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Global Foreign Exchange Division  
St Michael's House  
1 George Yard  
London  
EC3V 9DH

**TO:**

Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW.  
Washington,  
DC 20581

27 May 2014

**Re: the Commodity Futures Trading Commissions (CFTC) Request for Comment on the Commission's Review of Swap Data Recordkeeping and Reporting Requirements**

**RIN 3038-AE12 (79 Fed. Reg. 16689)**

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 Request for Comment on the Commission's Review of Swap Data Recordkeeping and Reporting Requirements, issued on 26 March 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 Foreign Exchange (FX) market participants,<sup>1</sup> collectively representing more than 90% of the FX inter-dealer market.<sup>2</sup> 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.

**Introduction**

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.

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 both the number of market participants and the volume of transactions are high. Notional

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<sup>1</sup> Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi UFJ, Barclays, BNP Paribas, Citigroup, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Morgan Stanley, Nomura, Royal Bank of Canada, Royal Bank of Scotland, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac

<sup>2</sup> According to Euromoney league tables

turnover, as recently reported by the Bank of International Settlements, is US\$5.3 trillion/day.<sup>3</sup>

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, the 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 standards as we believe that consistent trade reporting requirements offers regulators the best opportunity to oversee trading practices and market transparency. We note that recent comments made by the CFTC's Commissioner Scott D. O'Malia<sup>4</sup> supporting harmonization, and the Financial Stability Board's (FSB's) recent Consultation Paper on data aggregation, both of which promote the desire, and requirement, to standardise the reporting of swaps data.

We welcome the CFTC's approach to consulting market participants on its Swap Data Recordkeeping and Reporting Requirements, which for FX commenced in February 2013. GFXD members have invested heavily in their technology builds to ensure compliance with regulatory deliverables, including trade reporting, and have continually partnered with regulatory authorities to discuss and improve the quality of submissions.

The GFXD recommends that the CFTC considers the implications, financial and otherwise, of any recommendations that the CFTC may make to its existing part 45 requirements as a result of this Request for Comment. We also urge the CFTC to align any recommended changes to those recently recommended by the GFXD in our response to the FSB's Consultation Paper regarding the aggregation of OTC derivatives data.<sup>5</sup>

*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.*

We would also like to clarify that in our response to this Request for Comment we have only answered the questions that have specific FX implications; questions that do not impact the FX markets have not been included.

Finally, we support the submission made by the International Swaps and Derivatives Association, Inc (ISDA) in response to the CFTC's Request for Comment on the Commission's Review of Swap Data Recordkeeping and Reporting Requirements.

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

<sup>4</sup> <http://www.cftc.gov/PressRoom/SpeechesTestimony/opaomalia-34>

<sup>5</sup> <http://gfma.org/correspondence/item.aspx?id=575>

## Executive Summary

### ➤ **Definition of a minimum Data Set**

- We support the establishment of the following CFTC core reporting principles
  - That the CFTC specify the minimum data necessary to enable the fulfillment of the regulatory mandate
  - That these needs can be met by the majority of the market participants
  - That some firms may provide more than this minimum data set, but this should not be used to establish a new benchmark for the industry
  - That new processes are developed to replace the current inefficient process of reporting confirmation data by PDF submissions

### ➤ **What is Confirmation v Confirmation Data**

- We believe that the Commission should clarify the application of its confirmation data reporting requirements (and related confirmation requirements) to uncleared FX transactions in a manner that is not disruptive to well-established market practices and infrastructure that were developed with the encouragement of international prudential regulators. If the Commission determines that additional data beyond that contained in existing primary economic terms (PET) and real-time data fields would be useful, then we recommend that the Commission propose modifications to part 45 that would require the reporting of specific, additional data fields, whether as PET/real-time data or as a form of supplementary data, rather than requiring that additional information be reported through an interpretation of the contractual terms that must be included in confirmations or reported as confirmation data

### ➤ **Data aggregation across multiple Trade Repositories**

- The GFXD supports the view that any CFTC recommended changes to their existing swap data reporting obligations should bring convergence with other global regulatory trade reporting regimes, and be phased into implementation
- The desire for the harmonization of trade reporting requirements across multi jurisdictions or multi-trade repositories is now becoming critical for regulatory oversight
- The FSB recently requested advice from the market on proposed data aggregation exercises, recognizing the challenges faced by regulators when attempting to look at a consolidated position
  - Inconsistencies still exist in trade identifier construct and other key reporting fields
  - Inconsistencies exist as to when reporting is required to be submitted to the trade repository (trade date v trade date+)
  - Inconsistency remains in who is required to report, including dual v single sided requirements
  - Inconsistency in the global treatment of participant confidentiality

### ➤ **Commercial considerations**

- Market participants have already built and implemented technology to ensure compliance with US and other global trade reporting obligations, including part 45
  - Any changes to current part 45 obligations will require additional build and subsequent cost at a time when market participants are facing increased costs and concentrated delivery schedules to meet other global regulatory deliverables

**1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.**

**a. For confirmations that incorporate terms by reference (e.g., ISDA Master Agreement; terms of an Emerging Markets Trade Association (“EMTA”)), which of these terms should be reported to an SDR as confirmation data?**

I. Confirmation Data Reporting

The Request for Comment requests comment regarding the specific data elements that should be reported by reporting counterparties and swap execution facilities (SEFs) to a swap data repository (SDR) as confirmation data under part 45 of the Commission Regulations, including asking which of the terms of bilateral documents between transacting parties that the parties incorporate by reference in the confirmation (e.g., terms of an International Swaps and Derivatives Association (ISDA) Master Agreement or an Emerging Markets Trade Association (EMTA) currency template) should be so reported.<sup>6</sup> The Request for Comment also requests comment on whether the scope of confirmation data that is required to be reported to an SDR should vary depending on whether or not the relevant swap is cleared or subject to the Commodity Exchange Act’s (CEA) trade execution requirement.<sup>7</sup> We understand that the Commission, in connection with these Requests for Comment, is considering whether to require reporting counterparties and SEFs to report data elements representing specific bilateral documentation terms or identify which documentation templates or forms that the transacting parties have agreed to govern their transaction.

Accordingly, this section discusses whether such an expansion of the Commission’s confirmation data reporting requirements is warranted in connection with uncleared swaps in the FX asset class. In addition, this section discusses the application to such swaps of the primary economic terms (PET) and real-time reporting requirements under parts 45 and 43, respectively, of the Commission Regulations, as well as swap dealer (SD), major swap participant (MSP) and SEF confirmation requirements under Commission Regulations §§ 23.501 and 37.6.<sup>8</sup> As described in greater detail below, these requirements relate to the policy objectives that underlie confirmation data reporting requirements.

A. Background and Discussion

By way of background, uncleared FX transactions are typically governed by multiple documents constituting a hierarchy of agreements. At the most general level is a master agreement, typically a form agreement (e.g., an ISDA Master Agreement), that sets forth the operational and credit terms that govern the overall trading relationship between the counterparties. The counterparties can further customize their relationship terms by making certain elections under the master agreement, negotiating bespoke bilateral terms in “schedules” and agreeing to market protocols, such as an ISDA Dodd-Frank Protocol or a CLS Bank Protocol. Counterparties can also agree to currency pair-specific template terms addressing such matters as emerging market rate sources and disruption events (e.g., standard EMTA terms) in the context of a specific transaction (via a long-form confirmation) or across their overall trading relationship level (via a master confirmation). Ultimately, the dynamic economic terms of each specific transaction are agreed and confirmed by the parties on an individual trade basis and are set forth in a trade-specific confirmation.

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<sup>6</sup> 79 Fed. Reg. 16689, 16691 (Mar. 26, 2014) (question numbers 1 and 1.a).

<sup>7</sup> Id. (question numbers 2 and 3).

<sup>8</sup> In this regard, we note that the [Reporting Consultation] also requests comment on data transmission processes arising from the execution, confirmation, clearing and termination of a swap and how the Commission Regulations outside Part 45 impact Part 45 reporting. Id. at 16692 (question numbers 13 and 14). The GFXD’s comments in this section are also intended to respond to these requests for comment.

As the most specific form of documentation, a trade-specific confirmation is the controlling document for the relevant transaction and prevails in the event of any inconsistency with any other bilateral documentation in effect between the transacting parties. However, in contrast to some other asset classes, an FX trade-specific confirmation often does not include express cross-references to the other bilateral documentation governing the transaction. Instead, except when parties use a long-form confirmation, which is relatively less common, FX trade-specific confirmations have been streamlined to be consistent with internationally agreed electronic messaging data protocols, such as SWIFT and CLS messaging, that do not include these cross-references. The application of terms contained in other bilateral documentation between transacting counterparties is ensured by provisions in that documentation that provide for trade-specific confirmations to be deemed to include the terms of that documentation, except that the trade-specific confirmation controls in the event of any inconsistency between it and that documentation.

FX market participants and infrastructure providers adopted this approach, with the encouragement of international prudential regulators, in order to reduce operational risk by promoting straight-through processing in downstream trade processing and settlement systems, while at the same time maintaining the legal enforceability of all applicable documentation. We believe that the Commission should apply its confirmation data reporting rules to uncleared FX transactions in a manner that is not disruptive to these well-established practices and infrastructure but that ensures the completeness and accuracy of the swap data maintained by SDRs.

Confirmation data's role in ensuring the completeness of swap data should be evaluated in light of the broader objectives underlying part 45 and part 43. The regulatory reporting requirements of part 45 and the public reporting requirements of part 43 are intended to provide sufficient information, in a standardized format, to achieve the Dodd-Frank Act's objectives of systemic risk mitigation, market abuse prevention and price discovery/transparency.<sup>9</sup> If PET and real-time data fields are sufficient for these purposes, as intended, then confirmation data reporting requirements should not need to be expanded to include any other terms of bilateral documentation or identify bilateral documentation templates. This additional information can be made available to the Commission and other regulatory authorities and SEFs and other self-regulatory organizations (SROs) nearly as effectively, and at much lower cost, through the application of Commission and SRO recordkeeping requirements and related requirements to provide information to regulators and SROs.

