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Re: Consultative Report on OTC Derivatives Data reporting and aggregation requirements, Aug 2011

The Global Foreign Exchange Division ('GFXD') welcomes the opportunity to comment on the above consultation paper regarding trade repositories. On behalf of its members, the GFXD would like to take the opportunity to set out a number of issues around the implementation of a trade repository for foreign exchange transactions and to respond on the specific questions raised in the document. The GFXD would also welcome the opportunity to discuss these in more detail with you with the aim of aligning and coordinating development work as closely as possible to the benefit of both regulators and industry.

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 22 global FX market participants[1], collectively representing more than 90% of the FX market[2]. Both the GFXD and its members are committed to ensuring a robust, open and fair market place.

[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, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State St., UBS, and Westpac
[2] According to Euromoney league tables

Overview and current FX industry initiatives

The GFXD welcomes the goals of enhancing regulatory oversight and promoting greater transparency. It is working with its members to implement a trade repository for the FX industry that aims, to the greatest extent possible, to meet global regulatory needs.

Its members recently announced their recommendation to partner with DTCC and SWIFT to develop a global foreign exchange trade repository. This selection was the result of an extended evaluation, Request for Information (RFI) and public Request for Proposal (RFP) process that began back in December 2010, with the RFP issued in April 2011. The project is currently in the scoping phase and key work areas will cover overall functionality, technology, connectivity, messaging and data formats amongst other areas. However, this must crucially be framed in the context of understanding how the needs of multiple regulators can be met.

A common, global approach to trade repositories

The selection of a preferred partner for trade repository services arises from the general preference of the industry for the use of global trade repositories, rather than multiple, fragmented local repositories. This is because they provide the chief benefits of enhanced regulatory oversight and efficiency of data capture. This is particularly the case for the FX market which is characterised by vastly higher number of transactions and participants when compared to other asset classes given its position as the basis of the global payments system.

Comprehensive oversight

Trade repository information must be consistent, complete and as non-duplicative as possible in order for it to be meaningful, both for market surveillance and systemic risk monitoring. Global trade repositories provide a centralised point for submission of data, giving regulators access to both on and offshore trades and allowing them to build a complete picture regarding the positions of overseen entities. Since local regulators may typically only exert jurisdiction over local firms, currencies traded offshore by offshore entities would not be subject to that local regulation. They would therefore not be reported to the local repository, limiting the usefulness of that subset of data. Building an accurate picture of systemic risk or trade activity becomes significantly more difficult where the trade population is fragmented across a number of localised trade repositories, particularly considering the volume of participants and transactions present in the FX market, and in the absence of standardised global formats. The value of a comprehensive data set can also extend to implementation of other regulatory initiatives, for example, in analysing whether to mandate clearing for particular products and in establishing block trade sizes and appropriate reporting delays.

Efficiency

There are a number of efficiency arguments for global trade repositories from all market participants' perspectives.

- Cost – global trade repositories reduce the implementation costs related to building out and connecting to relevant trade repositories for both regulators and market participants alike. For reporting parties, global trade repositories allow a centralised reporting channel with common technology, messages and trade formats. Given the number of market participants engaging in cross-border transactions, local repository reporting may add significant costs for both buy and sell side participants as they are required to report to a number of repositories. Hardest hit might be the smaller, regional banks that would likely be expected to undertake the burden of international reporting on behalf of their clients. Centralised client due diligence would also produce significant savings.

- Data consistency and common standards – agreed global data formats and standards for LEIs and product and trade identifiers would also promote significant benefits for all users. The industry is making progress in this regard and we fully support the comments made in the Coalition of Financial Services Firms and Trade Associations letter regarding LEI development and submitted in response to your consultation. Where local repositories prevail, regulators will need to be able to interpret and aggregate data across a number of differently formatted outputs, which can be inefficient at best. Timely access to and interpretation of a comprehensive data set will be important in times of market crisis and this will be hindered if regulators are required to seek trade and position data from a number of repositories. In addition we are supportive of the ISDA work on UPI taxonomy
- Implementation – global trade repositories may also help to minimise the risks of conflicting implementation deadlines and reduce time to market.

Accommodating different jurisdictional requirements

Of course, any global trade repository must meet the needs of the multiple regulators that it serves. In order to do that, the GFXD and its members support the efforts being made across international forums to standardise both data formats and reporting requirements. The current implementation status of global regulation does mean that final requirements have not yet been set and so any moves to implement trade repositories should be done so with flexibility in mind. It is important to stress that the development of the FX trade repository is being done so with global regulatory reporting in mind and not simply with a focus on the US's Dodd-Frank rules. This extends to reviewing the options for the legal entity structure to address any indemnity requirements, building data centres in location-neutral venues and submitting the FX trade repository for regulation in multiple jurisdictions.

