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15 February 2013

Re: Implementation of a framework for Australia's G20 over-the counter derivatives commitments (Consultation Paper, December 2012)

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 issued by The Treasury of the Commonwealth of Australia. 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 and welcome the opportunity for continued dialogue with global regulators.

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1. ***Do you have comments on the costs and benefits of complying with the trade reporting obligation, as outlined in this document, from the point of view of your business and/or that of your customers?***

The FX market presents some unique challenges for reporting when compared with other asset classes: notably the high volume of transactions and the wide universe of participants, given that FX forms the basis of the global payments system. The nature of the market presents practical challenges to ensuring that all relevant reporting participants are able to report and, given the cross-border nature of the FX market, that they are able efficiently to report in multiple jurisdictions.

Given the wide ranging use of FX instruments, the potential costs of reporting will be multiplied across a larger population of market participants than for other asset classes. As

[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

such, we fully support the notion that market participants may use an agent or other intermediary for reporting. This will help to reduce the cost impacts associated with reporting for low volume users by allowing larger participants to report on their behalf, thereby ameliorating the direct connectivity costs which would in any event be borne by those larger market participants.

A further element in reducing costs is allowing market participants with reporting obligations in multiple jurisdictions to satisfy their Australian obligations by reporting to a (recognised) foreign trade repository. For this to work effectively, reporting requirements need to be aligned: not just at the principles level, but down to the level of data standards, fields, identifiers and common definitions for such items. This will help avoid confusion and allow for an international, standard reporting language (e.g. FPML) to be used. Otherwise participants may be required to persist and transmit two or more different elements for the same data field e.g. price. We believe it is in the interests of regulators and participants alike to harmonise such standards and would welcome the opportunity to discuss standardisation in the context of more detailed proposed requirements at an appropriate time. We note that most, if not all, members of the GFXD are planning to adopt the use of a global data repository hosted by the Depository Trust & Clearing Corporation (DTCC) in order to fulfil reporting in multiple jurisdictions (where permitted). Use of common infrastructure for reporting in multiple jurisdictions also helps to alleviate issues regarding standardisation and reduce costs.

2. Do you have comments on the proposal to mandate a broad range of derivatives subject to the phase in and exceptions outlined in the document? Or is there another option you prefer? If so why?

The proposal to mandate a broad range of derivatives would be consistent with the approach in other jurisdictions, although the timing / phasing in of reporting obligations does differ, not just by asset class but also by instrument.

3. Do you have a preference for the timetable being prescribed in regulation or implemented by a phased approach to ASIC rule making?

We prefer the more flexible, phased approach under ASIC rulemaking. As the paper points out, this may allow further considerations of the technical challenges that emerge both at a participant and asset class level.

4. Do you have comments on the proposal timetable for implementing the trade reporting obligation? Or is there another option you prefer? If so, why?

We broadly support the timetable outlined in the paper, subject to the comments made above regarding allowing flexibility and given the range of participants that will be captured for FX. This will allow consideration of existing market structures and the time needed to implement the necessary changes. Australian regulators may wish to consider an approach that is similar to the US and Europe, where reporting obligations for credit and rates have been set in advance of those for FX, equities and commodities, recognising the existing infrastructure and readiness of those asset classes to respond to the reporting requirements. This would also spread the impact of asset class implementation across two periods, which may further assist market participants to comply.

5. ***For Phase 1, do you have a preference for referencing legal status, thresholds of activity, or size proxies? For Phases 2 and 3, do you prefer activity thresholds or size proxies?***

We agree with the approach that larger financial institutions should report first. With respect to the legal status approach, EMIR places an obligation on both counterparties to a trade to report under a dual-reporting approach. Hence an approach based on legal status would not necessarily take into account the size of the particular participant in this instance.

6. ***Do you have comments on the proposed regulations at Attachment A? Or is there another option you prefer? If so why?***

No comment.

7. ***Do you have comments on the proposal to wait until after review processes before making a decision on mandating trade reporting of electricity derivatives? Or is there another option you prefer? If so, why?***

No comment.

8. ***Are there other bodies with responsibility for underlying assets upon which a derivative is based that should be also be specified under section 901J??***

No comment.