Confirmation data's role in ensuring the accuracy of swap data, in turn, is related to confirmation requirements. Commission Regulation § 45.1 defines the term "confirmation data" to mean all of the terms of a swap matched and agreed by the counterparties in confirming the swap. Commission Regulations §§ 23.501 and 37.6(b), in turn, require SDs, MSPs and SEFs to confirm a transaction by executing or providing legally binding documentation of all the terms of the transaction which shall legally supersede other agreements. The requirement that a confirmation legally supersede other agreements works in conjunction with confirmation data reporting rules to ensure the accuracy of SDR data by preventing conflicting terms in other agreements (that are not reported to an SDR) from governing a transaction.<sup>10</sup> This requirement prevents the parties to a transaction from bilaterally modifying the exchange rate applicable to their transaction from that specified in the PET data report, confirmation or confirmation data report for the relevant transaction.

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<sup>9</sup> See 77 Fed. Reg. 2136, 2142 (Jan. 13, 2014) (stating the objectives of Part 45's PET reporting requirements); 77 Fed. Reg. 1182, 1185 (Jan. 9, 2012) (stating the objectives of Part 43's public reporting requirements).

<sup>10</sup> See 77 Fed. Reg. 1182, 1193 ("Absent a requirement that the confirmation legally supersedes the previous agreement relating to the swap, transparency could be lost as key terms could be included in the schedule or credit support annex and conflict with terms later added to the confirmation.").

In addition, in response to commenters who requested that master agreement provisions be permitted to “control” or “trump” a confirmation, the Commission placed limitations on incorporation by reference that are intended to preserve SDR data accuracy.<sup>11</sup> These limitations require that there be no conflicts between the confirmation and the master agreement provisions that the parties wish to incorporate by reference, which effectively ensures both that the confirmation does not “control” or “trump” the parties’ master agreement (as requested by the commenters) and that the contractual terms agreed by the parties do not vary from data reported to an SDR or the public (as intended by the Commission). In addition, in the context of SEF-executed transactions, the Commission has indicated that transacting parties are to provide master agreements to SEFs ahead of execution so that a SEF can provide a confirmation inclusive of master agreement provisions that are incorporated by reference and report complete, non-duplicative and non-contradictory data to an SDR as soon as technologically practicable after execution.<sup>12</sup>

In circumstances where the incorporation by reference of master agreement provisions is limited by its terms to those provisions that are not in conflict with the confirmation, these limitations and requirements are unnecessary. By definition, in these circumstances, the master agreement provisions governing a transaction cannot vary from the trade-specific confirmation data that is reported to the SDR. In addition, to the extent that the confirmation does not include relationship terms that the Commission considers relevant to the price or risk characteristics of a swap, accurate information regarding those terms should already be required to be reported by the reporting party as PET or real-time data. A SEF also can ensure that it fulfills its PET and real-time data reporting obligations by specifying the transaction terms relevant to PET and real-time data fields as standard product terms and conditions<sup>13</sup> and, for relationship terms relevant to PET and real-time data fields (such as indication of collateralization), requiring parties to supply information about those terms on a static basis just as they are required to provide other static information (such as their SD, MSP or financial entity status). In these circumstances, requiring SEFs to gather and maintain the underlying bilateral documentation will provide no meaningful enhancement of the completeness or accuracy of swap data, but obtaining and maintaining tens of thousands of master agreements, and the accompanying schedules, currency-pair templates and other forms of bilateral documentation, would be operationally burdensome and impose crippling costs on SEFs and SEF participants, discouraging them from using SEFs for uncleared transactions on a voluntary basis. Finally, as discussed in more detail below, this other documentation is independently available to both the Commission and SEFs upon request, and including express cross-references to that documentation in confirmations is not necessary to establish a complete audit trail.

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11 See 77 Fed. Reg. 55904, 55919 (Sept. 11, 2012) (“With respect to the comments of ABC & CIEBA and AMG, the Commission understands the practice explained by these commenters to mean that some confirmations of swaps incorporate by reference certain terms that are delineated in master agreements and that the parties have agreed that such terms trump any inconsistent terms that may appear in a confirmation. The Commission clarifies that the rules adopted herein do not prohibit the practice of incorporation by reference. Therefore, if counterparties want to include certain standard provisions in their master agreements that will control each swap transaction executed, this approach would be acceptable so long as they ensure that their books and records and the confirmation data reported to an SDR reflects the actual terms of each swap transaction. Given the Commission’s interest in ensuring the integrity of data reported to an SDR, contradictory or conflicting swap transaction terms in an SD’s or MSP’s books and records or in data reported to an SDR when reconciled with an SD’s or MSP’s books and records could indicate non-compliance with the [sic] both the confirmation rule adopted herein and the swap data reporting rules under part 45 of the Commission’s regulations.”).

12 See 78 Fed. Reg. 33476, 33491 (June 4, 2013) at fn. 195 (“There is no reason why a SEF’s written confirmation terms cannot incorporate by reference the privately negotiated terms of a freestanding master agreement for [uncleared] transactions, provided that the master agreement is submitted to the SEF ahead of execution and the counterparties ensure that nothing in the confirmation terms contradict the standardized terms intended to be incorporated from the master agreement.”).

13 We would expect a SEF’s product terms and conditions to address all “other term(s) of the swap matched or affirmed by the counterparties in verifying the swap” within the meaning of Appendix 1 to Part 45, if the Commission retains that data field.

## B. Recommendations

In light of the foregoing, we respectfully recommend that the Commission clarify that (i) the provisions in Commission Regulations §§ 23.501 and 37.6(b) requiring that the confirmation “legally supersede” other agreements preclude the provisions of any other agreements from contradicting, superseding or conflicting with the terms in the confirmation, but do not require that the confirmation terms invalidate the terms of bilateral agreements that are not addressed by the transaction terms included in the confirmation; and (ii) a transaction confirmation does not need to include express cross-references to previous agreements in order for non-conflicting terms set forth in those agreements to govern the transaction in the event that the bilateral documentation deems the confirmation to include those terms.

These clarifications would provide legal certainty to the uncleared FX markets and maintain operational efficiency for market participants and infrastructure providers, without giving rise to any inconsistencies with Commission Regulations or objectives. SDs, MSPs and SEFs would execute or provide confirmations that, consistent with Commission Regulations §§ 23.501 and 37.6(b), contain all the dynamic economic terms negotiated between the parties in connection with an individual transaction and supersede other agreements.<sup>14</sup> Non-conflicting terms that apply to multiple transactions across the parties’ trading relationship would be reflected in pre-agreed, written trading relationship documentation consistent with Commission Regulation § 23.504.

Express cross-reference to such terms in confirmations should not be necessary to make them legally enforceable. Nor would requiring such cross-references be necessary for there to be an auditable trail to the governing relationship terms. Registrants and SEF members are already required to maintain copies of all relevant transaction documentation in a WORM-compliant format, identifiable and searchable by transaction, that is readily available to the Commission or SEFs upon request.<sup>15</sup> The PET and real-time data reports to the SDR, as well as the records required to be kept by SEF registrants and members, would together enable the Commission and other regulatory authorities and SEFs and other SROs to identify all relevant bilateral documentation for a specific transaction.

These clarifications would also avoid the unnecessary legal and operational risk that would arise from a requirement that transaction confirmations include express cross-references to the parties’ specific relationship documentation. For example, parties would not be exposed to the risk that a failure to update confirmations to reflect amendments to master documentation, or adherence to new market protocols, could result in claims that those amendments or protocols do not apply. Nor would they be exposed to the risk that a failure to update confirmations upon a novation could result in disagreements about which terms apply to the novated transaction. More significantly, the fruits of long-running efforts to achieve straight-through processing in the FX markets would be preserved, an important result given the Commission’s goal of promoting straight-through processing. Disruptions to downstream trade processing and settlement processes that could expose parties to unwanted settlement, credit and market risks would also be avoided.

In addition, the Commission should clarify that, so long as (i) a SEF confirmation legally supersedes all other agreements, (ii) the parties do not seek to incorporate into the SEF transaction any terms that conflict with or contradict the SEF confirmation, the SEF’s rules or the relevant SEF product terms and conditions and (iii) SEFs require their participants to

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<sup>14</sup> We note that Commission Regulations contemplate that a confirmation is one component of a broader range of relationship documentation, which also includes master agreement and credit support documentation. See Commission Regulation § 23.504(b). Therefore, we do not read the requirements in Commission Regulations §§ 23.500(c) and 37.6(b) that a confirmation include “all of the terms of the transaction” to require that terms in a previous agreement that apply across multiple transactions be set forth or cross-referenced in the confirmation.

<sup>15</sup> See Commission Regulations §§ 1.31, 1.35 and 23.201 - .203.

provide information sufficient for a SEF to fulfill its PET and real-time reporting obligations, then the parties are not obligated to provide their bilateral relationship documentation to the SEF in advance of execution in order for those agreements to apply to the transaction. As noted above, in these circumstances, there is no possibility that application of the parties' bilateral relationship documentation to a SEF transaction could lead to conflicts with the core principles applicable to the SEF because Commission-reviewed SEF rules and product terms and conditions would supersede any conflicting terms in the master agreement. This clarification would relieve SEFs of the significant and unnecessary administrative costs and potential liabilities resulting from the collection and maintenance of tens of thousands of bilateral agreements, which in any event SEFs' staff could not plausibly be expected to review in any detail nor would they need to review in order to achieve any regulatory objective. It would also avoid exposing SDs and MSPs to unnecessary legal risk arising from the disclosure of confidential bilateral trading arrangements in contravention of their agreements with their counterparties.

