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Chairman Timothy G. Massad
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Commodity Futures Trading Commission
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August 12, 2016

Re: Request for Postponement of Margin Requirements for Uncleared Swaps for Phase 1 Covered Swap Entities

Ladies and Gentlemen,

For the reasons set forth below, the Global Foreign Exchange Division ("GFXD") of the Global Financial Markets Association[1] requests that the US Prudential Regulators and Commodity Futures Trading Commission ("CFTC") postpone the implementation of certain margin requirements for uncleared swaps for covered swap entities ("CSEs") from September 1, 2016.

[1] 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 foreign exchange (FX) market participants collectively representing around 85% of the foreign exchange inter-dealer market.

EXECUTIVE SUMMARY

The GFXD fully supports the US Prudential Regulators and CFTC taking initiatives to implement the G20 commitments to reform the OTC derivative markets.

We very much appreciate the recognition the agencies have shown to date of the prudence of international harmonization of these reform measures, including by implementing the modified margin compliance dates set forth in the March 2015 "Margin requirements for non-centrally cleared derivatives" issued by BCBS-IOSCO[2] in order to achieve a uniform approach for the commencement of uncleared margin requirements across global jurisdictions.

Given that the FX market is the world's largest financial market, and effective and efficient exchange of currencies underpins the entire global financial system, our members rely heavily on and fully support internationally coordinated regulation, which we believe will be of benefit to both regulators and market participants alike. Many of the current legislative and regulatory reforms, including those implementing margin requirements for uncleared OTC derivatives transactions, have had and will continue to have, a significant impact upon the operation of the global FX market. Specifically, FX non-deliverable forward ("NDF") and FX option ("FXO") transactions are within scope of initial and variation margin requirements in both the US and EU.

In the US, the US Prudential Regulators' and CFTC's margin requirements for uncleared swaps ("US margin rules")[3] commence for "Phase 1" covered swap entities[4] on September 1, 2016. We are writing to express our concern about this timing, given the European Commission's recent endorsement of draft regulatory technical standards for uncleared margin requirements ("EU margin rules") which delay implementation of margin requirements for firms that were originally scheduled to comply with the requirements on September 1, 2016, potentially to 2017.[5]

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[2] Available at http://www.bis.org/bcbs/publ/d317.htm.

[3] Department of the Treasury Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration and Federal Housing Finance Agency, Margin and Capital Requirements for Covered Swap Entities; Final Rule, 80 Fed. Reg. 74840 (Nov. 30, 2015); Commodity Futures Trading Commission, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Final Rule, 81 Fed. Reg. 636 (January 6, 2016).

[4] Covered swap entities (combined with affiliates) with an average daily aggregate notional amount of covered swaps for March, April and May 2016 exceeding $3 trillion transacting with a counterparty exceeding the same threshold.

[5] http://ec.europa.eu/finance/financial-markets/docs/derivatives/160728-letter-esas_en.pdf; Swiss FINMA Guidance 01/2016 (July 6, 2016) also provides that FINMA is extending the transitional deadlines for the relevant Swiss margin requirements until such time as the corresponding future requirements must be met in line with the relevant European regulations. Our references herein to "EU margin rules" include the Swiss rules.

Our concern about a lack of synchronization of the US and EU start dates for Phase 1 margin requirements stems from the following:

- Given that so much of FX is transacted cross-border, a lack of synchronization has the potential to influence firms' incentives for trading, disrupt the current market structure and lead to a bifurcation of FX liquidity pools and concentration of counterparty risk.
- Differing start dates also have the potential to disrupt FX prime broker relationships and cause clients of FX prime brokers, such as private funds, pension funds and retirement accounts, to lose access to competitive liquidity and become restricted in their ability to continue to rely on their prime broker arrangements to meet their FX needs.

In light of these concerns, as further detailed below, we are writing to request that the US Prudential Regulators and CFTC postpone implementation of initial margin requirements for Phase 1 CSEs under the US margin rules from September 1, 2016 until the new initial margin implementation date applicable for "Phase 1" under the EU margin rules.

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EXPLANATION OF FX CONCERNS

A. Impact of a lack of alignment of US and EU uncleared margin rules start dates on FX market trading, structure and liquidity.

