Foreign Exchange Professionals Association

May 7, 2021

Global Foreign Exchange Committee Secretariat
Sent via email: codefeedback@globalfxc.org

RE: Request for Feedback on Amendments to the FX Global Code and the Introduction of Related Cover Sheets and Templates

Dear GFXC Secretariat,

The Foreign Exchange Professionals Association (FXPA)[1] appreciates the opportunity to provide feedback to the Global Foreign Exchange Committee (GFXC) on the amendments to the FX Global Code (the Code) and the introduction of related cover sheets and templates.[2]

The FXPA remains a strong supporter of the Code and its stated aim to promote a robust, fair, liquid, open, and transparent market, which is very much in line with FXPA's own principles. As we committed in 2017, the FXPA, as an Association, fully supports the adoption of the Global Code's principles.[3]

The FXPA applauds the GFXC's effort to further transparency and stability in the foreign exchange (FX) market through updates to the Code's guidance. Any additional guidance, though, should continue to follow the Code's principles-based approach. To the extent the amendments, cover sheets, and templates appear more like regulatory technical standards, the FXPA cautions the GFXC from adopting changes that will make it harder – not easier – for market participants to commit and adhere to the Code.

The FXPA would like to offer a few overall observations and then respond to the GFXC's specific questions on the proposed updates.

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[1] The FXPA represents the collective interests of professional FX industry participants, including buy-side, exchanges and clearing houses, trading platforms, technology companies, banks and non-bank market participants, among others, to advance a sound, liquid, transparent and competitive global currency market to policymakers and the marketplace through education, research and advocacy. The following comments do not represent the specific individual opinion of any one particular member. For more information, please see www.fxpa.org.

[2] GFXC, *Request for Feedback on Amendments to the FX Global Code and the Introduction of Related Cover Sheets and Templates* (Apr. 2021), https://www.globalfxc.org/consultative_process.htm?m=72%7C429.

[3] *See FXPA Endorses Global Code for FX Market*, FXPA (May 25, 2017), https://fxpa.org/fxpa-endorses-global-code-for-fx-market/.

I. The Amendments, Cover Sheets, and Templates Impose Overly Prescriptive Requirements Beyond the Code's Principles-Based Approach.

The FX Global Code is a principles-based document. It was developed to provide a common set of guidelines to promote the integrity and effective functioning of the FX market by unifying disparate codes of conduct from different jurisdictions.[4] In short, it identifies global good practices and processes. Moving towards a more prescriptive regime, as suggested in the amendments, cover sheets, and templates, is problematic for three primary reasons.

First, imposing regulatory-like technical standards will make it harder for market participants to adhere to the Code. Because those signing Statements of Commitment or otherwise committing to follow the Code operate in various jurisdictions that each have their own prescriptive standards, the Code should not try to mimic these countries' laws and rules. Instead, the Code should continue setting broad-stroke guidelines of best practices. The amendments, cover sheets, and templates, as discussed below, are generally too prescriptive for implementation directly into the Code. The FXPA suggests that a neutral industry group revise the cover sheets and templates for use as "best practices" documents that are separate and apart from the Code. The FXPA volunteers its services and expertise to lead and participate in this neutral industry group.

Second, the requirements in the proposed updates will deter market participants, particularly buy-side firms, from committing to Code adherence. While the proposed amendments do not directly add new obligations to buy-side firms, the new components will increase the compliance burden on those to whom it does apply (venues and liquidity providers), and merely seeing others forced to meet higher standards sends the wrong message to other FX market participants with respect to the Code. The proposed amendments suggest a trend towards highly-prescribed "principles" that will turn potential market participants away, at a critical junction in time.[5]

Finally, the postposed amendments may further complicate the issue related to the proliferation of public registers. Today, there are sixteen global registers. Many individual FX committees maintain their own registers. Listing a Statement of Commitment on a specific register may indicate an implicit acknowledgement and acceptance of an uplift in local market standards, such as the Tokyo Foreign Exchange Market Committee.[6] Venue-based registers may use their register as the "golden source" as to whether a market participant has issued a Statement of Commitment irrespective if such a Statement is listed elsewhere. This source then becomes the basis for venue reports as to whether a participant has committed to or adheres to the Code.

Some of the proposals we address below on cover sheets and disclosures would only encourage additional public registers. The combination of additional registers, along with potential local

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[4] GFXC, *FX Global Code*, https://www.globalfxc.org/fx_global_code.htm.

[5] The New York Foreign Exchange Committee recently discussed broadening buy-side adoption in the United States. *See* Foreign Exchange Committee, April 14, 2021 Meeting Agenda, https://www.newyorkfed.org/medialibrary/Microsites/fxc/files/2021/fxc-agenda-april-2021-meeting.

[6] *See* The Tokyo Foreign Exchange Market Committee, *Local Standards in Tokyo FX Market: Supplementary provisions to the FX Global Code* (2017 ed.), https://www.fxcomtky.com/coc/pdf_file/201705/tokyo_local_standards_en.pdf.

uplifts by a register, has already created an administrative burden on those wishing to issue Statements by requiring them to track where their Statements are listed and what additional obligations they have assumed. We do not believe the original intent of the Code was this fragmented, duplicative, and complicated outcome.

II. Responses to Specific Questions

The FXPA reviewed each of the attachments in the proposal package. We provide our responses below to three of the four attachments: (A) Anonymous Trading, (B) Algorithmic Trading / Transaction Cost Analysis, and (C) Disclosures.

A. GFXC Anonymous Trading Proposals

A1 Do you agree with the proposed Data-related addition to Principle 9?

The FXPA is generally supportive of the concept that FX E-Trading Platforms (including anonymous platforms) disclose to users and prospective users what specific market data is available, to whom, and at what frequency and latency. The prescriptive addition to Principle 9, though, will be difficult to implement in practice because not all E-Trading Platforms are registered, regulated entities with rulebooks.

While supportive of the general concept, the FXPA, however, recommends that the language related to "disclosure cover sheets and/or within applicable platform rulebooks" be broadened to capture user agreements, venue policies, etc.

A2 Do you agree with the proposed Tag-related additions to Principles 9, 19 and 22?

The FXPA is generally supportive of the addition to Principles 9, 19 and 22.

With respect to Principle 19, we note that retagging is used, not just to facilitate trading where one party previously requested avoid facing another, but where a market participant wishes to avoid being identified. The additional language should reflect this purpose too.

With respect to Principle 22, the FXPA does not necessarily view "tags" as colour. The type of information identified in the proposed amendment, footnote 2, is an example but does not represent all types of information disclosed by platforms. The FXPA has concerns that the new platform disclosures of tag-related policies may be too burdensome and prescriptive, and another layer of complexity to platforms' rulebooks, user agreements, and onboarding materials.

Finally, like our comment above, references to rulebooks should be expanded to cover user agreements, venue policies, etc.

A3 Do you agree with the proposed Credit-related additions to Principles 29 and 41?

The FXPA is generally supportive of the addition to Principle 29, but notes that there are different methods of monitoring credit limits, such as net vs. gross basis. Further, the requirement to specify the methodologies used to calculate "Net Open Position," is too detailed. The requirement should focus more broadly on credit exposures and how they are used (i.e., daily settlement limit), as well as levels at which credit limits are established. The FXPA suggests that the GFXC consider principles around the disclosure of how credit limits are calculated and how irregularities are handled.

The FXPA also is generally supportive of the addition to Principle 41.

A4.1 Do you agree with the proposed Identification of Code Signatory-related addition to Principle 22?

A4.2 Do you agree with the included footnote to the proposed addition to Principle 22?

A4.3 Do you agree with the added example to Annex 1, which would map to Principle 22?

The FXPA has both operational and market liquidity concerns with the proposed additions to Principle 22 and Annex 1.

Operationally, and as noted above, the proliferation of registers already makes it difficult to ensure Statements of Commitments stored in each register are accurate. Requiring additional documentation be kept at each register will add to the compliance burdens. Venues, moreover, would – in effect – be promoting "Code compliant" participants without any way of confirming that is true. Furthermore, the only time that counterparties' commitment to or compliance with the Code generally arises in the normal course of business right now is with respect to transaction disputes or broken trades. It is not the case now that market participants typically look at Code commitment status when considering a transaction with another party.

