



afme/

asifma

sifma

Global Foreign Exchange Division
39th Floor, 25 Canada Square
London
E14 5LQ

TO:

Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Bank of England
Threadneedle St
London
EC2R 8AH

Market Conduct and Post-Trade Policy Team, Financial Conduct Authority
By email: cp21-31@fca.org.uk

17 February 2022

Re: CP21/31: FCA and Bank of England consult on changes to reporting requirements under UK EMIR

The Global Foreign Exchange Division ('GFXD') of the Global Financial Markets Association ('GFMA') welcomes the opportunity to provide comments to the FCA and the Bank of England on its consultation paper on changes to reporting requirements under UK EMIR published on the 25th of November 2021.

The GFXD was formed in cooperation 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 23 global Foreign Exchange (FX) market participants¹, collectively representing the majority of the FX inter-dealer market². 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.

Q1: Do you expect the proposed 18-month implementation period for counterparties and TRs to implement the proposals as detailed in this CP to pose any challenges? If yes, please provide as much detail as possible on the expected challenges and any views you have on how those challenges could be mitigated.

For FX, the GFXD welcomes an 18-month period for the implementation of the new reporting requirements. However, we recommend that the standards for reporting are finalised, and the validation rules are published before the beginning of the 18-month period.

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, Standard Chartered Bank, State Street, UBS and Wells Fargo.

² According to Euromoney League Tables.

Additionally, we invite the FCA to consider other go-live dates (i.e. ESMA and CFTC's go-live dates) in order to guarantee a smooth transition to the new EMIR regime. For the same reason, members also recommend avoiding that the implementation period coincides with the calendar end of year as market participants might have code freezes in place.

Q2: In relation to the amendments to the table of reportable fields, do you expect the proposed 6-month period for counterparties to update their outstanding derivative reports in line with the new requirements to pose any challenges? If yes, please provide as much detail as possible on the expected challenges and any views you have on how those challenges could be mitigated.

For FX, the GFXD agrees with a 6-month period for counterparties to update outstanding derivatives to be in line with the new requirements. However, during the 6-month period, counterparties might update the outstanding derivatives at different times, as per the normal course of business of amending a transaction. Therefore, trade reporting breaks might occur, and we invite the FCA to be mindful of the reconciliation issues that could arise as a consequence of that.

Q3: Do you agree with our proposal to align the table of reportable fields under UK EMIR with the CDE guidance issued by CPMI-IOSCO to the extent that it is applicable in the UK? If no, please explain the rationale for your answer.

For FX, the GFXD agrees with the proposal to align the table of reportable fields under UK EMIR with the CDE guidance.

Given the global cross-border nature of FX markets, it is essential that regulators consider other reporting regimes in order to aggregate data across different jurisdictions and increase transparency.

Q4: Do you agree with our proposal to align the technical standards on reporting under Article 9 UK EMIR, including the table of reportable fields, with ESMA's approach to the extent that it is applicable in the UK? If no, please explain the rationale for your answer.

For FX, the GFXD agrees with the proposal to align the technical standards with ESMA's approach, and we appreciate that the table of reportable fields does not include significant divergence with the EU EMIR rules.

Nevertheless, given the global cross-border nature of FX markets, the GFXD recommends considering other reporting regimes, such as the CFTC's rules and the CDE guidance, to enhance market efficiency and provide market participants with legal certainty.

Moreover, our members would welcome further clarity on the scope of the reporting requirements themselves, specifically the distinction between EMIR and non-EMIR eligible instruments for package transactions.

For example, in the case of a package transaction consisting of an FX Spot and an FX Forward, the GFXD recommends the FCA to clarify that only the FX Forward shall be reported in line with the reporting requirements.

Q8: Do you agree with our proposal to amend the definition of the 'venue of execution' field? If no, please explain the rationale for your answer.

For FX, the GFXD welcomes the FCA's proposal to amend the definition of the 'venue of execution' field, aligning with ESMA's approach.

Q19: Do you agree with our proposal for counterparties to notify the Bank or FCA (as applicable) of any material errors or omissions relating to their UK EMIR reporting? If no, please explain the rationale for your answer.

For FX, the GFXD agrees with the proposal for counterparties to notify the BoE or the FCA of any material errors or omissions relating to their UK EMIR reporting. Indeed, the proposal is consistent with the overall approach adopted by UK regulators.

Q20: Do you agree with our proposal for counterparties to have arrangements in place for the remediation of any reconciliation breaks? Do you think there is a need for further guidance specifying the process and timeframes for remediation?

For FX, the GFXD supports the position of the International Swaps and Derivatives Association (ISDA) on the arrangements that market participants need to have in place to identify and resolve reconciliation breaks.

Moreover, in the presence of reporting breaks due to counterparties populating the inverted exchange rate for a trade, we recommend that trade repositories (TRs) should be able to reconcile the trade. For example, in the case of a counterparty buying USD and selling EUR and the other buying EUR and selling USD, they could either report the exchange rate as USD/EUR at 1.1464 or as EUR/USD at 0.8723, noting that the net effect remains unchanged. By way of example, this kind of break can happen when counterparties use systems that always use a particular (e.g. their local) currency as the base currency. However, this should not cause a reporting break since the information provided in both cases is correct.

On a similar note, TRs should also be able to reconcile the break when counterparties populate the field “Exchange Rate” rather than “Forward Exchange Rate” for FX Forwards and the GFXD would welcome flexibility in the Validation Rules on the points mentioned above.

Q22: Do you agree with our proposal relating to the use of standardised XML schemas based on the end-to-end reporting solutions in the ISO 20022 standards? If no, please explain the rationale for your answer.

For FX, the GFXD supports ISDA’s position on the use of standardised XML schemas.

