Global Foreign Exchange Division
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25 Canada Square
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European Commission
1049 Brussels
Belgium

18 July 2017

Re: Proposal for a Regulation of the European Parliament and Council Amending Regulation (EU) 648/2012 – EMIR Amendment

Dear Sir, Madam

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to provide feedback on the European Commission's proposal for an amending regulation of the European Parliament and Council, amending Regulation (EU) 648/2012, the European Market Infrastructure Regulation (EMIR).

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 25 global foreign exchange (FX) market participants,[1] collectively representing over 80% 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.

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

[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, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

[2] According to Euromoney league tables.

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.

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Executive Summary

Section A: Counterparty Classification

The GFXD recommends that counterparties whose status changes as a result of annual assessments should be required to notify their trading counterparties as well as ESMA.

Section B: Trade Reporting

The GFXD is extremely concerned by the persistence of duplicative reporting requirements and a lack of harmonised and explicitly clarified data standards across global reporting regimes. We do not believe that the Commission's proposal for a delegated reporting system for smaller non-financial counterparties will be successful in addressing this and continue to support an Entity-Based Reporting system, with detailed and harmonised data requirements, as the optimal global solution.

Section C: Margin

The GFXD urges that an exclusion be provided under the regulatory technical standards adopted pursuant to Article 11(15)(a) of EMIR from the requirements in the standards in respect of variation margin for physically-settled FX forwards and swaps, to achieve closer alignment with other jurisdictions whilst still ensuring the relevant risks are adequately addressed.

Section D: Clearing

The GFXD is supportive of 'FRAND' terms but is concerned by the suggestion that these will be further defined in a delegated act, given that the Commission has concluded that the extension of clearing services to smaller counterparties is often not commercially viable.

The GFXD is strongly supportive of the Commission's decision to review EMIR to identify further enhancements. However, we also strongly believe that the Commission should look to leverage previous experiences gained in Europe from EMIR and MiFID II/R, from the US with Dodd-Frank[3] and from Asia-

[3] Dodd–Frank Wall Street Reform and Consumer Protection **Act** (Pub.L. 111–203, H.R. 4173)

Pac with the roll-out of their regional obligations, as well as subsequent re-assessments including the current CFTC's KISS initiative[4].

FX by nature is a cross-border market; as reported by BIS in their 2016 Central Bank survey[5], 65% of transactions are executed on a cross border basis. It is highly likely that market participants will be required to comply with obligations in at least two jurisdictions, possibly three, and thus we strongly encourage that any re-assessments are coordinated on a cross-border basis.

SECTION A: COUNTERPARTY CLASSIFICATION

The GFXD supports the efforts of the Commission to remove unnecessary burden from certain non-financial counterparties. However, we suggest an additional provision for the new Article 4(4)(a)(1), namely that non-financial counterparties whose status changes because of an annual assessment should be required also to notify their trading counterparties of their change in status. This will allow their counterparties to be aware of which obligations may have changed as a result, for example whether trades with that counterparty will need to be cleared, in the event of a clearing mandate for FX products.

SECTION B: TRADE REPORTING

We outline below key areas for the Commission to consider:

Duplication of Reporting

The GFXD has performed an analysis (see Annex I) which demonstrates the multiple reporting obligations faced by the industry in complying with EMIR, MiFID II/MiFIR and Dodd Frank. We identify that an eligible trade could be required to be reported up to 14 times (noting that this could increase if that trade has an Asia nexus too). We have also identified the reportable 'risk' fields for FX trades, and again it is clear that these too are duplicated across each of those reporting obligations.

Whilst we understand the nature of this review to be targeted at specific areas of EMIR trade reporting, we urge the Commission to re-assess these duplicative reporting requirements.

We believe that there are significant benefits to be gained for (global) regulators and market participants alike in streamlining requirements.

Firstly, the complex and often overlapping regulations are extremely costly to build for and maintain, both for market participants and for regulators. In 2015, Sapient[6] estimated that complying with Dodd Frank and EMIR reporting regulations cost firms $25million on average, part of which was attributed to the difficulty of implementing a single business-wide solution for both regulations. With numerous other reporting regulations

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[4] http://www.cftc.gov/PressRoom/PressReleases/pr7555-17

[5] http://www.bis.org/publ/rpfx16.htm

[6] http://www.sapient.com/content/dam/sapient/sapientglobalmarkets/pdf/thought-leadership/Crossings_Spring2015_TradeReport.pdf

now in force globally, the costs for market participants continue to increase. Regulators, too, are expected to bear significant costs for the same regulations. For example, while reporting data is already available through EMIR, MiFIR has required each EU National Competent Authority (NCA) to create a system to receive transaction reports from firms, often for the same trades, and to build a Transaction Reporting Exchange Mechanism (TREM) system for exchanging data between NCAs.