Given the delay afforded under the EU margin rules, Phase 1 EU CSEs who would only be required to comply with margin obligations on September 1, 2016 if they face a Phase 1 US CSE[6] counterparty will have a commercial imperative to trade instead with counterparties other than Phase 1 US CSEs[7] because complying with the US margin rules will invoke significant additional transaction costs.

A difference in US and EU margin start dates for Phase 1 could also cause:

- Certain firms in jurisdictions without final margin obligations on September 1, 2016 to move their FX trading activity away from Phase 1 US CSEs to instead face, for example, Phase 1 EU CSEs who, due to EU margin rules delay, do not have margin

[6] This would include a non-US CSE if it has a US parent or guarantee, is part of a US banking group or is trading out of a US branch.

[7] Such as Phase 1 non-US CSEs (European or otherwise) which do not have a US parent or guarantee, are not part of a US banking group and not trading out of a US branch.

obligations on September 1, 2016 because they are only required to comply with margin obligations then if they face a Phase 1 US CSE.

- Phase 1 US CSEs to shift their NDF and FXO trading activity with certain counterparties so the US CSE instead transacts FX via an affiliate of the US CSE who is not subject to margin obligations on September 1, 2016 (if they have one), such as a non-US affiliate that is not itself a CSE under the US margin rules.

These circumstances have the potential to prompt dislocation of global trading relationships, in particular between Phase 1 US CSEs and Phase 1 EU CSE counterparties, resulting in market fragmentation and the creation of bifurcated liquidity pools - US trading with US, EU trading with EU - with the accompanying concentration risk[8] arising as a result.[9] Phase 1 US CSEs will likely, as a consequence, find it more difficult to hedge the exposures they incur in the course of performing their vital market-making function, which will introduce greater risk into the FX market. This will in all likelihood result in greater costs being transferred to other market participants, including end-users who rely heavily on market-makers when using FX transactions to hedge their currency risks.

Market fragmentation and disruption concerns are particularly pronounced for the FX market. The FX market is the basis of the global payments system, which means that the volume of FX transactions is extremely high and transactions are most often executed by market participants across geographical borders. As reported by the Bank for International Settlements ("BIS") in its "Triennial Central Bank Survey: Foreign Exchange Turnover" in April 2013, around 75% of FX activity was executed by market participants across five global jurisdictions.[10]

Based on data submitted to the GFXD in an informal survey of several GFXD Phase 1 US CSEs, for example, on average during the last six months approximately 50% of each of these Phase 1 US CSEs' total (i) FXO volume and (ii) NDF volume with other Phase 1 firms was transacted between those Phase 1 US CSEs and a Phase 1 EU or Swiss firm who, due to the EU

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[8] For example, risk stemming from FX activity becoming concentrated in the EU between Phase 1 EU CSEs who, due to the EU margin rules delay, would only be required to comply with margin obligations on September 1, 2016 if they faced a Phase 1 US CSE.

[9] In a similar vein, it was widely observed in 2013 that the SEF requirements created certain dislocations between US and EU market participants. Multi-lateral trading facilities offering FX products classified as swaps (NDFs and FXOs) were required to register as SEFs under US regulation, and with no similar requirement under EU regulation there ensued a bifurcation of liquidity between those facilities which were required to register as SEFs and those which were not. Dramatic shifts in trading style, with trading redirected from electronic to voice trading as a result of the SEF rules coming into force, were also reported. See "Footnote 88 and Market Fragmentation: An ISDA Survey (December 2013)" available at http://www2.isda.org/functional-areas/research/research-notes/

[10] BIS 2013 Triennial Survey, available at http://www.bis.org/publ/rpfx13fx.pdf

margin rules delay, would only be required to comply with margin obligations on September 1, 2016 if they face a Phase 1 US CSE.

Imposition of initial margin requirements under the US margin rules on September 1, 2016 on Phase 1 US CSEs without equivalent requirements under the EU margin rules could put this FXO and NDF activity at risk of being transacted instead by the EU or Swiss counterparty with an entity other than these US CSEs, to avoid the extra transaction costs.

B. Impact of a lack of alignment of US and EU uncleared margin rules start dates on FX prime broker arrangements

We are also concerned that the consequences of unsynchronized dates will negatively impact clients of FX prime brokers, by impeding their ability to continue to effectively transact FXO and NDF via their prime broker arrangements.