Q23: Do you agree with our proposal to relating to the use of LEIs and framework for updating LEIs? If no, please explain the rationale for your answer.

For FX, the GFXD supports ISDA’s position on the use of LEIs and the framework for updating LEIs.

Q24: Do you agree with our proposals relating to the use of UTIs? If no, please explain the rationale for your answer.

For FX, the GFXD agrees with the proposal to adopt the global UTI standards. However, UTI standards can suit their purpose only if regulators apply the same definitions and steps worldwide. Therefore, given the global cross-border nature of FX markets, global harmonisation should be key in defining the reporting obligations (e.g. by harmonising UTI, UPI, CDE). Moreover, by enhancing global harmonisation, regulators will also reduce the risk of duplicative requirements.

Since the UTI is meant to be no more than an unintelligent code which identifies the two sides of a derivative transaction report, it is of primary importance that efficiency, implementation ease and cost minimisation take absolute priority in determining how it is generated and communicated.

The most consistent point of feedback from members is that while centralised infrastructures (including trading platforms, Central Counterparties (CCPs) and confirmation platforms) should take priority for UTI generation wherever possible and therefore remain at the top of the generation logic, immediately following that, counterparties should be able to agree how to exchange UTIs in the manner that is most efficient for them, resulting therefore in more trades pairing and less reconciliation issues. The purpose of the generation logic should be to act as a fallback that can be referred to in case counterparties cannot agree.

This is simply because many counterparties would find it vastly simpler to rely on an existing or future bilateral agreement - at the counterparty level – which stipulates that one party will

always be the UTI generator, to achieve the same outcome with lower cost, greater certainty and improved efficiency. This clean and simple way should be respected as much as possible.

We also note that there are precedents for promoting bilateral agreement as high within the generation logic as possible, such as within the January 2020 ESMA Guidelines on Reporting under Articles 4 and 12 of the Securities Financing Transactions Regulation (SFTR). In order to align as far as practicable with other global regulations, the FCA should promote further opportunities to harmonise this use of UTI generation by counterparty agreement with other jurisdictions.

Overall, we are aware that the generation of UTIs is still under development, and we recommend the FCA ensure enough flexibility to change the Waterfall Approach as a result of further implementation or international coordination with other jurisdictions (e.g. CFTC and ESMA). A flexible approach would address the needs of those transactions which are neither centrally executed nor cleared and which the FCA refers to in the paragraph 3.71. Thus, rather than promoting a prescriptive rule as suggested in paragraph 3.71, we invite the FCA to leave space for further improvements resulting from future industry discussion.

Finally, in terms of implementation and operational uncertainties and challenges, our 2017 Joint Response³ identified a number of outstanding issues with the CPMI-IOSCO Waterfall that require resolution at a global level before jurisdictional implementation can be finalised⁴.

Q25: Do you agree with our proposals relating to the use of UPIs and ISINs? If no, please explain the rationale for your answer.

For FX, the GFXD supports the FCA's proposals relating to the use of UPIs, as they represent the best way to identify a product. However, we remain concerned about the use of ISINs together with UPIs.

A key issue with ISINs is that they are constructed using Settlement Date rather than instrument tenor and this results in a significant number of ISINs being generated for what is essentially the same instrument. This makes it very difficult to compare products across a time range and ultimately increases complexity and reduces transparency, which contradicts the ultimate goal of allowing authorities to monitor risks in distinct products (paragraph 3.75).

We also note that there is duplication between ISINs and Unique Product Identifiers (UPIs) and recommend the use of UPIs to promote global consistency across jurisdictions⁵.

We are acutely aware of the need for a coordinated global approach for the adoption of these new reporting standards and we acknowledge that there is still a significant element of uncertainty as to the implementation dates of other major jurisdictions. Consequently, given the global cross-border nature of FX markets, we strongly encourage a coordinated approach across jurisdictions to ensure consensus on all remaining uncertainties before finalising the Technical Standards. The lack of much-needed resolution on key points such as the inconsistency of rules between different jurisdictions may create confusion and uncertainty in the market, and add additional, unnecessary costs for reporting entities. There is also a strong recommendation from members that the actual UTI go-live date is aligned, as far as practicable, with those in other jurisdictions such as APAC jurisdictions, EU, and US, i.e. a 'big bang' approach.

In addition to the issue mentioned above, when UPIs will be fully in place and widely adopted, we recommend excluding CFI codes and ISINs. Specifically, CFI Codes do not provide significant additional information, as the data that they contain is already captured within the UPIs. As a result, excluding ISINs and CFI Codes from EMIR reports would reduce the risk of potential conflicts between the relevant information and avoid duplication. Thus, we recommend that UPIs replace ISINs and CFI Codes rather than being used in addition to those product identifiers, as suggested in paragraph 3.76.

³ <https://www.gfma.org/correspondence/gfma-fx-division-and-isdas-submit-comments-to-the-fsb-on-its-consultation-on-governance-arrangements-for-the-unique-transaction-identifier-uti/>

⁴ https://www.gfma.org/wp-content/uploads/2021/10/210902-mas-reporting-cp-gfxd_isda-final.pdf

⁵ <https://www.gfma.org/wp-content/uploads/2021/09/hmt-wholesale-markets-gfxd-final-1-1.pdf>

We appreciate the opportunity to share our views on this Consultation Paper. Please do not hesitate to contact Andrew Harvey at +44 (0) 203 828 2694/ aharvey@eu.gfma.org or Sara Scognamiglio at +44 (0) 203 828 2711 / sscognamiglio@eu.gfma.org should you wish to discuss any of the above.

Your sincerely,

A handwritten signature in black ink, appearing to read "James Kemp". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James Kemp
Managing Director
GFMA's Global FX Division