Secondly, the data that is reported across regulations and jurisdictions is not consistent (e.g. using a globally consistent minimum data set) or explicitly defined, making it extremely difficult for regulators to aggregate and interpret. This ranges from the fundamental (e.g. differences between regulations as to what constitutes a reportable event) to the detailed (e.g. the precise format of each data field). The latter is particularly challenging for market participants, who must interpret each set of requirements, resulting in data sets that are inconsistent, sometimes even down to how the same trade is represented by each counterparty. Any attempt to standardise data sets at the trade repository level is not a satisfactory solution, adding cost and process when the problem could be solved at a regulatory level with explicit, globally harmonised requirements.

Trade Reporting – Data Standards

We commend the commitment made in the amended Article 9(6) to consider "international development and standards" and other EU reporting requirements including MiFIR[7].

GFXD has consistently promoted and supported efforts to align global trade reporting standards. We encourage the Commission to mandate ESMA to consider the work currently being undertaken by CPMI-IOSCO to harmonise the reporting of key data elements, including the Unique Transaction Identifier ("UTI") and Unique Product Identifier ("UPI").

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. Where data standards can be harmonised on a global level, trades can be reported to multiple regulators in the same format, which reduces the burden on market participants. Data sets can then be more easily combined and aggregated amongst regulators, allowing them to better oversee trading practices and market transparency.

Explicit Definitions of Data Attributes

Since the commencement of the G20 reporting obligations we have called for regulators to provide consistent, explicit definitions of the data required to be reported. We note that it is still the case that explicit definitions are missing. Market participants are therefore required to interpret which inevitably impacts the quality of data reported.

Whilst the industry can help provide additional analysis, such as the FX papers we have recently published on EMIR and MiFID[8], we urge the Commission to leverage efforts being undertaken by IOSCO as part of their data harmonisation work streams and to define once and for all the data that is to be reported for any additional

[7] Regulation (EU) No 600/2014

[8] http://gfma.org/Initiatives/Foreign-Exchange-(FX)/FX-MiFID-Working-Group/

fields. We also urge the Commission to stream-line any 'roll-out' efforts to avoid the continual, sub-optimal yearly process where a repetitive cycle of changes is required to be designed, tested and implemented by all market participants.

Timing of Implementation

In our February 2015 response[9] to the consultation on the new EMIR reporting technical standards (which goes live in November 2017), we requested a globally consistent minimum data set and cautioned against rules that involve a significant amount of industry interpretation. Yet we note that the new standards will come into effect while the CPMI-IOSCO[10] data harmonisation process is still underway. Assuming that ESMA commits to implementing the conclusions of the CPMI-IOSCO work, any changes to EMIR reporting will therefore necessitate another set the technical standards to be drafted and consulted on, which will take time and require further adjustments to reporting systems, both for market participants and regulators.

We would also like to encourage the Commission, Council and Parliament to consider the timings of any final amendments. We believe that each amended requirement should be subject to a transitional period, harmonised at EU level, to prevent market disruption. We also suggest that assessment periods are included where relevant, and should allow sufficient time for all market participants to prepare for each change. Go-live dates that conflict with other similar regulations, or which fall mid-week, can also be of significant concern for the industry.

Trade Reporting – Backloading

The GFXD is supportive of the removal of the backloading obligation.

Trade Reporting – Framework

The GFXD is strongly concerned by the decision to impose a delegated reporting structure on financial counterparties (FC) when trading with non-financial counterparties who are not subject to the clearing obligation (NFC-), as outlined in the new Article 9(1)(a). While we appreciate that this may alleviate the burden on NFC-s to report their transactions, we do not believe that this delegated reporting solution is ideal in terms of either efficiency or data quality.

In February 2017, the GFXD wrote to the Commission[11], together with the International Swaps and Derivatives Association (ISDA), the Investment Association and the Alternative Investment Management Association (AIMA), outlining our concerns with adopting an SFTR-style[12] delegated reporting model for EMIR. This followed an earlier joint association letter[13] in April 2016 in which we outlined why an Entity-Based Reporting framework – one in which sole responsibility for the accuracy of the reported data is assigned

[9] http://www.gfma.org/correspondence/item.aspx?id=662

[10] Committee on Payments and Market Infrastructure (CPMI) and International Organisation of Securities Commissions (IOSCO). A number of consultations papers have been issued, seeking to harmonise key OTC derivative data elements, including the Unique Transaction Identifier (UTI) and Unique Product Identifier (UPI).

