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Via website

18 May 2020

Re: Review of the Regulatory Framework for Investment Firms and Market Operators

Dear Mr Lueder

The Global Foreign Exchange Division ('GFXD') of the Global Financial Markets Association ('GFMA') welcomes the opportunity to provide comments to the European Commission on its Review of the Regulatory Framework for Investment Firms and Market Operators, published on 17 February 2020.

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 FX market participants,[1] collectively representing the majority of the FX inter-dealer market.[2]

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[1] Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Northern Trust, RBC, Scotiabank, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.

[2] According to Euromoney league tables.

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.

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For FX, we have set our answers to specific questions below. For the rest of the consultation paper, we support the responses made by the Association for Financial Markets in Europe. (AFME).

Q7. What are in your view the reasons why an EU consolidated tape has not yet emerged?

The GFXD supports the response made by AFME, with the following additions:

For Foreign Exchange (FX), a key reason why an EU consolidated tape has not yet emerged is a lack of demand within the FX market. Market participants are able to obtain pricing transparency from a variety of existing sources, partly driven by the highly electronic nature of the market compared to some asset classes (in 2019, 58% of trades were executed electronically - https://www.bis.org/publ/qtrpdf/r_qt1912g.pdf). This is split roughly evenly between single bank platforms, disclosed venues, anonymous venues and other venues. The fastest growth in electronification has been in the dealer-to-customer segment, reflecting the changing composition of market participants, with financial customers, such as hedge funds and PTFs, and lower-tier banks playing a more active role.

We further note that FX is a global asset class, with 56% of transactions taking place cross-border (BIS 2019 FX Triennial Survey - https://www.bis.org/statistics/rpfx19_fx.htm). This significantly limits the value of a EU consolidated tape from a transparency perspective.

Q20. What do you consider to be the most appropriate way of determining the Official List of ETFs, bonds and derivatives defining the scope of the EU consolidated tape?

The GFXD supports the response made by AFME, with the following additions:

Per our response to Question 7, we do not believe that there is sufficient demand for a consolidated tape in FX. Should a consolidated tape for FX be considered in future, once an appropriate model has proven successful in other asset classes, a significant hurdle would be the ISIN construct for FX.

It is widely understood within the industry that the current ISIN construct is not sufficiently standardised to capture FX products accurately across the market. In many instances, it is possible for two parties trading the same instrument to assign different ISINs, thereby reducing the transparency available. Furthermore, the FX ISIN construct is based on settlement date, rather than instrument tenor. This makes it difficult to compare products across a time range, for example how the price of a 3-month FX Forward in USD/EUR changes over time, as on each day that the instrument is traded, it will be assigned a different ISIN.

Q30. Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

The GFXD supports the response made by AFME, with the following additions:

Per our response to Question 20, a significant hurdle remains the ISIN construct for FX.

It is widely understood within the industry that the current ISIN construct is not sufficiently standardised to capture FX products accurately across the market. In many instances, it is possible for two parties trading the same instrument to assign different ISINs, thereby reducing the transparency available. Furthermore, the FX ISIN construct is based on settlement date, rather than instrument tenor. This makes it difficult to compare products across a time range, for example how the price of a 3-month FX Forward in USD/EUR changes over time, as on each day that the instrument is traded, it will be assigned a different ISIN.

Q55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

The GFXD supports the response made by AFME, with the following additions:

Per our response to Question 20, a significant hurdle remains the ISIN construct for FX.

It is widely understood within the industry that the current ISIN construct is not sufficiently standardised to capture FX products accurately across the market. In many instances, it is possible for two parties trading the same instrument to assign different ISINs, thereby reducing the transparency available. Furthermore, the FX ISIN construct is based on settlement date, rather than instrument tenor. This makes it difficult to compare products across a time range, for example how the price of a 3-month FX Forward in USD/EUR changes over time, as on each day that the instrument is traded, it will be assigned a different ISIN.

Q92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

Rather Agree.

Q92.1 Please explain your answer to question 92

As outlined in our response to ESMA on its consultation on its review of the Market Abuse Regulation (MAR), available at https://www.gfma.org/wp-content/uploads/2019/12/esma_cp_mar_gfxd_replyform-.pdf, we do not believe that an amendment to the regulatory framework for Spot FX, via MAR and/or MiFID/R, is appropriate, and will not meet the regulatory goal due to the global cross-border nature of Spot FX, it's short dated tenor and the types of market participants (and their rationale for) trading Spot FX.

We believe that whilst the current regulatory framework helps to prevent a majority of misbehaviours in the Spot FX market, the FX Global Code ('Code') (https://www.globalfxc.org/fx_global_code.htm) provides the best means to support regulation against market abuse. Its wide adoption, and the current global review process to ensure it remains fit for purpose should be supported by EU NCAs and the Commission. We support ESMA's view to wait for the Code to be more deeply embedded into the market and for any developments flowing from the 2020 review to be adopted across the EU.

The Code was developed by central banks, NCAs and market participants from around the world, to promote a "robust, fair, liquid, open and appropriately transparent market in which a diverse set of market participants, supported by resilient infrastructure, are able to confidently and effectively transact at competitive prices that reflect available market information and in a manner that conforms to acceptable standards of behaviour."

All 25 members of the GFXD, who account for the majority of the interdealer FX market, have attested their adherence, as have over 1000 market participants globally (as at April 2020), including sell/buy-side entities, trading venues and other market infrastructures, resulting in the same outcome for those attesting adherence as that expected through regulation.

The Global FX Committee (GFXC), a forum made up of central banks and private sector participants which also maintains the Code, has also made extending adherence as widely as possible a priority for the coming year. Following the 2018 update, the Code is currently undergoing its first global 3-year review to ensure that it remains fit for purpose and relevant to market developments.