We further recommend that the Commission not require reporting parties or SEFs to report as confirmation data any data beyond the terms actually included (or incorporated by operation of SEF rules) in their confirmations.<sup>16</sup> This approach should not result in any deficiency in the data available to the Commission or SEFs because all of the PET and real-time data required by parts 45 and 43 is reported to an SDR regardless of what is reported as confirmation data.

If, however, the Commission determines that additional information beyond that contained in existing PET and real-time data fields would be useful, then we recommend that the Commission propose modifications to part 45 that would require the reporting of specific, additional data fields, whether as PET/real-time data or as a form of supplementary data, rather than requiring that additional information be reported through an interpretation of the contractual terms that must be included in confirmations or reported as confirmation data. For example, the GFXD preliminarily believes that the Commission should propose modifications to part 45 that would supplement existing reporting requirements by requiring, for newly executed emerging market non-deliverable foreign exchange forwards (NDFs), reporting of data fields (such as fixing time, city, source and page) comprising the settlement rate option term of an EMTA currency template.<sup>17, 18</sup> This information could be useful to the Commission because it would facilitate efforts by market surveillance staff to identify the scope of transactions and identities of transacting parties that would be affected by events pertaining to a particular settlement rate. In contrast, other terms in an EMTA currency template, such as disruption events and fallbacks, are much less likely to affect a transaction in the ordinary course. Given the costs of modifying reporting infrastructure to include additional data fields, and the relative benefits of reporting different EMTA terms, in our view, requiring the reporting of the settlement rate option would represent a balanced approach to supplementing existing swap data reporting for non-deliverable foreign exchange forwards. We would therefore support the publication of a rule proposal by the Commission to require data fields comprising the settlement rate option to be reported under part 45 for newly executed emerging market non-deliverable foreign exchange forward transactions.

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<sup>16</sup> We note that the proposed reporting standard would not preclude reporting parties or SEFs from voluntarily reporting additional information.

<sup>17</sup> These data fields are not currently required to be reported because they are not set forth specifically in the Appendices to Parts 45 and 43, nor do they represent terms that are typically matched and affirmed/agreed by the counterparties in verifying/confirming the trade because market participants instead typically agree to the settlement rate option by incorporating a standard EMTA currency template into their relationship-level master confirmation agreement.

<sup>18</sup> For SEF-executed transactions, we would anticipate that the SEF would already incorporate this term into the product terms and conditions it certifies to the Commission.



A Commission rule proposal specifying the additional information to be reported would have many benefits. It would allow the Commission to solicit meaningful public input on the costs and benefits of additional reporting requirements, since those costs and benefits can only be ascertained with precision if commenters know what specific information they might be required to report. Similarly, the Commission could solicit input on the transition period that would be necessary to enable market participants and SEFs to develop the operational workstreams, policies and procedures and infrastructure necessary to come into compliance with the new requirements. Moreover, specifying the relevant information would promote data standardization and data aggregation, thereby making the reported data more useful to the Commission and other regulators relative to data reported through other means, such as portable document format (PDF) files.

This approach would additionally promote legal certainty, as market participants would have greater clarity regarding the scope and type of information they are obligated to report than they would under an approach relying on an expansive, “catch-all” interpretation of confirmation data. As noted above, existing recordkeeping and information availability requirements should suffice to ensure that non-standard data is made available to the Commission and SEFs promptly.

Finally, if the Commission determines that existing reporting requirements are insufficient to achieve the Commission’s intended regulatory objectives, then we believe that it should seek to coordinate any modifications it makes to its rules with regulators in other G20 jurisdictions to ensure harmonization across jurisdictions that share common infrastructure and operational workflows.<sup>19</sup> In this regard, we note that inconsistencies in data fields and formats have been identified by regulators as one of the major challenges they face in aggregating and analyzing data, and that international consultations and efforts, which we support, are in progress to promote data consistency across jurisdictions.<sup>20</sup> In addition, coordination with other regulators is necessary to ensure that any modifications with respect to Commission reporting rules do not disrupt industry-wide straight-through processing infrastructure or otherwise give rise to conflicts or inconsistencies with market practices that were fostered by international prudential regulators.

**3. Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding: (a) swaps that are required to be cleared but not subject to the trade execution requirement; (b) swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution; (c) swaps that are voluntarily submitted to clearing at some point after execution (e.g., backloaded trades); and (d) uncleared swaps? If so, how?**

We support the submission made by the International Swaps and Derivatives Association, Inc (ISDA).

**4. More generally, please describe any operational, technological, or other challenges faced in reporting confirmation data to an SDR.**

FX is the world’s largest financial market<sup>21</sup> and a central component of the global payment system. FX is used in international trade, cross-border activity and monetary policy and as

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<sup>19</sup> As an example of an alternative approach that the Commission could consider, data reporting requirements in the European Union do not require separate confirmation data reporting, but they do provide for the parties to report a confirmation timestamp, the means of confirmation (e.g., electronic or non-electronic), the master agreement type and the master agreement version.

<sup>20</sup> See Financial Stability Board, *OTC Derivatives Market Reforms: Seventh Progress Report on Implementation* (Apr. 8, 2014) at p.30.

<sup>21</sup> The Bank for International Settlements (“BIS”) estimates that average daily market turnover in FX increased to USD 5.3 trillion in April 2013, up from USD 4 trillion in April 2010 and USD 1.6 trillion in 1995 - BIS, Monetary and Economic Department, *Triennial Central Bank Survey – Foreign Exchange Turnover in April 2013: Preliminary Global Results (Sept 2013)* and *Global Foreign Exchange Market Turnover in 2013 (“BIS 2013 FX Survey”)*

such the number of participants and the range of their capabilities is considerable and any reporting challenges will be exaggerated because of this.

Unlike some of the other derivative asset classes, FX does not utilize a centralised 'middleware' that can facilitate the confirmation process, such as that used in the interest rate markets. FX has a de-centralised market structure for confirming trades. FX market participants confirm their trades via established electronic or manual processes, with these processes having developed over time to ensure that good, legally binding confirmations exist in a timely fashion; it is these established processes that have replaced the need for a centralised 'middleware'.

Nearly all FX transactions between dealers are processed electronically, via straight-through processing (STP), meaning they are processed electronically without any human input, and trades are normally confirmed as soon as technically possible.

For those transactions executed with market participants with less sophisticated technology, or for those transactions that are more complex or bespoke in nature, then there is still a significant reliance on manual confirmation processes (i.e. non-automated processes).

Such manual processes continue to present the biggest challenge to reporting confirmation data. Manual processes often incur delays which impact the ability of the reporting counterparty to report confirmation data, and is reflected in additional reporting (often after trade date) to the trade repository. For example:

- if one participant to the trade does not use electronic messaging and confirms via email, and operationally validates their trades at the end of their day, then the confirmation will be communicated and processed on a Trade Date +1 (T+1) basis
- if one participant resides in a different global region to the US participant, time-zone differences means the trade is confirmed (at best) on a T+1 basis

These two examples (most noticeably occurring with corporate clients who execute FX trades to facilitate cross-border payments) are the most simplistic of scenarios, though both are highly prevalent in the FX market, both require an update (reflecting confirmation data) to the trade repository post trade date.

It is a consideration that these manual confirmation processes infer a sense of regulatory inter-dependency between both parties. The reporting party cannot meet their timely obligations unless the non-reporting party confirms the trade and provides trade allocations etc.

In the context of complex and bespoke trades, referenced above, the industry has historically relied upon the concept of economic representation. Each firm will have their own way of representing complex and bespoke products within their trade booking systems. Such proprietary booking methods impact the ability to standardize the electronic confirmation messaging for these types of products and thus limit the ability to have standardized representations in the trade repository. A solution to this reporting challenge lies with increasing the use of the rich-format Financial Products Mark-up Language (FpML) messaging; each product requires a specific template before use. In order to achieve this, industry standardized templates for individual complex/bespoke products need to be developed (steps to do so include assessment of the product features, creation of a template that contains the financial features and legal components of the trade, testing and technological builds to accommodate these new templates and appropriate timeframes to adopt these standards in the market place). The GFXD is actively pursuing the increased FpML templating of complex and bespoke FX products to increase the standardization of reporting within the trade repository. As products become templated, then the need for market participants to scan and submit PDF copies of their confirmation data for those trades which are unable to be fully reported via FpML will be reduced.

The global nature of the FX market also creates challenges with respect to the legal position of some jurisdictions on data privacy. The GFXD recently submitted in its response to the

Financial Stability Board<sup>22</sup> a request for the global regulatory community to address such challenges. The GFXD asks that the CFTC, in any of its recommendations in response to their Request for Comment, supports global consistency in what data can or cannot be reported to meet regulatory commitments.

**5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?**

We support the submission made by ISDA.

**6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).**

**a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?**

We support the submission made by ISDA.

**b. How should reporting entities identify the reason why two swaps are linked (e.g., identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?**

We support the submission made by ISDA.

Additionally, the GFXD believes that the Unique Swap identifier (USI) is the best method of linking related swaps, with reporting parties using the 'prior USI' when appropriate.

The challenge for the FX market is that its participants are vast in numbers and vary widely in their levels of technical sophistication and it is likely that market participants with lower levels of technological sophistication are unable to easily represent such information.

The GFXD believes that the CFTC can help the derivatives market by defining a minimum data set that is required to enable the CFTC to meet its regulatory reporting mandate, specifically containing data that can be communicated by less sophisticated means, such as via a comma-separated values (CSV) file. This approach would significantly improve both the quality of reporting and the cost/benefit analysis of implementation. We would also like to re-iterate our view that any changes should be made with global reporting standardization in mind.