[11] http://www.gfma.org/correspondence/item.aspx?id=887

[12] Securities Financing Transaction Regulation – Regulation (EU) No 2015/2365

[13] http://www.gfma.org/correspondence/item.aspx?id=802

to one counterparty via an automated hierarchy system (the "Entity-Based Reporting system") – is the optimal solution for reducing the burden on end-users and improving data quality.

We noted that data quality issues are often attributed to different interpretations of how the information should be represented. There are already many well established and regulatory supported industry processes that mitigate the risk of inconsistencies between counterparties as to the material economic terms of a trade, such as trade confirmation and portfolio reconciliation.

These processes show significantly lower levels of discrepancies than dual-sided reporting and are also regulatory requirements under EMIR[14]. Industry best practices drive trade confirmation processes to take place as soon as possible after execution, whilst regulatory obligations require that trade confirmations must occur before the end of the business day following the date of execution of the derivative contract, and portfolio reconciliation is to occur up to each business day, depending on the number of contracts outstanding between the counterparties.

Trade confirmation is a highly automated process and anecdotal feedback suggests that over 90% of FX contracts are confirmed within the EMIR deadline; the material terms are therefore agreed at this stage. This means that discrepancies between the counterparties' reports in a dual-sided system must be attributable so something other than disagreement over economic terms.

The move to an entity-based reporting system would also have a positive impact on the ability of regulators to interpret data on a global level. If all trades were reported only once, there would be no discrepancies between different representations of a single trade. Combined with greater harmonisation of data standards on a global level (as outlined above), this would increase the ability of regulators to combine data sets and create a more accurate picture of global liabilities and trends.

In addition, the current delegated reporting proposal presents significant challenges:

1. As drafted, the text suggests that the FC is expected to submit two reports: one from its own perspective and the other from the perspective of the NFC-. This would require the NFC- to provide a significant number of fields for the second report, such as details on collateral, or whether the trade is linked to commercial activity. Given that both reports would be then checked and submitted by one party, the second report would be of no additional value
2. FCs would be also liable for reporting on behalf of both counterparties and for ensuring the accuracy of the data. This creates a situation in which the FC is reliant on the NFC- to provide data for the trade report in sufficient time, and to provide correct data. If the NFC- fails to do either, it is the FC that would be in breach of its regulatory obligation.
3. For the NFC- to provide the data in a timely manner, it will have to maintain systems that record and transfer the data to the FC, meaning that the financial burden on the NFC- is not significantly reduced. To remove the financial burden entirely, an entity-based reporting system would have to be implemented.
4. There is no third-country provision included within the proposals. It is therefore unclear whether a non-EU bank trading with a EU NFC- would be subject to a reporting obligation.

[14] See EMIR Article 11 and Commission Delegated Regulation (EU) No 149/2013

5. There has not been consideration of the consequences of a NFC moving above or below the clearing threshold during the life of a trade. If reportable events occur after the NFC status has changed, it is unclear who has the obligation to report these events.

Therefore, while the GFXD commends the efforts of the Commission in seeking to reduce the burden on smaller market participants, while improving the accuracy and quality of the data reported, we are concerned that the proposed approach will not sufficiently achieve either aim. Instead, we would support an entity-based reporting system, together with a focus on explicit and globally harmonised data reporting standards as noted above.

SECTION C: MARGIN

Margin for physically-settled foreign exchange contracts

For the following reasons, we urge that an exclusion be provided under the regulatory technical standards adopted pursuant to Article 11(15)(a) of EMIR (the "Margin RTS")[15] from the Margin RTS's requirements in respect of variation margin (VM) for physically-settled FX forwards and swaps[16] ("FX Contracts").[17] We anticipate, in the absence of this, a detrimental impact on the FX market, and therefore strongly urge the Commission to consider the following points.[18]

As illustrated below, the EU is the only jurisdiction to include FX Contracts within scope of its uncleared margin rules. Other jurisdictions have excluded FX Contracts (in respect of both IM and VM), though in several jurisdictions local bank supervisors have instead indicated certain expectations regarding VM for FX Contracts via adoption of, or reference to, the 2013 "BCBS Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions" (the "FX Guidance").[19]

Physically-settled FX forwards and swaps included or excluded for VM under local uncleared margin rules					
U.S.	Excluded	Singapore	Excluded	Europe	Included
Japan	Excluded	Australia	Excluded	Hong Kong	Excluded
Canada	Excluded	Switzerland	Excluded	Korea	Excluded

[15] Commission Delegated Regulation (EU) 2016/2251.

