consistently promoted and supported efforts to align global trade reporting standards as we believe that consistent trade reporting requirements offer regulators the best opportunity to oversee trading practices and market transparency.

In addition to ESMAs current Consultation Paper, we also note the consultation performed by the CFTC on its swap data reporting and record keeping requirements[4] to which the GFXD responded. We requested that the CFTC help to define a (globally consistent) standardised minimum data set. We believe that this would allow convergence with other global regulatory trade reporting obligations and provide more effective regulatory oversight. We also note similar recent consultations in Hong Kong, Singapore and Australia.[5] In responding to these consultations, we also requested further consistency in the definition and use of a standardised minimum data set.

We also request that ESMA partners with other regulators to establish a globally consistent minimum data set, which should form the basis of future reporting enhancements. We suggest that any implementation timelines are sufficient to allow for market participants to build, test and implement changes, without increasing the already unmanageable number of trade reporting miss-matches at the trade repositories.

We also note the Financial Stability Board's (FSBs) Consultation Paper[6] on data aggregation, promoting the desire and requirement to standardise the reporting of swaps data, identifying the 4 key challenges facing the market today, namely:

- Inconsistencies in trade identifier construct and other key reporting fields
- Inconsistencies exist as to when reporting is required to be submitted to the trade repository (trade date v trade date plus)
- Inconsistency remains in who is required to report, including dual v single sided requirements
- Inconsistency in the global treatment of participant confidentiality

The GFXD requests that ESMA takes this opportunity to explicitly define trade reporting requirements in Europe, leveraging the key challenges identified above. The derivatives industry has consistently sought more clarity from ESMA and the NCA community on how Tables 1 and 2 should be populated, how the UTI and UPI should be constructed, and that the inconsistencies in how individual trade repositories require their data to be submitted and matched should be addressed.

The GFXD believes that due to the complex trade reporting landscape in Europe, any direction from ESMA needs to be absolutely specific in its guidance in order to prevent exacerbating the current issues, and should act to prevent further interpretations of trade reporting requirements. Market participants have already invested considerable time, human capital and financial resource in order to reach the current standards. Any subsequent recommendations by ESMA need to be carefully considered to ensure that valuable resource is not invested needlessly.

3 https://www.bis.org/publ/rpfx13fx.pdf

4 http://gfma.org/correspondence/item.aspx?id=598

5 http://www.gfma.org/correspondence/item.aspx?id=621, http://www.gfma.org/correspondence/item.aspx?id=616, http://www.gfma.org/correspondence/item.aspx?id=610

6 http://gfma.org/correspondence/item.aspx?id=575

Q1: Do you envisage any difficulties with removing the 'other' category from derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) of ITS 1247/2012? If so, what additional derivative class (es) and type(s) would need to be included? Please elaborate.

For FX, the GFXD does not anticipate difficulties in removing the 'other' category from derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) of ITS 1247/2012, as long as there are adequate means to categorise the range of derivatives reported. It should however be noted that due to the heterogeneous nature of the derivatives markets, other asset classes may have a requirement to leverage the 'other' category.

The GFXD also believes that such data fields should be replaced by the use of the Unique Product Identifier (UPI). The intention behind the UPI is to provide specifics as to what derivative instrument has been traded. We believe that this would provide a more useful and non-duplicative approach, rather than ESMA continuing to refine existing product classification fields.

Q2: Do you think the clarifications introduced in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

For FX, the GFXD believes that the clarifications made in this section provide improvements with respect to the derivatives market, but are not comprehensive. For instance, with respect to paragraph 25, we still support the view that the concept of a buy/sell indicator is not appropriate for FX cash products (FX Swaps/FX Forwards). For FX cash products, there will always be a buyer of currency and a seller of currency, and not a buyer of an 'FX Swap' or a 'FX Forward' – such trades are an exchange of two currencies and there will not be a buyer/seller in the same way that, for example, there is with an FX Option. We would like to reference existing data that is reported under the 'Payer/Receiver' fields, and we believe that this sufficiently describes the FX Swap and FX Forward financial instruments. Whilst the GFXD has established a recommended practice to identify the buyer/seller of a FX Swap/FX Forward[7] we consider that this is not an optimal resolution.

Additional clarifications such as the use of a 'negative number' will make reporting more accurate, but the addition of increased granularity at this stage will increase the opportunity for reporting differences between parties. We also consider that the text in paragraph 21, 'the value reported by the first counterparty should be approximately equal..' is not specific enough and will only lead to further interpretation issues, exactly the type of situation that the market is looking for ESMA to provide specific direction on. It is well established that many challenges still exist in the dual sided reporting of trades. The GFXD requests that ESMA re-addresses any text in the Consultation Paper that does not provide explicit direction or leaves any ambiguity.

The GFXD supports the continued use of the USI as the trade identifier. Given the global nature of the FX business, it is highly likely that a considerable percentage of FX trades reported in Europe will also be reported in the US and will therefore require a USI. For those trades that do not have a USI, the GFXD continues to support the view that the UTI should be constructed using characters 7-16 of the LEI plus a further 32 character trade id. The GFXD believes that uniqueness can be established with the approach and does not believe that a full LEI is required. We therefore support the ISDA 'Unique Trade Identifier (UTI): Generation, Communication and Matching' paper.

Q3: What difficulties do you anticipate with the approaches for the population of the mark to market valuation described in paragraphs 21 or 19 respectively? Please elaborate and specify for each type of contract what would be the most practical and industry consistent way to populate this field in line with either of the approaches set out in paragraphs 21 and 23.

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[7] http://gfma.org/uploadedFiles/Initiatives/Foreign_Exchange_(FX)/FX%20Trade%20Side%201209%20v0%201.pdf

We support the submission made by the International Swaps and Derivatives Association, Inc (ISDA).

Q4: Do you think the adaptations illustrated in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

The GFXD would like to draw reference to the text in paragraph 29, specifically the withdrawal of BICs and Interim Entity Identifiers. As we have previously mentioned, the FX market is global in nature and acts as the global payment system. The users of the FX market are therefore vast in number, wide in their geographical location and usually transact across jurisdictional borders. Given this, it is likely that each participant to a trade will be overseen by different regulators, some of which may not require the use of LEI. It is precisely this situation that causes issues with trade reporting and why flexibility to use BIC etc is required. The GFXD suggested to the CFTC in their consultation on swap data reporting in May 2014[8] that global regulatory consistency is required so that all market participants are required to obtain a LEI, and unless implemented that flexibility is required to enable multiple methods of identifying the participants to a trade.

Paragraphs 30/31/32 suggest changes that enable more granular detail to be reported, specifically on the sector of the counterparty. As referenced in our response to Q7, the GFXD believes that data linked to the identity of the counterparty should be centrally managed as part of the LEI registration process. Whilst ESMA suggests that this approach is not suitable in this instance, the GFXD respectfully disagrees. We believe that the maintenance of additional client-specific static data is not scalable. If ESMA considers that this data is of regulatory value, then we recommend that this field be included in the (global) minimum reporting data set, and suggest that a change in the LEI registration process would be appropriate, adding value to both regulators and market practitioners. Should these fields ever be required to be matched, the GFXD believes that the addition of extra parameters will increase the opportunity for increasing the number of reporting miss-matches. If such changes are warranted then we would suggest that these fields do not become matching fields at this stage.

Paragraph 34 renames an existing notional field and introduces a new notional field. Conceptually this is appropriate (and for instance would more accurately reflect the mark to market of a trade whose notional changes during the life-time of the trade). In practice however, the GFXD believes that such contract intrinsic events would not be re-confirmed as part of normal market practice and would require a significant shift in current processes - we therefore do not support such changes at this time.

Paragraphs 41 and 42 pose concerns for the GFXD members in that we believe that any trade changes will always be reported under a consistent code, whether 'R' or 'E'. Additionally, it is not clear to us how such differentiation would be implemented. We also believe that an approach to differentiate between these two types of actions will increase the number of reports (and not decrease as suggested in the Consultation Paper) and if implemented, would prove to be another differentiator between trade reporting in Europe v other jurisdictions. The GFXD believes that regulations should be as globally harmonised as possible, especially for a global market like FX.

We would also like to remind ESMA that GFXD members are already reporting multiple other trade actions to DTCC (such as 'novation', 'aggregation' and 'termination'), which we believe are not being subsequently reported on an individual basis to ESMA. We understand that such actions are currently 'bundled' by DTCC into a reduced number of trade actions (such as 'transaction type' including 'trade, amendment, termination, actions') before further reporting to ESMA/NCAs. Our members believe that trade repositories should not 'bundle' such messages and that this extra granularity is of value.

[8] http://gfma.org/correspondence/item.aspx?id=598

Q5: Do you think the introduction of new values and fields adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

For the paragraphs concerning margin, we support the submission made by ISDA.

