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TO:

ESMA
103 Rue de Grenelle
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23 March, 2016

Re: Consultation Paper on Guidelines on Transaction Reporting, Reference Data, Order Record Keeping and Clock Synchronisation

Dear Sir/Madam,

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 on Transaction Reporting, Reference Data, Order Record Keeping and Clock Synchronisation* issued by the European Securities and Markets Authority (ESMA) on 23 December, 2015 (the Consultation Paper).

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,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.

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

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.

² According to Euromoney league tables.

operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for globally coordinated regulation which we believe will be of benefit to both regulators and market participants alike.

The global FX market presents some unique challenges for 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 turnover, as reported by the Bank of International Settlements, is US\$5.3 trillion/day³ and whilst the number of individual transactions is not publically available, it is expected to run into the hundreds of millions.

The challenge of aggregating and usefully applying the data gathered through global reporting regimes is one that has become increasingly apparent as G20 reforms are implemented across jurisdictions. The GFXD has consistently promoted and supported efforts to align and harmonise 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 relation to the Consultation Paper, we would like to raise some specific concerns regarding the fields to be reported under the MiFIR transaction reporting requirements. **In particular, we are concerned by the application of ISINs to transaction reporting under MiFIR RTS 22 Annex 1 Table 2.**

Although ISINs are in use in some markets already, for example the bond markets, this is not the case in the OTC derivatives markets, such as the global FX markets. Instead, FX market participants use an industry-developed standard taxonomy for FX products⁴. However, in order to facilitate the move towards mandating ISINs in regulations such as MiFIR, the GFXD is actively engaged and partnering ISO to develop a practical and accurate ISIN construct for OTC derivatives markets. We strongly believe that the ISIN should be multi-functional in its application and be jurisdictionally agnostic.

The purpose of an ISIN is to allow for the uniform identification of a security/financial instrument throughout the trade lifecycle. This enables authorities to aggregate data relating

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

⁴ OTC Derivatives Products Taxonomy v2.0, available at <http://www2.isda.org/functional-areas/technology-infrastructure/data-and-reporting/identifiers/upi-and-taxonomies/>

to a specific instrument and also allows investors to compare prices across the same instrument. Therefore it is critical that the ISIN has a sufficient level of granularity to identify individual instruments, without seeking to incorporate volatile trade factors – the inclusion of volatile trade factors will likely result in ISINs at the individual trade level. We understand that both the regulatory community as well as market participants wish to avoid the creation of ISINs at the trade level, which, for FX, could result in a grossly unmanageable (and impracticable) number. Conversely, an ISIN with too high a level of granularity would not allow data aggregation for such purposes as the regulatory monitoring of trades for market abuse or for end user price comparison.

We additionally believe that an unintended consequence of using ISINs for FX cash products (which are very limited in the number of actual data points available e.g. FX spot and FX forwards), will be that the ISIN will ultimately prove of little value and that it would be more beneficial to the industry to report and make readily accessible for the consumers of this data the currency pair and value date as separately reported trade attributes.

Consequently, it is important to consider each characteristic carefully to determine whether it can usefully be included in an ISIN. MiFIR RTS 22 Annex 1 Table 2 notes that a specific group of fields (42-56) are not applicable where the instrument is identified in field 41 by an ISIN. It can therefore be concluded that ESMA expects an ISIN to include, at least, the data captured by those fields (yet we would like to note that the ISIN structure is still under discussion at the industry level via ISO led working groups). However, the GFXD considers that several of these volatile data points, if included in an ISIN, would cause serious problems within the global FX markets of scale and granularity and associated increased end-user practical challenges and implementation costs. Notably:

- Underlying instrument code: while underlying products in FX are not referenced as clearly as in, for example, an equity derivative trade, the underlying instrument for an FX derivative would be a FX spot trade – the underlier for a FX option, for example, is a FX spot trade. FX spot is not classified as a MiFID instrument⁵, and is not therefore required to be identified by an ISIN, yet in this instance the industry would presumably be required to obtain an ISIN for the relevant FX spot trade. Extending the ISIN classification to cover FX spot would be an additional undertaking for the industry. Furthermore, the ISO 4217 standard covers 163 currencies, which, even if only crossed with the top 5 currencies results in over 800 potential crosses. We do not believe that creating ISINs for these products will be of value. **We believe that a better solution may be to include the currency pair for**

⁵ MiFID instruments are defined in Directive 2014/65/EU (MiFID II) Annex 1 Section C (4)

the underlier, given that there is already a simple quoting convention for FX spot which is far more accessible for an end user than an ISIN.

- Strike price: ISINs should be limited to denoting relatively static data elements. FX instruments are OTC and are customisable to the requirements of the end-user. The FX markets form the basis of the global payments system and as such FX transactions are executed to facilitate cross-border payments, or to hedge future obligations. This means that the strike price: is hugely variable; is likely to be transaction specific; will be impacted by underlying market volatility, and; will differ between currency pairs. The GFXD believes that the inclusion of the strike price, which is a highly volatile, granular data element will likely result in ISINs at a transactional level. **We believe that if the strike price is included in the ISIN structure, it will limit the ability of the regulatory community to use the ISIN to perform their regulatory obligations as well as is limiting the ability of end-users to successfully compare transactions.**
- Maturity date and expiry date: as mentioned previously, given that FX forms the basis of the global payment system, it is not unreasonable to expect that FX trades are executed to facilitate current, as well as, future dated cross border payments. Using as an estimate that FX products might have a tenor extending out to anything up to 50 years, we believe that including another volatile attribute such as maturity/expiry dates in the ISIN construct increases almost infinitely the number of ISIN's required, likely requiring in a new ISIN per currency pair per individual maturity and expiry date (noting for example that there are approximately 13,000 working days in any 50 year period). **We therefore suggest that maturity and expiry dates are not included in the ISIN construct. As mentioned above, we believe that this will limit the practical application of the ISIN.**

The GFXD understands that ISINs should provide a practical, standardised solution to data aggregation and comparison for regulators and end users – the GFXD has historically supported the harmonisation and standardisation of data attributes across jurisdictions. We are committed to working with the industry to produce a workable ISIN construct for FX derivatives, in order to fulfil the regulatory requirement imposed by MiFIR. However, it is incredibly important that the instrument characteristics denoted by an ISIN are relatively static and are not too granular. The inclusion of for instance volatile instrument attributes

would reduce the ISIN to a transactional identifier that can only be used once. An ISIN is better applied to those instruments with complex and more numerous static fields.

The FX market, as noted above, has a notional turnover of \$5.3tn/day. Over half of this turnover takes place in Europe, and could be subject to the MiFIR ISIN requirements. We therefore urge ESMA to reconsider the ISIN construct for FX derivatives in relation to MiFIR RTS 22, in order to ensure that the result is practical and useable for regulators and market participants. We also welcome further discussion on the additional complexities expected when the various RTSs such as RTS 2 and RTS 22 are collectively applied, especially when considering instrument types and delivery types and how these are consistently defined and applied across market participants. We believe that such combinations, if not explicitly categorised, will significantly increase the numbers of ISINs required as well as limiting their effectiveness for the regulatory and end user community, mirroring those issues currently seen within trade reporting submissions and the known limitations of data usability.

We appreciate the opportunity to share our views on the Consultation Paper. Please do not hesitate to contact Andrew Harvey on +44 (0) 203 828 2694, email aharvey@gfma.org, or Fiona Willis on +44 (0) 203 828 2739, email fwillis@gfma.org, should you wish to discuss any of the above.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'James Kemp', with a large, sweeping flourish at the end.

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA