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TO:

Financial Stability Board - Aggregation Feasibility Study Group

Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

28th February, 2014

Re: Financial Stability Board (FSB) Consultation Paper on the feasibility study on approaches to aggregate OTC derivatives data

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 the Feasibility study on approaches to aggregate OTC derivatives data issued by the Financial Stability Board (FSB) on February 4th, 2014. 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 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 GFXD welcomes the opportunity to set out its views in response to your Consultation Paper.

Introduction

The global FX market presents some unique challenges for trade reporting when compared with other asset classes. FX forms the basis of the global payments system and as such the number of market participants and the volume of transactions are high. Notional turnover, as recently reported by the Bank of International Settlements is US\$5.3 trillion/day.³

The diversity in market participants presents many practical challenges in ensuring that all relevant reporting participants are able to report. As the FX market is global in nature, reporting of a transaction will often be required to multiple jurisdictions and any jurisdictional variance in requirements will need to be adopted by one or both parties to the transaction. The GFXD has consistently promoted and supported efforts to align global trade reporting requirements as we

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 Wells Fargo and Westpac.

² According to Euromoney league tables

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

believe that consistent trade reporting requirements offers regulators the best opportunity to oversee trading practices and market transparency.⁴

As such, the GFXD supports the use of globally consistent identification fields, such as:

- the Legal Entity Identifier (LEI)⁵;
- the Unique Product Identifier (UPI) utilising the ISDA product taxonomies,⁶ and;
- the Unique Transaction Identifier (UTI)

The UTI is fundamental to transaction matching. The FX and wider derivatives markets support common standards, specifically those identified in the ISDA paper *Unique Trade Identifiers (UTI): Generation, Communication and Matching*.⁷ The paper describes the global UTI standard for generating and exchanging a single UTI for the purpose of global trade reporting. The CFTCs Unique Swap Identifier (USI) is an example of where a single trade identifier has been approved for multi-jurisdictional use. The European Securities and Markets Authority (ESMA), the Hong Kong Monetary Authority (HKMA) and the Ontario Securities Commission (OSC) have all agreed to accept the USI as the UTI for reporting in their jurisdictions. The GFXD suggests that other jurisdictions, which are not yet live for trade reporting, also leverage this approach.

The GFXD feels that whilst recognition of the formats used in other jurisdictions is important, a more effective approach would be to globally standardise a set criteria of fields. If market participants are able to report these fields in a globally standardised manner, regulators will have access to consistent, complete and non-duplicative data enabling effective risk-monitoring of the markets. Market participants are able to implement such requirements in a cost effective manner, reducing their technology build and connectivity costs. As previously mentioned, the FX market is globally diverse and any consistency in reporting requirements can only help with the technical implementation to meet regulatory needs.

Questions

1. Does the analysis of the legal considerations for each option cover the key issues? Are there additional legal considerations - or possible approaches that would mitigate the considerations - that should be taken into account?

We believe the key legal considerations have been covered in the Consultation Paper.

The GFXD members have legal concerns with trade reporting requirements that could result in contravening data privacy laws. For instance, if a transaction occurs with a counterparty that resides in a country that has data privacy laws, the other participant to the trade could be at legal risk should they expose who that counterparty is.

An example would be a trade between a participant residing in the European Economic Area (EEA - no counterparty 'masking') and one residing in Switzerland (has counterparty 'masking'). Under the European Markets Infrastructure Regulation (EMIR)⁸, the participant residing in the EEA

4 <http://gfma.org/correspondence/item.aspx?id=564>

<http://gfma.org/correspondence/item.aspx?id=525>

<http://gfma.org/correspondence/item.aspx?id=506>

<http://gfma.org/correspondence/item.aspx?id=492>

<http://gfma.org/correspondence/item.aspx?id=282>

<http://gfma.org/correspondence/item.aspx?id=136>

<http://gfma.org/correspondence/item.aspx?id=313>

5 [http://gfma.org/initiatives/legal-entity-identifier-\(lei\)/gfma-statement-on-the-endorsement-of-pre-lei-utilities/](http://gfma.org/initiatives/legal-entity-identifier-(lei)/gfma-statement-on-the-endorsement-of-pre-lei-utilities/)

6 http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls

7 <http://www2.isda.org/attachment/NjE0MQ==/ISDA%20USI%20Overview%20Paper%20updated%202013%20Nov%2018%20v8%20clean.pdf>

8 Regulation (EU) No 648/2012

would be required to report the identity of its counterparty to the trade repository, and could be at risk from legal action from its counterparty who resides in Switzerland. The resulting impact could be that the legal risk is deemed too high and that the trading relationship is terminated, to the detriment of both parties. The GFXD believes that any global data-aggregating solution will need to provide a legally suitable resolution to the issues raised by ‘masking/not masking’ before aggregation can be implemented.

The Consultation Paper also makes reference to trade repositories active as per August 2013 and only focusses on data that is not ‘personal data’. We believe that due to the global nature of the FX market, personal data should be considered when regulators are looking to monitor activity either in specific currencies or by specific market participants. We expect that regulators will want to understand who is transacting what types of trades, especially if these transactions are of size or complexity.

We also expect challenges with data aggregation due to the differing jurisdictional requirements as to which transactions are required to be reported. Under US and Canadian regulations, “FX Security Conversion” transactions (i.e. those entered into to fund the purchase/sale of a foreign security) are considered to be spot and are excluded from trade reporting requirements. Such transactions settle at the same time as the security, which could be greater than the traditional T+2 timeframe used to define spot. Within Europe, such transactions, if settling greater than T+2, are generally thought of as forwards and would be included in trade reporting requirements. Whilst this is a general view of the legal interpretation within Europe, some countries are exempting based on a longer interpretation of spot (i.e. trades settling >T+2) as well as exempting those transactions entered into for commercial purposes. For clarity, the GFXD supports the view that “FX Security Conversions” are considered to be spot transactions.