With respect to liquidity fragmentation, disclosure of Code signatories may help identify counterparties in anonymous markets where there are not many participants. Noting identifying Code signatories pre-trade also may result in a bifurcation or fracturing of the market where only those who have signed the Code want to trade with each other. In other words, we could find pools split between Code affirming and non-Code affirming financial institutions. While the disclosure contemplated by this amendment might encourage more widespread Code adoption, in reality, there is no mechanism (particularly at the venue level) to verify whether a participant has actually signed the Code. The FXPA has concerns that participants may commit to Code compliance for purposes of a venues' disclosure without having completed its assessment before making that decision.

To date, FXPA members are unaware of participants making trading decisions based specifically on a counterparty's Code-commitment status.

The FXPA, as an alternative, suggests a list of Code signatories all utilize and rely on one single, global register. Participants can then review the register to see if their counterparties (where known) have actually signed the Code.

If the GFXC moves forward with adopting this amendment, the FXPA finds that the proposed footnote to the proposed addition to Principle 22 is necessary to make clear that the onus is on the user to accurately report and update the platform to any changes to its Code affirming status.

B. *GFXC Algorithmic Trading / Transaction Cost Analysis Proposals*

As stated in the introduction, the FXPA believes that many of these proposed amendments would be better presented as "best practices" rather than specific amendments to the Code's Principles. In practice, while the Code is not binding, the practical result of these amendments is to impose specific, granular obligations on FX market participants.

The templates (discussed below), in particular, seem to deviate from the 2017 Code's principles-based approach and have brought the Code to more like a regulator's technical standards document.

B3 ***Do you have any comments on the additional text in Principle 18 around the disclosures of conflicts of interest?***

The conflict of interest paragraph added to Principle 18 may make compliance with this requirement and certain local laws challenging. In particular, the EU waives this type of burden for eligible contract participants (ECP) counterparties and multilateral trading facility (MTF) transactions. Similarly, the definition of "algorithmic execution" may not align with the term as its used in other jurisdictions.

For example, the proposed definition does not align with that used by Mifid (limited or no human intervention) or the Hong Kong Securities and Futures Commission (computer generated trading activities).

In order to avoid regulatory disharmonization and further regulatory conflict, the FXPA suggests that the Code refer to local definitions for purposes of defining the scope of "algorithmic trading" to comport with each jurisdiction's existing regulations.

B4.2 Do you have any comments on the content of the template? If so, please be as specific as possible (e.g. suggesting rephrased or additional questions, commenting on questions to be removed) and substantiate your comment(s).

The proposed template makes very specific assumptions on how algorithms work that may not be universal. For example, some algorithms operate on full portfolio levels, and it is unclear whether these are incorporated in the proposal.

The proposal also appears to apply more heavily to market makers, and it may not be possible or practical for E-Trading Platforms to comply with the proposed template. In other words, the proposal places significant onus on the liquidity providers, and it is unclear how much of the information asked for in the proposal is already being made publicly available or to customers.

Finally, some of the information asked for within the proposal related to risk transfer prices would be impossible to provide, as certain market segments do not have it. It could be difficult, for example, to provide a risk transfer price on a whole transaction, especially for a small or medium sized bank.

B6.2 Do you agree with the definition of algorithmic execution? If not, what would you change?

Please see above response to B.3.

B6.3 Do you agree with the definition of aggregation services? If not, what would you change?

The proposed definition of "aggregation services" does not seem to fit the intent of the overall amendments to Principle 18, and would end up pulling in every platform. The FXPA suggests that the revised definition make clear whether and how algorithms operate, such as on a portfolio or position basis.

C. *GFXC Disclosures Proposals*

C1.1 Do you support the introduction of a Disclosures Cover Sheet for Liquidity Providers?

C2.1 Do you support the introduction a Disclosures Cover Sheet for E-Trading Platforms?

The FXPA believes liquidity providers and trading platforms cover most of the disclosures in their own proprietary disclosure documents, which are either public or available to members/counterparties. As such, we recommend that the amendments should provide more detail on the expected *scope* of the disclosure, particularly for disclosures that are not publicly available. The proposed template for algorithmic trading, for example, is expected to be made public only to the extent there is no sensitive information contained in it.[7]

As currently drafted, the cover sheets place an administrative burden on platforms and providers as disclosures change and registers change. So far as this is connected to a push towards a proliferation of public registers, things could be fraught.

Moreover, the definitions and terminology used in any disclosure framework are important, as there are possible negative implications for platforms that do not provide services that neatly fit into the definitions. If the GFXC moves forward with a disclosure framework, the framework should not be too prescriptive.

C1.2 Do you have feedback on the proposed content of the LP Cover Sheet (annex 1)?

The FXPA believes that disclosing parties will try to incorporate disclosure by providing links to existing disclosures on its website, rather than providing for the substantive disclosure in this LP Cover Sheet, to avoid having to constantly update the cover sheets at various registers. Providing anything less than what is already disclosed raises concerns that the LP Cover Sheet may be viewed as false/misleading, as well as inconsistent with what the company already discloses. Liquidity providers would be reasonable to be concerned about conflicting disclosures if cover sheets were relied upon rather than materials it publishes publicly or directly to customers.

From a customer perspective, based on preliminary FXPA member discussions, cover sheets may not be used/read any more than existing disclosures. Many liquidity providers already disclose significant amounts, and an additional requirement in the Code might not solve a real problem. Additionally, some FXPA members do not make use of counterparty disclosures.

C2.2 Do you have feedback on the proposed content of the E-Trading Platform Cover Sheet (annex 2)?

There is likely to be a sizable administrative, legal, and compliance burden with this Cover Sheet. These disclosures would be public, and there will be scrutiny from regulators and participants' internal legal teams. To avoid allegations that the Cover Sheets are false or misleading, companies will need to include pages of disclosures. To avoid doing so, participants may simply redirect to existing

[7] *See Attachment B: Proposals for Enhancing Transparency to Execution Algorithms and Supporting Transaction Cost Analysis* at 10 (Apr. 2021), https://www.globalfxc.org/docs/gfxc_request_feedback_april2021_att_b.pdf ("EA providers should make their answers to the FX Algo Due Diligence Template easily accessible to clients. They can publish a completed template in the unrestricted area of their website or provide it to clients bilaterally should it contain sensitive information.").

documents as a way to avoid this burden, which diminishes the value add of such a Cover Sheet.

C3 Do you support the proposed Code changes to include explicit references to trade rejection information in Principle 9 and Principle 36?

The GFXC proposes a list of preemptive reasons for trade rejection, as well as why trades are eventually rejected. The UK explored standardized reject codes, and while there was some agreement on the general benefit, there also was agreement that these codes would add a burden to price makers and price takers. As in the UK proposal, the burden here all falls on the liquidity providers. Additionally, concerns exist that the broad definition of rejected trades would make it hard to accurately classify rejections, as human error and other non-electronic factors could be difficult to classify under standardized codes. The FXPA suggests releasing standardized reject codes, but giving time for market participants to adopt them before incorporating them into the Code. Like the recommendation above that cover sheets and templates be created by a neutral industry group, the FXPA again volunteers its services and expertise to lead an effort to create standardized reject codes.

The administrative burden should this proposal be adopted, moreover, adds to the risk and compliance industrial complex. We note that some record of trade rejections may already be captured as part of an audit trail for some venues.

This burden also may be particularly acute for buy side firms who would have to build systems and connect to others with the ability to communicate with new standardized rejection definitions. In other words, the costs may exceed the benefits, particularly if reject codes most regularly used are "other," "human error," or some other generic description.

Finally, the GFXC should consider application of this trade rejection requirement in both the human/voice as well as algorithmic/automated trading contexts.

C4 Do you support the proposed Code changes to provide additional guidance on how Market Participants handle FX Trading Information internally in Principle 19?

There are questions on how much granularity would be required, and what exactly would be required in this disclosure. There is a real potential for administrative burden as legal and compliance teams work on this.

In sum, the proposal is not quite transparent enough for what type of information it seeks. As noted above, the vagueness of what is required begs the question as to the amendment's value add.

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The FXPA stands ready to work with the GFXC on the issues discussed herein, as part of its review of the Code. Should the GFXC wish to discuss these comments further, please contact the undersigned at chairman@fxpa.org.

Sincerely yours,

Chip Lowry
Chairman