9. ***Do you have comments on the proposal to implement the trade reporting and trade repository licensing regime expeditiously, but not to impose interim reporting obligations ahead of this? Or is there another option you prefer? If so, why?***

Privacy and confidentiality provisions are clearly one of the most difficult areas for international trade reporting. As the paper points out, a number of jurisdictions (including Australia) may place restrictions on the counterparty details that may be reported to a trade repository, leading to potential legal conflicts. Whilst obtaining client consent may resolve this, there will be cases where consent is unable to be obtained or where even with such consent, disclosure is not permitted.

We believe the only long-term solution is for local laws to allow disclosure of such details for trade reporting purposes, as the paper proposes in support of foreign trade reporting requirements. Until such time as disclosure rules are harmonised we urge Australian regulators also to recognise that local laws may prevent disclosure of foreign client data that may be required under Australian law. Under such circumstances we believe parties should be exempt from reporting where confidentiality laws prohibit such reporting. Alternatively, reporting parties could be allowed to mask trade details such as client names and identifiers, as was recently permitted under a recent CFTC industry no-action letter[3]. We note though that even under this approach, submitting firms may face legal and reputational risks.

10. ***Do you have comments on the proposal to not impose central clearing obligations at this stage? Or is there another option you prefer? If so, why?***

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[3] http://cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-46.pdf

We support the proposal not to impose central clearing obligations at this stage. As discussed in our previous responses on this topic, there are products within the FX asset class, specifically FX forwards and FX swaps, which should be appropriately exempted from most, but not all, regulatory requirements. In the United States, the Treasury Department has issued a final notice of determination which grants an exemption for FX forwards and FX swaps from most OTC derivatives regulation, including clearing and trading requirements. Similar treatment is being considered by a number of other jurisdictions, including Hong Kong and Singapore. Recitals in the OTC derivatives, central counterparties and trade repositories legislation (EMIR) in Europe also provide for certain classes of transaction to be exempted from central clearing on the basis of their risk characteristics and international convergence. Public comments by European Commission officials suggest this is, in part, directed towards the treatment of FX forwards and FX swaps.

Even if the clearing of FX forwards or FX swaps were not mandated, it important that the overriding objectives for regulators internationally, including in Australia, should be to implement measures that are proportionate to the systemic risks being addressed. In the context of margin and capital requirements, they should be set at levels that only address specific, unmitigated risks, and be appropriately calibrated (i.e., not be duplicative/additive) and not incentivise clearing for such products because this could very well increase rather than decrease potential systemic risk, especially in times of crisis.

We also believe that Australia should allow itself flexibility when applying a margin regime for uncleared derivatives. A number of jurisdictions have implemented regimes that require derivatives to be subject to either mandatory clearing OR mandatory margining. We believe these requirements should be considered on a standalone basis. For example, an instrument might be classed as a derivative for certain obligations (i.e. FX forwards and swaps for trade reporting) but not others e.g. central clearing, where this may not be the appropriate risk mitigant because settlement risk represents the far greater risk. In the latter case, an exemption from clearing should not automatically require mandatory margining: the regime should be assessed as a separate possible risk mitigant in order to allow appropriate calibration.

11. Do you have comments on the proposal to not impose trading obligations at this stage? Or is there another option you prefer? If so, why?

We agree with the proposal. As discussed in our previous response, we do not believe there is sufficient evidence to support a mandate for trading in specific classes of derivatives. We believe the regulators should focus, and therefore prioritize, efforts on mandatory reporting. Once data has been compiled for FX, Australian regulators will be better positioned to determine which, if any, products exhibit sufficient liquidity to be subject to any mandatory clearing obligations as well as trading requirements. Mandatory trading on exchanges or other trading facilities is not a necessary condition for financial stability and could have a negative impact, for example, in reducing liquidity in the market where the mandatory trading rules apply.

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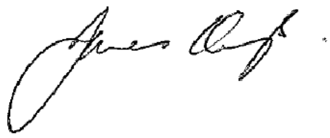
We appreciate the opportunity to share our views on this consultation paper issued by The Treasury of the Commonwealth of Australia. Please do not hesitate to contact me at +44 (0) 207 743 9319 or at jkemp@gfma.org should you wish to discuss any of the above.

Yours sincerely,



James Kemp

Managing Director

Global Foreign Exchange Division, GFMA[4]

[4] The Global Finanical Markets Association ("GFMA") brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA.