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TO:

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Dear Sirs

Re: Trade Information Reporting System – FX Security Conversions

Following the publication by the Korea Exchange (KRX) of its draft Trade Information Reporting System on 1 November 2018, the Global Foreign Exchange Division (**GFXD**) of the Global Financial Markets Association (**GFMA**), would like to provide some additional comments on the subject of FX Security Conversion Transactions.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 25 global FX market participants[1], collectively representing around 80% of the FX inter-dealer market[2]. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

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We note that the list of products in scope includes FX Forwards but excludes FX Spot and would, therefore, like to bring to your attention the issue of FX Security Conversions. These can be defined as: *the purchase or sale of a foreign currency for the sole purpose of effecting a purchase or sale of a security denominated in a foreign currency, when the settlement period for such FX transaction is within the settlement cycle for such security.*

[1] Bank of America Merrill Lynch, Bank of New York Mellon, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds Bank, Mizuho, Morgan Stanley, MUFG Bank, NatWest Markets, Nomura, Royal Bank of Canada, Scotiabank, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac
[2] According to Euromoney surveys

Due to the increased access and investor interest in foreign markets, growing numbers of these customers are invested in foreign securities. To facilitate the purchase or sale of these foreign securities, bank custodians and broker-dealers, as part of their duties, often enter into a FX transaction that is incidental to and for the sole purpose of effecting the foreign securities transaction. For example, when a non-US customer wishes to purchase a US dollar-denominated security, its broker-dealer or bank custodian will enter into a corresponding FX transaction to have US dollars on hand to meet the cash currency requirements necessary for the customer to complete its purchase of the securities. These FX transactions are an integral part of the settlement process. Typically, the settlement cycle for most securities denominated in major currencies is trade date plus three days (T+3).[3] Accordingly, the bank custodian or broker-dealer would enter into a FX transaction on a T+3 basis as well. However, in some securities markets, the settlement cycle can take up to seven days (T+7).

To date, regulatory authorities in several major jurisdictions, such as the United States[4], Canada[5], EU[6] Singapore[7], and Hong Kong[8] have defined transactions used solely to fund the purchase or sale of a foreign security where the settlement period is greater than T+2 days as an FX Spot (or otherwise excluded) contract. Such transactions are thus outside the scope of OTC derivatives regulation within those jurisdictions. Others, such as Australia[9], have granted waivers for FX Security Conversions for the present. Hence, we suggest that the KRX should apply the same treatment to these transactions and either <u>not</u> consider them as foreign exchange derivatives or <u>not</u> require them to be reported.

Subjecting these transactions, that are incidental to related securities transactions, to OTC derivatives reporting would expose bank custodians, broker-dealers and their customers to needless operational, price, credit and other risks. As a result, participants may restrict FX Security Conversions to T+2 FX Spot contracts, even when the securities settlement takes longer, thereby exposing the customer to FX risk, while exposing the bank to certain operational risks, and changing – and disrupting – the long-standing and well-functioning settlement processing for the systemically relevant securities markets that exists today.

OTC derivatives regulation should not be applied to the types of incidental transactions at issue here and will not provide any meaningful protection to participants (in the form of disclosures) or meaningful information to the regulatory authorities (in the form of regulatory reporting). Inconsistent treatment of these transactions globally should be avoided to ensure that the lack of an exclusion for FX Security Conversions from OTC derivatives regulation in some jurisdictions (e.g. Korea) doesn't create unnecessary disincentives from transacting in securities in those jurisdictions by raising their transactional costs relative to other jurisdictions which have excluded them (e.g. in the United States and EU).

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[3] See www.sec.gov/investor/pubs/tplus3.htm
[4] Federal Register CFTC and SEC Vol 77, No 156, 17 CFR Parts 230, 240 and 241, Page 48257
[5] See for example OSC Rule 91-506 Section 2(1) 'Excluded Derivatives'
[6] Commission Delegated Regulation (EU) 2017/565 Article 10
[7] Securities and Futures Act (Chapter 289) Securities and Futures (Reporting of Derivatives Contracts) (Amendment No. 2) Regulations 2014, Amendment of Regulation 2 'excluded currency contract'
[8] Securities and Futures (OTC Derivative Transactions—Reporting and Record Keeping Obligations) Rules (Cap. 571, sections 101L and 101P) – see 'excluded currency contract'
[9] ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 Part 2(13) as amended on 19 September 2018

We appreciate the opportunity to share our views on this issue. Please do not hesitate to contact John Ball on +852 2531 6512, email jball@gfma.org should you wish to discuss any of the above.

Yours faithfully

James Kemp
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