For example, if under a US/EU prime broker arrangement a Phase 1 US CSE prime broker has not agreed collateral arrangements and documentation with a Phase 1 EU executing dealer by September 1, 2016 because of the added transaction costs and obligations required under only the US margin rules, the US prime broker's client will not be able to rely on the US prime broker to facilitate trading for the client with that executing dealer.[11] Similarly, a Phase 1 US CSE performing an executing dealer function would be required to commence margin under the US margin rules on September 1, 2016, whereas it may not have agreed collateral arrangements and documentation with a Phase 1 EU prime broker who does not otherwise have margin obligations under its local EU margin rules. In either of these examples, without agreements with respect to collateral in place between the executing dealer and prime broker on September 1, 2016, the prime broker's client would be impeded from entering into FXO and NDF trades via their prime broker arrangements.

Our members are concerned that a significant portion of FX liquidity provided to clients (including US prime broker clients) of Phase 1 US CSE prime brokers is obtained from EU or Swiss executing dealers who, due to the EU delay, will not be subject to margin requirements on September 1, 2016 unless they face a Phase 1 US CSE prime broker. We are also concerned that a significant portion of FX liquidity provided to clients (including US prime broker clients) of Phase 1 EU prime brokers is obtained from Phase 1 US CSE executing dealers.

Commencing Phase 1 margin requirements under the US margin rules on September 1, 2016 in advance of the equivalent EU requirements could jeopardize FX prime brokerage activities and

[11] Because the US prime broker will not be able to meet the US margin rules requirements for the prime broker/executing dealer leg of the transaction.

relationships, putting them at risk of interruption, fragmentation and even dislocation. As a result, FX prime broker clients, such as private funds, pension funds and retirement accounts, could suddenly find themselves losing much-needed access to competitive liquidity and being constrained in their ability to transact under their longstanding prime broker arrangements, which would introduce added uncertainty and risk to a currently well-established, well-functioning and very necessary sector of the FX market.

REQUEST TO THE US PRUDENTIAL REGULATORS AND CFTC

Due to the concerns and considerations detailed above, although we appreciate the US Prudential Regulators' and CFTC's efforts to date to achieve alignment in compliance dates for uncleared swaps margin, we strongly urge you to consider synchronizing the September 1, 2016 compliance date under the US margin rules with the new implementation timeframe in the EU margin rules.

Specifically, we ask that the US Prudential Regulators and CFTC postpone implementation of the Phase 1 initial margin requirements under the US margin rules from September 1, 2016 until the new Phase 1 initial margin implementation date applicable under the EU margin rules, which would mean Phase 1 CSEs would be required to comply only with the variation margin requirements starting on September 1, 2016, not initial margin.[12]

This would avoid the market dislocation and negative impacts we highlight above, which we are concerned would result from unsynchronized US, EU and Swiss uncleared swaps margin start dates, whilst achieving the regulatory objective of ensuring that Phase 1 uncleared swaps transactions are margined with respect to daily market moves starting in September of this year.

CONCLUSION

The FX market is the basis of the global payments system, so our continued view is that, in order for this market to continue to function effectively and in order to avoid unwanted fragmentation of what is an already highly automated, transparent and well-functioning market, regulations, including relevant start dates across countries, should be harmonised at the global level before they are implemented.

[12] Whilst we do not specifically address variation margin requirements for non-Phase 1 firms in this letter, we note that if there is also a lack of alignment between the US and EU as to the date on which variation margin requirements take effect for entities in scope of variation margin beyond Phase 1 firms, this also has the potential to lead to similar counterparty preference/market fragmentation/tiered market concerns and issues.

We are grateful to the US Prudential Regulators and CFTC for appreciating the importance of international regulatory harmonization for the FX market, given how crucial consistent application of regulations across borders is for our FX members. Both we and our 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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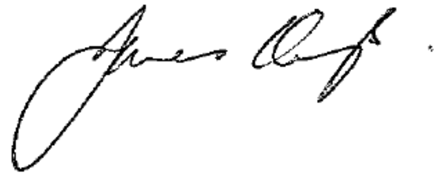
We appreciate the opportunity to share our views on these important considerations. Please do not hesitate to contact Victoria Cumings on 212-313-1141, email vcumings@gfma.org should you wish to discuss any of the above.

Yours sincerely,



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