[16] As defined in Article 27(a) and (b) of the Margin RTS.

[17] We note that Article 27 provides a derogation from Article 2(2) of the Margin RTS for FX Contracts in respect of initial margin ("IM"): " . . counterparties may provide in their risk management procedures that initial margins are not collected . . .".

[18] Also see our 2016 letter to the Commission regarding the draft version of the Margin RTS, available at http://www.gfma.org/correspondence/item.aspx?id=805.

[19] http://www.bis.org/publ/bcbs241.pdf. BCBS/IOSCO, in its March 2015 "Margin requirements for non-centrally cleared derivatives" (the "International Margin Framework", available at http://www.bis.org/bcbs/publ/d317.htm) states that the margin requirements described therein do not apply to FX Contracts but that ". . . standards apply for [VM] to be exchanged on [FX Contracts] . . . [to be] implemented either by way of supervisory guidance or national regulation" and that "In developing variation margin standards for [FX Contracts], national supervisors should consider the recommendations in the [FX Guidance].".

FX Contracts are widely entered into by market participants falling within scope of the Margin RTS[20], such as banks, dealers, investment managers, and other end-users of FX, including some corporate entities. Importantly, FX Contracts are often relied upon by entities around the world to hedge currency risk exposures. Implementing necessary capabilities for mandatory exchange of VM for FX Contracts in accordance with the Margin RTS requires significant infrastructure build, as well as the commitment of cash or other liquid assets as collateral.

In addition to the challenges which arise where regulatory approaches are inconsistent as between jurisdictions, these Margin RTS requirements raise liquidity, operational, documentation and regulatory risks and burdens for in-scope entities. This may result in those relying on FX Contracts for their hedging needs - for example, pension fund managers investing in diverse securities - being deterred from managing their currency risk through the use of FX Contracts.

We urge that the Commission, ESMA, the European Parliament and the Council take the concerns of FX market participants about the impact of the Margin RTS on market participants transacting FX Contracts into consideration. Given that the requirement to exchange VM in respect of physically-settled FX forwards has not yet taken effect,[21] we believe it is an opportune time to highlight our concerns to the Commission. We strongly recommend the following:

1. As part of the review of EMIR, consider the arguments we have made for an exclusion from the Margin RTS's requirements in respect of VM for FX Contracts, to achieve closer alignment between the EU approach and that in other jurisdictions[22] whilst still ensuring the relevant risks are adequately addressed.[23] We would be happy to engage in further discussion with the EU institutions and supervisory authorities regarding the nature of the exclusion and how it could be achieved.

2. In the meantime, given the timing sensitivities and to avoid disrupting the FX market as of 3 January 2018, adopt a Commission Delegated Regulation amending the Margin RTS under the mandate provided by Article 11(15)(a) of EMIR to extend the derogation period granted under Article 37(2) therein, to allow the EU institutions and supervisory authorities sufficient time to assess and address the concerns we raise above.

SECTION D: CLEARING

The GFXD supports the principle that clearing services should be provided under "fair, reasonable, and non-discriminatory commercial terms" (FRAND) as stated in the amendment to Article 4(3)(a). However, we are

[20] EU "Financial Counterparties" and certain "Non-Financial Counterparties". We understand that the EMIR review proposes to extend the range of entities classified as "Financial Counterparties", which would further exacerbate the concerns we raise.

[21] Article 37(2)(b) of the Margin RTS applies VM for physically-settled FX forwards from MiFID II's application date (3 January 2018).

[22] For example, via harmonized supervisory guidance, or by incorporating instead the VM provisions from the FX Guidance (see page 16, paragraphs 3.3.6, 3.3.7 and 3.3.8 of the FX Guidance).

[23] FX Contracts have a different risk profile to other types of derivatives, as we explained in our letter to BCBS/IOSCO in 2012 (available at http://www.gfma.org/correspondence/item.aspx?id=367, see page 12, section 3) regarding their consultative document on margin requirements for non-centrally-cleared derivatives. It is also worth noting that, in the recent financial crisis in 2008-2009, the FX market demonstrated its ability to withstand major disruption and to continue operating in a safe and sound manner.

concerned by the proposal that the Commission should adopt a delegated act to define the meaning of "fair, reasonable, and non-discriminatory" in this context.

As the Commission's Impact Assessment acknowledges in §3.2.1.3, "recent evidence suggests that clearing members find little incentives to develop extensively their client clearing offer because of cost issues, and even more so for clients with limited activity in OTC derivatives".