Paragraph 55 refers to a process that should be followed when counterparties to a trade are unable to agree whose responsibility it is to generate the UTI. The GFXD believes that the current suggestion is insufficient and will not rectify the current challenges faced by the market. The GFXD suggests that a more appropriate solution would be to agree an approach for ALL situations, not just those in which parties fail to agree a UTI. Such an approach should start at the execution of a trade, in which a trade executed on a trading venue should have the UTI generated by the venue and communicated to both parties as part of the execution message. The GFXD suggests the UTI generation model should follow the recommended approach as described by ISDA in their paper 'Unique Trade Identifier (UTI): Generation, Communication and Matching'.

Q6: In your view, which of the reportable fields should permit for negative values as per paragraph 40? Please explain.

For FX, the GFXD believes that as referenced in paragraph 44, the addition of a 'negative' value will only impact the mark to market data submissions and believes that this is an appropriate enhancement to trade reporting.

Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph 42? Please elaborate.

The GFXD believes that any data specific requests that are linked to the identity of the counterparties to the trade should be centrally managed – such an approach supports STP rates, reduces manual interventions and improves the quality of the data available to regulators. For example, this approach would be of critical importance in delegated reporting scenarios, reducing the amount of data that needs to be communicated and validated by both parties to a trade.

In this specific instance, the GFXD suggests that market participants should record their NACE code as part of the LEI registration process and that trade repositories should then reference this and enhance the trade reporting submissions accordingly.

Q8: Do you envisage any difficulties with the approach described in paragraph 45 for the identification of indices and baskets? Please elaborate and specify what would be the most practical and industry consistent way to identify indices and baskets.

For FX, the GFXD suggests that until such products are templated in FpML, then they will continue to be reported by market participants via the 'generic' FpML template (or CSV file) which does not have the functionality to fully define such products.

The templating of products within FpML is a challenging and time-consuming process and should not be considered to be an 'over-night' solution to trade reporting issues – the use of FpML is also typically limited to the more sophisticated market participants. The process to create a new FpML template typically works as follows. Consensus if firstly sought between market participants to ensure that there is a standard interpretation of how a product works, what its data attributes are, what cash-flows are generated and how the legal confirmation template should be structured. Such factors are then considered for the actual templating within FpML. A working group consisting of market practitioners will then look to draft a proposed FpML template. Iterations of a template will be subject to scrutiny from an oversight group, which are ultimately accountable for the final approval of the template, subsequent to it being published on the FpML website and thus being available to the market as a whole. Once the FpML template is published, market participants, including trade repositories, will then need to perform their own systemic changes (including testing) to ensure that the new FpML template can be used in day-to-day production. We anticipate the process will require 12 months which is inside the elapsed time requirements of other such industry initiatives, e.g., SWIFT Standards process (approx 24 months).

Q9: Do you think the introduction of the dedicated section on Credit Derivatives will allow to adequately reflect details of the relevant contracts? Please elaborate.

No response for FX.

Q10: The current approach to reporting means that strategies such as straddles cannot usually be reported on a single report but instead have to be decomposed and reported as multiple derivative contracts. This is believed to cause difficulties reconciling the reports with firms' internal systems and also difficulties in reporting valuations where the market price may reflect the strategy rather than the individual components. Would it be valuable to allow for strategies to be reported directly as single reports? If so, how should this be achieved? For example, would additional values in the Option Type field (Current Table 2 Field 55) achieve this or would other changes also be needed? What sorts of strategies could and should be identified in this sort of way?

As historically suggested by the GFXD, we recommend that strategies (complex and bespoke products) that are confirmed in their constituent parts (and thus legally independent of each other) should be reported as such, and that an independent ID, such as a 'swap tracking number' be attached to all constituent parts enabling ESMA/NCAs to assess the overall strategy. Until all types of complex and bespoke products are defined in FpML, CSV or any other file types used to report trades, we do not believe that trade repositories will be able to match such strategies.

We would like to make reference to the ongoing developments we are leading with respect to increasing the products available to the market in FpML. The GFXD has recently completed the templating of 27 variants of 3 FX derivative products, Targets, Accruals and Vol/Var swaps. These templates, once implemented, will enable market participants to accurately represent such trades within their trade reporting submissions.

Q11: Do you think that clarifying notional in the following way would add clarity and would be sufficient to report the main types of derivatives: Please elaborate.

For FX, the GFXD recommends that as contractual payments for Currency Options are derived from the original notional, rather than an underlying asset, it would be more appropriate to add 'Currency Options' to paragraph 56 rather than the inference that these would be included in paragraph 57.

The GFXD would also like to seek clarification on the context in which 'conclusion of the contract' is used in paragraph 59. We assume that this refers to the notional at the point when the trade is executed between the 2 parties, rather than the notional at the maturity of the contract (i.e. settlement/termination/expiration/cancellation etc).

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We appreciate the opportunity to share our views on this Consultation Paper. 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,

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