Whilst the industry would prefer global data repositories to be implemented for the reasons set out above, the GFXD understands that certain jurisdictions prefer to mandate the use of a local trade repository. A number of operating models are being considered and it may be possible to implement a local trade repository within a global framework without necessarily ceding physical control to an offshore location. Such a local instance might even be operated by the regulator under licence from a global provider. In instances where a separate local repository is conceived and built, for the reasons outlined above, it would be preferable for the local repository to utilise agreed global formats and parameters to facilitate reporting, and better still to allow trade data to be fed from a global trade repository to a local repository and possibly vice versa.

Information types, Data standards and unique identifiers

Data aggregation challenges may arise if regulators and the central bank rely on multiple trade repositories with inconsistent reporting standards or technological platforms. We believe this is one of the strongest arguments *for* a global trade repository, as discussed above. The GFXD and its members are actively engaged in the various industry initiatives to promote common LEIs, USIs and UPIs and are working to integrate these into the specifications for the global FX trade repository.

Unique attributes of different asset classes

It is important that Trade Repository rules take into account the specifics of different asset class. For example, in FX, and for the more vanilla products, counterparties exchange electronic messages through SWIFT that constitute a legal confirmation for most parties. Legal documentation is only exchanged for the less automated products. In the absence of the trade repository holding the golden copy for transactions, we believe regulators should only be concerned that a trade is confirmed by both parties and that the reported details are accurate. Other consultations also suggest that confirmation data should be matched by the trade repository or a related third-party matching service through affirmation by the counterparties. FX is different to other asset classes in that much of the matching is done by banks locally and unlike for e.g. rates (Markitwire) there is no commonly used piece of intermediate infrastructure that will confirm and feed the majority of trades into a trade repository. For this reason too, we suggest adopting flagged / confirmed status reporting as an option.

Valuation data

There is some debate surrounding the requirement that valuation data be reported to the trade repository and on the need to provide collateral information for transactions. In general, collateral held against counterparties is done so across that counterparty's trades in all asset classes, rather than on a trade by trade basis. Whilst collateral valuation data can be split out by asset class by counterparty, this may be misleading to regulators and create unnecessary noise as margin requirements will be offset against exposure to a counterparty across all asset classes.

Position level data and aggregate data available to regulators

We would suggest that if position data is required by regulators, the rules should leave flexibility for a trade repository to infer position data from trade data, gather it separately or do a mixture as appropriate. This will allow it to provide complete and useful position data before backfilling of historic trade data and allows the provision of useful position data if some trades are not reported to the trade repository. Requiring the trade repository to generate or calculate meaningful positions from the trade population may be unrealistic:

- It requires a sufficiently complete trade population
- Non-linear risks (e.g. FX options) cannot be simply aggregated across repositories
- Position information needs to show net bilateral positions across asset classes (requires consistent counterparty mapping, combined trade population, consistent parameters)

Interaffiliate trades

Given the high volume of transactions in FX compared to any other asset class, we believe that for reporting purposes, the reporting requirements should include only transactions settling with an un-affiliated third party. Many millions of trades occur daily between different affiliates of the same institution which are not relevant to that institution's external market positioning and would increase ticket volumes at any trade repository significantly. We would also point out that FX is used to manage balance sheet and foreign asset exposures for income attribution, which under this rule would be subject to reporting. We do not believe that reporting inter-affiliate trades will achieve the goals of reducing systemic risk and increasing transparency. Inter-affiliate trades represent allocation of risk within a corporate group and do not give rise to the same systemic risk issues that are raised by trades by one corporate group with another. Also, reports about inter-affiliate FX trades will not give meaningful indications about the overall FX market or the overall exposure of the relevant corporate group.

General Comments

The global trade repository for FX is being expressly designed to allow regulators across a number of different jurisdictions suitable access. Part of the development work or the trade repository will be ensuring that the regulatory portal provides suitable methods of access including regular and ad hoc reporting.

We acknowledge that there remain issues to be addressed in ensuring that the jurisdictional differences in approach to disclosing counterparty data require to be addressed, but note that even with a local trade repository, reporting participants may still face legal conflicts regarding disclosure of counterparty data where those counterparties are located in jurisdictions which do not permit such disclosure. This is being recognised and addressed at a global level, where data reporting to repositories and the disclosure of information to regulators is a central tenet of the new OTC derivatives regime. We believe that solutions to overcoming potential barriers to cross-border data sharing and disclosure will require co-operation among regulators and repositories facilitated through carefully considered legislative amendments, new regulations and co-operation agreements.

Regarding participation in oversight, the trade repository could submit itself for regulation in a number of jurisdictions to provide a level of comfort on local regulatory oversight and influence in operations. Alternatively, regulators could agree cooperative oversight arrangements e.g. as for CLS currently.

Phasing and implementation

We believe that given the breadth of the proposed reporting requirements, a phased approach would be sensible. This should focus on implementing the infrastructure to enable the transparency and oversight desired by regulators, followed by establishment of minimum reporting requirements and large block thresholds and finally implementation of public dissemination. In this way, regulators would be able to make due and appropriate consideration of the different asset classes and their underlying instruments.

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We appreciate the opportunity to share our views on the consultation paper. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at jkemp@gfma.org should you wish to discuss any of the above.

Yours sincerely,

James Kemp
Managing Director
Global Foreign Exchange Division