**c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?**

We support the submission made by ISDA.

**d. How should related swaps reported to different SDRs be linked?**

We support the submission made by ISDA.

**7. What are the benefits and/or disadvantages of reporting continuation data using: (i) the lifecycle reporting method; and (ii) the snapshot reporting method?**

We support the submission made by ISDA.

**a. Are there events or information that can be represented more effectively using one of the reporting methods rather than the other?**

We support the submission made by ISDA.

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<sup>22</sup> <http://gfma.org/correspondence/item.aspx?id=575>

**b. Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?**

We support the submission made by ISDA.

In addition for FX, we believe that all trade repositories should have the same functionality. Trade repositories should cater for market participants with all levels of sophistication and provide low tech or ease of use solutions to enable compliance with global reporting requirements – in this instance either snapshot or lifecycle reporting. The GFXD considers both to be valid and is not currently aware of any negative implications of either approach. We have previously mentioned that the FX market is global in nature and consists of a considerable number of participants with differing levels of technical sophistication. If global regulatory commitments are to be achieved, allowing regulators to monitor trading activity then all required market participants should be able to report a consistent, defined set of data using a variety of high to low technological methods.

We believe that the CFTC should establish core principles on the minimum data they require in order to achieve their regulatory mandate. These mandatory, fixed elements (i.e. minimum data requirements) will enable aggregation within the trade repository as well as across trade repositories. It is key that these fields can be reported using multiple technical formats (critical for FX due to the widely varied sophistication of market participants) and that these standards allow for some participants to report additional data, should they so desire, without invoking a regulatory response requiring all market participants to do the same.

**8. How can valuation data most effectively be reported to SDRs to facilitate Commission oversight? How can valuation data most effectively be reported to SDRs (including specific data elements), and how can it be made available to the Commission by SDRs?**

We support the submission made by ISDA.

**a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?**

We support the submission made by ISDA.

**b. What challenges and benefits are associated with unregistered swap counterparties (both financial entities and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?**

We support the submission made by ISDA.

**9. Please: (i) identify and (ii) describe the complete range of events that can occur in the life of a swap. Please also address whether, and if so how, reporting entities should report each such event.**

We support the submission made by ISDA.

**a. How should events in the life of a swap be represented in SDR data? For example, should an “event type” identifier, as well as a description of the specific event, be required?**

We support the submission made by ISDA.

**10. Can swap data reporting be enhanced so that the current state of a swap in an SDR (e.g., open, cancelled, terminated, or reached maturity) can be determined more efficiently and, if so, how?**

We support the submission made by ISDA.

**b. Should reporting entities and/or SDRs be required to take any actions upon the termination or maturity of a swap so that the swap's status is readily ascertainable and, if so what should those requirements be?**

We support the submission made by ISDA.

In addition, the GFXD supports the view that the maturity date exists on trade submissions to the trade-repository and is therefore reported to the trade repository as part of the current Swap Data Recordkeeping and Reporting Requirements. Early termination events are also reported to the trade repository. We believe that a comparison of the settlement date to the date for which position data is being extracted should be sufficient to establish if the transaction is open or closed prior to inclusion in a report.

The GFXD does not believe that any additional actions are required upon the termination/maturation of a swap. Given the size of the FX market (FX is the world's largest financial market and a central component of the global payment system), any additional trade reporting requirements could have significantly negative consequences on the infrastructure and performance of the trade repository and any such changes need to be carefully considered.

**c. Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void ab initio, continue to be reported to and identified in SDR data? Why or why not? If so, how?**

We support the submission made by ISDA.

**i. Should the swap data reporting rules be enhanced or further clarified to address void ab initio swaps?**

We support the submission made by ISDA.

**11. Should the Commission require periodic reconciliation between the data sets held by SDRs and those held by reporting entities?**

The GFXD does not believe that additional reconciliation of data sets is warranted. There currently exist numerous methods in which portfolio reconciliations are performed, such as the portfolio reconciliation exercises performed as part of CFTC part 23 obligations.<sup>23</sup>

Market participants have an obligation to ensure that as part of their CFTC part 43/45 responsibilities that any reporting errors are corrected as soon as they are observed. Non-reporting counterparties have an obligation to promptly notify the reporting party of the correction once they become aware of an error or omission in the reported data. Once a reporting counterparty is aware of any errors, they are obliged to promptly submit corrected data to the relevant trade repository.

**12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3), 29 what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?**

We support the submission made by ISDA.

**13. Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared. Please include in your response any processes arising from all relevant platforms and methods of execution.**

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<sup>23</sup> <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-21414a.pdf>

We support the submission made by ISDA.

In addition for FX, the number of execution platforms has also grown to mirror the growth seen in the market over the last 15 years. The variety of execution platforms, execution methods and transmission processes is vast and it is extremely difficult to identify all of these pathways for the FX market.

Considering the clearing of FX products, the 2012 US Treasury exemption for FX forwards and swaps<sup>24</sup> means that these products are exempt from the made available to trade (MAT) obligation (and the subsequent requirement to be cleared) under the Dodd-Frank Act. Whilst we note that there is not a current mandatory trading-obligation for the non-exempted FX products (FX options and FX non-deliverable forwards) there does exist voluntary clearing mechanisms for certain FX non-deliverable forwards, although the uptake of such services are low. In order to aid the wider industry in its assessment in considering the challenges with clearing physically delivered FX products<sup>25</sup>, the GFXD has performed analysis to size the same day liquidity shortfalls for FX options should there be a default in the market, and is currently facilitating a series of roundtables with market participants, CCPs, Regulators and Central Banks to discuss these challenges.

**14. Please identify any Commission rules outside of part 45 that impact swap data reporting pursuant to part 45. How do such other rules impact part 45 reporting?**

We support the submission made by ISDA.

**16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?**

As previously mentioned, the GFXD is actively engaged in improving the quality and quantity of products that can be represented via FpML and has been successful in templating those products that are traded in large volumes. The industry is now focusing its efforts on those products that are traded in smaller volumes, which tend to be less standardized.

The process enabling products to be modeled and represented in FpML is time consuming and complicated, with specific templates being built to represent the financial and legal characteristics of the products. Once a draft template is created, it will then be subject to exhaustive operational and legal testing before it can be recommended for market use. Recent products that have successfully been through this process for FX are FX Digital options, Barrier options, Callable Forwards and enhancements to non-dollar NDF's. The industry also has a significant dependency on market participants, including trade repositories, building the technology to enable these finalised templates to be used, which could result in significant build and test time for market adoption and this is often the limiting factor to wider industry use.

The number of participants in the global FX market is considerable, as is the level of sophistication. Market participants require varyingly sophisticated channels of communication, such as the previously mentioned (more technical) FpML messaging as well as (less technical) CSV files. The CFTC and other global regulators can help market participants by defining a fixed set of standardized fields for primary economic and confirmation data reporting that can be reported by all market participants, irrespective of

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24 See final determination issued by the US Treasury in November 2012 to exempt FX swaps and forwards from most requirements of the Dodd-Frank Act, available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-20/pdf/2012-28319.pdf> ("US Treasury FX Determination"), page 69704

25 <http://gfma.org/Initiatives/Foreign-Exchange-%28FX%29/FX-Options-Clearing/>

their technical capabilities. Such clarification will enable market participants to meet reporting requirements and will allow global regulators to easily aggregate data.

The wider derivatives industry, including FX, has also implemented methods to scan and submit PDF copies of their confirmation data for those trades which are unable to be fully reported via FpML, such as complex and bespoke transactions. This process is especially inefficient (both costly and time consuming) and we expect that the CFTC will also be experiencing challenges in utilizing this data, especially for aggregation exercises. The proposal that the CFTC defines a fixed set of minimum data requirements would be a considerable evolution towards addressing these inefficiencies, the suggestion being that all participants who are required to report, irrespective of the type of transaction, will be able to do so in a format that allows the CFTC to use that data to meet their regulatory mandate.

We would also propose that the CFTC could request additional data from participants if specifically required i.e. in addition to any minimum data requirements. We note that the CFTC could standardize these extra requirements over time to become mandatory should the need arise.

**17. Please describe any challenges associated with the reporting of allocations. How should allocation data elements (i.e., indications of whether swaps will be allocated, as well as the identities of entities to which portions of executed swaps are allocated) be reported to SDRs?**

The FX market has established numerous allocation practices primarily depending on the sophistication of the client, which are either automated or manual in nature. For instance, a manual allocation would be required when a trade is executed electronically in one system (using the first touch principle a unique swap identifier (USI) is designated at this stage) and then allocated in another system, at which point what would have been an automated process becomes manual as the two systems are not electronically linked.

There also exists scenarios (for instance in the regional bank business) where a trade has only one allocation, essentially to the same account as the original execution. In this instance, there could be two USIs generated by the execution platform, one for the original execution and one for the allocation, where in fact only one USI is required.

Given that the FX market is a global market, there are situations where the counterparty does not provide the allocations to a trade within the required time-frame. For instance, if the geographical location of both participants to the trade is different, maybe one party in the US and the other in Asia, then the trade allocations will be communicated after the close of business in the US, with the allocations being processed on the following day.

This type of situation is especially prevalent in the asset management community due to the high numbers of accounts (i.e. allocations) used.

We would also like to reference to the discrepancy between the CFTCs part 45 and part 1.35 rules, specifically drawing attention to the differences in the specified time-frames for when allocations are required to be submitted by the investment manager to the reporting counterparty for un-cleared swaps. We request clarity from the CFTC on this discrepancy, text included below:

§ 45.3 Swap data reporting; creation data

*(e. ii) Post-allocation swaps. (A) Duties of the agent. In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours after execution.*

§ 1.35 Records of commodity interest and cash commodity transactions.

(a.5.1v) (A) For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.