While the proposals in the Impact Assessment seem to focus on transparency regarding costs, risks and benefits, the document then goes on to state that "minimum transparency and non-discriminatory access requirements…may, however, not be sufficient to lower costs for the smallest of clients to the extent necessary to make clearing services economically feasible for them". Given these statements, it is unclear how a definition of FRAND principles in a delegated act could lead to wider provision of indirect clearing without imposing a requirement on firms to offer the service on terms that are not commercially viable. This is more likely to lead to a withdrawal of firms offering the service than an extension of the service to smaller firms.

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We appreciate the opportunity to share our views on this subject. 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

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gfma afme/ asifma sifma

Annex 1: EU/US Transparency and Reporting Obligations: Bilateral/SI

DRAFT 18/07/2017

Timing	**Continuous**	**Pre-Trade (Continuous)**				**ASATP**	**< 15min**	**ASATP < 30min**	**30min**	**<21.00 CET**	**< T+1**			**T+2 / 4wk**	**Quarterly**	**Annual**
Data Capture	Costs and Charges	Indicative Quote		Firm Quote	Pre-Trade Mid	All Trade Details (US)	Price, Time and Volume (EU)			Instrument Data	All Trade Details (EU)					

REPORT

Dossier	MiFID 2 Art 24	MiFIR Art 18			DFA Part 23	DFA Part 43	MiFIR Art 21	DFA Part 45	DFA Part 43	MiFID Art 27	MiFIR Art 26	EMIR Art 9	MiFID 2 Art 25	MiFIR Art 21	MiFID 2 Art 27	MiFID 2 Art 27
L2 (MiFID/R)	DA Apr16 Art 50	RTS 2					RTS 2			RTS 23	RTS 22		DA Apr16 Art 59	RTS 2	RTS 27	RTS 28
Name/Scope	Investor Protection (1)	Pre-Trade	Pre-Trade	Pre-Trade	Disclosures of Material Information	Real-Time Public Reporting	Post Trade	Swap Data Reporting	Real-Time Public Reporting	Reference Data	Transaction Report	Trade Report	Investor Protection (2)	Post Trade	Best Ex	Best Ex
Scope/Notes		Liquid <SSTI	Liquid <SSTI Art 18(5)	Illiquid < SSTI Art 18(2)	* All NDFs, NDOs and exotic options * Fwds and swaps: if cpty agrees, and real time pricing is available, it only applies to fwds and swaps in BIS top 31 ccys >1yr * Vanilla options: if cpty agrees, and real time pricing is available, it only applies to vanilla options in BIS top 31 ccys >6mnths	NDF and options <block size	If no deferral granted		NDF and options >block size					If granted deferral		
Recipient	Client	Public via RM/APA/ proprietary means	Other clients	Clients (on request)	Counterparty (only when cpty is not SD, MSP, SBSD or MSBSP)	Public via TR	Public via APA	TR	Public via TR	NCA	NCA	TR	Client	Public via APA	Public via website	Public via website
Content	Costs and Charges (incl information on investment and ancilliary services, the cost of advice, the cost of the financial instrument and how the client may pay for it, and any third party payments)	Firm Quote (Fields TBD)	Firm Quote (Fields TBD)	Firm Quote (Fields TBD)	Pre-Trade Mid	Transaction and Pricing Data	Price, Time and Volume	Confirmation Data and PET	Transaction and Pricing Data	All Instruments Traded/Admitted to Trading (incl. Quotes and Orders)	Trade Details (65 Fields)	Trade Details (85 Fields)	Details concerning the order	Price and Time OR Aggregated Data	Best Ex Venues, Instruments, Price, Cost, Likelihood of Execution, Extra RFQ Information	Top 5 Venues
Price/Quote	N/A	Yes (All in)	Yes (All in)	Yes (All in)	Mid Mark (Trader)	Yes (All in)	Yes (All in)	Yes (All in)	Yes (All in)		Yes (All in)	Yes (All in)	Yes	Yes (All in)	Yes (All in)	N/A
Currency		?	?	?		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	
Notional		?	?	?		Yes, rounded	Yes	Yes	Yes, capped	Yes	Yes	Yes	Yes	No/Aggregated	Yes	Yes - % of Total
Reporter ID							Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes
Cpty ID								Yes			Yes	Yes	Yes			
Product ID		?	?	?		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes/Yes	Yes	Yes
Buy/Sell								Yes			Yes	Yes	Yes			
Timestamp						Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes/No	Yes	