In relation to the impact of a change to the regulatory framework (via MiFID/R) for Spot FX, we are concerned that it would have a very significant (and negative) impact for potentially limited benefits. We lay the impact out more fully in the MAR Response linked above. They include:

Limited Benefits:

- Even with appropriate exemptions, the number of transaction reports made to NCAs would be expected to increase significantly and would not yield a full picture of the activity in the market. Considerable investment from NCAs and market participants would be needed, which may not prove appropriate under cost-benefit analysis and is inconsistent with the current reporting landscape, which is fragmented and in need of significant global revision
- Amendments to transparency and reporting obligations would be needed, at significant resourcing and cost to both NCAs and market participants. Given the well published reporting challenges, we do not believe that this will provide better quality data for NCAs and that NCAs would be best served using the currently available data. We suggest that NCAs could instigate arrangements as required to request (i) existing and comprehensive industry-wide Spot FX trade data sources (such as trading venues), and (ii) the data firms store themselves for other purposes

Implementation Challenges:

- Many participants active within the EU Spot FX market are not MiFID investment firms. Significant changes would be required to bring a vast array of EU/non-EU market participants into the scope of a stringent and onerous licensing regime which was designed primarily for "true" financial services providers and would not be proportionate to their activity

- In relation to market structure, Spot FX is a predominantly quote-driven OTC market, - most of the existing trading platforms may not meet the requirements to be considered as MiFID II trading venues and would need to register. Extending MiFID to include Spot FX could give rise to significant challenges as regards the operation of the global market and potentially drive changes to the provision of liquidity (e.g. liquidity providers may decide to stop providing liquidity), which would harm the ability of EU end users to meet their business needs (such as payments or hedging)
- There may be changes to the scope of existing MiFID/R obligations in relation to derivatives, given that Spot FX is often considered the underlying for FX derivatives. The implementation of other MiFID/R obligations to Spot FX would also need to be considered, e.g. best execution and costs and charges reporting and algorithmic trading.

Question 93. Which supervisory powers do you think national competent authorities should be granted in the area of spot FX trading to address improper business and trading conduct on that market? Please explain your answer.

We believe that EU NCAs could be empowered to recognise and enforce the FX Global Code (https://www.globalfxc.org/fx_global_code.htm) and should also look to establish arrangements to leverage the already comprehensive Spot FX data that is already available, such as that from EU trading venues.

As outlined in our response to ESMA on its consultation on its review of the Market Abuse Regulation (MAR), available at https://www.gfma.org/wp-content/uploads/2019/12/esma_cp_mar_gfxd_replyform-.pdf, we note the historical delineation between Spot FX and FX derivatives, which has resulted in Spot FX generally falling within the jurisdiction of central banks rather than regulators of securities or derivatives.

At the launch of the Code, central banks and NCAs in major jurisdictions such as Australia, the EU, Hong Kong, Singapore and the US endorsed the Code and expressed support for its adoption by market participants.

Many of the central banks' FX committees mentioned above have made adherence to the Code a pre-requisite for membership, including the ECB's FX Contact Group (The FXCG is a forum for interaction between the ECB and industry-wide market professionals involved in the wholesale foreign exchange (FX) market https://www.ecb.europa.eu/paym/groups/fxcg/html/index.en.html), which further encouraged major market participants to sign statements of commitment.

As per our response to Q92.1, we do not believe that an amendment to the regulatory framework for Spot FX, via MAR and/or MiFID/R, is appropriate. However, in terms of the tools available to local EU NCAs and authorities to enforce the Code, we note the following global examples which demonstrate how other jurisdictions active within the global Spot FX market have recognised the Code and suggest that should the Commission be required to do so , that it considers an EU-wide approach in-line with one of the examples below:

Australia (ASIC) regulate conduct in Spot FX through multiple provisions in the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001 (https://download.asic.gov.au/media/4270050/rep525-published-26-may-2017.pdf and assesses conduct against both Acts, the Global Code and Report 525 https://asic.gov.au/about-asic/news-centre/speeches/redefining-conduct-in-fx-markets/ and https://download.asic.gov.au/media/5417669/rep652-published-18-december-2019.pdf.

Hong Kong (HKMA) promotes adherence to the Global Code and whilst recognising that the Code is voluntary is actively working with market participants to promote adherence, requesting a demonstration of adherence.

Ireland (Central Bank of Ireland) is planning a Senior Executive Accountability Regime (https://centralbank.ie/news/article/speech-senior-executive-accountability-regime-derville-rowland-22-oct-2019) as an equivalent to the UK's SMCR, which is expected to contain procedures to address individual accountability and enforcement.

Singapore (MAS) has adopted the Global Code into its Blue Book and associated FAQ (http://www.sfemc.org/industry-good-practice-blue-book.html) which is seen as the industry guidance on good practices applying to all market participants, and notes that all SFEMC members consider themselves bound by the Blue Book. The FAQ also notes that 'The SFEMC has endorsed the Financial Markets Regulatory Practices (the "FMRP") Examination administered by the Institute of Banking and Finance ("IBF") as the professional certification programme for all individuals engaged in the wholesale financial markets. The FMRP Examination assesses the understanding of wholesale dealing practices and market conduct based on the Blue Book.'

The UK (FCA) has its Senior Managers and Certification Regime (SMCR) and the FCA has introduced a mechanism for formally recognising industry codes, compliance with which would indicate that the person subject to the SMCR is meeting their obligation to observe "proper standards of market conduct" with respect to unregulated markets. In addition to the FCA's Principles for Business, the UK SMCR offers an additional tool for UK regulators to take action to ensure that firms and individuals engaging in Spot FX activities observe proper standards of market conduct, including those encouraged by the Code.

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

Yours sincerely,

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