As a final legal consideration the GFXD would also like to understand how the governance of the data in the aggregator would work. For instance, who has the responsibility for ensuring that any aggregated data matches the individual firm’s submission to the trade repository?

2. Does the analysis of the data and technology considerations cover the key issues? Are there additional data and technology considerations - or possible approaches that would mitigate those considerations - that should be taken into account?

The GFXD considers that the analysis of the data and technology considerations covers the key issues.

Many of our members, and their clients, are impacted by the multiple requirements for trade reporting across the globe. Established, automated process-flows, in what was already a highly electronic market have been interrupted with many new, manual processes implemented to manage trade reporting exceptions. For FX, this is specifically compounded due to the global nature of the product, the volumes of transactions executed and the sheer number of market participants - the Consultation Paper references the type of data being reported and the variance between jurisdictions as being a factor in complicating both the build and daily management of reporting processes.

For example, if we compare the basic reporting requirements between the US and Europe, we can observe differences in the following:

- **who** is required to report (Europe includes participants with lower levels of market exposure ‘non financial counterparties’ and dual rather than single sided reporting);
- **what** is required to be reported (variances in the data fields, such as a separate UTI for those participants not able to use a USI);
- **when** reporting is due to be submitted to the trade repository.

With trade reporting in Europe going live on the 12th February, 2014, we are anecdotally hearing of reporting breaks due to:

- trade booking-model differences;
- differing interpretations of how to populate the data in reportable fields;
- differing legal interpretations of what is required to be reported, and;
- the awareness of market participants to their own obligations to report.

We expect that similar results should be expected when a trade aggregator is used to aggregate trades across multiple trade repositories and jurisdictions with different standards. For example, and as previously discussed, the legal interpretation of what is required to be reported is typified in the differing views within Europe on the definition/inclusion of FX spot and forwards, with ESMA recently raising this issue to the European Commission for comment.⁹

Whilst it may be possible to build a mechanism to interpret fields and match data downstream of the trade repository, any subsequent FSB recommendations that require re-builds by market participants should consider the financial implications of such an approach; it is of key consideration that any aggregation exercises do not incur any additional costs to market participants. Smaller market participants in particular (e.g non-financial counterparties in Europe) have limited or non-existent budgets to invest in technology re-builds; be this either at the participant level, the trade repository level or even the aggregator level. Time to market is also a factor to consider here. It is critical that any recommendations reflect both regulatory and commercial benefits.

3. Is the list of criteria to assess the aggregation options appropriate?

We generally agree with the criteria identified in the Consultation Paper.

Should Option 1 be chosen, the GFXD would suggest that any commercial bias from favouring one specific entity (as well as the concentration risk) should be considered. The responses to these considerations will be of value too if for instance, the direction of travel moves towards a single, global trade repository.

Option 2 would tend to infer that a tighter level of technical control and co-ordination would be required to ensure accurate aggregation, again posing the question as to who would be accountable for the oversight, management and control of a central index.

Option 3 is the GFXD’s least favoured approach. Due to the varying reporting requirements around the globe, the data stored in the numerous trade repositories will be sufficiently different and will make it laborious and ineffective for regulators to interpret any collective data. The costs and the challenge to consolidate this data outweigh any perceived benefits.

⁹ http://www.esma.europa.eu/system/files/2014-184_letter_to_commissioner_barnier_classification_of_financial_instruments.pdf

4. Are there any other broad models than the three outlined in the report that should be considered?

Whilst the models suggested look at aggregating data, the GFXD considers that there is a wider macro-opportunity to define a single, super-set of data that should be mandatorily reported to each trade repository. This super-set of data should be consistent across all trade repositories, both in definition and content, and not leave ambiguity with respect to interpretation. Additional fields, outside of the super-set of data, could be specified on a jurisdictional by jurisdictional basis which would accommodate any specific requests at the independent regulatory level. An approach to achieving such consistency could come in the form of guidance from a global regulatory body with each regulator agreeing to use such independent guidance.

This approach would improve the overall quality of data being reported to the multiple trade repositories, allowing regulators greater transparency into their specific markets. Market participants would also benefit as technological builds would be more consistent, cost-effective and operational/risk controls more effective. Further benefits would be seen over-time in that a global, single trade repository could be established; legal, technical and operational challenges with the three models outlined in the Consultation Paper would effectively be eliminated.

We believe that this approach would significantly increase the transparency in the market. Regulators would have access to better quality data, and market participants would have more clarity, being able to manage their processes in a more efficient, controlled and cost-effective manner.

5. The report discusses aggregation options from the point of view of the uses authorities have for aggregated TR data. Are there also uses that the market or wider public would have for data from such an aggregation mechanism that should be taken into account?

The GFXD suggests that aggregated data could be used to replace existing processes to provide data to central banks and the Bank of International Settlements (BIS) as part of their existing market survey exercises. For example, the Bank of England Semi-Annual FX Turnover Survey could be partly populated using data from an aggregated source.

Finally, aggregated data could be used to measure asset class performance against established and future commitments to the OTC Derivatives Regulators Forum /Supervisors Group, replacing any existing processes. For example, regulators could use the data to assess the degree of automation seen in the confirmation processes.

We appreciate the opportunity to share our views on the Consultation Paper. Please do not hesitate to contact Andrew Harvey should you wish to discuss any of the above.

Yours 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 distinct "K".

James Kemp
Managing Director
Global Foreign Exchange Division