As mentioned above, due to the cross-border nature of the FX market, it is highly likely that trade allocations will be provided after the end of the calendar day on which the swap is executed, which create challenges for the reporting counterparty to comply with these two rules.

**19. Please describe any challenges associated with the reporting of prime brokerage swap transactions (e.g., challenges related to transactions executed either bilaterally or on a platform and/or involving different asset classes)?**

We support the submission made by ISDA.

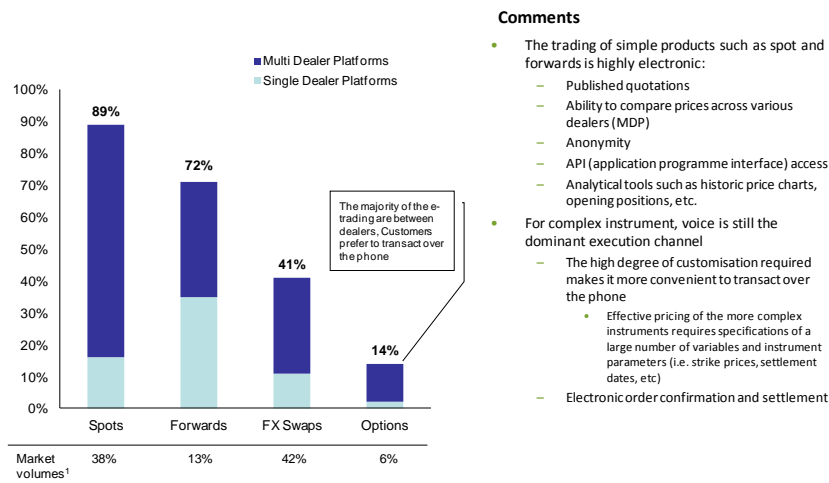
**21. Are there instances in which requirements of CFTC regulations or reliance on exemptive or staff no-action relief<sup>35</sup> result in more than one party reporting data to an SDR regarding a particular swap? If so, how should such duplicative reporting be addressed? What should be the role of the reporting entities, as well as other submitters of data, and SDRs in identifying and deleting duplicative reports? What solutions should be implemented to prevent such duplicative reporting?**

We support the submission made by ISDA.

**22. In addition to those entities enumerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers (“USIs”)? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.**

For the FX markets, given the large proportion of the market that is executed electronically, the first-touch principle is the most efficient method to create and distribute the USI i.e. the execution platform generates and communicates the USI to both parties to the trade. Table 1 below illustrates the split in electronic v non-electronic trading in the FX market, specifically demonstrating the impact that the first touch principle could have on the FX markets for the generation and communication of the USI.

Table 1: Electronic Trading Uptake by Instrument



1. Percentage of trading volume in 2013  
 Source: BIS, Greenwich Associates, Oliver Wyman analysis, GFXD estimates. Note BIS estimates of spot e-trading range from 64% to 95%. See BIS Quarterly Review, Dec 2013, page 34 footnote 10



Currently, only Swap Execution Facilities (SEF) can generate USIs for transactions executed on their platforms. For FX this is a significant challenge as the majority of FX transactions are executed on electronic platforms that are not required to register as a SEF. The GFXD believes that other entities (i.e. non-SEF registered entities) should be allowed to generate USIs, as referenced in our letter to the CFTC dated 17 January 2013, titled Request for No-Action Relief with Regard to Commission Regulation 45.5 which we have included in the Appendix for reference.

In this letter we describe that:

- there is a large proportion of the FX market that is exempt from the “swap” definition (specifically FX forwards and FX swaps), and that are traded electronically on electronic communication networks (ECNs) and other venues that are not required to register as Swap Execution Facilities (SEF)
- therefore the afore mentioned preference for the ‘first touch principle’ cannot be applied and one of the parties to the trade will be required to generate the USI and communicate it to the other party
- FX is a global market, and the restrictions on ECNs being able to generate the trade identifier do not exist outside of the US. When the venue which resides outside of the US, for instance in Europe, generates a Unique Trade Identifier (UTI) to facilitate compliance with trade reporting under the European Markets Infrastructure Regulation (EMIR)<sup>26</sup> the US participant to the trade will also be required to generate its own USI to ensure compliance with CFTCs part 45 requirements

We would like to note that this approach would be similar to the approach taken by the Division of Market Oversight in No-Action Letter 14-46 with respect to qualifying multilateral trading facilities (Q-MTFs). In that letter, the Division permitted a Q-MTF to generate a USI as though it were a registered SEF. To the extent that the Commission wants to exercise direct oversight of USI generation by non-SEF FX ECNs, we believe that it should permit such an ECN to apply for an Acknowledgment ID from the Division in a manner similar to a Q-MTF.

Finally, it is due to this current inefficiency that the GFXD supports the European UTI construct (legal entity identifier + trade reference) as the global trade identifier, recommended as to enable global consistency in trade reporting requirements. Such an approach will enable trading venues to generate the trade identifier and allow effective and efficient communication of the trade identifier to both parties of the transaction. We suggest that the CFTC considers this approach in its assessment of global regulatory policy and data harmonization, especially when considering the G20 commitments and data aggregation across trade repositories.

**23. How should data reported to SDRs identify trading venues such as SEFs, DCMs, QMTFs, FBOTs, and any other venue?**

We support the submission made by ISDA.

**24. In order to understand affiliate relationships and the combined positions of an affiliated group of companies, should reporting counterparties report and identify (and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6? 37 If so, how?**

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<sup>26</sup> Regulation (EU) No 648/2012

We support the submission made by ISDA.

**25. To the extent that a reporting entity is, in reliance on effective no-action relief issued by Commission staff, reporting to an SDR in a time and/or manner that does not fully comply with the swap data reporting rules (e.g., outside reporting rules' timeframe, required data elements missing), how can the reporting entity most effectively indicate its reliance upon such no-action relief for each affected data element?**

**a. Are there any other challenges associated with the reliance on staff no-action relief with respect to compliance with part 45? If so, please describe them and explain how the swap data reporting rules should address those challenges?**

The GFXD would like to reference that there have been multiple no-action reliefs (NARs) issued by Commission staff where there is benefit to the FX market, or the FX market is impacted as part of relief offered to the wider derivatives market.

Tracking the number of open NARs presents many operational challenges, especially the ability to manage projects in accordance to these NARs. Often, the NARs are issued with very short time-limits, which in practice do not afford themselves to the technical builds required to enable market participants to take advantage of the relief offered. Technology builds are subject to considerable budgetary approval processes, often established months in advance of the project commencing. Typically, if budget is approved, then the ability to implement technology and take advantage of the relief afforded by a new NAR will often require the transfer of resource from another regulatory deliverable project, which could in effect cause challenges in the delivery of the other project.

Additionally, if there is a requirement for the CFTC to know when a trade executed by a swap dealer or major swap participant has been transacted with reliance to a specific NAR, we suggest that the CFTC contacts that specific swap dealer or major swap participant to address that specific request. If the CFTC were to enforce a requirement where a NAR is assigned to each impacted trade, then this would require significant industry build and considerable technical challenges for market participants.

**26. Under the swap data reporting rules, are there any challenges presented by swaps for which the price, size, and/or other characteristics of the swap are determined by a hedging or agreed upon market observation period that may occur after the swap counterparties have agreed to the PET terms for a swap (including the pricing methodology)? If so, please describe those challenges.**

We support the submission made by ISDA.

**27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?**

We support the submission made by ISDA.

We believe that a consistent, defined minimum data set would enable the CFTC to achieve their regulatory mandate, providing clarity on what data would need reporting and therefore enabling the CFTC to understand the terms of the reported transactions, irrespective of their type or complexity.

The GFXD members actively use FpML messaging in their reporting to the trade-repository. Whilst FpML allows for standardised representations for most FX products, there still exist reporting challenges for those products/strategies that are not live in FpML (i.e. templates do not exist for these products/strategies). It is with this in mind, and as previously mentioned that we suggest that the CFTC defines a minimum data set that allows market participants to report the required data fields in various methods (eg FpML or CSV), depending on their sophistication.

We request clarity on the CFTCs requirement for the economic result (previously referred in our response as economic representation) to be reported, or should specific and explicit data be reported to meet regulatory aims. More specific reporting requirements, as previously discussed, are to the disadvantage of less sophisticated FX market participants who generally participate in the FX market to facilitate payments. The GFXD recommends that both economic representation and specific, explicit data will allow more market participants to report accurate data.

**28. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to: a. Cleared status; b. Collateralization; c. Execution timestamp; d. Notional value; e. U.S. person status; and f. Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).**

We support the submission made by ISDA.

**29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.**

We support the submission made by ISDA.

**a. Should the Commission require reporting of the identities, registration status, and roles of all parties involved in a swap transaction (e.g., special entity (as defined in Commission regulation 23.401(c)); executing broker; or voice/electronic systems)?**

We support the submission made by ISDA.

**b. What, if any, additional fields would assist the Commission in obtaining a more complete picture of swaps executed on SEFs or DCMs (e.g., order entry time; request for quote (“RFQ”), or central limit order book (“CLOB”), or order book; request for cross, blocks, and other execution method indicators or broker identification)?**

We support the submission made by ISDA.

**c. Are there additional data elements that could help the Commission fulfill its oversight obligations, as described above?**

We support the submission made by ISDA.

**d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?**

We support the submission made by ISDA.

**30. Have reporting entities been unable to report to an SDR terms or products that they believe are required under part 45 or related provisions? If so, please generally describe the data elements and/or products involved.**

We support the submission made by ISDA.

**a. Where a single swap has more than two counterparties, please comment on how such information should be provided within a single part 45 submission (i.e., one USI)?**

We support the submission made by ISDA.

**31. Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows reflected in a swap as agreed upon at the time of execution? If so, how could the requirements be modified to capture such a schedule?**

We support the submission made by ISDA.

**32. Taking into account the European Union's reporting rules and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral is reported for cleared and uncleared swaps?**

We support the submission made by ISDA.

**33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically:**

**a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and ipso facto the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?**

We support the submission made by ISDA.

**b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?**

We support the submission made by ISDA.

**c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?**

We support the submission made by ISDA.

**d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.**

We support the submission made by ISDA.

**35a. Responses should address: i. The reporting obligations applicable to alpha swaps; ii. The reporting obligations applicable to beta and gamma swaps; iii. Who holds the reporting obligation(s) for each swap; iv. The reporting of the linkage of alpha, beta, and gamma swaps; and v. Who has the legal right to determine the SDR to which data is reported?**

We support the submission made by ISDA.

**40. Aside from "firm trades," some swaps may be created from "open offer," meaning there is no original swap between two counterparties, but only equal and opposite**

**swaps between each of the counterparties and the clearinghouse. How should the swap data reporting rules address such swaps?**

We support the submission made by ISDA.

**42. a. Please provide recommendations regarding the reporting of netting and compression, and describe any relevant differences in reporting of netting and of compression.**

At the present time, given the largely un-cleared nature of the FX market (FX forwards, FX swaps and FX options are not being cleared, some voluntary clearing of FX NDFs), this question has yet to be fully explored.

**b. Are netting and compression different concepts in the uncleared swaps markets versus the cleared swap market? If so, how?**

We generally consider netting to consist of the aggregation of trades to alleviate operational capacity, reducing payment obligations without impacting the legal status of the individual trades – the gross obligations of the trades still exist.

Compression is considered to result in a change in both the value of the trade and the legal nature of the trade. For FX, we expect that the flow of information during compression exercises will be significant, specifically with the required cancel and re-submission of trades to reflect the new position in the participant's books and records as well as the subsequent updates required at the trade repository. Depending on the FX products implicated, the flows and challenges on market infrastructures could be considerable.

There are existing compression models that will present considerable challenges if applied to the FX market, such as the futures compression model. The futures compression model requires that once executed, a trade is added to an overall position and the position itself is then managed. For FX this would represent significant challenges for market participants when it comes to managing the trade flows for trade cancellations, rebooks and then the re-submission to the trade repository, not to mention the management of all associated data attributes, such as the USI.

**47. In what situations should an SDR reject part 45 data from entities due to errors or omissions in the data? How should the Commission balance legal requirements for reporting as soon as technologically practicable and the need for complete and accurate data?**

We support the submission made by ISDA.

**48. All data in an SDR must be current and accurate, and the Commission expects SDRs, counterparties, and registered entities to take proactive steps to ensure data accuracy. Are there challenges that a reporting entity faces in confirming data accuracy? If so, how can those challenges most effectively be addressed?**

We support the submission made by ISDA.

**49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?**

We support the submission made by ISDA.

**50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an**

**SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.**

We support the submission made by ISDA.

**52. Are there additional existing swaps data standards (other than the legal entity identifier (“LEI”), unique product identifier (“UPI”) and USI) that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?**

We support the submission made by ISDA.

Additionally for FX, we would like to reference the response that we submitted to the Financial Stability Board<sup>27</sup> on Data Aggregation. The GFXD strongly believes that a standard set of trade reporting requirements should be established by the regulators at the global level and that these requirements should be explicitly defined to prevent any misinterpretation by market participants.

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

- the Legal Entity Identifier (LEI)<sup>28</sup>
- the Unique Product Identifier (UPI) utilising the ISDA product taxonomies<sup>29</sup> and
- the Unique Transaction Identifier (UTI)

Such a core set of standardized data attributes would facilitate better data aggregation within either a single trade repository or across multiple trade repositories and allow more accurate representation of trade data.

Finally, if there was a jurisdictional specific (additional) trade reporting requirement, it would be possible for any extra attributes to be reported on top of the core set of standardized fields, thus allowing regulators the ability to meet their individually mandated obligations.

**53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.**

We support the submission made by ISDA.

The key challenge for the FX market is ensuring that both parties have a LEI. Because the FX market acts as the global payment system, the users of the FX market are vast in number, wide in their geographical location and transact across jurisdictional borders. Some of these jurisdictions are not subject to US law and many of the participants of these jurisdictions do not feel the need to apply for a LEI (or feel the need to permission a 3<sup>rd</sup> party to apply for a LEI on their behalf), especially if their local regulator does not require a LEI.

**a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?**

The GFXD suggests that any processes implemented to help market participants obtain a LEI are performed at the global regulatory level, not just the G20 level. All markets, including ‘emerging markets’ should be considered in this process as we believe the requirement to obtain a LEI should be implemented equally across all jurisdictions. Such an approach would mitigate the scenario where one party to a trade is not regulatory obliged to obtain a LEI.

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<sup>27</sup> <http://gfma.org/correspondence/item.aspx?id=575>

<sup>28</sup> <http://gfma.org/initiatives/legal-entity-identifier-lei/gfma-statement-on-the-endorsement-of-pre-lei-utilities>.

<sup>29</sup> [http://www2.isda.org/attachment/NTQzOQ-/ISDA\\_OTC\\_Derivatives\\_Taxonomies\\_0\\_version2012-10-22.xls](http://www2.isda.org/attachment/NTQzOQ-/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls)

**54. What principles should the Commission consider when designating a UPI and product classification system pursuant to § 45.7?**

We support the submission made by ISDA.

**a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.**

The FX market has been actively engaged with ISDA in helping to define the taxonomy for FX<sup>30</sup>, which specifically consists of the following products: FX spot, FX forward, FX NDF and FX options (vanilla, non-deliverable, simple exotic and complex exotic). The FX industry uses this taxonomy in the creation of FpML message templates, which in turn are used to provide more detailed trade reporting representations to the trade repositories. This taxonomy is therefore heavily incorporated into the technology builds and existing data flows of market participants.

The GFXD proposed the ISDA taxonomy to allow the market the maximum flexibility in the innovation of new products. Product innovation is critical in the FX OTC market; corporates and investors are consistently looking for more effective means to hedge their exposures and such innovation provides an evolution in the methods available. More detailed and prescriptive individual product taxonomies would take longer to implement in the market-place and would delay both the ability to innovate (at the expense of the end-user) and to report (at the expense of the regulator). We would also be concerned that a more detailed taxonomy would not allow the regulators sufficient ability to effectively aggregate data in the trade repository due to the OTC nature of the FX products and the ability to trade multiple variances on a similar product.

**55. Please explain your experiences and any challenges associated with the creation, transmission and reporting of USIs.**

We support the submission made by ISDA.

As previously mentioned for the FX markets, there are key challenges with respect to the creation and transmission of a USI, which ultimately impact the ability to report a USI. Whilst considering these challenges it is important to remember what a USI is intended to be used for:

*These unique identifiers will be crucial regulatory tools for linking data together and enabling data aggregation by regulators across counterparties, asset, classes, and transactions. This will enhance regulators' ability to mitigate systemic risk, prevent market manipulation, conduct effective market and trade practice surveillance, enforce position limits, and exercise resolution authority.<sup>31</sup>*

For FX, these challenges include:

- **Generation:** The inability of non SEF registered ECN platforms to generate a USI particularly impacts the FX forward and swap market, meaning that a US person may be required to generate the USI, rather than taking the USI from the execution platform. In multi jurisdictional reporting scenarios this can result in delays in confirmations due to partying trying to agree which reference is reportable to which regulator
- **Communication:** The communication of a USI is largely via the confirmation process. Any delays to this process will impact the ability of the reporting party to include a USI on their report within the Trade Date (T0) time-frame
- **Standardisation:** The lack of a global standard for the trade identifier. Many trades are currently required to be reported in multiple jurisdictions; any variances in the construct of the trade identifier adds increased cost and operational risks to the market participants whilst simultaneously compounding the data aggregation challenges for regulators

<sup>30</sup> [http://www2.isda.org/attachment/NTQzOQ--/ISDA\\_OTC\\_Derivatives\\_Taxonomies\\_0\\_version2012-10-22.xls](http://www2.isda.org/attachment/NTQzOQ--/ISDA_OTC_Derivatives_Taxonomies_0_version2012-10-22.xls)

<sup>31</sup> [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sdrr\\_qa.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sdrr_qa.pdf)

**56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (e.g., for purposes of monitoring the SD de minimis calculation)?**

We support the submission made by ISDA.

**57. Should data elements be reported to the SDR to reflect whether a swap is a dealing or non-dealing swap? If so, how should this information be reflected in the SDR?**

We support the submission made by ISDA.

**58. Where transactions are executed in non-U.S. dollar ("USD") denominations, should the SDR data reflect USD conversion information for the notional values, as calculated by the counterparty at the time of the transaction (rather than the conversion taking place at the SDR)?**

We support the submission made by ISDA.

**61. How can swap data reporting be enhanced to facilitate the calculation of positions within SDRs?**

As previously mentioned, the importance of the CFTC defining a minimum set of data requirements for market participants to report will enable the CFTC to meet its regulatory mandate. A consistently defined set of data requirements would enable the trade repositories to easily aggregate data, either within a single trade repository, or across multiple trade repositories.

**a. How should position information within an individual SDR be aggregated across multiple SDRs so that the Commission has a complete view of a market participant's risk profile for swaps reportable under Dodd-Frank?**

We would like to draw reference to our previous responses and to our response to the Financial Stability Board<sup>32</sup> on Data Aggregation.

The GFXD strongly believes that a standard, minimum data set of trade reporting requirements should be established by the regulators at the global regulatory level and these requirements should be explicitly defined to prevent any misinterpretation. Unless such actions are taken, it will be incredibly challenging and expensive to ensure that there can be sufficient matching between trade repositories.

The GFXD would also like to draw reference to trade reporting in Europe, specifically to the existing challenges with matching trade reporting data across multiple trade repositories. Due to a lack of standardized trade reporting attributes and standardized trade repository functionality, the matching rates for all asset classes is very low. Anecdotal feedback suggests this is due to:

- Inconsistencies in the data being reported to each repository
- Technological challenges at each trade repository, including the inability to provide exception reporting

These challenges have recently been escalated to European Securities and Markets Authority (ESMA) for action and should be noted that this is presenting a considerable obstacle in achieving regulatory mandates.

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<sup>32</sup> <http://gfma.org/correspondence/item.aspx?id=575>



**b. How can the Commission efficiently aggregate information by product and by market participant in order to understand positions across cleared and uncleared markets?**

Please see our response to question 61a.

**62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?**

We support the submission made by ISDA.

**63. What international regulatory coordination would be necessary to facilitate such data aggregation?**

We support the submission made by ISDA.

**64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?**

We support the submission made by ISDA.

**a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?**

We support the submission made by ISDA.

**b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?**

We support the submission made by ISDA.

**c. What would be the basis for property rights in the data for each of these scenarios?**

We support the submission made by ISDA.

**d. What ownership interests, if any, are held by third-party service providers?**

We support the submission made by ISDA.

**e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity?**

We support the submission made by ISDA.

**65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?**

We support the submission made by ISDA.

**a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?**

We support the submission made by ISDA.

**b. Does commercialization of swap data increase potential data fragmentation?**

We support the submission made by ISDA.

**c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?**

We support the submission made by ISDA.

**66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide “consent” to further distribution or use of swap transaction data for commercial purpose by the SDR?**

We support the submission made by ISDA.

**67. Even though swap data reported to an SDR must be available for public real-time reporting, should any use of such real-time data or commercialization of such data occur only with the specific consent of the counterparties to the swap?**

We support the submission made by ISDA.

**68. An ancillary issue relating to commercialization of data and legal property rights relates to the “portability” of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or “ported” to another SDR.<sup>52</sup> The Commission seeks comment on whether § 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported?**

We support the submission made by ISDA.

**69. To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) the accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data. Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.**

We support the submission made by ISDA.

**a. What challenges do Commission registrants (SDs, MSPs, SEFs, DCMs, and DCOs) face as reporting entities and reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission’s rules, if any, would help address these challenges?**

We support the submission made by ISDA.

**b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission’s rules, if any, would help address these challenges?**

We support the submission made by ISDA.

**c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission’s rules, if any, would help address these challenges?**

We support the submission made by ISDA.

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We appreciate the opportunity to share our views on this Request for Comment. Please do not hesitate to contact, Mandy Lam at +1 (212) 313 1229 / [mlam@gfma.org](mailto:mlam@gfma.org) or Andrew Harvey at +44 (0) 207 743 9312 / [aharvey@gfma.org](mailto:aharvey@gfma.org) should you wish to discuss any of the above.

Yours sincerely,

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 long, sweeping underline.

James Kemp  
Managing Director  
Global Foreign Exchange Division, GFMA

**Appendix: GFMA No-Action Relief request re ECN namespaces**

CEA Section 4r  
Commission Rule 45.5

17 January 2013

Richard Shilts  
Acting Director  
Division of Market Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Request for No-Action Relief with Regard to Commission Regulation 45.5**

Dear Mr. Shilts:

The Global FX Division (“GFXD”)<sup>33</sup> of the Global Financial Markets Association (“GFMA”)<sup>34</sup> is writing, on behalf of our members and their affiliates, to request that the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) issue a no-action letter confirming that the Division will not recommend that the Commission commence enforcement action (1) under Commission Rules 45.5(b), (c) or (d) against any reporting counterparty or swap data repository (“SDR”) for a failure to create, transmit or maintain a unique swap identifier (“USI”) for a foreign exchange (“FX”) transaction that is reportable pursuant to Part 45 of the Commission’s Regulations (a “Reportable FX Transaction”), and which is executed on an FX ECN (as defined below) that is not registered as a swap execution facility (“SEF”) in accordance with such provisions, if the reporting counterparty or SDR transmits and maintains a USI created for the Reportable FX Transaction by the unregistered FX ECN in the manner described below or (2) under Commission Rule 45.5(e) against any registered entity or swap counterparty for a failure to use and record a USI created pursuant to Commission Rules 45.5(b) or (c) in its records and swap data reporting for a Reportable FX Transaction executed on an unregistered FX ECN if the registered entity or swap counterparty uses a USI created for the Reportable FX Transaction by the unregistered FX ECN in the manner described below.

**I. Background**

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<sup>33</sup> The Global Foreign Exchange (FX) Division was formed as part of the Global Financial Markets Association (GFMA) and its members comprise 22 global FX market participants, collectively representing more than 90% of the FX market (Euromoney 2012).

<sup>34</sup> The Global Financial 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. For more information, please visit <http://www.gfma.org>.

Commission Rule 45.5 provides that each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to Part 45 of the Commission's Regulations by the use of a USI, which shall be created, transmitted and used for each swap as provided in Rules 45.5(a) through (c). A USI consists of a single data field that contains the unique alphanumeric code assigned to the creator of the USI by the Commission (a "namespace") and a unique alphanumeric code generated and assigned to the relevant swap by the creator of the USI.

In adopting Rule 45.5, the Commission explained that the USI is to be created through a "first-touch approach" at the earliest possible point, which is intended to ensure that all market participants involved with the swap will have the same USI for the swap as soon as possible, avoid confusion and potential errors, avoid delays in submitting an executed swap for clearing while waiting for receipt of a USI and minimize the need to alter pre-existing records concerning the swap in various automated systems to add the USI.<sup>35</sup>

Under this first-touch approach, the responsibility for creating the USI for a swap is as follows:

- **For swaps executed on a SEF or designated contract market ("DCM"):** the SEF/DCM shall create and transmit the USI.
- **For swaps executed off-facility with a swap dealer ("SD") or major swap participant ("MSP") as the reporting counterparty:** the reporting counterparty shall create and transmit the USI.
- **For swaps executed off-facility without a SD or MSP as the reporting counterparty:** the SDR shall create and transmit the USI.

Swaps that trade on SEFs will benefit from the application of the first-touch principle under Rule 45.5. Specifically, as a result of the allocation of responsibility set forth above, for those swaps, the SEF would be responsible for creation and transmission of the USI, consistent with the first-touch principle.

FX swaps and FX forwards are commonly executed on, variously, electronic communication networks, electronic trading platforms, electronic trading facilities, or other facilities or platforms providing electronic means for the execution of FX transactions between third parties (together, "FX ECNs"). However, Sections 1a(47)(E) and 1b of the CEA provide the Secretary of the Treasury (the "Secretary") with the authority to exempt FX swaps and FX forwards from the definition of the term "swap." On November 20, 2012, the Secretary published in the Federal Register a final determination granting such exemption.<sup>36</sup> Given this final determination by the Secretary, an FX ECN that limits its trading in swaps to exempt FX swaps and FX forwards will not be required to register as a SEF.<sup>37</sup> Nevertheless, Section 1a(47)(E)(iii) provides that, notwithstanding such a determination by the Secretary, all FX swaps and FX forwards shall be reported to an SDR or the Commission pursuant to Section 4r of the CEA.

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<sup>35</sup> See Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136, 2158 (Jan. 13, 2012).

<sup>36</sup> Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 Fed. Reg. 69694 (Nov. 20, 2012).

<sup>37</sup> The relief requested herein would not apply to FX transactions executed on an FX ECN that is registered as a SEF.

In addition, some non-exempt FX transactions will continue to trade on FX ECNs that may not satisfy the SEF definition and therefore would not qualify to register as SEFs.<sup>38</sup> FX transactions executed on such an FX ECN would nonetheless be subject to Commission reporting requirements. For example, while FX options do not benefit from the exemption granted by Treasury, it is not clear at this stage whether, or in which cases, they will be subject to a mandatory clearing determination and subsequently to an obligation to trade on SEFs. The applicability of mandatory clearing and trading requirements to FX options is currently subject to further analysis. We recognize that such requirements may apply subject to safe and sound clearing methodologies being developed: GFXD and its members are working with regulators, central banks and central counterparties in the context of the CPSS-IOSCO Principles for Financial Market Infrastructures to define the key challenges faced in clearing FX options in order to help inform market solutions in this regard. However, to the extent that such clearing and trading determinations are not so made for FX options and to the extent that such instruments are traded on FX ECNs, we believe it would be beneficial for such instruments to conform to the first touch approach promoted by the Commission in the case of other reportable swaps.

The FX market has a mature and widely adopted electronic trading framework in which FX swaps and FX forwards (which, depending upon currency pair and tenor, are generally liquid instruments) readily trade electronically and in volumes which are sufficient to support a business case for standalone FX ECNs. The final determination released by Treasury states that, currently, approximately 41% and 72% of FX swaps and FX forwards, respectively, trade across electronic platforms. Absent this relief, a significant proportion of FX trading flows, which are currently executed through FX ECNs, would not benefit from the first-touch principle because FX ECNs would not be assigned a namespace for purposes of USI generation unless they were to apply for SEF registration voluntarily, assuming that they qualified to do so at all. Similarly, non-exempt FX transactions also trade electronically via ECNs and, depending upon relevant decisions in respect of clearing and SEF trading, may continue to do so in some cases on non-SEF platforms. For example, currently, it is estimated that approximately 14% of FX options are traded across electronic platforms<sup>39</sup>.

Therefore, for Reportable FX Transactions executed on FX ECNs that are not registered as SEFs and for which one of the counterparties is an SD or MSP, such SDs and MSPs with reporting party responsibilities wish to replicate an efficient and optimal workflow for the generation of USIs that is based upon the Commission's first-touch principle. Enabling FX ECNs that are not registered as SEFs to generate USIs in the same manner as SEFs, but without requiring full SEF registration, would achieve this goal.

## II. Request for Relief

As noted above, our members anticipate that a significant proportion of Reportable FX Transactions will continue to be traded on FX ECNs that are not required to register, and do not anticipate registering, as SEFs. Therefore, we request that the Division grant no-action relief requested herein, which would:

- (i) Allow the Commission, or a body, institution or organization determined by Division staff (for example, the National Futures Association) (the "Assigning Body"), to assign the designated namespaces to individual unregistered FX ECNs for the purpose of generating USIs for Reportable FX Transactions;

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<sup>38</sup> See Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1214, 1219 (Jan. 7, 2011) (discussing the types of trading systems that qualify to register as SEFs).

<sup>39</sup> Based on BoE, Celent, Greenwich Associate and OW analysis carried out for GFMA.

- (ii) Permit FX ECNs to generate and assign a USI to each Reportable FX Transaction executed on their respective platforms and to transmit such USI to the counterparties to the Reportable FX Transaction and any other relevant recipients, e.g., a derivatives clearing organization or SDR; and
- (iii) Allows reporting counterparties to report data to the applicable SDR under Part 45 using the USI assigned by an unregistered FX ECN for a Reportable FX Transaction.<sup>40</sup>

#### **A. Analysis**

This request is being made to (i) facilitate a more efficient workflow for the FX industry that will support regulatory reporting under Part 45 and which is consistent with the Commission's first-touch principle for USI assignment and (ii) ensure a level playing field between multi-product SEFs and FX ECNs. We believe that, should the Division grant this request, platforms intending to register as SEFs would not be incentivized to refrain from such registration, nor would FX ECNs be conferred any advantage.<sup>41</sup>

##### **1. The Proposed Relief would Reduce Cost, Complexity and Operational Risk**

Without the relief requested herein, FX ECNs would be unable to generate and assign USIs for the Reportable FX Transactions traded on their platforms. Under this scenario, there are two alternative implementations, both of which would increase the complexity of the workflow and USI assignment.

The first alternative implementation would require FX market participants to follow the same workflow as for a trade executed bilaterally. This workflow requires the reporting party to transmit the USI at a point later than first-touch. For FX, the only point at which transmission of trade information is certain or most reliable is during the confirmation process. This workflow is more complex than the first-touch approach since it involves requiring more participants, e.g., confirmation platforms, to be involved in making the appropriate changes to their systems to support the transmission of the USI. Given the diversity and number of participants in the FX market, including the greater number of infrastructure providers, this approach would result in more potential points of failure, which could be mitigated by facilitating the proposed first-touch approach for FX ECNs.

The second alternative implementation, which would enable the USI to be assigned at the point of execution, would require FX reporting parties to allocate tranches of their USIs to every FX ECN through which they trade.<sup>42</sup> For this approach to work, the FX ECN would need to implement full reporting party logic, including identifying and continually updating the Commission registration status of all users, to determine which side of a trade is the reporting party. The FX ECN would then need to allocate a USI based upon the allocated tranche identifiers agreed with the relevant reporting party. In addition to managing USI tranches for all of its trading participants that are reporting parties, this latter method can

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<sup>40</sup> The reporting counterparty would thus satisfy its requirement under Part 45 to "create" the USI for off-facility swaps by using the USI generated and assigned by the relevant FX ECN.

<sup>41</sup> This request assumes that a SEF would be able to use its namespace to assign USIs to non-swap trades executed on its platform. In the event that this is not the case, we believe there is still an efficiency argument to support generation of USIs for Reportable FX Transactions by FX ECNs.

<sup>42</sup> Under this mechanism, Dealer A would assign trade identifiers from, e.g., 1 to 10,000,000 to FX ECN A on the understanding that, for each trade for which Dealer A is the reporting party, FX ECN A would assign a USI of [Dealer A namespace] + [trade ID]. This process is repeated for each FX ECN through which Dealer A executes trades.

become unstable as trading volumes shift amongst FX ECNs, requiring reallocation of identifier tranches. Furthermore, FX ECNs would need to allocate the USI according to specific criteria for each reporting party, otherwise the USI cannot be guaranteed to be unique.<sup>43</sup>

Both of the above alternatives would add cost, complexity and operational risk to the USI assignment process that could easily be avoided through granting the requested relief, which we do not believe is contrary to the policy intent of the Commission.

## 2. Competitive Effects

An important goal of the requested relief is to level the playing field amongst market participants. It is therefore important to consider whether granting this request would assist in providing a level playing field among the electronic platforms, or confer any advantages or disadvantages to certain platforms. There are two cases to consider in this regard: (i) the multi-product SEF and (ii) FX ECNs.

We assume that a multi-product SEF would be able to utilize its SEF namespace to assign USIs for any trades that are executed across its platform (including non-swap trades in exempt FX swaps and FX forwards) and which are subject to Part 45. This would therefore enable the first-touch principle to apply for all trades. In isolation, this would confer an advantage on the multi-product SEF by virtue of its ability to assign a USI at point of execution, when an FX ECN could not.

Conversely, an unregistered FX ECN would be unable to acquire a namespace and assign USIs. As discussed above, some FX ECNs facilitate significant liquidity for the market, meaning that a significant proportion of trade flow would be unable to have a USI assigned at first-touch. If FX ECNs are not allocated a namespace, whereas multi-product SEFs are allowed to operate with a namespace, then the additional workload to support reporting transactions executed on FX ECNs would put them at a competitive disadvantage to multi-product SEFs.

In addition, we would not expect the FX ECN to submit voluntarily to SEF regulation solely to acquire a namespace to assign USIs to Reportable FX Transactions. The FX ECN market space is presently characterized by low costs and low barriers to entry resulting from the simplicity of the traded products and limited registration requirements. This has a knock-on benefit to the overall market and its end users by creating diverse sources of liquidity and innovative execution methods (e.g., anonymous, prime brokered dealing). A need for SEF registration would increase market costs, potentially reducing choice, availability of liquidity and stifling future innovation. In addition, there is no indication that Congress intended for the Commission's reporting rules to create incentives for FX ECNs to register as SEFs notwithstanding an exemption by the Secretary.

Going forward, should an FX ECN wish to expand its product offering to instruments subject to mandatory SEF trading, or to provide a functionality causing it to fall within the SEF definition, it would be required to apply for SEF registration. Providing that registration is successful (and whether or not a new namespace is granted or the existing namespace persists for ease of implementation) the competitive impact on the market should be neutral. We believe the minimum necessary outcome for the FX market is to ensure that all platforms that offer trading in Reportable FX Transactions should benefit from equivalent treatment in respect of namespace usage. Depending upon the final content of the SEF regulations, we believe that there may be up to 25 platforms that will operate/continue to operate as unregistered FX ECNs.

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<sup>43</sup> This is not an issue for a SEF since it would simply assign a USI comprising the [SEF namespace] + [unique identifier], i.e., it would not need to coordinate USI assignment with another party to ensure uniqueness.



**B. Conditions for Proposed Relief**

We propose that the Division's no-action relief requested herein be subject to the following conditions:

- (a) The Commission assigns or authorizes specified namespaces or a specified range of namespaces designated for use in unregistered FX ECNs' creation and assignment of USIs for Reportable FX Transactions;
- (b) The Commission or Assigning Body (as relevant) will be responsible for assigning the designated FX transaction namespaces to individual FX ECNs for the purpose of generating USIs for Reportable FX Transactions; and
- (c) That any FX ECN wishing to apply for a namespace should provide to the Commission or Assigning Body (as appropriate) the following:
  - a. Information on the applying entity, to include:
    - i. Full name of the legal entity;
    - ii. Parent name (if applicable);
    - iii. Name of the relevant trading platform;
    - iv. List of types of Reportable FX Transactions to which USIs will be assigned;
    - v. Registered address;
    - vi. Registered officers;
    - vii. Country of incorporation;
    - viii. Country of residence;
    - ix. Full contact details for the individual to be responsible for any communications including name, address, telephone, facsimile number and email.
  - b. A statement to the effect that the FX ECN is:
    - i. Applying for a namespace in order to assign USIs to Reportable FX Transactions to facilitate market participant compliance with Part 45 of the Commission's Regulations; and
    - ii. Not already registered as a SEF.
  - c. Any such further information related to the assignment of a namespace and the issuance of USIs as the Commission or Assigning Body (as appropriate) should, from time to time, require.

\* \* \*

Based on the foregoing, we respectfully request that the Division issue a no-action letter confirming that the Division will not recommend that the Commission commence enforcement action (1) under Commission Rules 45.5(b), (c) or (d) against any reporting counterparty or SDR for a failure to create, transmit or maintain a USI for a Reportable FX Transaction executed on an FX ECN that is not registered as a SEF in accordance with such provisions, if the reporting counterparty or SDR transmits and maintains a USI created for the Reportable FX Transaction by the unregistered FX ECN in accordance with the conditions specified in Part II.B above or (2) under Commission Rule 45.5(e) against any registered entity or swap counterparty for a failure to use and record a USI created pursuant to Commission Rules 45.5(b) or (c) in its records and swap data reporting for a Reportable FX Transaction executed on an unregistered FX ECN if the registered entity or swap counterparty uses a USI created for the Reportable FX Transaction by the unregistered FX ECN in accordance with the conditions specified in Part II.B above.

Please do not hesitate to contact the undersigned for any further information the Commission or its staff may require in connection with this request.

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 long, sweeping underline.

James Kemp  
Managing Director  
Global Foreign Exchange Division, GFMA<sup>44</sup>

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<sup>44</sup> The Global Financial 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.